Legal Counsel *for* Churches

Corporate Governance for Churches & Their Leaders

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May A Member Sue The Church?

Occasionally, disputes arise between churches and their members. Some controversies come about as the result of action the church chose to take. In some cases, a member may feel wronged by another church member and wants the church to accept responsibility.

When the situation reaches a boiling point, a member may decide to file a lawsuit against his/her church. The ability to pursue a legal claim against a church by one of its members depends on how the church is organized.

Churches may be organized in one of two basic structures. First, a church can be formed as a corporation. A corporation is a legal person recognized by the state. As such, articles of incorporation are written and filed with the Secretary of State. In the eyes of the law, the church corporation is a separate entity from the individual church members themselves.

The second format for churches is to operate as an unincorporated association. This type of organization is recognized as a collection of individuals united to form a church. This form resembles a partnership. In this instance, the congregation is indistinguishable from the church.

Let's return to our initial question. Can a member sue his/her own church? For the answer, we look to previous cases to see how courts have treated similar circumstances. Again, the answer depends on how the church is organized.

Church organizations that operate as legally recognized corporations are subject to lawsuits from their members. We know this because we see several cases where members sued their churches. The kinds of lawsuits include matters such as negligence, governance, defamation of character and breach of contracts.

There is a different story for churches formed as unincorporated associations. North Carolina courts have ruled that each member of an unincorporated church is engaged in a joint enterprise of worship. Therefore, one member may not recover from the church for damages sustained from the conduct of another member. This ruling came from a Durham County case.

A member of the Grey Stone Baptist church alleges she was injured when a set of risers erected by the youth choir fell on her. The church admits one of the locking braces had not been properly assembled. She sued the Trustees of the church claiming negligence. Negligence may be established by showing a duty was not fulfilled.

The court dismissed the case because the church is an unincorporated association. This means the plaintiff is part of the joint enterprise. A member's lawsuit against the church would include the member suing herself. A party cannot be the plaintiff and defendant in the same action. The court ruling does not preclude a member from suing another member individually.

On the other hand, North Carolina courts have ruled that an unincorporated association may not sue its members either. A Mecklenburg County court made this decision in a case where a negligent individual allegedly caused a fire at St. Paul Wesleyan Church. After paying the claim, the insurance company sought to recoup its expenses by suing the church member that was accused of being careless. The court stated the church is not allowed to sue its own members because it is an unincorporated association. As a result, the insurance company was not allowed to sue the church member on behalf of the church.

These cases illustrate the limitations of members to seek remedies from their unincorporated churches. This does not suggest that the unincorporated association is the best structure for every church. There are other considerations to weigh. All churches should practice effective risk management by having current policies, updated insurance coverages and adequate training for all staff.

Church leaders should review their organizations and decide if the current structure continues to meet their needs. ■

The Moment

You realized legal problems can be costly if ignored.

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Should Churches Have Non-Compete Agreements?

Churches may not think of themselves in competition with each other. After all, churches serve a higher purpose than seeking market share at the expense of other religious organizations. However, the contest for new church members among churches may be unavoidable.

In some instances, businesses that compete with one another seek to keep their employees from leaving for a rival. One way organizations protect their turf is to have their employees sign a non-compete agreement.

A non-compete agreement is an understanding between the employer and employee that the employee will not work for a competitor for a period of time. This helps ensures a key staffer does not spill trade secrets or use his/her relationships to lure away customers.

A non-compete contract is enforceable in North Carolina so long as the terms do not over reach. The period of time must be reasonable. Courts want to make sure the employee is not unfairly prohibited from employment. The employee must have a skill or experience that is relevant to the organization's competitiveness. The protected geography must be a reasonable area. A non-compete agreement may be unenforceable if the terms are unfair.

This leads us to the question of whether a church should use a non-compete agreement for its key employees. A church could consider the appeal of its senior pastor so essential to its competitiveness that his/her departure for a nearby church would be a threat. The same consideration could be applied to the music director, youth pastor or other officials. Any church employee whose parting for a cross-town church would negatively impact the church's growth could be the kind of position worth protecting.

A non-compete agreement does not prevent an employee from leaving the church for membership elsewhere. The agreement does not preclude the employee from working in another field. Depending on how the language is constructed, a non-compete agreement limits certain activities that could be unfair to the current church employer.

The introduction of a non-compete agreement to church officials could be easily misunderstood. Church leaders interested in such an agreement should have a strategic discussion about what interests they seek to protect. As with all contracts, there are tradeoffs to make. The church should decide what incentives it is willing to offer a church employee to get them to forgo future employment opportunities.

For many, a non-compete agreement for churches take on doctrinal implications. On one hand, it might seem contrary to biblical principles to stand in the way of a person who wants to serve the Lord in another church. On the other hand, church officials have a legal fiduciary duty to protect the interests of the church. Effective corporate governance suggests church leaders should weigh both concerns in making a decision whether to introduce non-compete agreements in the church.

> "a non-compete agreement limits certain activities"

Finally, a non-compete agreement is only as good as the church's willingness to enforce its terms. If the church leaders are reluctant to litigate the protections of a non-compete agreement, the claims may simply be ineffective. A church could always waive its right to impose the agreement depending on the circumstances.

A non-compete contract can be an important protection against competition from past employees. The decision to proceed with such an agreement should include an open dialog with all parties. ■

Legal Counsel for Churches is a service provided by M Smith Law, PLLC for members of the religious community. This periodical is intended to help churches and their officials become better prepared to address important legal and governance issues. We hope you find *Legal Counsel for Churches* a valuable resource. For each issue, we try to raise relevant issues and offer some practical alternatives. We welcome your comments and input.

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