

Legal Counsel for Churches

April | 2025

Corporate Governance for Churches & Their Leaders

M SMITH | LAW PLLC



I Beg Your Pardon The Power of an Apology



In today's litigious society, mistakes and misunderstandings can often escalate into costly and time-consuming lawsuits. However, there is a simple and often overlooked tool that can de-escalate conflicts before they reach the courtroom: a sincere apology.

Offering an apology at the right time and in the right way can prevent church disputes from turning into legal battles, preserving relationships, reputations, and financial resources.

An apology has long been recognized as a key tool for resolving conflicts. At its core, an apology serves two main purposes: 1) acknowledge wrongdoing or harm, and 2) an expression of regret or remorse. For many, the act of receiving an apology provides emotional closure and validation, which can reduce the need for further action.

People who feel wronged often seek acknowledgment that their feelings or experiences are valid. This desire for validation is not always about punishment but rather about ensuring the offender understands the harm caused. A genuine apology, when offered promptly and genuinely, can fulfill this need and prevent disputes from worsening.

When conflicts arise, emotions can run high, and the situation may feel personal or adversarial. A sincere apology humanizes the

interaction, showing empathy and concern for the other party. This can soften the stance of the aggrieved party and lead to a more amicable resolution.

In many cases, disputes arise from broken trust or perceived unfairness. Apologizing can begin to repair that trust by demonstrating accountability. It shows that the wrongdoer recognizes their mistake and is willing to make amends.

When a party refuses to apologize or acknowledge their mistake, the conflict often grows as the aggrieved party feels compelled to take further action, such as filing a lawsuit. An apology can reduce tensions, signaling a willingness to resolve the matter without legal intervention.

Some legal claims arise not just from the original harm but from the way the situation was handled afterward. By apologizing early, the parties can avoid these consequences.

In addition to the relational benefits of an apology, there are also legal advantages. For example, a potential plaintiff may only want to restore their relationship with the church. Seeking redemption and restoration can be a powerful motivation for each side.

The effectiveness of an apology in avoiding a lawsuit and escalating a bad situation depends on the honesty of the parties and delivery. Here are some key elements to consider.

- **Be Genuine:** A forced or insincere apology can do more harm than good.

- **Acknowledge the Harm:** It is important to explicitly acknowledge the harm or wrongdoing that occurred. Vague apologies, such as "I'm sorry if you were offended," are unlikely to be received well.

- **Offer a Solution or Plan for Change:** In many cases, offering a solution or a plan to prevent the same mistake from happening again can further reduce the desire for expensive and prolonged legal action.

- **Timing Matters:** Apologizing sooner rather than later can prevent the spiraling of the conflict and reduce the chances of litigation.

While apologies can be incredibly effective, there are situations where making verbal amends may not be enough to avoid legal action. In cases of severe harm, significant financial loss, or intentional criminal conduct, legal action may be unavoidable. In these instances, consult your lawyer on ways to mitigate the harm.

A well-timed and sincere apology can be a powerful tool in preventing lawsuits. It fosters understanding, rebuilds trust, and demonstrates accountability. This often leads to amicable resolutions that avoid the cost and stress of litigation. Whether in personal disputes or a church situation, the willingness to apologize can make the difference between a legal battle and a peaceful resolution. ■

Importance of Employment Separation Agreements



Employment relationships can come to an end for various reasons. Some jobs end due to layoffs or terminations. When an employee and employer part ways, an employment separation agreement can serve as a vital document to outline the terms and conditions of the departure.

For both the church and the employee, a separation agreement can help protect each's rights, minimizing risks and ensuring clarity during what can often be a sensitive or difficult transition.

One of the primary functions of a separation agreement is to provide clear terms on what is expected from both the employer and the employee. It establishes mutual understanding about compensation, benefits, and post-employment responsibilities. This helps eliminate the risk of misunderstandings or disputes that could surface later.

For churches, a separation agreement offers significant legal protection. By including a release of claims, the church can reduce the probability of future lawsuits from the departing employee. This clause typically states the employee agrees not to sue the church for any employment-related issues, including wrongful termination, discrimination, or harassment, in exchange for severance or other benefits.

For employees, a separation contract ensures they receive the compensation and benefits promised by the church. It also

protects their legal rights by allowing time to consult with an attorney before signing the document, ensuring the employee fully understands the agreement's implications.

A well-drafted separation agreement guarantees that employees receive fair compensation when they leave the church. This often includes severance pay, continued health benefits (such as COBRA), and payment for any accrued but unused vacation or sick days.

Many separation agreements contain confidentiality and non-disclosure clauses, which are crucial for protecting sensitive church information. Whether it's trade secrets, proprietary knowledge, or member lists, churches want to ensure former employees do not share or misuse confidential information after they leave.

A key element for many separation agreements is a non-disparagement clause. This term states both the employer and employee agree not to make negative or damaging statements about each other. This is especially important for employers looking to maintain a good reputation. It can also benefit the employee, as employers typically agree to provide unharmed references when contacted by future potential employers.

For employees, leaving a job, whether voluntarily or involuntarily, separation can be a stressful time. A separation agreement can help smooth the transition to a new job or career by providing much-

needed financial stability through residual compensation or extended benefits. Moreover, some agreements include provisions for outplacement services or job search assistance.

An employment separation agreement fosters cooperation between the departing employee and the employer, helping to avoid an acrimonious situation. By addressing all aspects of the separation in a professional and formal manner, both sides are more likely to part on good terms.

In some situations, such as layoffs or group terminations, employers are required to provide certain rights or notifications to employees under laws like the Worker Adjustment and Retraining Notification (WARN) Act or the Older Workers Benefit Protection Act (OWBPA). A separation agreement ensures that these legal requirements are met, particularly when offering severance packages to older workers who need extra time to review the agreement under OWBPA.

An employment separation agreement is a crucial document for both employers and employees. It provides a roadmap for the transition out of church employment, ensuring clarity, fairness, and protection for both parties. Churches can minimize legal risks and protect their business interests, while employees benefit from financial security and a clear understanding of their rights. ■



The Moment

You realized you had not thought of all the risks.

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Best Practices for Church Boards

Our law practice has had the privilege of working with many corporate boards. These organizations range from for-profit to nonprofits. The industries include hospitality, government, banking, faith, and technology.

We have observed some boards as more effective than others. The best practices for good governance is not a secret.

High performing boards have skilled directors who know their roles well. These board members successfully help their organizations strategically plan ahead, navigate uncertain futures, and mitigate risks. Successful directors approach their roles with serious diligence and excellence.

On the flip side of the coin, we have observed instances where boards have failed. These are occasions when the directors led the organization astray and mismanaged their responsibilities. Some mishaps are recoverable. Other misjudgments have led to disastrous consequences from which a rebound was impracticable. We believe these results are completely avoidable.

Here are a few practices we believe will help your church board operate well.

1. Knows the Business. Church officials should know how the business side of the church operates. This includes where revenues are received, how expenses are managed, and the functions of major departments. It would be difficult for a board to direct the institution without having a sense of where matters stand.

2. Understand Board's Composition. Every board member arrives with specific qualifications, talents, and experiences. The church governing body should catalog the collective credentials of the board. Awareness of the directors' abilities can help spot gaps in proficiencies.

3. Encourage Continued Training. The demand for corporate governance continually evolves. Directors who are committed to excellence search for new educational opportunities. Church officials should seek seminars, conferences, and classes to hone their skills.

4. Maintain Healthy Culture. Church board members should enjoy a productive working relationship with one another. This includes respect for others' opinions, orderly conduct, and ethical behavior.

5. Good Public Relations. Church directors are usually high profile leaders. The membership often observes how active the leaders engage in ministry work. Officials should commit themselves to being visible and supportive.

6. Regular Self-Assessments. High functioning boards accept the need to continually make improvements. To this end, the directors periodically evaluate their own performance to identify weaknesses and opportunities to expand their effectiveness.

7. Strategic Thinkers. Boards that perform well, have directors who take time to think forwardly about the church. Cultivating a church strategy is one of the most effective ways a board contributes to the membership.

8. Respect Rules of Order. Highly skilled directors understand meeting rules of order. Regardless of whether the church follows Robert's or another system, directors know how to reach orderly decisions.

9. Stay Agile. Effective directors recognize the future can be unpredictable. Church leadership must balance the need to anticipate when current plans may need to be altered.

10. Be Accountable. An effective board takes full responsibility for the success of the ministry. These directors don't look to make scapegoats of others. They work collectively to find solutions to challenges.

A high performing church board is comprised of directors who know their roles and work to make continuous progress. The board's competence helps the church achieve an effective ministry. ■

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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