

ENDORSED

OCT 16 2006

Clerk of the Napa Superior Court
By: M.M. FIELDS
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
COUNTY OF NAPA

CHARISSA W., et al.,
Plaintiffs,

v.
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, et al.

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED
DISCOVERY MOTIONS

Plaintiffs' Motions To Compel Discovery came on for hearing on October 13, 2006. The court, having read and considered the papers in support of and in opposition to the motion and having heard oral argument, took the motions under submission and now rules as follows:

Plaintiffs' Motion to Compel Depositions and/or for Protective Order re: the Westland Elders (Motion #1)

The Watchtower defendants have informed the plaintiffs that, at the depositions of four Church Elders, they will invoke the clergy-penitent privilege and object to "any inquiries concerning judicial investigations and judicial committees." Plaintiffs seek an order compelling the deponents to attend their depositions and to respond to such inquiries.

This court has previously ruled in the Track I cases that the penitential communication privilege does not apply to communications between the alleged abusers and the Judicial Committee. (See Court's ruling of September 29, 2005.) Although that ruling is not res judicata in non-track I cases, defendants provide no convincing reason why the court should rule differently in this case. For the reasons expressed in the earlier ruling, the court concludes that the witnesses may not assert the penitential communication privilege. To the extent the motion also encompasses the production of documents, defendants shall produce responsive documents, regardless of when they are dated. As plaintiffs note, it is possible that documents dated after the alleged abuse will contain relevant information. For these reasons, plaintiffs' motion #1 is GRANTED.

Plaintiffs' Motion to Compel PMK Deposition and Documents – General (Motion #2)

Plaintiffs have noticed the deposition of the Church defendants' Person(s) Most Knowledgeable (PMK) on a number of specified topics. Defendants have objected to six areas of inquiry, again invoking the clergy-penitent privilege. For the reasons discussed above and in the court's earlier ruling, the court finds that the clergy-penitent privilege does not apply to these areas of inquiry. Defendants also object to the scope of the document requests, claiming that documents that post-date the alleged abuse are not relevant or likely to lead to the discovery of admissible evidence. As above, the court finds that the documents are discoverable. For these reasons, plaintiffs' motion #2 is GRANTED.

Plaintiffs' Motion to Compel PMK Deposition and Documents – Legal (Motion #3)

Plaintiffs previously issued a PMK deposition notice concerning "any and all policies that the Jehovah's Witnesses organization had for handling accusations and proof of child sexual abuse from 1970 to the present." During that PMK deposition of Mr. Breaux, he identified functions that were handled by the Legal Department rather than by the Service Department, where he worked. As to these, he lacked the information necessary to provide responses.

Plaintiffs subsequently noticed a PMK deposition to inquire into (1) the organization, staffing and operation of the Legal Department; (2) the Legal Department's role in responding to

and investigating child sexual abuse allegations within the organization; (3) the development and use of "Child Abuse Telememos" which were forms developed to obtain and record information concerning reports of abuse (blank forms were produced in discovery); (4) records kept by or under the direction of the Legal Department concerning allegations of abuse; and (5) answers given to "survey questions" contained on one of the Telememos.

Defendants have objected that these areas of inquiry are protected by the attorney-client and/or work product privileges. As to the first two categories, plaintiffs contend that they concern only policies and implementation, and do not invade any privileges. As to categories 3 and 5, they assert only that the requested information is related to the blank documents they already received in discovery, and that the information goes to the heart of their case. Finally, as to category 4, they claim again, that no privileges would be invaded, because they seek general information about the types of records kept by the legal department.

The court agrees that items 1, 2 and 4, which seek general structural, policy and organizational information concerning the Legal Department, implicate neither the attorney-client nor the work product privileges. Items 3 and 5, on the other hand, seek protected information. As set forth in the declaration of the Church's associate general counsel, the Telememo forms are completed by attorneys or legal assistants based upon information provided them by congregation elders, and are used to assist in giving legal advice to the elders, as clients of the Legal Department. Similarly, any compilation of information, as from the "survey questions" constitutes attorney work product and is not discoverable.

For these reasons, the court will GRANT the motion as to items 1, 2 and 4 and will DENY the motion as to items 3 and 5.

Dated: 10/16/06


Raymond A. Guadagni, Judge