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ATTORNEYS FOR PLAINTIFF

DAVID L. MOYER,
Plaintiff,
v.
CHARLES E. BENNISON, JR.,
Defendant.

COURT OF COMMON PLEAS
MONTGOMERY COUNTY
CIVIL ACTION -- LAW AND EQUITY
NO. 02-07147 and
NO. 02-16553 (CASES CONSOLIDATED)
JURY TRIAL DEMANDED

**FOURTH AMENDED PRETRIAL STATEMENT
OF PLAINTIFF DAVID L. MOYER**

Dated: September 12, 2008

08 SEP 12 PM 2:17
CLERK OF THE
COURT
MONTGOMERY COUNTY PA

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Pursuant to Rule 212.2 of the Pennsylvania Rules of Civil Procedure and Local Rules 212.1* and 212.2(a)(7)*, Plaintiff David L. Moyer (“Plaintiff”) submits the following Fourth Amended Pretrial Statement.

1. **NARRATIVE STATEMENT OF THE CASE (RULE 212.2(A)(1))**

INTRODUCTION

1. This case arises out of the fraudulent and collusive scheme of Defendant Charles E. Bennison (“Defendant Bennison” or “Defendant”), motivated by secular animosity against Plaintiff, to injure and damage Plaintiff and to wrongfully force Plaintiff out of his vocation, his church, his congregation and his home.

2. Defendant’s scheme had nothing to do with the doctrine or theology of The Episcopal Church.

3. Defendant, assisted by his Chancellor and some members of his Standing Committee (and therefore by the Diocese) through fraud, concealment, bad faith and collusion, damaged Plaintiff and denied Plaintiff the church trial to which he was entitled. Defendant persisted in the denial of a church trial, fraudulently planned and implemented, and then stubbornly adhered to by Defendant – despite protests by Plaintiff, his congregation, numerous Bishops throughout the United States, the Presiding Bishop of The Episcopal Church, Archbishops from the Anglican Communion, and the Archbishop of Canterbury, the leader of the Anglican Communion.

4. Even if the process chosen by Defendant was proper (which it was not), Plaintiff was entitled to an impartial process free of fraud and bad faith. Defendant has admitted that all clergy are entitled to an “impartial” process.

5. The entire process against Plaintiff was “engineered and motivated” [by Defendant] in order “to rid” Defendant of Plaintiff. Defendant has admitted that such conduct would be improper.

6. Moreover, Defendant “predetermined [Plaintiff’s] guilt before the canonical process had begun” and “had determined to wield the canonical disciplinary process as a weapon to effect [Plaintiff’s] removal from office.” Defendant has admitted that such conduct would be improper.

7. There is no legitimate First Amendment protection for Defendant – who planned and implemented a fraudulent scheme to deprive Plaintiff of his ability to practice his chosen profession and then told jokes and had his picture taken smiling as he signed the “Sentence of Deposition,” intending to deprive Plaintiff of all of his rights as a priest. In any event, following the close of discovery, Defendant moved for Summary Judgment, asserting, *inter alia*, a First Amendment objection. This Court (Honorable Tomas Branca), upon review of the evidentiary record, denied the motion for Summary Judgment as to all the causes of action asserted in *Moyer I* and *Moyer II*.

STATEMENT OF FACTS

8. At all material times, Plaintiff was an Episcopal priest and the Rector of The Church of The Good Shepherd, Rosemont, Pennsylvania.

9. On October 16, 2002 (after the “Deposition” of Plaintiff), Defendant filed a verified pleading, stating that “Plaintiff is a priest of the Episcopal Church.” This pleading was verified by Defendant’s counsel (Mary Kohart, Esq.).

10. Defendant Bennison is the Bishop of the Episcopal Diocese of Pennsylvania (“the Diocese”), an unincorporated association organized and existing under the laws of the

Commonwealth of Pennsylvania. At all material times, Plaintiff was a clergy member of the Diocese. Executive authority in the Diocese was exercised jointly by Defendant and the Standing Committee of the Diocese (“the Standing Committee”).

11. The Chancellor of the Diocese is the attorney for both the Bishop and the Standing Committee. At all material times, the position of Chancellor was held by William Bullitt, Esq. Mr. Bullitt is the partner of Mary Kohart, Esq.

12. On March 1, 2002, Defendant “inhibited” Plaintiff from acting as an Episcopal priest in the Diocese for a period of six months.

13. In April 2002, Plaintiff filed his complaint in *Moyer I* to stop the inhibition and for compensatory and punitive damages resulting from the inhibition and other wrongful acts of Defendant. Legal action in this civil court was necessary and appropriate because Defendant had refused to vacate his wrongful acts, and Plaintiff had no available and/or reasonable administrative remedy within The Episcopal Church to present his claims. At the time Plaintiff filed the *Moyer I* complaint, he was unable to specifically allege Defendant’s fraud and bad faith (as later set forth in the *Moyer II* complaint) because the evidence of fraud and bad faith only became available through the discovery process permitted by this Court in *Moyer I*.

14. Even if there was an administrative remedy (which there was not), the proceedings, as shown by the length of time consumed by the present church proceedings against Defendant, could not have been completed in sufficient time.

15. On September 5, 2002, Defendant “deposed” Plaintiff “entirely from the ordained ministry,” thereby purporting to immediately and forever vacate and terminate Plaintiff’s position as priest and Rector at The Church of The Good Shepherd and all associated offices and duties.

16. That same day, Plaintiff filed a second complaint (*Moyer II*) for a judgment declaring Defendant's acts wrongful and invalid and to recover compensatory and punitive damages resulting from all of Defendant's wrongful acts including, *inter alia*, inhibiting and deposing Plaintiff; defaming Plaintiff; interfering with Plaintiff's employment contracts; fraud; denial of due process; and causing Plaintiff extreme physical and emotional distress.

17. In The Episcopal Church, priests and members of individual congregations in dioceses elect bishops. During his campaign to be elected Bishop of the Diocese of Pennsylvania, Defendant explicitly promised Plaintiff and his representatives that, if elected, Defendant would allow other bishops to preside at services at The Church of The Good Shepherd.

18. Plaintiff was compelled to ask for this promise from Defendant because of various statements by Defendant that went far beyond the normal dispute in religious communities between so-called liberals and conservatives, including statements about replacing the Christian marriage liturgy to a ceremony used by barbarian Visigoths and statements about changing the words of the Bible.

19. After Defendant became Bishop, Plaintiff asked him to keep his promise and not preside at worship services at Good Shepherd. Plaintiff believed Defendant's promise and the solemn vows he had made at his ordination required him under the "Rules" of The Episcopal Church to ask Defendant not to preside at worship services.

20. Defendant broke his promise to Plaintiff and insisted that Plaintiff welcome Defendant to preside at services at Good Shepherd.

21. Other priests in the Diocese had also asked Defendant not to preside at services, but finally only Plaintiff publicly spoke out against Defendant for breaking his promise and for making the statements referred to in Paragraph 18.

22. Defendant had a personal secular animosity towards Plaintiff, arising out of, among other things, his anger over Plaintiff's public criticisms of Defendant.

23. Motivated by this secular animus and by the desire to injure Plaintiff as part of his "media strategy", Defendant Bennison began a fraudulent and collusive scheme to remove his critic by deposing Plaintiff from the priesthood. Defendant has admitted that he described what he was doing to Plaintiff as "this is between David and me."

24. Defendant knew that Plaintiff, as a clergy member of the Diocese, was entitled to the detailed judicial due process trial and appellate procedures set forth in Canons of The Episcopal Church before he could be legitimately deposed.

25. Specifically, the Trial Canons provided that no deposition of a priest could occur unless (a) the priest was found guilty in a trial before an Ecclesiastical Trial Court;¹ (b) that conviction was affirmed by an appellate court (the Court of Review); and (c) the Trial Court imposed a sentence of deposition.

26. The Trial Canons provided a detailed due process procedure when a bishop asserts that a priest has failed to follow instructions of a bishop or has taken action without the consent of the bishop. Those rights include, *inter alia*, the following rights:

- (a) the issuance of a written presentment;
- (b) right to counsel;
- (c) pre-trial discovery;

¹ The judicial authority in the Diocese.

- (d) challenging for cause;
- (e) the right to file an Answer;
- (f) trial before the independent Ecclesiastical Trial Court, including the right to call and confront witnesses pursuant to the Federal Rules of Evidence;
- (g) the right to submit proposed instructions; and
- (h) the right to appeal to a Court of Review, in which the procedures are governed by the Federal Rules of Appellate Procedure.

27. Defendant has admitted the matters set forth in the preceding paragraph. *See* Def.'s Answer to Compl. ¶¶ 47-48 (*Moyer I*). More generally, Defendant has admitted that the "Canons of the Episcopal Church are a written document, the contents of which speak for themselves." Def.'s Answer to Third Am. Compl. ¶ 76 (*Moyer II*).

28. Defendant has admitted that the right to counsel is an important right. In fact, Defendant has complained that he was not advised of his right to counsel.

29. Defendant did not want Plaintiff to have a trial because, *inter alia*, Defendant could not control its outcome and because he would have to testify. Moreover, he believed the outcome would be unfavorable to him. It was an essential element of the Bennison scheme that Plaintiff be deposed without providing Plaintiff the trial to which he was entitled.

30. Under no circumstances was Defendant willing to grant Plaintiff a church trial.

31. Accordingly, Defendant, to implement his scheme, had to circumvent this trial process and decided to "convict" and "sentence" Plaintiff without a trial through actions that were willful, fraudulent, collusive, in bad faith, not impartial, and an abuse of privilege. It was an essential element of this scheme that Plaintiff be denied both a church trial and a civil trial.

32. Defendant requested and received the agreement of his agent, the Chancellor of the Diocese, to assist him in his scheme, and such assistance was provided. All acts and failures to act of the Chancellor set forth herein were as an authorized agent of Defendant (and of the Diocese). Moreover, individual member(s) of the Standing Committee gave assistance to the Defendant in his scheme, such as by providing false affidavit(s); providing false testimony; destroying material evidence; and by concealing material information from Plaintiff.

33. Defendant began “looking elsewhere” to find an “alternative route” other than a trial to rid himself of his chief critic. He decided to use Canon IV.10 (“Canon 10”) because there was no provision for a trial.

34. Canon 10 is entitled “Abandonment of the Communion of this Church by a Priest or Deacon.”²

35. That Canon was enacted to deal for priests who leave The Episcopal Church, for example, to join the Roman Catholic Church, and, prior to the Bennison scheme, had always been used for this purpose.

36. Defendant has judicially admitted that Canon 10 relates to “clergy renouncing their orders, leaving the Episcopal Church, ... and thereby abandoning the communion of the Church.”

37. Defendant knew that Plaintiff had not renounced his priesthood and knew that Plaintiff had not left The Episcopal Church. On more than one occasion, Plaintiff unequivocally stated to Defendant and the Standing Committee his intention to remain in The Episcopal Church.

² Webster’s dictionary defines “abandonment” as the “act of abandoning,” which itself is defined as “to cease to assert or exercise an interest, right, or title to esp. with the intent of never again resuming or reasserting it.”

38. Moreover, Defendant has admitted that there is no need for a trial when properly using Canon 10 since the priest leaving The Episcopal Church to join another denomination is expected to voluntarily renounce his right as a priest of The Episcopal Church. Def.'s Answer to Compl. ¶¶ 49-50 (*Moyer I*).

39. Defendant's knowledge that the use of Canon 10 against Plaintiff was improper (as distinguished from proceeding by pastoral direction and, if necessary, a trial) is shown, *inter alia*, by the actions he took against a priest who claimed to be a druid and a priest who claimed to be a witch.

40. Defendant's secular actions against Plaintiff is also shown by the fact that Defendant took no action against another priest who clearly had left The Episcopal Church.

41. In early 2002, Plaintiff was nominated to be a bishop within The Episcopal Church by a group called Forward in Faith. This nomination, however, was in no sense an attempt by Plaintiff to leave The Episcopal Church. Forward in Faith was a group within The Episcopal Church. Plaintiff's nomination was submitted to the head of The Episcopal Church, and no further action was taken on the nomination.

42. Canon 10, with its truncated and simple procedures – an automatic deposition following a six months' inhibition – fulfilled the requirements of the Bennison scheme to dispense with Plaintiff without a trial.

43. Defendant has admitted that the use of Canon 10 against Plaintiff was "novel." Def.'s Memo. of Law in Supp. of Mot. for Summ. J., at 49-50 (signed by Mary Kohart, Esquire, counsel for Defendant). According to Defendant, there is "some humor" in Plaintiff's predicament. *Id.* at 49. Indeed, Defendant was so amused by what he did to Plaintiff that he was telling jokes as he signed the "sentence of deposition."

44. Even if Canon 10 applied to Plaintiff (which it did not), he was entitled to an impartial process free of fraud, concealment and bad faith.

45. Defendant and his agent, the Chancellor, had the duty to Plaintiff to make truthful statements and to reveal to “the” Standing Committee all facts known to him, favorable or unfavorable, that related to the proceedings against Plaintiff. This duty was not satisfied by making information available to selected Standing Committee members.

46. Defendant directly (and through his agent, the Chancellor) breached his duties to Plaintiff by failing to explain to the Standing Committee the consequences of a vote to approve the use of Canon 10 against Plaintiff and by concealing information from the Standing Committee and by misrepresentations to the Standing Committee.

47. The Chancellor, as Defendant’s agent, in so doing, also breached his duties to the Standing Committee and to Plaintiff and thus damaged Plaintiff.

48. Defendant inhibited and “deposed” Plaintiff pursuant to Canon 10 for personal, vindictive, and secular reasons.

49. One of the secular reasons that Defendant chose to use Canon 10 against Plaintiff is that using Canon 10 would deny Plaintiff a trial, the outcome of which Defendant could not control since a trial would be before an independent trial court.

50. A second secular reason that Defendant chose to use Canon 10 against Plaintiff is that, unlike the Trial Canons, there is no right to appeal proceedings under Canon 10. Both Defendant and his agent, the Chancellor, were aware that there is no right of appeal. There is no reference in Canon 10 to any right of appeal. Moreover, Defendant was also advised that, unlike the Trial Canons, Canon 10 “is essentially a unilateral declaration of abandonment by the Standing Committee and Bishop.”

51. As admitted by Defendant, Plaintiff had only two options once Defendant had inhibited him:

- (a) agree with Defendant's demands; or
- (b) deny that he committed the acts alleged.

52. Neither of these two "options" was an appeal of the inhibition or the deposition.

53. Plaintiff denied that the acts were a violation of the Canons and denied that he had abandoned the Communion of the Church, but Defendant insisted that Plaintiff's only options were as set forth in paragraph 51.

54. Defendant willfully and wrongfully concealed from Plaintiff and from members of the Standing Committee and others his intention not to provide Plaintiff with a church trial if Plaintiff denied that he had abandoned the Communion of the Church.

55. Defendant breached his duty to each member of the Standing Committee and, therefore, damaged Plaintiff in failing to inform all members of the Standing Committee of the options Defendant asserted were provided to Plaintiff by Canon 10.

56. A third secular reason that Defendant decided to use Canon 10 is that Defendant intended to proceed to depose Plaintiff without a trial even if Plaintiff denied the charge; i.e. even if Plaintiff denied he had abandoned the Communion of the Church.

57. A fourth secular reason that Defendant decided to use Canon 10 against Plaintiff was that these proceedings were part of Defendant's personal "media strategy." Defendant met with his public relations advisors in 2001 – before the Canon 10 proceedings were initiated by Defendant. Notes of that meeting states: "David Moyer – Depose."

- (a) Mr. Bullitt, the former Diocesan Chancellor, does not know of any other time where there was a public relations campaign with respect to a priest

being disciplined. Not only was the use of Canon 10 “novel”; so was the public relations campaign.

- (b) As part of the media strategy campaign, there was a “Moyer” section on the Diocesan website. Mr. Bullitt conceded that he knows of no other case where there was a website relating to a priest being disciplined.
- (c) Defendant relied heavily on the Diocesan Communications Director to implement his media campaign against Plaintiff. Defendant also employed a paid public relations consultant with respect to his media strategy.

58. With all the financial issues facing the Diocese of Pennsylvania, Defendant diverted substantial economic and staff resources just to focus on David Moyer.

59. A fifth secular reason that Defendant continued the Canon 10 proceeding against Plaintiff is that he believed inhibiting and then deposing Plaintiff would assist in Defendant’s fund-raising efforts. Defendant had been advised by his fund raising advisors that discontinuing the Canon 10 proceedings against Plaintiff would have an adverse impact on Defendant’s fund raising efforts.

60. A sixth secular reason that Defendant decided to use Canon 10 against Plaintiff was to punish Plaintiff and retaliate against Plaintiff for his public criticisms of Defendant.

- (a) Plaintiff had made many public statements criticizing Defendant, including criticism of Defendant for not keeping commitments made by Defendant in his campaign to be elected Bishop.

- (b) Defendant has admitted that he orally described the proceedings against Plaintiff as follows: This is “between David and me.” Def.’s Answer to Third Am. Compl. ¶ 130(a) (*Moyer II*).
- (c) Defendant did not use Canon 10 against Rev. David Ousley, then the Rector of The Church of St. James The Less. Many of the “charges” made against Plaintiff could have been made against Rev. Ousley. Indeed, Defendant instituted litigation against St. James The Less because he claimed St. James The Less had left the Diocese and The Episcopal Church. Allegedly, Rev. Ousley had “years of canonical failures.” Dr. Pamela Darling, a member of the Standing Committee, explained that the reason Plaintiff (and not Rev. Ousley) was charged under Canon 10 was that Plaintiff was more “highly public” than Rev. Ousley, further demonstrating the “novel” use of Canon 10 against Plaintiff.
- (d) Dr. Darling admitted that criticism of the Bishop is not abandonment of communion.

61. Such reason was wholly unrelated to the reasons set forth in Canon 10.

Defendant has admitted that it is improper to take action against a member of the clergy for reasons that are “wholly unrelated” to the charges.

62. Defendant, pursuant to his scheme, called a meeting for January 31, 2002 to manufacture support in the Standing Committee for his Canon 10 strategy. Defendant did not inform Plaintiff of this meeting. Defendant made the decision as to whom to invite to the meeting. The notes of that meeting reflect that Mary Kohart, Esq. attended that meeting.

- (a) Defendant willfully refused to postpone the meeting to enable Rev. William Duffey, Plaintiff's Dean,³ to attend. Reverend Duffey (who opposed taking any action against Plaintiff) advised Defendant that he could not attend on January 31 because he had to preside at the funeral of his father and requested that the meeting be postponed. Defendant refused to postpone the meeting.
- (b) Rev. Duffey has stated that Defendant had only invited those likely to support Defendant's scheme. Also, Rev. Duffey, had he been able to attend that meeting, could have informed those present that the group established by Defendant to make recommendations with respect to, *inter alia*, Plaintiff had unanimously concluded that no action should be taken against Plaintiff.

63. The notes of the January 31, 2002 meeting demonstrate the malice and bad faith of Defendant. After hearing Defendant's presentation of his Canon 10 scheme, his supporters made statements such as "discipline the dummies" and "shoot the rabbit." Defendant's silence and the lack of any protest or any comment by Defendant shows the bad faith of Defendant.

64. Defendant's Canon 10 scheme to depose Plaintiff for "abandoning the communion" was the subject of the meeting.

65. Immediately following the meeting, Defendant prepared a draft letter to Plaintiff giving notice to Plaintiff that Canon 10 would be used against Plaintiff if Plaintiff did not agree to all of Defendant's demands. That draft letter is evidence of Defendant's understanding of his duty to give notice to Plaintiff of his intended use of Canon 10.

³ A Deanery is a sub-group of the Diocese.

66. However, Defendant decided to delete reference to Canon 10 in the actual letter sent to Plaintiff. The actual letter, dated February 2, 2002, demanded that Plaintiff agree to Defendant presiding at services at The Church of the Good Shepherd on the dates set forth in the letter.

67. That letter stated it was sent “in accordance with” Canon IV.1 Sec. 1(h)(2). That Canon states that a priest “shall be liable to presentment [the Church equivalent of an indictment] and trial” (emphasis added), for disobedience of a “pastoral direction,” the exact term that Defendant used in his letter. Since Defendant had already decided to use Canon 10, there was no reason to refer to the Trial Canons in the letter except to mislead Plaintiff into thinking he would be subject to a trial.

68. When Plaintiff received this letter, he reasonably believed that Defendant was threatening him with presentment and trial if Defendant’s demands – set forth in the letter – were not met or if Defendant claimed they had not been met. Plaintiff had no notice of any possible use of Canon 10 against him until he received Defendant’s letter inhibiting him on March 1, 2002.

69. Plaintiff’s reliance on the letter as stating that presentment and trial would be the sanction for any alleged non-compliance was reasonable as Dr. Darling had the same understanding when she read Defendant’s February 2 letter. Dr. Darling testified that it appeared that Defendant had decided not to use Canon 10 because the letter “didn’t reference Canon IV 10.”

70. In response to the letter of February 2, Plaintiff stated to Defendant that he was not prepared to have Defendant preside at services on the dates demanded in Defendant’s letter.

71. Plaintiff did not believe his reply violated any Canons and intended to plead not guilty in the church trial threatened by Defendant in his letter of February 2.

72. Had Plaintiff been given notice in the February 2 letter (or at any time prior to receiving the March 1 letter) of Defendant's actual intention to use Canon 10 against him, Plaintiff would have had the opportunity to cause the same protest against the Canon 10 proceeding that occurred in March and April of 2002 – including the protest by the Presiding Bishop. The difference is that this protest could have been made before the Standing Committee took action, as Plaintiff could have alerted the Presiding Bishop. Moreover, had Defendant not concealed from Plaintiff a letter of the Presiding Bishop, which condemned any plan to discipline Plaintiff on “abandonment” grounds; the letter from Robert Royce, Esq., which concluded that Plaintiff's actions should not be deemed an “abandonment of the communion;”⁴ what happened at the January 31 meeting; and the draft February 2 letter, Plaintiff would have included those matters in a protest before the Standing Committee took action. Moreover, because Defendant had withheld all of these pieces of information from the Standing Committee, Plaintiff would also have informed the Standing Committee of those matters. Finally, Plaintiff would have demanded a church trial when he met with the Standing Committee.

73. In order to move forward with his Canon 10 scheme, Defendant had to get the consent of the Standing Committee. This was essential to Defendant's scheme since, under no circumstances was he willing to give Plaintiff a church trial. He therefore decided to defraud the Standing Committee and did, in fact, defraud the Standing Committee. In the alternative, he decided to defraud those members of the Standing Committee who were not participating in the

⁴ Despite Mr. Royce's admonition against Defendant's Canon 10 scheme, Defendant identified Mr. Royce as a “contributor” to a “background paper.”

scheme and/or who did not have knowledge of the scheme and did, in fact, defraud those members. The Standing Committee has publicly stated that Defendant concealed from them “a memo from the Chancellor” relating to the Canon 10 proceedings against Plaintiff. The Standing Committee stated that such concealment was material. The Standing Committee’s statement arose out of the Standing Committee’s request that Defendant resign. Such fraud breached a duty to Plaintiff and injured Plaintiff.

74. Defendant, through his attorneys (also the attorneys for the Standing Committee) requested advice on the use of Canon 10 against Plaintiff from Robert Royce, a retired Chancellor. Mr. Royce’s advice was clear and unequivocal: to use Canon 10 against Plaintiff:

would be a terrible chilling effect on the life of the Church. This is especially so as Canon III.10 is essentially a unilateral declaration of abandonment by the Standing Committee and Bishop. The Disciplinary Canons in Title IV provide a sufficient vehicle for the discipline of Members of the Clergy who violate the Canons and the application of Canon III.10 is available for cases of true abandonment.

75. Mr. Royce expected that his letter would be distributed to all members of the Standing Committee since he stated that “I hope that this is helpful to you [Frank Helminski, Esq.] and the Standing Committee in your deliberations.” *Id.* (emphasis added).

76. Defendant received a copy of the letter. Defendant did not, however, distribute the letter to all members of the Standing Committee. To the contrary, Defendant distributed a “background paper” to all members of the Standing Committee. The “background paper” stated that it was proper to use Canon 10 against Plaintiff and listed Mr. Royce as one of the “contributors” to the memorandum. This is the same as asking John Kerry to opine on the re-election of George Bush, receiving his statement opposing such re-election, and nevertheless listing him as a “contributor” to a final report urging the re-election.

77. Defendant has admitted that “he did prepare and edit the Background Paper.”
Def.’s Answer to Third Am. Compl. ¶ 114 (*Moyer II*).

78. One “editing” was to delete the Royce letter as an attachment to the background paper.

79. The “background paper” was material to the decision of the Standing Committee since Defendant admits that it was the “report” required by Canon 10 as a prerequisite for Standing Committee action.

80. Defendant even deceived his Communications Director, leading her to believe that Mr. Royce “helped prepare” the “background paper.”

81. Defendant also wrongfully concealed the Royce letter and the “background paper” from Plaintiff (as well as the draft background paper containing the Royce letter).

82. Because the Canon 10 scheme was part of Defendant’s secular “media strategy” and because Defendant had taken steps to assure his desired result, Defendant had his public relations advisors prepare a press release announcing Canon 10 action taken against Plaintiff before any vote by the Standing Committee.

83. Defendant fraudulently induced Plaintiff to request a meeting with the Standing Committee by telling Plaintiff that the Standing Committee was considering approving a church trial for Plaintiff on one charge – the failure to agree to the visitation demanded in Defendant’s February 2 letter.

84. As intended by Defendant and his agent, the Chancellor, the “hearing” Plaintiff received at the meeting of February 26, 2002 was neither fair nor honest.

85. The Standing Committee vote as to Canon 10 occurred at its meeting of February 26, 2002. Plaintiff requested an opportunity to address the Committee, believing that

the purpose of the meeting was to consider whether to approve a church trial for him on one charge – the failure to agree to the visitation demanded in Defendant’s letter of February 2. He had no notice of any Canon 10 proceedings and no notice of any “charge” other than the “charge” arising out of his response to the February 2 letter. He was told to come alone. Prior to Plaintiff appearing at the meeting, Defendant, through his agent, the Chancellor, wrongfully and fraudulently advised the Standing Committee that giving Plaintiff a church trial was more “Draconian” than using Canon 10 against Plaintiff. The Chancellor was present when Plaintiff appeared at the meeting. At the meeting, Defendant’s agent, the Chancellor, concealed from Plaintiff: 1) the intention to use Canon 10; 2) the existence of a draft “Report” containing seven “charges” and “findings;” 3) the Chancellor’s advice that giving Plaintiff a trial would be more “Draconian;” 4) the Royce Letter; and 5) the letter from the Presiding Bishop. Had Plaintiff known of the concealed matters, he would have protested the use of Canon 10 and would have demanded a trial. Plaintiff referred to his ordination vows and references to public statements made by Defendant such as changing the marriage ceremony and changing the words of the Bible. He stated his intention to remain in The Episcopal Church.

86. As intended by Defendant and his agent, the Chancellor, the “hearing” Plaintiff received at the meeting of February 26, 2002 was neither fair nor honest.

87. After Plaintiff had left the meeting, (still unaware of the planned use of Canon 10) Defendant was asked by a member of the Standing Committee to state the views of the Presiding Bishop with respect to using Canon 10 against Plaintiff. The minutes state that Defendant replied, in the presence of all Standing Committee members (and the Chancellor), that the views of the Presiding Bishop were “unknown.” This statement was false in that Defendant had received a letter from the Presiding Bishop condemning such action.

88. When asked about this statement by Defendant, Mr. Bullitt testified as follows: “I don’t know why he would have said it.”

89. Defendant also concealed this letter and his statement from Plaintiff.

90. Defendant and his agent, the Chancellor, breached their legal duties to Plaintiff by, *inter alia*: a) not providing Plaintiff with a copy of the first letter from the Presiding Bishop; b) not providing Plaintiff with a copy of the letter from Robert Royce; c) not informing Plaintiff that he had told the Standing Committee that the views of the Presiding Bishop were unknown; d) not providing Plaintiff with a copy of the second letter from the Presiding Bishop; e) not informing Plaintiff of the seven “charges” before the vote of the Standing Committee; and f) concealing the statement that a trial would be more “Draconian.”

91. On March 1, 2002, Plaintiff received a letter from Defendant informing him, for the first time of the use of Canon 10 and that he was being inhibited for a period of six months, without a trial.

92. If Defendant had elected to pursue a presentment against Plaintiff under the Trial Canons, as he indicated to Plaintiff he would, and if a presentment were issued, Defendant could have inhibited Plaintiff until the trial. Accordingly, previously threatening Plaintiff with “inhibition” did not provide notice to Plaintiff of Defendant’s intention to use Canon 10.

93. Defendant’s strategy was to find an “alternative route” other than a trial. If his Canon 10 scheme had not succeeded, Defendant would not have proceeded under the Trial Canons. Given Defendant’s hostility to a trial, Defendant would not have given Plaintiff the public forum of a trial.

94. Moreover, if Defendant's "alternative" application of Canon 10 had not been employed and Defendant refused to apply the Trial Canons, Defendant would have had no procedural means by which to inhibit Plaintiff.

95. The public revelation of the Bennison Canon 10 scheme – including distribution of the Standing Committee's "Report" – caused a national protest:

- (a) The Presiding Bishop stated that Defendant's actions and the Canon 10 proceedings were "utterly unacceptable." Def.'s Answer to Compl. ¶ 69 (*Moyer I*).
- (b) Numerous Bishops condemned the action.

96. Pursuant to Defendant's scheme, the Report, written by Defendant's agent, the Chancellor, was written with the intention to deny Plaintiff both a church trial and a civil trial.

97. With the approval of Defendant, the President (Rev. Glenn Matis) and Vice President (Rev. Wood) of the Standing Committee then allowed their names to be used in a letter to the Editor of the *Philadelphia Inquirer*. The letter was actually written by Defendant's public relations advisors. The letter was false and fraudulent in that:

- (a) The letter stated that the issues were "respectfully discussed" at the January 31 meeting (without revealing the comments of "shoot the rabbit" and "discipline the dummies"); and
- (b) It stated that the January 31 meeting was attended by the "members of Diocesan Council."

98. That letter caused a protest from Rev. Gregory Brewer, a member of Diocesan Council, who was not invited to the January 31 meeting, probably because he opposed the taking of action against Plaintiff.

99. Reverend Wood's reaction to Rev. Brewer's protest was "so what."

100. Reverend Matis (who assisted Defendant in the scheme) stated, "The Rosemont crowd [Plaintiff and his congregation] is not amused that David did not get a church trial. Obviously, they still don't get it – remember – Bluebird reading group," i.e., the "stupid" reading group in elementary school. See Jonathan Mooney, *The Art of balancing Reading Re-Mediation and Accommodation* (undated), <http://www.familyeducation.com/article/0,1120,23-28911,00.html>.

101. Reverend Matis also referred to The Church of the Good Shepherd as "the Church of the Good Suspension" and agreed with the description of Plaintiff as similar to the monster in the movie "Alien" (and agreed with comparing Plaintiff to Osama Bin Laden).

102. Following receipt of the letter of March 1, 2002, Plaintiff, in writing to the Defendant:

- (a) protested the use of Canon 10; and
- (b) denied that he had abandoned the Communion of the Church or had in any sense left The Episcopal Church.

103. Defendant did not respond to Plaintiff's written denial.

104. A letter written on Plaintiff's behalf was sent at the same time to Defendant's Chancellor. This letter denied that Plaintiff had violated the Canons and stated that, if Defendant claimed that Plaintiff violated any church rules, Plaintiff was entitled to a church trial.

105. Neither Defendant nor the Chancellor responded to that letter.

106. Defendant and his agent, the Chancellor, had a duty to explain to the Standing Committee that this letter constituted a demand for a church trial.

107. Defendant and his Chancellor willfully and wrongfully concealed from members of the Standing Committee that Plaintiff had demanded a church trial – and thus damaged Plaintiff.

108. Having received no response to those two letters, Plaintiff wrote a letter on March 27, 2002 to the Presiding Bishop asking him to appoint a Council of Conciliation composed of other Episcopal bishops to “effect a reasonable and honorable resolution of this matter.”

109. On April 8, 2002, the Presiding Bishop refused that request.

110. Defendant directly, or through his agent, the Chancellor, misled members of the Standing Committee and/or failed to inform the members of the Standing Committee that once they had voted in favor of Canon 10 that Plaintiff would not be given a church trial even if he denied that he had abandoned the communion of the Church and even if he denied that any of the seven “charges” constituted a violation of the canons.

111. Dr. Darling was misled into believing that, if Plaintiff denied he had abandoned the Communion of the Church, he would be given a trial, and was misled into believing that, if Plaintiff denied that the acts alleged were violations of the Canons, Plaintiff would receive a trial.

112. Defendant, knowing that members of the Standing Committee and others believed that Plaintiff was entitled to a church trial if he denied that he had abandoned the Communion of the Church, deliberately failed to either inform them that Plaintiff had made such a denial or inform them that he would not give Plaintiff a church trial even after such denial by Plaintiff.

113. Had Plaintiff been given the trial to which he was entitled, Plaintiff would have pleaded not guilty since Plaintiff believed that none of his actions constituted a violation of any Canon.

114. As stated by Plaintiff at the Standing Committee Meeting, Plaintiff believed that his ordination vows required him to refuse Defendant's demands.

115. As intended by Defendant and his agent, the Chancellor, Defendant was both to be denied as a Church Trial and then denied a civil trial, with the Chancellor asserting that a civil court had no jurisdiction to determine whether Plaintiff's ordination vows excused his actions.

116. The purpose of the scheme was, therefore, to ensure that Plaintiff had no opportunity to assert this primary defense.

117. Canon 10 had no provisions for any appeal. The rules of The Episcopal Church did provide for charges to be filed against a bishop, but this was of no help to Plaintiff because he did not yet have the evidence of Defendant's fraud and bad faith – he did not know of the concealed documents and the false statements. In any event, any group hearing charges against Defendant had no power to stop the inhibition or the impending deposition. Finally, as shown by the two proceedings against Defendant, this process would take many years to occur, if at all.

118. Moreover, Defendant willfully and wrongfully decided not to give Plaintiff a church trial because, inter alia, he had been advised that discontinuing the Canon 10 proceedings would adversely impact his fund raising efforts and willfully and wrongfully concealed that fact from Plaintiff and from members of the Standing Committee.

119. On April 15, 2002, Plaintiff served Document Requests upon Defendant and upon the Diocese.

120. At a Standing Committee meeting on April 23, 2002, these Document Requests were discussed by Defendant, his agent, the Chancellor, and the Standing Committee. There are two paragraphs in the minutes referring to the Complaint (*Moyer I*) and the Document Requests. The first of those paragraphs contain the following statements: “Bill [Bullitt] advised us not to destroy any documents. Our conversations with Bill are covered by Attorney/Client privilege. These tapes are protected as well.” (Emphasis added).

121. Given the context of the sentence relating to “[T]hese tapes,” it is clear that there were tape recordings of discussions concerning this litigation and recordings of discussions concerning Plaintiff.

122. Mr. Bullitt testified as follows: “It is my recollection that the person...who acted as secretary of the meetings...would have a tape recorder running, and that would help her with the transcription, or help her develop the minutes after the meetings. And that’s probably the reference that was being made there.” Mr. Bullitt believes that taping of meetings continued after the April 23 meeting.

123. Reverend Matis testified that “at one point the Standing Committee minutes – not minutes, meetings were taped.” Reverend Matis could not remember when that “practice” stopped.

124. Reverend Matis testified that he did not know what happened to the tapes.

125. During his extensive deposition testimony as to the tapes referred to in the minutes of April 23, 2002, Reverend Matis did not refer to any alleged instruction to turn off the tape machine. To the contrary, the testimony accepted the fact that the tapes related to Plaintiff.

126. To assist Defendant in his scheme, Reverend Matis subsequently executed a false affidavit contradicting his testimony and claiming that there never were any tapes relating to Plaintiff.

127. Counsel for Defendant (Mary Kohart, Esq.), during Reverend Matis' testimony, stated "We knew all about these tapes."

128. The Document Requests served with the Complaint in *Moyer I* included requests for production of tape recording of discussions concerning Plaintiff and/or this litigation. In any event, once litigation had been anticipated, Defendant and his agents (including the Chancellor and Rev. Matis) had the duty to preserve the tapes. Certainly, they had that duty during and after the discussion at the meeting of April 23, 2002.

129. At the time of service of those Document Requests, the Diocese was a party to *Moyer I*. By agreement of counsel, following the granting of Preliminary Objections in favor of the Diocese, Defendant assumed the responsibility of preserving and producing documents that were in the possession of the Diocese and/or the Standing Committee. Subsequent document requests served by Plaintiff upon Defendant also called for production of tape recordings of discussions concerning Plaintiff and/or this litigation.

130. No tapes have ever been produced. They have been erased or destroyed.

131. During the inhibition period, an authorized agent of Defendant (Mary Kohart, Esq.) (in the presence of Defendant and others) referred to Plaintiff as a flying "terrorist." The bad faith of Defendant is shown by the fact that Defendant remained silent after hearing that statement and has never repudiated or criticized that "shocking" statement.

132. As individual Standing Committee members began to learn of Defendant's fraud relating to the proceeding against Plaintiff, they began to send private e-mails to each other expressing their outrage:

- (a) Amanda Smoot wrote an e-mail entitled "Grr," stating that she felt "manipulated" and "used." Ms. Smoot never informed Plaintiff of her concerns or this e-mail.
- (b) Dr. Darling expressed her outrage, not only at Defendant, but also at Defendant's attorneys (who also were the Standing Committee's attorneys). Dr. Darling never informed Plaintiff of her concerns or this e-mail.
- (c) Rev. Matis and Amanda Smoot authored a "farewell" memo when they left the Standing Committee, stating that the Standing Committee should have independent counsel "to allow us to fully explore our options" where there is disagreement between the bishop and the Standing Committee.⁵

133. On June 24, 2002, the Presiding Bishop of The Episcopal Church sent a letter to Defendant demanding that Defendant not move forward with the Canon 10 proceeding against Plaintiff.

- (a) Defendant faxed the letter to William Bullitt and then apparently destroyed the original.
- (b) Neither Defendant nor Mr. Bullitt ever gave a copy of that letter to the Standing Committee or informed the Standing Committee of its existence.
- (c) Neither Defendant nor Mr. Bullitt gave a copy of the letter to Plaintiff.

⁵ Reverend Matis is now the President of the Standing Committee.

- (d) In 2003, Plaintiff's counsel, in reviewing the document production made by Defendant, noted a reference to a June 2002 letter from the Presiding Bishop. The letter, however, was not in the document production. Plaintiff's counsel requested a copy of the letter from Defendant's counsel. In reply, Defendant's counsel (presumably after consulting with Defendant (and with other counsel for Defendant) and with the approval of Defendant) made the following representation: "[m]y client does not appear to have kept a copy of the June 24, 2002 letter and, thus, cannot produce it to you."
- (e) Plaintiff's counsel then requested that the files of Defendant's attorneys be searched.
- (f) Only then letter was the Presiding Bishop's letter produced by Defendant's counsel.
- (g) Defendant's counsel marked the letter "confidential." Plaintiff's counsel then moved to have the "confidential" designation removed. Defendant and his agents opposed that Motion, concealing that Motion and the opposition from those members of the Standing Committee who had not assisted Defendant in the opposition to the Motion. This Court granted that Motion.
- (h) Plaintiff then informed his congregation of the existence of the letter.
- (i) It appears that members of the Standing Committee were first informed of the existence of the letter by the actions of Plaintiff and not by Defendant or Defendant's attorneys.

134. Dr. Darling, a member of the Standing Committee, testified that some members of the Standing Committee “believed that it [the letter] had been willfully withheld.”

135. When the Standing Committee finally decided to request Defendant’s resignation, it cited Defendant’s concealment of this letter as one of the reasons it requested Defendant’s resignation.

136. The Standing Committee considered the concealment to be material, stating that “its [the letter] theme and intent was germane to our decision making, especially since the sender is our Presiding Bishop.”

137. Although the Standing Committee used Defendant’s fraud in an effort to compel Defendant’s resignation as Bishop, the Standing Committee, even after being fully informed as to Defendant’s fraud through, inter alia, their knowledge of the material on file in this proceeding and in documents shown to them in oral depositions, never attempted to take any action to mitigate the effect of the fraud upon Plaintiff. This continued even after the Standing Committee became the Ecclesiastical Authority of the Diocese.

138. Accordingly, all acts of the Defendant were as an authorized agent of the Diocese.

139. Plaintiff reserves all rights against those Standing Committee members who were members of the Standing Committee in 2002 and who were also members when the Standing Committee became the Ecclesiastical Authority of the Diocese.

140. The Diocese has thus ratified Defendant’s fraudulent scheme against Plaintiff and is legally liable for all damages from that scheme.

141. To complete his scheme, Defendant signed a “Sentence of Deposition” with respect to Plaintiff on September 5, 2002.

142. The signing of that document should have been a serious if not sad moment for Defendant, since, if valid, the document (a) would deprive Plaintiff of the right to continue as a priest, not only in the Diocese, but throughout the Anglican Communion; (b) would remove Plaintiff from his employment as Rector of The Church of the Good Shepherd; and (c) would require Plaintiff and his family to have to leave their home. Indeed, Defendant, in his public statements concerning the inhibition and deposition repeatedly stated how “sad” and “pained” he was over his actions.

143. Instead, for Defendant, this was the successful completion of his secular scheme. As he began to sign the document, he began to tell jokes to Rev. Matis and Rev. Wood – who were present as witnesses. And when Rev. Wood and Defendant were smiling, someone was summoned to take a picture of Defendant signing the document. Reverend Wood testified that he was embarrassed to have his picture taken while smiling because he had no notice the picture would be taken. On the other hand, Rev. Matis and Defendant were aware that the photograph was to be taken.

144. Dr. Darling’s testimony as to her reaction when she learned of the photograph was: “I groaned.”

145. When Plaintiff learned of the photograph, Plaintiff served a document request for the photograph. Defendant’s Responses stated that the photograph does not exist.

146. On September 5, 2002, William Bullitt advised the Standing Committee that there were no letters from the Presiding Bishop stating that “the use of Canon 10 was a clear misuse of the canon.”

147. On January 24, 2006, the Standing Committee requested that Defendant resign as Bishop. The Defendant has refused to resign.

148. One of the reasons publicly given by the Standing Committee was “a breakdown in trust,” citing two examples of Defendant concealing matters from the Standing Committee in this matter. The Standing Committee statement refers to both concealments as material by stating that they related “to an important action” and were “germane to our decision making.”

149. The Standing Committee used the fraud of Defendant to advance their campaign to remove Defendant as Bishop but did not take any action to mitigate the effect of the fraud on Plaintiff.

150. The Standing Committee also refused to consent to the re-appointment of William Bullitt as Chancellor.

151. *Moyer I* and *Moyer II* have been consolidated. The damages claimed in *Moyer I* are also included in the damages claimed in *Moyer II* – including punitive damages.

152. Defendant admits that he was aware of Plaintiff’s contract with Good Shepherd and admits that there is evidence that he acted for the purpose of interfering with that contract.

153. Plaintiff did everything he could to stop the inhibition. He obeyed the inhibition to show that he had not left The Episcopal Church.

154. As a result of Defendant’s wrongful acts, Plaintiff was completely isolated from his church and his congregation and suffered extreme emotional distress. For example:

- (a) Plaintiff was verbally attacked by another priest simply for wearing the collar of a priest during the inhibition.
- (b) Other priests and congregants, fearful of Defendant’s power and retaliation, avoided any contact with Plaintiff. Plaintiff felt completely alone. In the community, people avoided Plaintiff as if he had the plague.

- (c) Plaintiff was not allowed to minister at the Home of the Merciful Savior in West Philadelphia. Plaintiff had for several years ministered weekly to children with cerebral palsy, and had gotten to watch them grow and to know their families.
- (d) Plaintiff felt compelled not to attend the St. Michael's Youth Conference in Massachusetts in August of 2002. Plaintiff had served on the staff of this Conference for twenty-two years and had watched his own three children spend six years at the Conference, as well as many other young people from the three parishes where he had served as Rector over the years. Plaintiff had been the sub-Dean of the Conference and was in charge of athletics and the evening programs. He agreed to stay home because the other priests on staff were fearful of reprisal from their bishops if they associated with him as an "inhibited" priest.

155. Plaintiff suffered severe physical and emotional distress as a result of Defendant's wrongful conduct. For example:

- (a) Plaintiff was faced with the loss of his home (which was provided by the Church) and his position at the Church. He was naturally concerned for the welfare and well-being of his wife and children.
- (b) Plaintiff had to address the panic, chaos, and mistrust in his congregation caused by Defendant's attack and removal of Plaintiff from active ministry.
- (c) Plaintiff experienced daily torment for being refused the right and opportunity to perform priestly acts. This denial of the ability to live out

his vocation was particularly painful because Defendant announced the inhibition during Lent and Holy Week was approaching.

- (d) Plaintiff was not allowed to perform or officiate at weddings, funerals, or baptisms.⁶
- (e) Plaintiff was not allowed to participate in the mentoring or ordination of his Curate, whom he had mentored and nurtured for many months in preparation for his ordination.
- (f) Plaintiff was distraught over the burden that the inhibition placed on Rev. Austin.

156. Plaintiff experienced not only emotional, but also physical injuries, including back pain, anxiety, insomnia, depression, crying, uncontrolled shaking.

157. Defendant has admitted that inhibition causes:

- (a) “great emotional distress”
- (b) “anxiety”
- (c) “pain”
- (d) “a sense of helplessness and humiliation and profound embarrassment”
- (e) having to “witness the suffering of his family”

158. During the inhibition period and after the deposition, Plaintiff was injured and was under constant attack by Defendant, causing more severe physical and emotion distress.

- (a) Defendant maintained a “Moyer section” on the diocesan website.

⁶ This also resulted in a loss of income.

- (b) Defendant mailed a letter to all members of congregation of Good Shepherd.
- (c) Defendant mailed a letter to all congregations in the diocese.

159. These documents were false and defamatory against Plaintiff and caused additional severe emotional and physical distress. In addition, the documents deliberately concealed what had happened, and Plaintiff suffered more distress when the truth was revealed.

160. Defendant not only published false and defamatory statements and documents concerning Plaintiff; he also attempted to prevent any communication by Plaintiff to fellow members of the Diocese by denying Plaintiff to access to the Diocesan mailing list and by refusing even to accept a paid statement to be included in the Pennsylvania Episcopalian.

161. The Episcopal Church is part of the worldwide Anglican Communion, which is headed by the Archbishop of Canterbury in England. The present Archbishop of Canterbury and his predecessor both condemned Defendant's deposition of Plaintiff from this priesthood.

162. Many bishops in The Episcopal Church also condemned the deposition.

163. After the "deposition", Defendant continued to threaten Plaintiff and his congregation; causing more severe emotional distress to Plaintiff:

- (a) Defendant called meetings of members of Good Shepherd to persuade the congregation to ask Plaintiff to leave his position as Rector.
- (b) When Defendant's attempts at persuasion failed, Defendant made a public statement that he himself would replace Plaintiff as Rector of Good Shepherd if the congregation did not force Plaintiff out.

- (c) On November 6, 2002, the Standing Committee passed a resolution referring to the seizure of Good Shepherd property unless the congregation asked Plaintiff to leave his post.
- (d) Again on September 11, 2006, Defendant publicly announced his intention to seize the property of Good Shepherd because Plaintiff was still there.
- (e) Defendant sent a letter to Plaintiff claiming that Plaintiff had no right to perform priestly acts such as marriage or hearing confessions.

164. After the “deposition,” Plaintiff suffered more shock and distress as Defendant began to produce documents in this litigation and testimony was taken from members of the Standing Committee and members of Defendant’s staff. Among other things, Plaintiff learned that:

- (a) Malicious comments like “shoot the rabbit” and “discipline the dummies” were made at the January 31, 2002 meeting and that Defendant did not criticize those remarks.
- (b) Defendant made jokes and had a picture taken while signing the Sentence of Deposition.
- (c) Defendant failed to protest when his attorney referred to Plaintiff as a flying terrorist.
- (d) Defendant concealed documents – the letter from the Church attorney, the letters from the Presiding Bishop, and the draft letter which would have given him notice of the plan to use Canon 10.

165. Plaintiff suffered severe distress, shock, and anger as he realized that none of these facts were on the “Moyer Section” of the Diocesan Website or in the letters Defendant had sent to the Good Shepherd congregation and to all churches in the Diocese.

166. Plaintiff experienced additional severe shock and distress from learning that, in June 2002, the Presiding Bishop had told Defendant that the proceedings against Plaintiff must stop and from learning that Defendant and his attorney had not informed him or the Standing Committee of the letter.

167. It was left to Plaintiff to inform his congregation of the Presiding Bishop’s letter. Defendant and his agents attempted to prevent Plaintiff from informing his congregation of the letter by marking the document “Confidential” and by resisting Plaintiff’s Motion to have the confidential designation removed.

168. Indeed, it appears that the Standing Committee learned of the letter, not from the Defendant, but from Plaintiff. When the Standing Committee finally decided to ask Defendant to resign, it highlighted Defendant’s concealment of letter as one of the reasons for the request.

169. Even with the disclosure of all of this, Plaintiff received no apology – from either Defendant or from any member of the Standing Committee. To the contrary, Defendant continued to issue threats to seize the Church property unless Plaintiff left Good Shepard.

170. After some period of time, it became clear to Plaintiff that Defendant intended to stay as Bishop indefinitely. Defendant had thrown Plaintiff out of The Episcopal Church. Plaintiff intended to remain as the Rector of the Church of the Good Shepard. Under church rules, only Defendant could have set aside Plaintiff’s deposition. Moreover, Defendant continued to make public remarks – for example, stating that Jesus was a sinner and comparing the Anglican Church in Africa to the Nazi party – which convinced Plaintiff that any

reconciliation with Defendant as his Bishop was impossible. Plaintiff had to move forward in his life and did accept a nomination to become a bishop in the Traditional Anglican Communion while remaining as Rector of Good Shepherd.

171. Plaintiff has been damaged by each of the causes of action alleged in *Moyer I* and *Moyer II*.

172. Defendant's actions set forth in the preceding paragraphs and including, *inter alia*, interference with Plaintiff's contracts, his fraudulent conduct, his retaliation against Plaintiff, his denial of due process to Plaintiff, and his infliction of emotional and physical distress, and Defendant's jokes as he "deposed" Plaintiff, were all done intentionally and, constitute extreme and outrageous conduct going beyond all possible bounds of decency. The conduct should be regarded as atrocious and utterly intolerable in a civilized community, and punitive damages, therefore, are appropriate.

2. TYPES AND AMOUNTS OF DAMAGES CLAIMED (RULE 212.2(a)(2))

Plaintiff's claim for compensatory and punitive damages is unliquidated, except as set forth in the Affidavit of Plaintiff in Opposition to Defendant's Motion for Summary Judgment, which is incorporated by reference. Total damages exceed \$50,000.

3. NAMES AND ADDRESSES OF WITNESSES (RULE 212.2(a)(3))

The following witnesses are expected to be presented:

- (1) David L. Moyer (*liability/damages*)
- (2) Rita Moyer (*liability/damages*)

The above individuals can be contacted through counsel to Plaintiff.

- (3) Rev. William Duffey (*liability/damages*)
St. George's Episcopal Church
One West Ardmore Avenue

Ardmore, PA 19003

- (4) Rev. Garrin Dickinson (*liability/damages*)
Holy Nativity Church
2200 18th Street
Plano, TX 75074
- (5) Dr. William Lander (*expert on liability, causation, and damages*)
888 Glenbrook Avenue
Bryn Mawr, Pennsylvania (PA)
- (6) Dr. Howard Benjamin (*damages*)
723 Ardmore Ave
Ardmore, Pennsylvania 19003
- (7) Charles E. Bennison, Jr. (as on cross) (*liability/damages*)
(Defendant has been served with a Request to Appear)
- (8) Barbara Alton (as on cross) (*liability/damages*) (*live and/or by deposition*) (*under subpoena*)
- (9) Art Stewart (as on cross) (*liability/damages*) (*live and/or by deposition*) (*under subpoena*)
303 West Lancaster Ave. - # 288
Wayne, PA 19087
- (10) Margaret Cave (as on cross) (*liability/damages*) (*live and/or by deposition*) (*under subpoena*)
312 Grayling Ave.
Narberth, PA 19072
- (11) Rev. William Wood (as on cross) (*liability/damages*) (*live and/or by deposition*) (*under subpoena*)
226 Righters Mill Road
Gladwyne, PA 19035
- (12) Rev. Glenn Matis (as on cross) (*liability/damages*) (*live and/or by deposition*) (*under subpoena*)
Church House
Philadelphia, PA
- (13) Mary Lou Bulmer (as on cross) (*liability/damages*) (*subpoena in process*)
2060 Grantham Ave.
Berwyn, PA

(14) Mary E Laney (as on cross) (*liability/damages*) (*subpoena in process*)
3010 Gowan Ln
Lafayette Hill, PA

Plaintiff expects to call witnesses listed in items 7 through 12 as on cross-examination in its case in chief. The witnesses listed in items 8 through 14 have been or are in the process of being subpoenaed. Plaintiff requests a stipulation that Ms. Kohart made the statements referring to in Paragraphs 127 and 131 to avoid the necessity of calling her as a witness. Plaintiff is entitled to have each of them testify at the trial, and Plaintiff reserves the right to use their depositions at trial. Plaintiff specifically reserves the right to call William Bullitt, Esq., and Frank Helminski, Esq. as on cross-examination. Plaintiff expects that Defendant's counsel will cooperate to arrange the witnesses' appearance. Plaintiff reserves the right to cross-examine these witnesses if and when Defendant calls them in his case, and Plaintiff reserves the right to call any witness listed by Defendant. Finally, Defendant's counsel has been served with a Notice compelling Defendant to appear and testify at the trial.

This list does not include rebuttal witnesses, and Plaintiff reserves the right to call such rebuttal witnesses as he may deem appropriate. Plaintiff also reserves the right to supplement this list at any time prior to or at the time of trial. Plaintiff also reserves the right, for good cause shown, to offer substantive evidence through a witness not listed.

4. EXHIBITS (RULE 212.2(a)(4))

The following exhibits are offered by Plaintiff and preliminarily marked for identification:

PLAINTIFF'S EXHIBIT NO.	DESCRIPTION
P1	Constitution and Canons For the Government of the Protestant Episcopal Church in the United States of America Otherwise Known as The Episcopal Church, Title IV (2000)
P1A	Excerpt, Constitution and Canons For the Government of the Protestant Episcopal Church in the United States of America Otherwise Known as The Episcopal Church, Title IV (2000)
P1B	Constitution and Canons For the Government of the Diocese of Pennsylvania of the Protestant Episcopal Church in the United States of America Otherwise Known as The Episcopal Church, Canon 3, "Of the Organization of the Convention and its Officers"
P2	Letter from The Most Rev. Frank T. Griswold, Presiding Bishop, to The Rt. Rev. Charles E. Bennison, Jr. (July 6, 2001)
P3	Contract Services Agreement (Apr. 2, 2001)
P4	Contract Services Agreement (Aug. 7, 2001)
P5	"Talking Points/Key Messages" (Dec. 11, 2001) (AS 437-449)
P6	Agenda, Bishop's Media Engagement – Strategy Meeting (Dec. 19, 2001) (AS 20-21)
P7	Memorandum from Charles Bennison to Members of the Standing Committee re Situation at All Saints', Wynnewood, and Good Shepherd, Rosemont (Jan. 18, 2002) (DM 2488-2489)
P8	Email from Pamela Darling to Standing Committee re "Oh dear" (Jan. 19, 2002 12:34 PM) (DM 4429-4430)
P9	Email from Robert C. Royce to Frank Helminski (Jan. 20, 2002) (DM 2257-2259)
P10	Email from Pamela Darling to Standing Committee re "Some background info and a proposal" (Jan. 20, 2002 7:30 PM) (DM 679-684)

P11	Draft letter from Charles E. Bennison, Jr. to Rev. Dr. David L. Moyer (Jan. 23, 2002) (DM 1216-1218)
P12	Note from Dr. David Moyer to Charles E. Bennison, Jr. (Jan. 25, 2002) (DM 1564-1567)
P13	“Responding to Situation at Good Shepherd, Rosemont” (BA-1)
P13A	“Responding to Situation at Good Shepherd, Rosemont” (AS 68)
P14	Handwritten notes of Jan. 31, 2002 meeting (BA-5)
P15	Page B, the Pennsylvania Episcopalian (Feb. 2002) (Smoot-9)
P16	“Argument” draft (DM 328-329)
P17	“Background Paper on the Question of the Canonical Discipline of the Rev. David Moyer” (DM 23-32)
P18	“Report to the Standing Committee of the Episcopal Diocese of Pennsylvania Concerning the Rev. Dr. David L. Moyer Pursuant to Canon 10 (draft) (DM2 239-240)
P19	“Draft of Letter to Members of the Standing Committee” (DM2 238)
P20	Letter from Charles E. Bennison, Jr. to The Rev. Dr. David L. Moyer (Feb. 2, 2002) (DM 177-178)
P21	Draft Letter from Charles E. Bennison, Jr. to The Rev. Dr. David L. Moyer (Feb. 2, 2002) (DM 5-6)
P22	Letter from The Rt. Rev. Robert W. Duncan to The Rt. Rev. Charles E. Bennison, Jr. (Feb. 4, 2002) (AS 100)
P23	Letter from The Rev. Dr. David L. Moyer, SSC, to The Right Rev. Charles Bennison (Feb. 5, 2002) (DM 1428-1429)
P24	Letter from Charles E. Bennison, Jr. to Art Stewart (Feb. 6, 2002) (AS 5)
P25	Email from Charles Bennison to Art Stewart re Moyer documents (Feb. 11, 2002) (AS 752)
P26	Email from Pam Darling to Bill Wood re Some thoughts (Feb. 13, 2002 - 5:22 p.m.) (DM 4482-4483)

P27	E-mail from Pamela Darling to Standing Committee re "Report on Conversation with the bishop" (Feb. 13, 2002 5:16 PM) (DM 2201-2202)
P28	E-Mail from Charles Bennison to Meg Cave (Feb. 19, 2002) re "draft of letter to Clergy" (DM 4221-4222)
P29	"Agenda for Staff Meeting Thursday" (Feb. 21, 2002) (DM2 220-221)
P30	E-Mail from Charles Bennison to Meg Cave (Feb. 25, 2002) re "terryo@dipoa.org" (DM 4219-4220)
P31	"Draft of Possible Letter to Our Clergy" (Feb. 25, 2002) (AS 129)
P32	"The Minutes of the Regularly Scheduled Meeting of Standing Committee" (Feb. 26, 2002) (DM 867-882)
P33	"On the Canonical Discipline of The Rev. Dr. David L. Moyer - A Report to the Rt. Rev. Charles E. Bennison, Jr." (Feb. 26, 2002)
P34	"Situation Summary: Church of the Good Shepherd, Rosemont" (Smoot 20)
P35	Letter from The Rev. Mr. Glenn M. Matis and The Rev. Mr. William H. Wood, III to The Rt. Rev. Charles E. Bennison, Jr. (Mar. 1, 2002) (DM 321-323)
P35A	Letter from The Rt. Rev. Charles E. Bennison, Jr. to The Rev. David L. Moyer (Mar. 1, 2002) (CB 387)
P36	Standing Committee's Findings and Determination (Mar. 1, 2002) (website visited Nov. 20, 2002)
P37	Bishop's Letter to the Clergy (Mar. 1, 2002) (website visited Nov. 20, 2002)
P38	Letter from Charles E. Bennison, Jr. to House of Bishops (Mar. 1, 2002) (DM 303)
P39	Letter from The Rev. Dr. David L. Moyer, SSC, to The Rt. Rev. Charles E. Bennison, Jr. (Mar. 5, 2002) (DM 1405-1408)
P40	Letter from The Rev. Dr. David L. Moyer to The Rt. Rev. Charles E. Bennison (Mar. 5, 2002) (AS 104-106)

P41	Email from Meg Cave to Glenn Matis (Mar. 6, 2002 8:18 PM) (DM 1388-1389)
P42	“Situation Summary: Church of the Good Shepherd, Rosemont” (website visited Oct. 28, 2002)
P42A	“Situation Summary: Church of the Good Shepherd, Rosemont” (AS 118-121)
P43	Draft letter to the editor (AS 110)
P44	Letter to the editor (Smoot Ex. 4)
P45	Email from Greg Brewer to Diocesan counsel (Mar. 12, 2002 8:18 AM) (AS 858-859)
P46	Email from Bill Wood to William C. Bullitt and Meg Cave (Mar. 12, 2002 6:01 PM) (DM 4276)
P47	“Rector is inhibited after years of canonical failures,” The Pennsylvania Episcopalian, Page A, H (Apr. 2002) (DM 112-113)
P47A	“Rector is inhibited after years of canonical failures” (website visited Apr. 22, 2002)
P47B	“Rector is inhibited after years of canonical failures” (website visited Nov. 20, 2002)
P48	“The Minutes of the Regularly Scheduled Meeting of Standing Committee” (Mar. 19, 2002) (DM 889-900)
P49	Letter from The Rev. Dr. David L. Moyer, SSC, to The Rt. Rev. Charles E. Bennison, Jr. (Apr. 1, 2002) (CB 292-293)
P50	Email from Christopher Hart to Glenn Matis re “Memo about Financial Matters” (Apr. 9, 2002) (DM 4802)
P51	Email from Glenn Matis to Standing Committee (Apr. 23, 2002) (DM 4840)
P52	Jonathan Mooney, <u>Family Education</u> , “The Art of Balancing Reading re-Mediation and Accommodation” (Matis 28)

P53	“The Minutes of the Regularly Scheduled Meeting of the Standing Committee” (Apr. 23, 2003) (DM 901-903)
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P106	Email from Meg Cave to Chandler Joyner forwarding email from Barbara Alton to William Bullitt and Meg Cave re "letter to editor" (Mar. 13, 2002) (DM 003760) (BA-15)
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P128	David W. Virtue, Special Report, “Jesus Was a Sinner, Says Pennsylvania Bishop Charles Bennison” (Mar. 30, 2003) (http://listserv.episcopalian.org/wa.exe?A2=ind0303e&L=virtuosity&D=1&H=1&O=D&F=&S=&P=79)

P129	David W. Virtue, News Analysis, "Jesus Was a Sinner, Retraction or Redaction by Bishop Bennison" (Apr. 16, 2003) (http://listserv.episcopalian.org/wa.exe?A2=ind0304c&L=virtuosity&D=1&H=1&O=D&F=&S=&P=270)
P130	Morning Edition: Episcopal Church Debating Surge in More Conservative Evangelicals from Africa (NPR radio broadcast Jan. 27, 2003)
P131	Terry Mattingly, "Those Anglican Hitlers in Africa" (http://tmatt.gospelcom.net/column/2003/02/19/)
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P145	In the Matter of the Presentment Against the Right Reverend Charles E. Bennison, Jr.
P146	Jan Nunley, <u>Episcopallife Online</u> , "Presiding Bishop Reaches Out to Bishops Attempting to Withdraw Dioceses", Oct. 21, 2007 (http://www.episcopalchurch.org/79901_91480_ENG_HTML.htm)
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P159	Email from Glenn Matis to Lou Temme re Pastoral Letter (July 28, 2002) (DM 5282-5283)
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P161	Email from Meg Cave to Barbara Alton re ECUSA Bishops Respond to the Deposition of Fr. Moyer (Sept. 9, 2002) (DM1614-1615)
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P165	Email from Pamela Darling to William C. Bullit, Frank Helminski, Standing Committee, etc. re DioPa web postings (Mar. 6, 2002) (DM 4677)
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P171	Email from Glenn Matis to Standing Committee, etc., re Moyer article in today's Inquirer and 9/5/02 memo (Sept. 5, 2002) (DM 5120-5121)

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