

MONTGOMERY, McCracken, Walker & Rhoads, LLP
BY: JOHN H. LEWIS, JR., DAVID D. LANGFITT and JO A. ROSENBERGER
IDENTIFICATION NOS. 04490, 66588, and 200121
123 South Broad Street
Philadelphia, PA 19109
(215) 772-7596

LAW OFFICES OF WILLIAM R. HOURICAN
BY: WILLIAM R. HOURICAN
IDENTIFICATION NO. 22211
527 Swede Street
Norristown, PA 19401
(610) 278-1950

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 COURT
MONTGOMERY COUNTY PA

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BY: JOHN H. LEWIS, JR., DAVID D. LANGFITT and JO A. ROSENBERGER
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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.

