

# THE INSURANCE ADVISOR

For America's Churches and Related Ministries from Brotherhood Mutual and Its Agents

## PROTECT YOUR MINISTRY FROM A LEGAL BATTLE ON CHURCH DISCIPLINE

ISSUE 26—HOW DO YOU AVOID LEGAL PROBLEMS AFTER CHURCH DISCIPLINE?

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Traditionally, the courts have not involved themselves in cases of church discipline because of First Amendment privilege. However, there have been court cases that attempt to limit the right of churches to discipline members. Courts may intervene when:

- A church's disciplinary actions amount to a deliberate and malicious campaign to ruin someone—financially, politically, or psychologically.
- A church lacks jurisdiction over people being disciplined because they were not formal members of the church.
- A church fails to follow consistently its bylaws or disciplinary guidelines.



In a case in Oklahoma, a woman who admitted she had violated her church's ban on fornication submitted a signed letter of withdrawing her membership after being confronted by elders of the church. Despite a request from her lawyer that the elders not reveal her behavior to the congregation, they did so, informed four other congregations in the area, and told her that her attempt to withdraw membership was doctrinally impossible. She sued for invasion of privacy and intentional infliction of emotional distress and won a \$435,000 judgment against the church and against the elders personally.

The Oklahoma Supreme Court reversed part of the decision that was based on actions the church took before the woman withdrew her membership, but it affirmed that the church and elders could be held liable for the actions they took when she was no longer a member.

### HOW TO AVOID LEGAL PROBLEMS

Churches should take the following actions before a disciplinary case arises:

- Amend bylaws and/or disciplinary guidelines to address significant aspects of discipline, especially the issues of whether the

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church will continue discipline after an attempted withdrawal of membership and whether a church will inform its members and other churches of its disciplinary actions.

- Obtain informed consent to disciplinary policies through membership classes and interviews. Ideally, there would be a written statement for each person to sign affirming that he or she understands and agrees with the policies.
- Teach regularly on church discipline so members remain aware of the biblical basis, purpose, and steps of discipline.

#### **STEPS TO FOLLOW WHEN APPLYING DISCIPLINE**

- Be consistent.
- Carefully follow your disciplinary guidelines.
- Always speak the truth.

Communicate only to people who have a right to know. Non-members should never receive any communication, written or verbal, pertaining to the discipline of a member. For example, any letters that must be sent regarding discipline of a member should be sent to members only, not to a general mailing list. Also, congregational announcements or meetings regarding discipline

of a church member should be strictly limited to the hearing or attendance of members of the church.

- In discussing unproven allegations with leaders, label them as such; do not allow unsubstantiated charges to be publicly proclaimed by the church.
- Base decisions on clearly explained biblical grounds.
- Check with your legal counsel before providing documentation of your disciplinary policies to an inquiring attorney. If you do provide it, explain the commitments your members made to abide by those policies.

Special note: If you have a Brotherhood Mutual® policy and a lawsuit is filed against your ministry, contact us immediately. With the documentation described above, we can help you understand the available insurance coverage under your policy and advise you on what to do in response to the suit.

For more on what to do in the event of a liability claim, visit our Claims section to learn what to do When a Loss Occurs.

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6400 Brotherhood Way • P.O. Box 2227 • Fort Wayne, IN 46801-2227 • 1.800.876.4994 • [www.brotherhoodmutual.com](http://www.brotherhoodmutual.com)