

## **FREQUENTLY ASKED LEGAL QUESTIONS (AND ANSWERS) FOR NEW DISTRICT SUPERINTENDENTS**

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### **CLOSING CHURCHES**

- 1) What opinion needs to be obtained by the district superintendent before a church can be discontinued?**

The district superintendent should obtain and consider an opinion of legal counsel as to the existence of any reversion, possibility of reverter, right of reacquisition, or similar restrictions to the benefit of any party. (§ 2548.1) Although technically not an “opinion” to be obtained, it is also important to consider the requirements of §§ 213 and 2548.2 for an assessment of the local church’s potential prior to a making any recommendation to close the church.

- 2) What consent needs to be obtained before a church may be discontinued?**

The district board of church location and building needs to approve and consent needs to be obtained from the presiding bishop and of a majority of the district superintendents. (§ 2548.2)

- 3) What are the district superintendent’s responsibilities when a church is abandoned?**

A majority of the district superintendents must consent to the determination of abandonment. (§ 2548.3)

### **PROPERTY ISSUES/LEASES**

- 4) Will the church lose its tax exemption if it rents a home or a building located on its property?**

It should not adversely affect the church’s **federal** income tax exemption. However, that parcel may lose its **state or local** property tax exemption and be subject to real estate taxes.

- 5) What kind of lessee is most appropriate?**

As a general rule, it should be a not-for-profit organization who furthers the spiritual, cultural, or educational goals of the church and/or community. Also, the prospective tenant should be evaluated in a risk/benefit analysis (examples of questions to consider: what is the activity that will be conducted on the church property, does the church have adequate liability insurance to cover the risk, are there any zoning issues or potential neighborhood problems, will the organization be able to pay its rent and does it have adequate liability insurance, what will be the wear and tear on the property, what staff time will be required, etc.). Some churches rent property to for-profit organizations. There is nothing inherently problematic about a church doing so, but such an arrangement should be carefully evaluated beforehand, using the same risk/benefit analysis but also addressing the additional questions that arise in the context of a for-profit use (for example: special zoning questions, property tax issues, additional liability concerns, image of the church, etc.). NOTE: the district superintendent’s approval is required for leases of thirty (30) days or more (§§ 2539.3 and 2540.3).

### **TRUSTEES’ RESPONSIBILITIES**

**6) What annual inspections should be made?**

The Board of Trustees should annually review the local church's insurance coverage (§ 2532.2) and should conduct an annual accessibility audit (2532.6).

**7) What are the trustees' responsibilities for the sale of church property?**

See §§ 2539-2542 and Section IV of the 2005-2008 Legal Manual (available for download only at [www.gcfa.org/](http://www.gcfa.org/)).

**8) How much insurance and what coverage should the church carry?**

The trustees should conduct an annual review of the church's insurance program, conduct an annual fire review with fire inspectors and carry comprehensive property and liability coverage. (§ 2532.2)

**EMBEZZLEMENT**

(See Tips for Preventing Misuse of Funds at <http://www.gcfa.org/misuseofChurchFunds.html>)

**9) Who should be told that a loss has occurred?**

The full scope of notification will depend on the unique circumstances of each situation. However, in general, the pastor, district superintendent, the audit firm, the insurance or bonding agent, the chancellor, the chair(s) of the appropriate committee(s), and the police.

**10) When should the bonding agency be notified?**

The bonding company should be notified as soon as a loss has occurred. They also could be told that no claim will be filed until the church is certain it has determined the full extent of the loss. This is important because with most bonding companies, the claim must include the amount of the loss, and the claim amount cannot be adjusted upward if additional monies are discovered missing at a later time from the same embezzlement.

**11) When should the police be notified?**

One is not criminally liable for failure to report a crime. However, the church should take very seriously the importance of notification of the police. History has proven that persons who embezzle from one organization will embezzle from another, regardless of how nice they appear or how sincerely they are sorry for what they have done. If the church fails to prosecute, another organization will be at risk for the same crime from the same person.

**12) Should an audit be performed?**

Absolutely. Please refer to the GCFA Local Church Audit Guide (available at [www.gcfa.org](http://www.gcfa.org))

**13) Should churches do background checks on all staff who handle money or financial accounts**

Churches should consider doing background criminal and credit checks on all such persons, in close consultation with legal counsel for compliance with state and federal laws on conducting such background checks. While background checks will not catch all persons who ultimately choose to embezzle, it can be helpful in discouraging persons with a known history of theft from applying for a church position. Also, churches should always check all references and verify educational background and other aspects of an applicant's history before offering a job.

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**14) How much bonding/fidelity insurance coverage is adequate?**

It depends on the size of the church and its assets. The church's insurance agent or broker can assist with this important question.

**PERSONNEL ISSUES**

**15) Do the employment provisions of the Americans with Disabilities Act (ADA) apply to church organizations?**

It depends. The ADA applies to all employers having 15 or more employees. However, ministerial personnel are not covered by the ADA, because of the significant First Amendment right of a religious organization to make its own decisions about ministerial staff, without court interference (ministerial staff would be anyone who has a clearly articulated ministry position in the church, such as ordained clergy, deacons, probably the music and choir director, probably the lay children's ministry director, etc.). Many states have employment disabilities statutes, and those statutes do not always have the ministerial exemption like the federal counterpart. Local churches should always consult with legal counsel before making staffing decisions that might have legal implications and be mindful of the Church's Social Principles on persons with disabilities.

**16) Should local churches have personnel policies?**

Yes. The best protection from lawsuits involving personnel issues is to: 1) have personnel policies, 2) consistently follow those policies, 3) follow-up on all problems and complaints, and 4) document those problems and complaints and the follow-up measures. It can be helpful to locate a church in your annual conference with comprehensive personnel policies (that have been reviewed by legal counsel) to share with other churches.

**COMPUTER/INTERNET**

**17) What kinds of behavior should alert the district superintendent, SPRC chair, pastor, or staff that a problem may exist with a pastor or staff person using the internet for inappropriate uses?**

The pastor or staff member spends unusually large amounts of time on-line; someone finds pornography on the computer that s/he uses; s/he receives a lot of mail, gifts, or packages from unknown persons; s/he turns off the computer monitor quickly or changes the screen on the monitor when someone comes into the room; s/he receives (or places) numerous e-mails or phone calls from (or to) unfamiliar persons; s/he becomes withdrawn; s/he is using an on-line account belonging to someone else. (These tips are adapted from FBI material on cybersex problems).

**18) If a problem exists with the pastor, what steps should be taken to report and investigate the matter?**

The matter should be reported to the PPR committee and the district superintendent without delay.

**19) What inspections should be made?**

Churches should consider a policy that includes monitoring the amount of time spent on-line by pastors and staff.

**SEXUAL MISCONDUCT**

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**20) Where may I find a sample local church policy statement on sexual misconduct?**

See Section III of the Legal Manual.

**21) What insurance coverage should a church have for sexual misconduct?**

Some church insurance carriers include sexual misconduct coverage within the general liability policy, which is one very acceptable way of addressing this coverage. Other church insurance carriers have a separate endorsement for sexual misconduct, with separate (typically lower) policy limits. Employment practices liability insurance coverage also can be helpful if it includes coverage for sexual harassment.

**22) Are there any guidelines for investigating sexual misconduct complaints?**

Yes. In the “Legal” tab for the workbook for new district superintendent training, there are several resources that should be helpful. See also the Administrative & Judicial Procedures Handbook, for complaints involving clergy.

### **CHILD SEXUAL ABUSE**

**23) Who is most likely to commit child abuse?**

It could be anyone. There is no way to accurately predict who is most likely to commit child abuse, and it could be anyone, including the most respected, trusted members of a church community, young or old.

**24) What steps can a church take to prevent child abuse?**

*Safe Sanctuaries* by Joy Melton (Discipleship Resources, available from Cokesbury) is an excellent resource on the protection of children from child abuse.

**25) Is there an example of a good church child protection policy?**

See *Safe Sanctuaries*.

### **EXTENSION MINISTRIES CONTRACTS**

**26) Should we use a contract to describe the work to be done and the responsibilities of each party to safeguard the bishop, annual conference, and the districts from subsequent requests for additional payment?**

A letter of understanding spelling out the rights and responsibilities of each party can be a helpful tool to ensure that everyone understands their roles and responsibilities and to use in the event of a problem, misunderstanding or conflict related to the extension ministry. Be mindful of ¶¶ 344-347. Guidelines in this area are available from the United Methodist Endorsing Agency of the General Board of Higher Education and Ministry (615-340-7411).

### **CEMETARIES**

**27) How do you handle a church’s cemetery when that church might be closing in the near future?**

Churches have found creative and comforting ways to dealing with this dilemma. Sensitivity to the fears and other feelings of persons with special attachment to the cemetery is crucial to a win-win

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resolution. A private cemetery association run by those who have a special interest is one of the easiest solutions. Sometimes the closed local church is turned into a chapel for the cemetery association. From a legal perspective, an attorney familiar with possible state law restrictions should be consulted in this process, and it is important, if possible, to sell the property (even if the selling price is \$10) to the cemetery association, in order to pass on any and all legal responsibility for maintaining the property, insuring it, and the like.

**28) Does it make regulatory and financial sense to become a private cemetery rather than a church cemetery?**

Yes. See above.

**ADMINISTRATIVE COMPLAINT**

(See generally the Administrative and Judicial Procedures Handbook, Chapter 5)

**29) Does the respondent (person charged) have a right of access to records relied upon?**

Yes. The respondent is entitled to access to all records relied upon in the administrative process. The chair of the board of ordained ministry (or other BOM person selected to be responsible for doing so) should provide those records to the respondent. (§ 362.2e)

**30) Does the respondent have the right to an attorney?**

Not exactly. The respondent may be accompanied by another clergyperson to any hearing. (§ 362.2c) That person has the right to voice.

**31) How much time does the respondent have to prepare for a hearing?**

The chair of the board of ordained ministry shall provide at least 20 days notice of the hearing. (§ 362.2b)

**SUPERVISORY RESPONSE**

(See generally the Administrative and Judicial Procedures Handbook, Chapter 5)

**32) Can the information discussed at supervisory response meeting be used against the person alleged to be ineffective at a later hearing?**

Possibly. For judicial complaints, “all documentary evidence under consideration” should be included with the complaint. (§ 2704) While the corresponding provision for administrative complaints is silent on this issue, it is quite common – and to be expected – that information about the pastor’s alleged ineffectiveness discussed at the supervisory meeting later would surface in a BOM hearing.

**33) May the person against whom a complaint is filed have someone accompany him during the supervisory session?**

Yes. The person against whom the complaint is filed may choose another person to accompany him or her (but no legal counsel shall be present). (§ 361.1b)

**JUDICIAL COMPLAINT**

(See generally the Administrative and Judicial Procedures Handbook, Chapters 10-14)

**34) How much time does the respondent have to respond to the judicial complaint?**

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The respondent shall have an opportunity to submit a written response within thirty (30) days after receipt of the complaint. (§§ 2704.1b, .2b, .3a, .4d)

**35) Does the person making the complaint have standing as a party and entitled to representation?**

The person making the complaint is not a party. Instead, counsel for the Church represents the interests of the Church. However, § 2701.1 provides the complainant with several rights, including the right to be accompanied. Many annual conferences have persons who serve as helpful advocates to assist the complainant and help him/her understand the process.

**36) What is the purpose of the preliminary hearing?**

To discuss procedures to be followed, who may be present, how and what evidence may be submitted. (§ 2706.3)

\*The idea for this Q&A, plus many of the questions themselves and the answers to some of the questions, were provided by Rev. Ray Brill (Virginia Annual Conference), for whom the advisor role is a part of his ministry to the Church. We are grateful to Rev. Brill for his willingness to share his wisdom and work with us and you.

GCFA is not engaged in legal, accounting, or other professional service. The information provided in this Q&A cannot substitute for local legal counsel familiar with the laws and facts of each particular situation. The services of a competent professional advisor always should be sought if legal advice or other expert assistance is required.

