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A BENCHMARK FOR THE FUTURE:  
BERGEN'S NEW JUDGES



## PROFILE IN THE LAW

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# RELIGION AND THE LAW

## WHO PLAYS GOD WHEN CONGREGANTS FIGHT?

By Russel B. Teschon

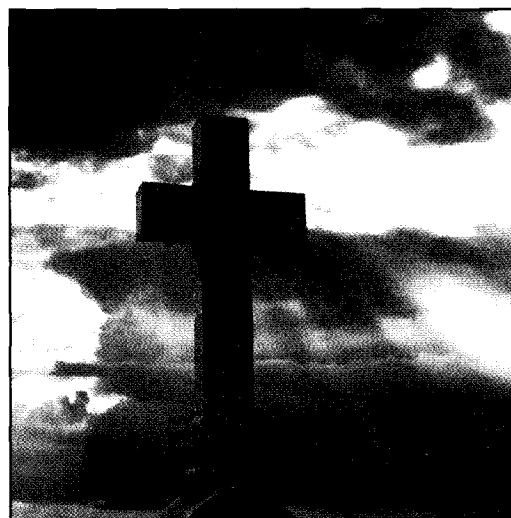
**C**onflict is not unique among those who claim to be friends of the Almighty. What is unique is for the courts to intervene and determine how those friends should treat each other and settle their disputes. This is because the First Amendment to the United States Constitution reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

The First Amendment circumscribes the authority of civil courts in disputes which concern religious organizations. *Watson v. Jones*, 13 Wall. 679, 728-29, 20 L.Ed. 666(1872). The Establishment Clause of the State Constitution also, forbids the establishment of religion and severely circumscribes the role that civil courts may play in resolving church disputes. *New Jersey Constitution* (1947) art. 1, para.4. Religious organizations, the majority of which are churches, often have their own religious precepts governing peacemaking, choosing their spiritual leaders and/or discipline of its congregants. In addition, these organizations have various types of organizational structures or government. For example, some churches are congregational, that is the congregation determines how issues are to be resolved. Some churches are hierarchical in structure, meaning the congregation must seek resolution through the hierarchy of those in authority above it. Some churches are a combination of the two or without a clear understanding of their own government structure.

Regarding congregational type governments [usually independent churches—see *Baugh v. Thomas*, 56 N.J. 203, 265 (1970), *Moorman v. Goodman*, 59 N.J. Super, 181 (App. Div. 1960)], *Watson*

requires a civil court to enforce property decisions made by a majority of the members or the appropriate governing body. *Chavis v. Rowe*, 93 N.J.103, 108, 459 A2d 674 (1983) (citing *Watson, supra*, 13 Wall at 728-29). If the church is a hierarchical form of religious organization, "civil courts must defer to the highest church authority that has ruled on the matter." *Chavis v. Rowe*, 93 N. J.

103, 108 (1983). A hierarchical form is indicated when the local church is an "an integral and subordinate part of the general church and subject to its authority" See *Protestant Episcopal Church v. Graves* 83 N.J. 572, 577, cert. denied sub. nom.; *Moore v. Protestant Episcopal Church*, 449 U.S. 1131, 101 S. Ct.954, 67 L. Ed. 2nd 119 (1981). Thus the first question for a Court to consider in determining whether it can exercise judicial power in resolving conflicts and disputes in religious organizations, is what type of governing structure does that religious body have? While that may appear to be a simple first step in the legal analysis, it is often complicated because some churches are members of organizations wherein that organization's authority over that church is voluntary. Suppose some of the church congregants believe that the dispute resolution process set forth by the organization is not the right one to follow. It is posited that the Court must then consider whether it has the ability to interpret documents presented to reach a legal (or is it theological?) conclusion concerning the government structure. If it does, it will often be with a blind eye toward the beliefs of the congregants and a vision toward applying regular princi-



ples of corporate law. The United States Supreme Court has described this approach at resolving difficulties as the "rule of neutral principles." *Jones v. Wolf*, 443 U.S. 595, 602, 99 S.Ct. 3020, 3025, 61 L.Ed 2nd 775, 784(1979); *Presbyterian Church v. Hull Memorial Presbyterian Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L..Ed. 2nd at 658, 665 (1969). Since religion is all about belief, it seems the court should be reluctant to involve itself in the dispute. New Jersey courts have been consistent in acting with restraint regarding "spiritual matters." *Solid Rock Baptist Church v. Carleton* 347 N.J.Super. 180, 197-8 (App. Div. 2002). See also *Ardito, v. Board of Trustees, Our Lady of Fatima Chapel*, 281 N.J. Super, 459, 467 (ch. Div. 1995); N.J. Super, 459, 467 (Law Div. 1995).

An area of conflict which has arisen numerous times in religious organizations is the removal of the spiritual leader. Often, congregants bond with their religious leader such that should other congregants seek to remove that leader the process is fraught with difficulty and procedural questions. When this occurs, it is common that equitable relief is sought in the courts. The specific equi-

table relief sought is often an injunction prohibiting the pastor or spiritual leader from continuing to lead the flock and entering the pulpit.

How does a court respond if members of a congregation demand this type of dispute be resolved in accordance with the guidelines set forth in the broader organization's rules for removal of the spiritual leader, and the cases be dismissed? Suppose the opposing members claim those rules and procedures are not "spiritually" correct. Suppose the larger organization or denomination assert that the church does not have to follow these procedures as they are voluntary? What if the congregants claim the rules and procedures of that larger organization are not being properly interpreted or applied? Can the court consider those rules or interpret them in light of the restrictions imposed upon it by the First Amendment? What if there are church bylaws that make no reference to the denomination's authority or to the handling of disputes in accordance with any code promulgated by the denomination? What if the denomination owns the property upon which the church building is located and the congregation affiliated with that denomination leases the land. What if there are no bylaws? What if the

certificate of incorporation for that religious organization makes no reference to the denomination? What documents can and should the court review to determine who is the highest church authority and/or what is the government structure to enforce or make decisions to settle the dispute? As these questions indicate, a plethora of issues present themselves when congregants seek judicial relief; all of which will create the tightrope for the court to walk in seeking to constitutionally intervene and bring peace to the congregants.

Our courts have held that it is proper for a church or its members to seek "limited judicial intervention to restrain from its premises and pulpit a former pastor indisputably terminated in accordance with express church procedure," *Solid Rock Baptist Church v. Carleton*, 347 N.J. Super. 180, 200 (App. Div. 2002) [wherein the court held that original church members who removed their Pastor by vote, were properly entitled to seek enforcement of that decision by injunctive relief in the Superior Court]. The courts of other states have likewise held injunctive relief is appropriate to bar a pastor who is removed from his position in a church from continuing to act as pastor. See *Lilly of the Valley Spiritual Church*, 169 Ill. App. 3d 624 523 N.E. 2d 999 (App. Ct. 1988). New Jersey Courts have spoken regarding the issuance of this type of relief. In *Kelly v. McIntire*, 123 N.J. Eq. 351, 22 Backes 351. (N.J.Ch. 1938), the Court ruled that a deposed pastor should be restrained from entering the pulpit in accordance with the decision of the church to remove him.

In *Kelly*, a dispute arose when the pastor and part of the congregation disagreed with a directive from the parent presbyterian church, and voted to

withdraw from the presbyterian church and join another church. The church responded and censured the pastor and removed him from the pulpit by certain decisions and hearings. These decisions were challenged by the pastor and those in his "break away" flock. The court enjoined the pastor from entering the pulpit, until his censures issued by the church were removed. *Id.* at 366. The court noted that within the presbyterian church there exist "judicatories," which contain an appeal process to be followed and which can apply corrective measures if the church determines they are necessary. The court enjoined the pastor from entering the pulpit, holding that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *Id.* at 363. As a result, the court held that the pastor was enjoined from "preaching or conducting services in the ... Church until his censures are removed and his right to minister has been restored by due procedure according to the constitution and practices of the Presbyterian Church in the United States of America." *Id.* at 366.

Of great importance is *Chavis v. Rowe*, 93 N. J. 103, 108 (1983) wherein the New Jersey Supreme Court made it clear that the highest church authority ruling in a hierarchical church governs church decisions. If the church is not hierarchical, but is congregational, the express procedure governs those disputes. *Solid Rock Baptist Church v. Carleton* 347 N.J. Super. 180, 200 (App. Div. 2002). Query; if the church is not hierarchical or the procedures are not expressed, will the courts intervene and "play God" to end the conflict, presumably to prevent irreparable harm (albeit in violation of the religious beliefs of the offended congregants)? Only God knows.

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