

## **Think Through Clergy Communications: When do Your Conversations Fall Under the Privilege?**

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In most states, and under the common law, communications with spiritual leaders are protected under a privilege called clergy-communicant, clergy-congregant, clergy communications or something similar. But when does it apply? Ministers must think through this before they start listening to confessions and other important communications.

In a case last year,<sup>1</sup> Pastor V. learned that one of his juvenile parishioners had sexually molested a young cousin. Horrified, he called in the boy and his mother, and pressed the boy to confess. The boy broke down, wept, and admitted the truth of the allegations. Pastor V. gave him spiritual counsel and prayed with him.

Although Pastor V. later admitted that defendant's statement was a confidential communication, he reported the communication to the victim's family and to the police (who had already received the report from the victim). At issue in the case was whether Pastor V.'s testimony could be admitted at trial, since the defendant insisted it was covered by the clergy-penitent privilege. The dispute went up to the Michigan Court of Appeals.

The court analyzed the Michigan statute and the common law privilege. The communication had to serve a religious function. It had to be made to a minister in his role as a cleric. It had to be made in the course of discipline laid out by the religious organization. In this case, defendant's confession to Pastor V. served a religious function. It was made to a pastor in his professional character, and in the course of discipline enjoined by the Baptist Church. Pastor V. admitted that the communication would be considered confidential, and that providing counseling and guidance were part of his pastoral role. The court held that the privilege applied, and that only defendant could waive it. Because he was a minor, his mother's presence did not waive the privilege.

Pastor V., while apparently well-meaning, was confused about the privilege, and was not clear with his parishioners about the privilege. He wound up in an embarrassing situation where he was arguably breaking faith to one or more persons—the defendant, the victim, or both.

Ministers should understand the privilege in their state (it will vary by state statute). They should understand what is required by their denomination on confidentiality. When a communication begins, ministers should consider if it is

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<sup>1</sup> *People v. Bragg*, 824 N.W.2d 170 (Mich. App. 2012).

privileged, and be clear with people before they pour out their hearts, stating whether or not their communications are confidential.

In a parachurch religious organization like a mission, many people are ordained, but roles may not be clear. Policy should define whether communications are ever protected by the privilege—or not.

Ministers who don't consider the situation carefully may create a misunderstanding that rises to betrayal.