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To:

From: Jim Ostenson

Date: November 30, 1988

Re: Legal considerations in church discipline

1. Of the numerous lawsuits that have been filed by disciplined church members and church staff, there have been four primary causes:

- a. Inconsistency by a church in exercising discipline—disciplining some, while ignoring the discipline of others.
- b. Abuse by churches of the discipline process—spreading gossip, failing to follow established procedures, etc.
- c. Failure by churches to communicate with members about the role of discipline in the life of the church, so that members do not know in advance that they may be subject to discipline.
- d. Society's emphasis on the rights of the individual.

2. There is no guaranteed method of avoiding a lawsuit, but the following are recommendations for churches in practicing church discipline:

- a. Give notice that the church practices discipline
  - (1) In church bylaws.
  - (2) In formal written membership covenants.
  - (3) As part of church membership training – provide a written Biblical statement as part of membership materials.
  - (4) As a subject of preaching and teaching.
- b. Make sure the church is consistent in its practice of discipline, even when a potential case is particularly awkward.
- c. Determine the church's disciplinary procedures in advance of needing to use them. In the Presbyterian Church in America, the Book of Church Order covers all essential procedures. Be sure officers are familiar with the steps outlined there, and that they study them thoroughly before beginning a disciplinary matter.

- d. In handling a disciplinary case, stress accuracy. Basing actions on assumptions and impressions will lead to trouble.
- e. If legal action is threatened by the member charged, consult a Christian attorney to review the procedures the church is following before proceeding.
- f. Limit the “audience” to the “community of interest”. Unnecessary publication of the disciplinary matter is unethical and can lead to lawsuits. The Book of Church Order gives church courts discretion as to public announcements of church discipline. If the court decides to announce the discipline to the membership, the following are recommended guidelines:
  - (1) Hold a closed congregational meeting. Ask all visitors to leave
  - (2) Read a brief statement from the Session which has been written ahead of time and deals with the case only generally, not in specific detail. Do not mention other individuals, who, while perhaps involved in the matter, were not members of the church subject to discipline.
  - (3) Discreetly tape record the meeting so there is a record of what was said. Also, keep a copy of the written statement that was read.
  - (4) After reading a brief statement which focuses on Biblical reason for the discipline, lead the congregation in prayer for the individuals(s) involved and the church as a whole. Be sure that the scope of information disclosed is limited. It is not necessary to identify the specific sin involved --a reference to “unrepentant sin” might suffice.
- g. Make certain there are not written announcements regarding the disciplinary matter. Never mention church discipline in a church newsletter or bulletin. Even a letter sent out to church members could potentially get into the hands of a non-member and could lead to a charge of “invasion of privacy” or one of the other claims being used by those suing their church.
- h. Maintain an attitude of planning your procedures in advance rather than just reacting to problems that develop. In the care of Christ’s Church, there will inevitably be difficulties, but He will honor efforts to maintain the purity of His Bride.
- i. More than anything else, do church discipline “by the Book”. Follow Scripture and the Book of Church Order meticulously. Many problems in discipline cases can be traced to church officers getting creative and ignoring established procedures.

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