Clergy Malpractice: An Emerging Field of Law

Increases in claims and lawsuits against churches and church officials raise many questions concerning constitutional law and the separation of church and state. Once immune from liability, church officials may now face claims of malpractice.

Some claims are met with the defense that churches and church officials cannot be sued in a civil court because the first amendment says "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

This defense has been upheld in some older cases and still holds in claims involving church doctrine, rituals, and property ownership. *United States v. Ballard,* 64 S. Ct. 882 (1944), clearly states the Court's view on religious issues.

> One's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his beliefs on those subjects, cannot be interfered with, provided the laws of society designed to secure its peace and prosperity and the morals of the people are not interfered with.

Yet more people are suing churches and clergy for wrongdoing.

> The day when the clergy were the only learned members of the community and were considered to be the ultimate authorities on both civil and church matters has long since passed. The honor and esteem in which the clergy were formerly held has somewhat diminished and many persons are no longer reluctant to sue the clergy or the church if that person feels that some monetary benefit may result. Case & Comment, Sept.-Oct. 1985, at 4, col. 2.

Many people believe churches are wealthy. Most clergy, however, have little or no financial resources. Claimants often attempt to recover damages from a church's insurance company. As a result, some insurers are refusing to cover certain allegations.

Church malpractice cases often involve sexual misconduct, child molestation, or improper counseling. In *Robert Destefano v. The Diocese of Colorado Springs,* Civ. Act. No. 84CV0773 (July 1984), a judge dismissed claims that a priest had engaged in an intimate relationship with a woman during marriage counseling. According to language in the first amendment and some Colorado statutes, the claim should have been filed in the Catholic Church system instead of a civil court. The case is on appeal.

In *Nally v. Grace Community Church,* 204 Cal. Rptr. 303 (Cal. Ct. App. 1984), a couple brought a wrongful death suit against a church and its pastors when their son, who was being counseled by the pastors, committed suicide. The parents' claim against the pastors included malpractice, negligence, and outrageous conduct. The defendants were granted summary judgment on the basis of separation of church and state, and the case was appealed. The court found that the facts of the case did not show that the boy had been damaged intentionally.

> To hold otherwise, under the facts of this case, could have the deleterious effect of opening a virtual Pandora's box of litigation by subjecting *all* of the various religious faiths and their clergy (e.g., ministers of the numerous Protestant denominations; priests of the Roman Catholic faith and the various Eastern Orthodox religions; rabbis of the Jewish faith, orthodox, conservative and reform; etc.) to wrongful death actions and expensive full-blown trials simply because they were unsuccessful in their sincere efforts through spiritual counseling to help or dissuade emotionally disturbed members of their congregations, who may be suicide prone, from carrying out such a predisposition.

A Washington, D.C., minister of the United Methodist Church was charged with sexually harassing five women. On September 17, 1985, John P. Carter was convicted of disobedience to the church by a 13-member jury of fellow clergy members in a trial held in a church basement. Carter, who is suspended from the ministry for three years, is appealing the decision on procedural grounds to the church's Jurisdictional Court of Appeals. Guidelines for the trial were set by the church's *Book of Discipline,* which sets conduct standards for members.

"To my knowledge, the Methodist Church is the only religious institution with such an elaborate procedure for disciplining its members," said Jane Dolkart, a partner in the Washington, D.C., firm of Dolkart, Langer & Zavos, who acted as assistant clergy counsel in the trial. "I was amazed at the lengths to which the church went to ensure [that Carter] got his due process." Legal Times of Washington, Oct. 7, 1985, at 4, col. 1.

Despite the church's conviction, the case may still go to a secular court. Both Carter and the women may file Title VII claims against the church, with Carter alleging racism and the women charging sexual harassment.

Nelson v. Dodge, 68 A.2d 51 (R.I. 1949), shows that there should be remedies for harm caused by outrageous conduct even when expressing religious beliefs.

In *Nelson,* a church leader repeatedly told the plaintiff he would suffer eternal damnation, causing the plaintiff to become physically and emotionally ill. The defendant often accompanied the threats with screaming and throwing herself on the floor and simulating vomiting. When the plaintiff asked the defendant for help, she told him that God said he should strip himself of all his possessions and give them to her. The court imposed a constructive trust on the plaintiff's possessions due to the defendant's influence over him.

In *State of Louisiana v. Gilbert Gauthe, Jr.,* Docket No. 51998 (Oct. 14, 1985), a Roman Catholic priest, defrocked after confessing to sexually abusing more than three dozen children, pleaded guilty and was sentenced to 20 years in jail. An aggravated rape charge, which carries a mandatory life sentence, was dropped in exchange for Gauthe's guilty plea to 11 counts of sexual abuse.

District Court Judge Hugh Brunson told Gauthe that his crimes "laid a terrible burden on those children, their families and society . . . . It may be that God in his infinite mercy may find forgiveness for your crimes, but the imperative of justice . . . cannot." The Washington Post, Oct. 15, 1985, at 4, col. 4. ■

—Claudia J. Postell