



CHURCH BYLAWS – PROCEDURE FOR MEMBER DISCIPLINE/MEMBERSHIP REVOCATION

It is highly important for churches to have a written membership policy. A vital part of any church's membership policy is specifically defining what steps will be taken to correct its members – should they violate the rules of the church – and how the disciplinary process applies to the withdrawal of membership. Legal claims seem to arise most frequently in this area when a church deems it necessary to discipline a member who is engaging in sexual sin.

For instance, in the *Guinn* case, a small-town church in Oklahoma was sued when its leadership began the discipline process for a member.¹ It seems the single mother of three was engaged in an inappropriate sexual relationship with the local mayor. After the elders of the church confronted her with the matter pursuant to Matthew 18 (and she admitted to it), she resigned her membership and had an attorney send a letter to the church warning it not to disclose the matter to the congregation. Because the woman was no longer a member, the court held that the elders were not immune from claims of invasion of privacy and intentional infliction of emotional distress after they disclosed the details of her relationship to the congregation and four other area churches.

The good news is that the court determined the elders could *not* be held liable for disciplinary actions taken before resignation of membership. A court order forcing them to pay damages for these actions would have violated the free exercise rights of the church.

Much can be learned from the *Guinn* case, but one of the most important things for church leaders to take away from this is that church bylaws should carefully spell out the disciplinary process and how it relates to withdrawing membership. For instance, the church would have likely avoided liability if its bylaws specifically stated that membership cannot be withdrawn once the disciplinary process begins, and had its members sign a statement agreeing to this condition of their membership.

For more information on how to protect your church from unnecessary lawsuits, read [“Five Things All Churches Should Have in Their By-Laws.”](#) If you have specific legal questions, use the [Legal Inquiry Form](#) to share your question with an attorney.

¹ *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989)



CHURCH BYLAWS - PROCEDURE FOR RESCINDING MEMBERSHIP

In previous editions, we've explained the importance of having church bylaws that define membership, as well as the procedure for membership discipline. Another significant aspect of church membership is rescission. A provision in the church bylaws specifically setting forth how and when membership may be rescinded either by the church or the member will go a long way toward protecting the church from legal liability when a member leaves. Alliance Defending Freedom suggests that membership be defined in a way that is similar to the following:

The membership of this Church shall be composed of individuals who are believers in the Lord Jesus Christ and affirm the tenets of the _____ Church Constitution, and who offer evidence, by their confession and their conduct, that they are living in accord with their affirmations and this Constitution and Bylaws, and are actively pursuing and continuing in a vital fellowship with the Lord, Jesus Christ. The membership of the church shall have final authority in all matters of church governance, as set forth and described in the Bylaws.

So what exactly happens when a member no longer “affirms the tenets” of the church or fails to conduct themselves according to the church’s moral standards? The answer should be spelled out clearly in the church bylaws. Depending on the congregation, the procedure for rescinding membership often involves some variation of the steps Christ prescribed in Matthew 18: progressive confrontation of the offending member starting with an individual, then by a small group of two or three, and finally by the church body. If the offending member still refuses to change their views or behavior to conform with church teaching, their membership is rescinded.

The good news is this biblically based policy has been tacitly sanctioned by at least one court of law.¹ But a subtle, yet important aspect must be addressed – whether the offending member can withdraw membership while the disciplinary process is pending. For some churches, this is important because they believe it’s the church’s obligation to attempt to correct behavior and beliefs of members who may be harming their spiritual and physical health. They want the opportunity to do this before membership ends. This belief is in tension with the general law that allows church members to withdraw their membership from a congregation at any time – a basic tenet of religious freedom. But if, as a condition of membership, a member agrees not to withdraw while discipline against him or her is pending, that may very well be enforceable.

¹ *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989).



Another important consideration is the legal implication of disclosing to the whole church the offense that led to discipline. This could lead to church liability for defamation, unless members have been informed of, and have conceded to, provisions in the bylaws that state this may occur.²

In sum, churches should include provisions in their bylaws that specifically address how membership will be rescinded. If the church has a disciplinary process that it believes must be carried out before membership can be withdrawn for moral or theological problems, it should have all members sign a document indicating that they are aware of this provision and consent to it. A similar consent form should be used if church discipline involves disclosure of reasons for discipline to the church body.

² *Owen v. Bd. of Directors of Rosicrucian Fellowship*, 342 P.2d 424 (Cal. App. 1959) (“A person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages, and customs”).



CHURCH BYLAWS - JOB DESCRIPTIONS AND RELIGIOUS GROUNDS FOR LIMITING EMPLOYMENT OPPORTUNITIES

The issue of limiting employment based on religious grounds is likely to come up at some time. Whether you are a pastor, on the church board, or run a ministry of the church, you may be confronted with a situation where an employee is acting contrary to your group's doctrines and beliefs. For example, a pastor might divorce his wife and remarry contrary to your church's doctrine. An administrative assistant might express belief contrary to your church's stance on abortion. It might be discovered that a teacher in your religious school might not actually attend church. And the issue will come up – *can we fire a person who does not adhere to our doctrine or agree with our beliefs?*

Alliance Defending Freedom litigated a case in Michigan where a church rescinded the call of one of its ministers, thus ending her employment. According to this church's by-laws, all disputes within the church were to be resolved according to Matthew 18, and church members were urged to reject the adversarial system that dominates the secular world. So when this minister threatened to sue the church, the church took the matter before its congregation, rescinded her call, and terminated her employment. She then sued the church, and one of the issues in the case is whether the church actually held such a belief.

While the general rule is that an employer cannot make hiring and firing decisions based on religion, there is an exception for "religious organizations." The legal system is very protective of church autonomy and generally does not interfere with church hiring and firing practices. Federal law exempts churches and allows them to consider an applicant's religious beliefs in hiring for all positions. And under most state laws, religious nonprofit organizations are entirely exempt from these regulations.

But nevertheless, there are things an organization should do to protect its ability to make hiring and firing decisions based on religion. First, churches need to stay true to their religious mission. Some ministries, over time, lose their religious mission and just become focused on doing a task. For example, some religious schools stop integrating church doctrine into the curriculum, and thus may lose their status as a religious organization under the law.

Second, religious organizations should provide job descriptions in their bylaws for every position in the church and explain in the job description how the position furthers the religious mission of the church. These position descriptions should include the religious grounds for limiting employment



opportunities – especially if the limitations involve other legally protected factors, such as race, age, sex, or national origin.

For example, if the church’s beliefs require that only certain positions be held by men, this should be stated in the bylaws with support from Scripture. This firmly establishes that there is a religious basis for the church’s limitations on employment, and is unlikely to be questioned by a judge.

Finally, churches should ensure that they are consistently applying their employment rules to protect themselves from claims of employment discrimination. Churches must handle similar cases similarly and cannot use religion as an excuse to treat a protected class of people more favorably than others. For example, a church might be vulnerable if it terminated an unmarried, pregnant female employee on religious grounds based upon an inference of illicit sexual intercourse, but did not terminate a male pastor guilty of extramarital sexual relations.

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