



PRESBYTERIAN
MISSION
— AGENCY —



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You've Been Served – Your First Response to a Lawsuit

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Criminal vs. Civil

- Criminal – summons or immediate arrest
 - Process moves more quickly
 - Constitutional rights apply
- Civil – initially moves quickly
 - Rights generally given by procedural and court rules
 - Then things often SSSLLLLLOOOOWWW down

Complaint

- Lawsuits start with the filing of a complaint
- The complaint describes the claims
- The complaint is filed by the plaintiff(s) with the clerk's office at the courthouse
- Then it is served on the defendants

Complaint II

- REMEMBER – it is the plaintiff's version of events, it will be one-sided
- You will have the chance to respond
- Judges know complaints are one-sided
- Don't panic!
- Judges are usually too busy to read complaints and files until the matter is before them on a motion

Service of Complaint

- Typically a complaint is hand-served by a process server or sheriff's deputy
- Sometimes by mail
- Do not sign anything other than a messenger's receipt to acknowledge receipt
- Instruct office staff to do the same
- Read before you sign

What to Keep

- Anything the process server hands to you
 - Complaint
 - Envelopes
 - Receipts (if you can, make a copy)
 - Attachments
- If mailed, keep envelopes/all enclosures

Make Notes

- On the front page of the Complaint write:
 - Date received
 - Time received
 - Where received
 - If you have an office stamp you use for mail and other papers received, use it
 - Method of service (process server? deputy?)

Next Step

- If your organization has an attorney, call immediately!
- DO NOT WAIT
- Keep a record of the date and time of call
- Send attorney the complaint and copies of everything

Why Immediately?

- Look at front of complaint
- On summons form or complaint it will say how many days you have to respond
- In KY 20 days, some states 30
- It sounds like a lot of time, it is not
- If you do not timely respond with an answer or other pleading, default – YOU LOSE!

We Don't Have A Lawyer

- Then contact your insurer first
- Insurers have lawyers they can engage
- Even if insurer does not agree to cover the claim, you can ask for names of lawyers
- If that does not work, contact leadership and ask for recommendations
- Contact the local Bar Association
- Once you have an atty, they act for you

Insurance

- Determine if your organization has a policy(s) that covers the claim
- You may have multiple relevant policies
- Contact all potential insurers, make them say no
- Try to convince them yes
- Follow whatever notice requirements the policy states
- Ask your insurance broker for help

What Else Immediately?

- After you contact your lawyer
- Immediately contact your insurer
- Send a copy of all of the paperwork
- Fax or scan and email if possible
- Insurers want immediate notice, document call
- If you fail to do it timely, they may deny a defense and/or coverage of damages, a judgment, etc.
- Keep a copy of what you send (ex. letter)
- If you keep things electronically, set up an email folder, for example

A Lawyer Calls

- Yes, some lawyers engage in questionable behavior
- Some plaintiff's lawyers will try to contact you to discuss a case – before or after you have an attorney
- Always ask: why are you calling? Who do you represent? Take notes, date, time, etc.
- You have no obligation to talk to ANY lawyer (of course you should talk to yours)

A Lawyer Calls 2

- Once you are represented by counsel, it is likely a violation of ethics for an opposing lawyer to call you
- Again, keep records
- Tell the lawyer to call your lawyer
- Then notify your lawyer of the call

DON'T Call

- Once you know someone is represented by a lawyer, resist the temptation to contact them, ex. member, former member
- You may be recorded
- They may portray the call differently
- Litigation changes EVERYTHING
- No matter what anyone says, it's always about the money

Leadership Notice

- You will need to notify the leadership of your organization
 - Head of Staff/Moderator
 - Session
 - Corporate officers
 - Clerk of Session

Preservation

- Early on, after you notify the lawyer and insurer and set up a meeting of leadership
- Next soonest step
- Preserve potential evidence
- If you have IT folks, tell them not to delete
- If you don't, notify all staff not to delete

More Preservation

- Preserve all potential hard copy records, phone messages, video, etc.
- Contact all employees who might have such evidence, gather it
- Let your attorney(s) know what you have
- They may want it all or at least copies
- Decide who will maintain it
- Lock it up

Public Face

- Decide who will be communicator to various constituents
 - Congregation (how quickly?)
 - Community
 - Media
- Decide if this person needs help or training
- Decide if you need an outsider

Understand the Client

- In working with the lawyers, understand who is the client
- If the organization is named, the organization is the client
- First Presbyterian Church of Anytown, Inc.
- Unless you are named in your capacity or personally, you are **not** the client
- But you may feel like the client if you are main contact

Understand the Client II

- As the rep for the client, you may be conflicted on some issues
- Ex. sexual misconduct by pastor
- Presbytery has jurisdiction over pastor
- Presbytery owes duties to pastor in that relationship
- Presbytery probably owes pastoral duties to others
- Talk to your lawyer first before you act

Help Lawyer Understand the Client

- You need to help your lawyer understand the client
- No matter what complaint says, tell lawyer structure of your organization
- You are a church, but you likely have a corporate, secular entity, as required by the *Book of Order*
- Let your lawyer decide who is real client

What To Give Your Lawyer

- Copies of:
 - Articles of Incorporation/Bylaws
 - Administrative Procedures Manual (3.0106)
 - Employee Handbook
 - Sexual Misconduct/Child Protection Policies (3.0106)
 - Other policies
 - Inform the lawyer re Session minutes/rolls
 - *Book of Order*

Help Your Lawyer

- Many lawyers have never represented a church
- Educate your lawyer on your church or council and the denomination, presbytery, synod, PCUSA

Pastor/Employee Named

- In some cases a pastor or employee may be named
- Ex. sexual misconduct, harassment
- The lawyer's duty is to represent the organization
- Named individuals also need a lawyer, insurer may agree to provide one, same or different
- Notify your lawyer, notify insurer who these individuals are, relationship to client organization (ex. pastor, employee, volunteer)
- They may have separate lawyer, interests may not be the same, distance may be required

We Did Not Know

- In some sexual misconduct cases, it's all a surprise when the complaint arrives
- Notify council of jurisdiction re pastor, decide what to do re employee
- Consider paid/unpaid time off
- May need to conduct own investigation
- May need to notify police/CPS
- Get guidance from your attorney

No Retaliation

- No matter what, never retaliate (no matter how angry you are)
- Against pastors or staff or members
- Against plaintiffs, especially if they are alleged victims, or witnesses
- REMEMBER, we are the church
- It will not serve you well for someone to testify under oath that you retaliated
- You may be WRONG

Pastoral Care

- Some folks involved may need pastoral care
- Decide who will provide it
- YOU may need pastoral care, make sure you get it
- The situation will likely get intense, you may become stressed

What to Expect

- Typical flow of lawsuit
 - Complaint/Answer – maybe MTD
 - Written discovery – interrogatories/RPD
 - Depositions under oath
 - Pretrial conferences/hearings
 - Trial date is set
 - Possible mediation/settlement discussions
 - Trial
 - Appeals

What to Anticipate

- Anticipate spending a lot of time talking to your lawyer(s) if you are main contact
- Litigation hold
- Collection of information (don't hold back)
- Discovery requests/responses
- Depositions
- Mediation/settlement
- Trial preparation

Lord, How Long?

- Lawsuits are not races
- Often they move slowly after the initial flurry, or so it feels
- Be prepared for the long haul

Lord, What Is Happening?

- But some cases move very quickly, initially
- Injunctive relief – ex. church property
- These types of cases go to hearing soon after you get the complaint
- You have not had much time to figure out what is going on and educate your lawyer
- If situations are developing and you sense litigation, put on the full armor of God

Hurry Up and Wait

- In the first weeks and months it will seem like a lot is going on
- Responding to complaint, responding to discovery
- Then things will likely quiet down

Contain the Chatter

- Avoid gossiping and chattering about the case
- Limit those in the know
- Determine with attorney who needs to know as case progresses
- Session?
- Congregation?

Multiple Proceedings

- You might end up with multiple proceedings, for example:
 - Criminal case
 - Civil case (neither of which is a replacement for a PJC matter)
 - Maybe a discrimination charge filed with a local commission
 - PJC case

Book of Order

- Remember D-10.0401(a):
 - “In those situations where civil proceedings have been commenced, committee may request of its [PJC] or session and receive an extension of its time for filing charges of up to six months from the conclusion of any investigation or resulting trial undertaken by civil authorities.”

Questions?