

CIVIL ACTION NO. 15-CI-002624

JEFFERSON CIRCUIT COURT
DIVISION NINE (9)
JUDGE JUDITH McDONALD-BURKMAN

REVEREND ROGER DERMODY,

PLAINTIFF,

v.

DEFENDANT PRESBYTERIAN CHURCH (U.S.A.)'s
ANSWER AND THIRD-PARTY COMPLAINT

PRESBYTERIAN CHURCH (U.S.A.),

DEFENDANT/THIRD-PARTY PLAINTIFF,

v.

REVEREND ERIC HOEY,

Serve: Reverend Eric Hoey
4720 Grand Dell Drive
Crestwood, KY 40014

and

REVEREND PHILIP LOTSPEICH,

Serve: Reverend Philip Lotspeich
3010 Wirth Avenue
Louisville, KY 40217

and

REVEREND CRAIG WILLIAMS,

Serve: Reverend Craig Williams
6011 Camino Tierra
San Clemente, CA 92673

THIRD-PARTY DEFENDANTS.

* * * * *

Defendant/Third-Party Plaintiff Presbyterian Church (U.S.A.) (the "Church"), by counsel, hereby submits its Answer to the Verified Complaint (the "Complaint") of Plaintiff Reverend Roger Dermody ("Rev. Dermody").

Preliminary Statement

1. Numerical Paragraph 1 of Rev. Dermody's Complaint is improper under CR 8.01, 8.05(1), and 10.02, and, therefore, requires no response.

Jurisdiction and Venue

2. The Church denies the allegations contained within numerical Paragraph 2 of the Complaint.

3. The Church denies the allegations contained within numerical Paragraph 3 of the Complaint.

Parties

4. In response to the allegations contained within numerical Paragraph 4 of the Complaint, the Church admits that Rev. Dermody is an adult resident of Jefferson County, Kentucky, who came to Kentucky, and formerly held the position of Deputy Executive Director for Mission. The Church denies the remaining allegations.

5. In response to the allegations contained within numerical Paragraph 5 of the Complaint, the Church admits that it is a Pennsylvania non-profit religious organization authorized to operate in the Commonwealth of Kentucky with its principal hub for missions and evangelism located at 100 Witherspoon Street, Louisville, Kentucky, 40202. The Church denies the remaining allegations.

Facts

A. Background Facts: PC(USA)

6. In response to the allegations contained within numerical Paragraph 6 of the Complaint, the Church lacks knowledge or information sufficient to understand Rev. Dermody's meaning of the unexplained and ambiguous phrases "the corporate and organizational structure for

the Presbyterian Church's operations" and "governed," and, therefore, denies same.

7. In response to the allegations contained within numerical Paragraph 7 of the Complaint, the Church admits that Linda Valentine serves as the Presbyterian Mission Agency's Executive Director, that the Presbyterian Mission Agency is located in Louisville, Jefferson County, Kentucky, and that the Presbyterian Mission Agency is governed by the Presbyterian Mission Agency Board. The Church denies the remaining allegations.

8. The Church denies the allegations contained within numerical Paragraph 8 of the Complaint.

B. Background Facts: Dermody

9. In response to the allegations contained within Paragraph 9 of the Complaint, the Church admits that Rev. Dermody is an ordained Presbyterian minister, having been ordained in or about October 1997. The Church further admits that Rev. Dermody received his Master of Divinity and Doctor of Ministry degrees from Fuller Theological Seminary in Pasadena, California. The Church denies the remaining allegations.

10. In response to the allegations contained within Paragraph 10 of the Complaint, the Church admits that Rev. Dermody previously served at Bel Air Presbyterian Church in Los Angeles, California. The Church lacks information or knowledge sufficient to admit or deny the allegations contained within the second sentence of numerical Paragraph 10, and, therefore, denies same.

11. The Church admits the allegations contained within numerical Paragraph 11 of the Complaint related to the Church's hiring of Rev. Dermody to serve as its Deputy Executive Director for Mission. The Church lacks information and knowledge sufficient to admit or deny the allegations related to Rev. Dermody's family situation and residence, and, therefore, denies

same. The Church denies the remaining allegations.

12. The Church admits all allegations contained within the second sentence of numerical Paragraph 12 of the Complaint. The Church denies the remaining allegations.

C. Facts Respecting the 1001 Movement

13. The Church admits the allegations contained within numerical Paragraph 13 of the Complaint.

14. The Church admits the allegations contained within numerical Paragraph 14 of the Complaint.

15. In response to the allegations contained within numerical Paragraph 15 of the Complaint, the Church lacks information and knowledge sufficient to understand Rev. Dermody's meaning of the unexplained and ambiguous phrases of "fully supported" and "mission and vision[.]" and, therefore, denies same.

16. In response to the allegations contained within Paragraph 16 of the Complaint, the Church admits that several Presbyterian Mission Agency staff members created and incorporated the Presbyterian Centers for New Church Innovation, Inc. ("PCNCI"). The Church further admits that none of the Presbyterian Mission Agency staff members involved in creating or incorporating PCNCI had authority to create or incorporate PCNCI. The Church denies the remaining allegations.

17. In response to the allegations contained within numerical Paragraph 17 of the Complaint, the Church admits that several Presbyterian Mission Agency staff members transferred the grant referenced from an authorized Church bank account into the unauthorized PCNCI bank account.

18. The Church denies the allegations contained within numerical Paragraph 18 of the

Complaint.

19. The Church denies the allegations contained within numerical Paragraph 19 of the Complaint.

20. In response to the allegations contained within numerical Paragraph 20 of the Complaint, the Church admits that it “accounted for” and “recovered” the funds transferred from the Church to PCNCI. The Church denies the remaining allegations.

21. The Church denies the allegations contained within numerical Paragraph 21 of the Complaint.

22. The Church denies the allegations contained within numerical Paragraph 22 of the Complaint.

23. The Church admits the allegations contained within numerical Paragraph 23 of the Complaint related to Rev. Dermody’s “recei[pt of] dozens . . . of emails each day” and the existence of two e-mails sent in January 2014 to Rev. Dermody that referred to PCNCI’s purpose and existence. The Church denies the remaining allegations.

24. In response to the allegations contained within numerical Paragraph 24 of the Complaint, the Church lacks information or knowledge sufficient to understand Rev. Dermody’s meaning of the unexplained and ambiguous phrase “formal PCUSA channels[,]” and, therefore, denies same. The Church denies the remaining allegations.

25. The Church denies the allegations contained within numerical Paragraph 25 of the Complaint.

26. The Church denies the allegations contained within numerical Paragraph 26 of the Complaint.

D. The Internal Audit and External Investigation

27. The Church admits the allegations contained within numerical Paragraph 27 of the Complaint.

28. The Church denies the allegations contained within numerical Paragraph 28 of the Complaint.

29. The Church denies the allegations contained within numerical Paragraph 29 of the Complaint.

30. In response to the allegations contained within numerical Paragraph 30 of the Complaint, the Church admits that it conducted an investigation from March 2014 to April 2015 and that the cost of the investigation exceeded \$500,000. The Church denies the remaining allegations.

31. In response to the allegations contained within numerical Paragraph 31 of the Complaint, the Church affirmatively states that the contents of the external investigation report are privileged. Separate and apart from the content of the external investigation report, the Church denies that there is “no evidence that [Rev. Dermody] . . . knew of, or played any part in, the creation of the non-profit PCNCI.”

32. In response to the allegations contained within numerical Paragraph 32 of the Complaint, the Church affirmatively states that the contents of the external investigation report are privileged. Separate and apart from the content of the external investigation report, the Church denies that there is “no evidence that [Rev. Dermody] . . . knew of, or played any part in, the creation of the non-profit PCNCI.”

33. In response to the allegations contained within numerical Paragraph 33 of the Complaint, the Church affirmatively states that the contents of the external investigation report

are privileged. Separate and apart from the content of the external investigation report, the Church denies that there is “no evidence that [Rev. Dermody] . . . knew of, or played any part in, the transfer of funds from a PCUSA account into the non-profit PCNCI account.” The Church further denies that the check transferring funds to PCNCI was approved by the Presbyterian Mission Agency Finance Department under the “supervision” of the Presbyterian Mission Agency’s Chief Executive Officer.

34. In response to the allegations contained within numerical Paragraph 34 of the Complaint, the Church affirmatively states that the contents of the external investigation report are privileged. Separate and apart from the content of the external investigation report, the Church denies that Rev. Dermody “had no prior knowledge of” PCNCI’s “creation, incorporation, or funding,” or that Rev. Dermody “did not approve” of other staff members’ creation, incorporation, or funding of PCNCI.

35. The Church denies the allegations contained within numerical Paragraph 35 of the Complaint.

36. The Church admits the allegations contained within numerical Paragraph 36 of the Complaint.

37. The Church denies the allegations contained within numerical Paragraph 37 of the Complaint.

38. The Church denies the allegations contained within numerical Paragraph 38 of the Complaint.

39. The Church is without information or knowledge sufficient to admit or deny the allegations contained within numerical Paragraph 39 of the Complaint, and, therefore, denies same.

40. The Church denies the allegations contained within numerical Paragraph 40 of the Complaint.

41. The Church denies the allegations contained within numerical Paragraph 41 of the Complaint.

42. The Church denies the allegations contained within numerical Paragraph 42 of the Complaint.

43. The Church is without information or knowledge sufficient to admit or deny the allegations contained within numerical Paragraph 43 of the Complaint and, therefore, denies same.

44. The Church denies the allegations contained within numerical Paragraph 44 of the Complaint.

45. The Church denies the allegations contained within numerical Paragraph 45 of the Complaint.

46. The Church denies the allegations contained within numerical Paragraph 46 of the Complaint.

47. The Church denies the allegations contained within numerical Paragraph 47 of the Complaint.

48. The Church denies the allegations contained within numerical Paragraph 48 of the Complaint.

49. The Church denies the allegations contained within numerical Paragraph 49 of the Complaint.

50. The Church denies the allegations contained within numerical Paragraph 50 of the Complaint.

51. The Church denies the allegations contained within numerical Paragraph 51 of the Complaint.

Claims for Relief

First Cause of Action: Defamation

52. In response to numerical Paragraph 52 of the Complaint, the Church restates, reaffirms, and incorporates by reference its responses to numerical Paragraph 1 through 52 of the Complaint as though fully set forth herein.

53. The Church denies the allegations contained within numerical Paragraph 53 of the Complaint.

54. The Church denies the allegations contained within numerical Paragraph 54 of the Complaint.

55. The Church denies the allegations contained within numerical Paragraph 55 of the Complaint.

Second Cause of Action: Defamation *Per Se*

56. In response to numerical Paragraph 56 of the Complaint, the Church restates, reaffirms, and incorporates by reference its responses to numerical Paragraph 1 through 56 of the Complaint as though fully set forth herein.

57. The Church denies the allegations contained within numerical Paragraph 57 of the Complaint.

58. The Church denies the allegations contained within numerical Paragraph 58 of the Complaint.

59. The Church denies the allegations contained within numerical Paragraph 59 of the Complaint.

60. The Church denies all allegations not expressly admitted herein.

61. The Church denies that Rev. Dermody is entitled to the relief he seeks or to any relief whatsoever.

DEFENSES AND OTHER NEW MATTERS

FIRST DEFENSE

Rev. Dermody's Complaint is barred by the ecclesiastical abstention doctrine or the ministerial exception or both because (a) Rev. Dermody is a teaching elder, or minister of the Word and Sacrament, who was ordained and called to ministry within the Church, (b) the Church is a religious denomination with about 1.7 million congregants from across the country, and (c) all of the Church actions in regard to Rev. Dermody have been taken in accordance with its Constitution and customs, as informed by the Church's and its congregants' faith, doctrine, and ecclesiastical governance.

SECOND DEFENSE

Rev. Dermody's Complaint is barred by an absolute or qualified privilege or both because the Church reported to the Presbytery and, in less specific terms, to the wider denomination, disciplinary action taken against Rev. Dermody as required by the Church's policies and practices informed by its faith and polity.

THIRD DEFENSE

Rev. Dermody has failed to mitigate his damages, if any.

FOURTH DEFENSE

Rev. Dermody's claims are barred by Rev. Dermody's failure to pursue and exhaust his internal remedies, which include a remedial judicial process before the Permanent Judicial Commission of the Presbyterian Church (U.S.A.), the denomination's ecclesiastical court.

FIFTH DEFENSE

Any statements made by or attributed to the Church were true or substantially true. The Church cannot be legally responsible for any rumors or gossip (not created or encouraged by the Church) that may have filtered throughout the wider denomination following the Church's truthful or substantially truthful statements. Moreover, any such rumors or gossip allegedly communicated by members of the Presbyterian Church (U.S.A.) must be addressed by seeking a Request for Vindication pursuant to the Book of Order.

SIXTH DEFENSE

Rev. Dermody's own conduct and statements, and/or those of the Third-Party Defendants, are the legal, proximate, and intervening causes of any and all of Rev. Dermody's alleged damages. Because of the nature of Rev. Dermody's and the Third-Party Defendants' position as ordained teaching elders within the Church's religious community, Rev. Dermody and the Third-Party Defendants are held to the highest ethical and moral standards, and their actions and/or inactions fell short of those expectations.

SEVENTH DEFENSE

Publication by individuals or entities other than the Church itself, including *The Presbyterian Outlook* and other similar periodicals, cannot be attributed to the Church.

EIGHTH DEFENSE

Any statements of which Rev. Dermody complains were not published by the Church in the legal sense as required by defamation law because they were provided only to Rev. Dermody's Presbytery (and the Third-Party Defendants' Presbyteries), and in less specific terms, to the wider religious denomination, as required by the Church's policies and practices informed by its faith and polity.

NINTH DEFENSE

Any statements of which Rev. Dermody complains were not published by the Church to third parties as required by defamation law; such statements were communicated to Rev. Dermody's Presbytery (and the Third-Party Defendants' Presbyteries), and in less specific terms, the wider religious denomination in accordance with the Church's faith and polity that hold its ordained teaching elders to the highest ethical and moral standards.

TENTH DEFENSE

Rev. Dermody's claims are barred, in whole or in part, by the doctrines of estoppel, unclean hands, laches, and waiver.

ELEVENTH DEFENSE

Rev. Dermody's claims are barred by consent in that Rev. Dermody knew or should have known that the Church's policies and practices, which are informed by its faith and polity, required the Presbyterian Mission Agency to report the disciplinary action rendered against him to his Presbytery and, in less specific terms, the wider denomination. Rev. Dermody agreed to such policies and practices by becoming a teaching elder and accepting the call to service at the Presbyterian Mission Agency.

TWELFTH DEFENSE

Rev. Dermody's claims are barred by admission in that Rev. Dermody acknowledged in a written response addressing the disciplinary action taken against him that (a) he failed to properly supervise certain ministers within his purview, and (b) he had a role in the creation and incorporation of PCNCI.

THIRTEENTH DEFENSE

Rev. Dermody is accountable for the acts and omissions of his subordinates, including, but not limited to, Third-Party Defendants. Because of the nature of Rev. Dermody's position as an ordained teaching elder within the religious community, Rev. Dermody is held to the highest ethical and moral standards, and his actions and/or inactions fell short of those expectations.

FOURTEENTH DEFENSE

The Church has a moral, ethical, religious, spiritual, ecclesiastical, theological, and fiduciary duty to its members and constituents to disclose to them any matters that may adversely reflect upon or impact the fitness for service of its ministers, including, but not limited to, Revs. Dermody, Eric Hoey, Philip Lotspeich, and Craig Williams.

FIFTEENTH DEFENSE

The ethical and other lapses by Revs. Dermody, Eric Hoey, Philip Lotspeich, and Craig Williams adversely reflected upon or impacted their fitness for service as ministers because ministers have a particularly acute obligation to ensure proper handling of God's resources.

THIRD-PARTY COMPLAINT AGAINST REVERENDS ERIC HOEY, PHILIP LOTSPEICH, AND CRAIG WILLIAMS

Defendant/Third-Party Plaintiff Presbyterian Church (U.S.A.) (the "Church"), by counsel, for its Third-Party Complaint against Third-Party Defendants Reverend Eric Hoey ("Rev. Hoey"), Reverend Philip Lotspeich ("Rev. Lotspeich"), and Reverend Craig Williams ("Rev. Williams"), states as follows:

1. At all times relevant hereto, the Church was a Pennsylvania non-profit religious organization authorized to operate in the Commonwealth of Kentucky and with its principal hub for missions and evangelism located at 100 Witherspoon Street, Louisville, Kentucky, 40202.

2. At all relevant times hereto, Rev. Hoey was an employee of the Presbyterian

Mission Agency—an agency of the General Assembly, the principal governing body of the Church—and a teaching elder ordained by the Presbyterian Church (U.S.A.). Rev. Hoey directly reported to Plaintiff Reverend Roger Dermody (“Rev. Dermody”) while they were employed by the Presbyterian Mission Agency.

3. At all relevant times hereto, Rev. Lotspeich was an employee of the Presbyterian Mission Agency and a teaching elder ordained by the Presbyterian Church (U.S.A.). Rev. Lotspeich directly reported to Rev. Hoey and indirectly reported to Rev. Dermody while all three individuals were employed by the Presbyterian Mission Agency.

4. At all relevant times hereto, Rev. Williams was an employee of the Presbyterian Mission Agency and a teaching elder ordained by the Presbyterian Church (U.S.A.). Rev. Williams directly reported to Rev. Lotspeich and indirectly reported to Rev. Dermody and Rev. Hoey while all four individuals were employed by the Presbyterian Mission Agency.

5. On May 29, 2015, Rev. Dermody filed a Verified Complaint (the “Complaint”) against the Church alleging that the Church, “by itself or through its directors, officers, and/or employees, . . . repeatedly and falsely published that [Rev. Dermody] . . . had engaged in ‘unethical’ conduct while an employee of the Church[,]” and that the relevant actions carried out by the Church and its employees were defamatory and defamatory *per se*, and resulted in damages to Rev. Dermody. (*See, e.g.*, Compl. ¶ 1). The Complaint is attached hereto as **Exhibit 1**.

6. The Church incorporates, by reference, all defenses set forth in its Answer to the Complaint as if completely reiterated herein, and represents that in filing this Third-Party Complaint, it does not waive such defenses.

7. In or about December 2013, Revs. Hoey, Lotspeich, and Williams created and

incorporated a non-profit corporation—the Presbyterian Centers for New Church Innovation, Inc. (“PCNCI”)—in violation of Church and Presbyterian Mission Agency policies. (Compl. ¶ 16).

8. Rev. Hoey told Rev. Dermody in or about January 2014 about PCNCI, but Rev. Dermody did not attempt to correct the actions of Revs. Hoey, Lotspeich, and Williams, even though Rev. Dermody was their superior, was charged with directly and indirectly supervising all three individuals, and had knowledge of the Church’s and the Presbyterian Mission Agency’s relevant policies that the individuals violated by incorporating PCNCI. (Compl. ¶ 23).

9. In or about March and April 2014, key Presbyterian Mission Agency employees and some Presbyterian Mission Agency Board members became aware of PCNCI’s existence, and later attempts by Revs. Hoey, Lotspeich, and Williams to transfer Church funds to PCNCI, which also violated Church and Presbyterian Mission Agency policies. (Compl. ¶ 29).

10. The Presbyterian Mission Agency launched an investigation in March 2014 to determine how PCNCI came into existence and whether Rev. Dermody and/or Revs. Hoey, Lotspeich, and/or Williams (and/or any other Church employees) violated policies in establishing and transferring Church funds to PCNCI. (*See, e.g.*, Compl. ¶¶ 27-33).

11. The investigation revealed that Rev. Dermody and Revs. Hoey, Lotspeich, and Williams violated the Presbyterian Mission Agency Ethics Policy and policies related to incorporation of entities apart from Presbyterian Mission Agency and/or the Church.

12. The factual results of the investigation were reported to the Presbyteries to which Revs. Dermody, Hoey, Lotspeich, and Williams belong, as required by Church policies and practice, and to the wider denomination.

13. Under these facts, as Rev. Dermody confirms throughout his Complaint, the

actions of Revs. Hoey, Lotspeich, and Williams caused any and all defamatory statements allegedly published and injuries allegedly suffered by Rev. Dermody related to PCNCI's establishment (and Rev. Dermody's role in PCNCI's establishment), the resulting investigation, and the release of information related to PCNCI's establishment and the violations of policies by Revs. Dermody, Hoey, Lotspeich, and Williams. (*See, e.g.*, Compl. ¶¶ 1, 16-26).

14. In the event the Church is found liable to Rev. Dermody for injuries he allegedly suffered, any such liability is indirect, passive, and secondary to that of Revs. Hoey, Lotspeich, and Williams, whose conduct (along with that of Rev. Dermody himself) was the direct, active, and primary cause of, and substantial factor in causing, any and all injuries allegedly suffered by Rev. Dermody.

15. In the event the Church is found liable for all or any portion of Rev. Dermody's alleged damages resulting from any and all injuries allegedly suffered by Rev. Dermody, the Church will be entitled to indemnity and contribution from Revs. Hoey, Lotspeich, and Williams; will be entitled to an apportionment instruction pursuant to KRS 411.182, allowing the jury an opportunity to apportion a percentage of liability upon Revs. Dermody, Hoey, Lotspeich, and Williams; and, will be entitled to a reduction in the amount of any judgment rendered against the Church, in an amount equal to the percentage of liability apportioned to Revs. Dermody, Hoey, Lotspeich, and Williams.

WHEREFORE, Defendant/Third-Party Plaintiff Presbyterian Church (U.S.A.) prays:

- A. That Rev. Dermody take nothing by his Complaint;
- B. That the Complaint be dismissed in its entirety and with prejudice;
- C. For indemnity and/or contribution from Revs. Hoey, Lotspeich, and Williams in the amount of any judgment rendered in favor of

Rev. Dermody against the Presbyterian Church (U.S.A.);

- D. That at trial of this action, the Presbyterian Church (U.S.A.) be granted a KRS 411.182 apportionment instruction, allowing the jury an opportunity to apportion a percentage of liability upon Revs. Dermody, Hoey, Lotspeich, and Williams;
- E. For recovery of its reasonable costs; and
- F. For all other proper relief to which it may be entitled.

Respectfully submitted,

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*Counsel for Defendant/Third-Party Plaintiff
Presbyterian Church (U.S.A.)*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via hand delivery before noon this 25th day of June, 2015, upon:

Stephen B. Pence Pence & Ogburn, PLLC 9300 Shelbyville Road, Suite 1205 Louisville, Kentucky 40223 Phone: (502) 736-6200 steve.pence@penceogburn.com <i>Counsel for Rev. Roger Dermody</i>	
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*Counsel for Defendant/Third-Party Plaintiff
Presbyterian Church (U.S.A.)*

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