

**SUPERIOR COURT, STATE OF ARIZONA,  
In and for the County of Cochise**

<b>JANE DOE I, <i>et al.</i>,</b>  <b>PLAINTIFFS,</b>  <b>vs.</b>  <b>THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, <i>et al.</i>,</b>  <b>DEFENDANTS.</b>	<b>CASE NO. CV202000599</b>  <b>ORDER RE:</b>  <b>DISCOVERY DISPUTES</b>	<div style="border: 1px solid black; padding: 5px; margin: 0 auto; width: 80%;">FILED 2022 AUG -8 AM 10: 27 AMY J HURLEY CLERK OF SUPERIOR COURT DEPUTY</div>
<b>HONORABLE LAURA CARDINAL DIVISION ONE</b>		<b>Date: August 8, 2022</b>

The following discovery disputes have been presented to the court for orders:

- 1) Does non-party witness, Richard Fife, have the right to invoke the clergy-penitent privilege regarding Paul Adams;
- 2) Is Richard Fife subject to a valid "gag order;"
- 3) Is Plaintiff entitled to discovery of the disciplinary file of Paul Adams' disciplinary council held in 2013;
- 4) Should the court conduct an *in camera* review of the disciplinary file.

**1. May Richard Fife invoke the clergy-penitent privilege in response to deposition questions?**

**Court's Ruling: No, he may not invoke the privilege, because Richard Fife is not clergy, and because the privilege was waived by Paul Adams.**

Plaintiff sought to depose Richard Fife regarding his knowledge of Paul Adams and the Adams family, and his participation in the 2013 Bisbee Church of Latter Day Saint's disciplinary council of Paul Adams, father of the minor plaintiffs. Fife refused to answer most of the pertinent questions, at the insistence of Defendant Church, based on the clergy-penitent privilege and the Church's recognition of that privilege. Counsel for Plaintiffs sought an order clarifying Fife's duty to respond to questions in deposition.

The court has reviewed the deposition of Fife, which was videotaped, as well as the available disclosure in the case, which includes affidavits of parties, including those of Dr. John Herrod and Kim Mauzy, depositions of Emily Reynolds and Leizza Adams, the 2010 Handbook issued to Stake Presidents and Bishops

of the Church of Latter Day Saints, portions of police reports, including the police interrogation of Paul Adams, and the court's records in the case.

Arizona courts have reviewed the clergy-penitent privilege through a series of decisions which refined the analysis of the privilege across different religions. Because the treatment of the privilege varies across jurisdictions, the court will rely for its decision on this line of Arizona cases.

The Church of Jesus Christ of Latter-Day Saints v. Superior Court, 159 Ariz. 24, 764 P.2d 759 (Ct. of App., Div. I, Fidel, J., 1988; rev. denied 1988) addressed a penitent's confessions of child molestation to three church bishops over several years. The court held, *inter alia*, that the privilege belongs to the penitent, citing Udall & Livermore §71 at 126, and that there is no legislative intent to "create a testimonial privilege for the clergy independent of the penitent's consent." *Id.*, 764 P.2d at 765. Addressing a First Amendment argument advanced by the church, the court found that unlike the "absolute obligation" or "absolute clerical vow of silence" found in other religions, such as Episcopal and Catholic, the LDS Church was not similarly bound "by an absolute obligation of silence, un-waivable by the penitent." *Id.*, 764 P.2d 767-8. The court further found that the privilege is "susceptible to implied waiver through conduct inconsistent with the maintenance of conversational privacy..." *Id.*, 764 P.2d at 764. The court found such an implied waiver by the Defendant in his discussions with law enforcement and by disclosures by the church bishops to child protective services and law enforcement.

Waters v. O'Connor, 209 Ariz. 380 103 P.3d 292 (2004)(Ct. of App., Div. I, Norris, J., 2004) examined "the meaning of clergyman under A.R.S. 13-4062...", a matter of first impression in the state. The question was whether the volunteer music director of a nondenominational Christian church met the definition of clergy for purposes of invoking the privilege. Waters asserted, as the Defendants do in the present case, that the meaning of "clergy" should be "expansively defined." *Id.*, 103 P. 3d at 383. The court wrote,

Such an expansive construction is contrary to how Arizona courts interpret privilege statutes. Generally, such statutes are to be restrictively interpreted. This is because they impede the truth-finding function of the courts. Church of Jesus Christ of Latter-Day Saints, 159 Ariz. [24,] at 29, 764 P.2d [759,] at 764. Further such an approach is not sufficiently linked to achieving the societal benefits justifying the existence of the clergy-penitent privilege.

*Id.*, 103 P.3d. at 296. The Waters court held that the music director's "honorific title and activities in the church" were insufficient to qualify her as "clergy." The court went on to address "denominational neutrality," and held that "whether a person is a clergyman of a particular religious organization should be determined by that organization's ecclesiastical rules, customs and laws," when determining the right to invoke the clergy-penitent privilege. The court wrote,

Members of the clergy often participate in administrative, social, commercial or other non-religious activities, and not all communications with a cleric should be privileged. The ‘professional character’ element requires the communication to be directed to a clergyman in his or her capacity as a spiritual leader within his or her religious denomination. (Citations omitted.)

Id., 103 P.3d 292 at 297.

State v. Archibeque, 223 Ariz. 231, 221 P.3d 1045 (Ct. of App., Div. I, Gemmill, J., 2009) established a three-step inquiry to determine whether the privilege applies, to wit: 1) is the person who received the confession a “clergyman or priest;” 2) was the confession made while the clergyman was acting in his professional capacity; and 3) was the confession made in the course of discipline “enjoined by the church” to which the clergyman belongs. Id., 221 P.3d at 234. Archibeque further confirmed that the clergy-penitent privilege is subject to the common law doctrine of implied waiver, by “any ‘course of conduct inconsistent with observance of the privilege.’” Bain v. Superior Court, 148 Ariz. 331, 334, 714 P. 2d 824, 827 (1986).” Id., 221 P. 3d at 235-6.

Based on the court’s review, the facts are: Paul Adams made a confession to Defendant Herrod, in Herrod’s role as then Bishop of the Bisbee ward of the Church of Latter Day Saints in 2010 or 2011. It appears that Paul Adams’ wife, Leizza, mother of the minor children, was present at the meeting with Herrod. The precise content of the confession has not been revealed, because the Defendant Church relies on the clergy-penitent privilege, but it appears to have been Paul Adams’ confession to sexual abuse of his children, and in particular, his daughter, M. Herrod has stated that he then undertook a period of counselling with Paul Adams for about one year. In or around the end of 2012, Herrod was released from his role as bishop of the Bisbee ward, and Kim Mauzy was called to serve in that capacity. In August 2013, based on communication from Herrod, Mauzy called the disciplinary council of the church, pursuant to church guidelines.<sup>1</sup>

At the time of the disciplinary council, Richard Fife was serving as clerk or secretary to the ward, a position which involved, among other things, collecting attendance data from various organizations within the ward and preparing reports regarding that information for transmission to the church’s headquarters in Utah. Throughout his membership in the church, Fife has served as ward clerk, First Counselor, and instructor to youth. At the time of the disciplinary council, however, it appears that he held the position of ward clerk.

Reviewing the Archibeque test for whether Fife was “clergy” at the time of the disciplinary council requires review of the Church’s own doctrine. Certainly, for most purposes, Fife’s role in 2013 as ward clerk would not meet the qualifications of “clergy” within the Archibeque test. The Church guidelines regarding the confidentiality requirements for all “participants” in a disciplinary council may encompass Fife, although the

---

<sup>1</sup> Why the disciplinary council was not held until 2013 is not clear. The 2010 Stake Presidents and Bishops Handbook, Vol. 1, Section 6.7.3 provides that in cases of incest or sexual child abuse, “a disciplinary council *must* be held...”. There is no clear timeline when such a council must be held, however.



clerk's role is quite limited. Section 6.10.4 of the 2010 Handbook for Stake Presidents and Bishops, Vol.1, provides that "a clerk records the proceedings of the council as a basis for completing the Report of Church Disciplinary Action Form, but *he does not participate in the discussion or decision.*" There is the inference, nevertheless, that the clerk is subject to confidentiality concerns arising from the disciplinary council: Section 6.10.1 provides that the clerk "should not participate" in the disciplinary council if the clerk had a legal duty to report to government authorities. Thus, although the clerk does not participate in the discussion or decision at the disciplinary council, the clerk is bound by a confidentiality requirement.

That requirement of confidentiality, however, does not arise from the clergy-penitent privilege, but is instead an ordinary, non-privileged requirement arising from church guidelines. The 2010 handbook contains many such requirements of confidentiality regarding issues having nothing to do with clergy-penitent privilege, but rather for general business or personal privacy concerns. See, for example,

17.1.35 (privacy of members re: records, directories, etc),

16.1.6 (prohibition of photographs or video recordings of ordinances and blessings),

13.8 (confidentiality of records);

14.5 (confidentiality of tithing and other offerings);

15.9 (confidentiality of Patriarchal blessings), and more.

Based on the foregoing, the court concludes that Mr. Fife's role in the disciplinary council is not that of a clergyman. He was not acting as clergy, nor was he a person who church members would have sought out to hear confession or spiritual guidance. His title and role as ward clerk is insufficient to meet the requirements of clergy within the doctrine of the Church. Further, the requirement of confidentiality imposed on the clerk at disciplinary council does not arise from the clergy-penitent privilege, and therefore Fife is not entitled to raise the clergy-penitent privilege as a means of avoiding response to questions.

### **Waiver**

Moreover, as is made amply clear in the Arizona line of cases, the right of confidentiality extending from the clergy-penitent privilege, belongs to the penitent, not to members of clergy. And in the absence of clear doctrine within the religion that confidentiality of the confession may never be broken, the duty of confidentiality may be waived by the penitent, either expressly or impliedly, and relieve the clergyman of the duty of confidentiality. As found in Church of Latter Day Saints v. Superior Court, *supra*, such a doctrine of absolute confidentiality is not a part of doctrine of the Church of Latter Day Saints.

Adams' confession to Herrod, and then perhaps again at the disciplinary council, was subject to the clergy-penitent privilege, and was thus subject to the duty of confidentiality by members of clergy. But the privilege was impliedly waived by Adams, through his subsequent, overtly public admission of his sexual abuse of his children. Prior of 2017, Adams posted of videos of the sexual abuse of his children on the world-wide

internet; he boasted on social media of his ability to have sex with his children with the acquiescence of his wife; and then in 2017, during interrogation by law enforcement, he admitted his sexual abuse of his children.

Any one of these acts would qualify as a “course of conduct inconsistent with observance of the privilege.” Bain v. Superior Court, 148 Ariz. 331, 334, 714 P. 2d 824, 827 (1986).” Archibeque, 221 P. 3d at 235-6. Taken together, Adams’ overt acts demonstrate a lack of repentance and a profound disregard for the “discipline enjoined by the church.” His acts can only be characterized as a waiver of the clergy-penitent privilege.

For this reason, the duty of confidentiality rising from the clergy-penitent privilege imposed on all members of the disciplinary council, as well as any member of the Church with knowledge of the acts of Paul Adams resulting in his excommunication from the church, subsequent arrest and indictment, are relieved of the duty of confidentiality, and are **ORDERED** to respond to any questions regarding their knowledge of any information regarding Paul Adams’ sexual abuse of his children.

## **2. Is Richard Fife subject to a “gag order”?**

**Court’s Ruling: No, Richard Fife is not subject to a “gag order” regarding information known to him about the placement of the Adams children.**

Plaintiff also sought Fife’s information regarding the placement of the minor children in Fife’s care following the Adams’ arrest in 2017 and the removal of the children from the family home by child welfare authorities. Fife refused to answer questions regarding the children’s placement in his care, citing to a “gag order” imposed upon him by either the court or the Arizona Department of Child Safety. Fife did not have clear understanding of purported gag order, but he insisted that he was subject to it.

A.R.S. 8-525D contains an admonition which is recited to attendees of a closed juvenile dependency court proceeding. The admonition may be referred to or characterized as a “gag order,” even by the court, because it prohibits attendees from “disclosing any information that may identify the child and the child’s siblings, parents, guardians and caregivers, and any other person whose identity will be disclosed during the proceeding.” Violation of the admonition is contempt of court.

The admonition does not survive the conclusion or dismissal of the dependency proceeding. The dependency involving the Adams children was dismissed in 2019. Fife is **ORDERED** to answer questions regarding the children’s placement in his care.

## **3. Is Plaintiff Entitled to Discovery of Disciplinary Council Record?**

**Court’s Ruling: Yes.**

Based on the court’s finding and order that Paul Adams waived his right to invoke the clergy-penitent privilege by his own conduct inconsistent with maintaining the privilege, the records of the disciplinary council

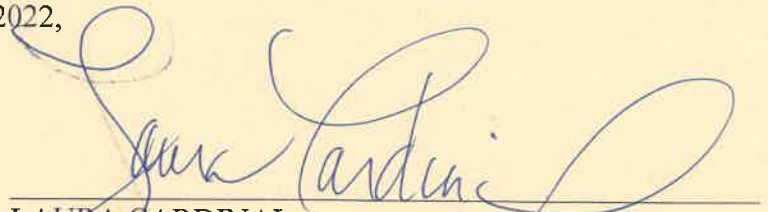
are similarly relieved of any duty of confidentiality. Defendant Church is **ORDERED** to disclose the record.

**4. Is an *In Camera* Review of Disciplinary File Necessary or Required?**

**Court's Ruling: No.**

While an *in camera* inspection of the 2013 disciplinary file could be conducted with little impact on the case, (see Blazek v. Superior Court, 177 Ariz. 535, 542 (1994); U.S. v. Zolin, 491 U.S. 554, 572 (1989))(in camera inspection...is a smaller intrusion upon the confidentiality of the... relationship than is public disclosure...", cited in J.F. v. Hon. Como, C.F NO. 1 CA-SA 21-0123, filed July 12, 2022), counsel for the Church has objected to such an inspection by the court, and *in camera* inspection is not deemed necessary by the Plaintiff. Counsel have leave to stipulate to a protective order regarding the disciplinary file.

DATED THIS 8 DAY OF AUGUST, 2022,

  
LAURA CARDINAL  
JUDGE OF THE SUPERIOR COURT

mailed/distributed: ( \_\_\_\_\_ date)( \_\_\_\_\_ initials)

cc:

xc: e-mailed (e) by: ab (05/03/2022)

☒ Taylor Boren, Esq.(e): [tboren@manlystewart.com](mailto:tboren@manlystewart.com) ☒ Joel Borowiec, Esq.(e): [courtdocs@borowieclaw.com](mailto:courtdocs@borowieclaw.com)  
☒ Kathleen Brody, Esq.(e): [kathy@mscclaw.com](mailto:kathy@mscclaw.com) ☒ Lynne Cadigan, Esq.(e): [lmcadigan@gmail.com](mailto:lmcadigan@gmail.com)  
☒ Anne Chapman, Esq.(e): [anne@mscclaw.com](mailto:anne@mscclaw.com) ☒ Dee Dee Holden, Esq.(e): [dholden@holdenarmer.com](mailto:dholden@holdenarmer.com)  
☒ Travis Hunt, Esq.(e): [thunt@omlaw.com](mailto:thunt@omlaw.com) ☒ William Maledon, Esq.(e): [wmaledon@omlaw.com](mailto:wmaledon@omlaw.com)  
☒ John Manley, Esq.(e): [jmanly@manlystewart.com](mailto:jmanly@manlystewart.com) ☒ Taylor Rayfield, Esq.(e): [trayfield@manlystewart.com](mailto:trayfield@manlystewart.com)  
☒ Michael Ryan, Esq.(e): [mryan@holdenarmer.com](mailto:mryan@holdenarmer.com) ☒ Nathan Ryan, Esq.(e): [nryan@holdenarmer.com](mailto:nryan@holdenarmer.com)  
☒ Peter Schofield, Esq.(e): [pschofield@kmclaw.com](mailto:pschofield@kmclaw.com) ☒ Julie Greenwood (e): [julie@mscclaw.com](mailto:julie@mscclaw.com)  
☒ DIV I JAA (e)

Please do not visit the courthouse if you are experiencing a communicable illness. Contact your attorney or the Court to reschedule your court appearance or to request a telephonic appearance.