Received 5/20/2020 3:17:11 PM Commonwealth Court of Pennsylvania

Filed 5/20/2020 3:17:00 PM Commonwealth Court of Pennsylvania
316 MD 2020

# IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | |
|---|---|
| IVY HILL CONGREGATION OF JEHOVAH'S WITNESSES,<br><br>Petitioner,<br><br>v.<br><br>COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HUMAN SERVICES,<br><br>Respondent. | No. ___MD 2020 |

## NOTICE TO PLEAD

To: COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HUMAN SERVICES

You are hereby notified to file a written response to the enclosed petition for review within thirty (30) days from service hereof or a judgment may be entered against you.

Dated: May 20, 2020

/s/ Matthew H. Haverstick
Matthew H. Haverstick (No. 85072)
KLEINBARD LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Ph: (215) 568-2000
Fax: (215) 568-0140
Eml: mhaverstick@kleinbard.com

*Attorney for Petitioner*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

| | |
|---|---|
| IVY HILL CONGREGATION OF JEHOVAH'S WITNESSES,<br><br>Petitioner,<br><br>v.<br><br>COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HUMAN SERVICES,<br><br>Respondent. | No. ___MD 2020 |

**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY RELIEF**

Petitioner Ivy Hill Congregation of Jehovah's Witnesses ("Ivy Hill Congregation"), by and through its undersigned counsel, hereby brings this petition for review seeking a declaration regarding the religious rights afforded to its members and, in support thereof, avers as follows:

## I. INTRODUCTION

1. This action implicates one of the core liberties enshrined in both the Federal and State Constitutions – the right of individuals to worship according to the dictates of their own faith and conscience.

2. The Ivy Hill Congregation consists of adherents to the practices and teachings of Jehovah's Witnesses.

3. Ivy Hill Congregation's beliefs and practices are now at issue given recent actual and threatened enforcement actions by the Commonwealth under the Child Protective Services Law (the "CPSL"), *see* 23 Pa.C.S. §§ 6301, *et seq.*, combined with the peculiar construct of the privilege afforded to clergymen, such as ministers of the gospel, under that statute.

4. In order to redress this harm and ensure that its congregants can worship according to the dictates of their faith, while also complying with the laws of this Commonwealth, the Ivy Hill Congregation seeks declaratory relief concerning the rights and responsibilities of its ministers of the gospel.

## II. JURISDICTION

5. This Court has original jurisdiction over this matter under Section 761(a)(1) of the Judicial Code because it is an action for declaratory relief against a Commonwealth agency. *See* 42 Pa.C.S. § 761(a)(1).

## III. PARTY SEEKING RELIEF

6. The Ivy Hill Congregation of Jehovah's Witnesses is an unincorporated religious body located in Philadelphia, Pennsylvania,

consisting of approximately 130 congregants who meet regularly and worship in accordance with the beliefs and practices of Jehovah's Witnesses.

## IV. GOVERNMENT UNIT WHOSE ACTIONS ARE IN ISSUE

7. Respondent Pennsylvania Department of Human Services ("DHS") is the Commonwealth agency charged with administering and overseeing the implementation of the CPSL, which is the statutory scheme with respect to which relief is sought.

8. Among other things, under the CPSL, DHS is tasked with:

a. promulgating regulations necessary to implement the statute; *see id.* at § 6306;

b. providing "specific information" through "continuing publicity and education programs" regarding "[p]ersons classified as mandated reporters[,]"and the attendant "reporting requirements and procedures[.]" *id.* at §§ 6383(a.2)(2)(ii) & 6383(a.2)(2)(iii); *see also id.* at § 6383(a);

c. establishing and maintaining a "statewide database of protective services[;]" 23 Pa.C.S. § 6331;

d. creating and maintaining a toll-free hotline for reporting abuse; *see id.* at § 6332;

e. ensuring it is "[c]ontinuous[ly] availab[le]" to address reports of child abuse; *see id.* at § 6333 (titled "[c]ontinuous availability of department");

f. conducting investigations under the CPSL and gathering reports; *see generally, e.g.*, *id.* at § 6334.1;

g. making reports received under the CPSL available to the Office of Attorney General, *see id.* at § 6340(a)(7), and any other law enforcement official failure to report abuse by a mandated reporter. *Id.* at § 6335(c)(1)(ii).

## V. STATEMENT OF MATERIAL FACTS

### *A. Role of Elders in the Ivy Hill Congregation.*

9. Jehovah's Witnesses are a regularly-established Christian church (religion) with over 8.6 million worshippers spread among over 119,000 congregations around the world; in Pennsylvania, there are hundreds of congregations of Jehovah's Witnesses, of which the Ivy Hill Congregation is one.

10. Ivy Hill Congregation does not use paid, full-time clergy, such as is the case, for instance, with the Catholic Church.

11. Instead, the Ivy Hill Congregation is aided in the worship of God by spiritually mature men collectively referred to as the "body of elders," who take the spiritual lead in the Congregation.

12. There are presently seven elders on the body of elders in the Ivy Hill Congregation.

13. The elders are volunteers, for whom the practice of religion is an unpaid pursuit rather than a paid occupation, profession, or other form of employment.

14. The elders are ordained ministers tasked with overseeing the spiritual needs of the Congregation in accordance with the Bible, secular laws, and the beliefs and practices of the Jehovah's Witnesses.

15. Any male congregant who satisfies certain Scriptural qualifications found in the Bible at 1 Timothy 3:1-13; Titus 1:5-9; James 3:17, 18; and 1 Peter 5:2, 3 may be appointed as an elder.

16. Specifically, upon satisfying the above Scriptural qualifications, a congregant may be recommended for appointment as an elder by the Congregation's existing body of elders.

17. In turn, that recommendation is transmitted to a circuit overseer, who is an experienced traveling elder who oversees 16-20 congregations in a geographic area.

18. If the circuit overseer is satisfied that the congregant recommended by the elders satisfies the necessary Scriptural qualifications, he may appoint the congregant as an elder.

19. All the elders in the Ivy Hill Congregation receive ecclesiastical training through (a) semi-annual week long visits of the circuit overseer; (b) one-day training classes known as Kingdom Ministry School that elders attend once every two years; and (c) a week-

long intensive instruction course known as the School for Congregation Elders that elders attend once every five years. This training is designed to help elders more effectively carry out various aspects of their ecclesiastical responsibilities.

20. As the spiritual shepherds, elders in the Ivy Hill Congregation are responsible for, *inter alia*: organizing the regular meetings held to strengthen the faith of the congregation and others in attendance; providing pastoral care for congregants; rendering spiritual assistance to congregants; officiating funerals; solemnizing marriages; and hearing confessions.

***B. Spiritual counseling in the Ivy Hill Congregation.***

21. A central component of the Ivy Hill Congregation's elders' obligation is to provide spiritual guidance and counseling.

22. Jehovah's Witnesses believe that a congregant who commits a serious sin requires spiritual counsel and assistance in order to maintain his or her relationship with God and, thus, all congregants are encouraged to seek spiritual counsel and assistance from the elders if they commit a serious transgression of God's laws.

23. In order to obtain this needed spiritual counsel and assistance, congregants who have committed a serious sin disclose private and highly sensitive information to elders. Doing so allows the elders to provide the sinner with specific spiritual counsel and assistance and to make personalized petitions to God in prayer on their behalf.

24. Because open and free communication between congregants and elders is essential to providing effective spiritual encouragement, counsel, and guidance, Jehovah's Witnesses – like many other Christian denominations – emphasize Biblical principles of privacy and confidentiality. *See* Proverbs 25:9 ("But do not reveal what you were told confidentially[.]").

25. As such, according to the Scriptural beliefs and practices of Jehovah's Witnesses, when a congregant in the Ivy Hill Congregation confesses a sin, or requests spiritual encouragement, counsel, and guidance, the communication with the elder is strictly confidential.

26. Furthermore, because under the beliefs and practices of Jehovah's Witnesses, repentance and reconciliation with God is crucial

to eternal salvation, the ability to confidentially divulge serious sin to elders is an important part of the congregants' faith and worship.

27. Although the beliefs and practices of Jehovah's Witnesses require that a congregant who commits a "serious sin" confess to and be spiritually counseled and assisted by three or more elders, the principles of privacy and confidentiality apply with equal force.

28. In accordance with the religious beliefs and practices of Jehovah's Witnesses, only elders are authorized to hear and address confessions of serious sin.

29. The elders' obligation to maintain confidentiality is based on Scripture and has also been explained in the official publications of Jehovah's Witnesses. *See* Proverbs 25:9; *The Watchtower*, April 1, 1971, pages 222-224; *Our Kingdom Ministry*, July 1975 page 3; *The Watchtower*, December 15, 1975, pages 764-66; *The Watchtower*, September 1, 1983, pages 21-26; *The Watchtower*, September 15, 1989, pages 10-15; *The Watchtower*, September 1, 1991, pages 22-24; *The Watchtower*, November 15, 1991, pages 19-23.

30. Relying on the Scriptural promise of confidentiality, congregants willingly open themselves to reveal their innermost

thoughts, feelings, and confess serious sins to trusted elders as they seek to mend their relationship with God and to heal spiritually.

31. If an elder in the Ivy Hill Congregation revealed confidential communications without a scriptural basis to do so, he could be removed as an elder and the breach could harm his relationship with God.

32. In addition, an elder's breach of confidentiality could undermine his and the body of elders' credibility with the Congregation.

### *C. The Child Protective Services Law.*

33. The CPSL, *see* 23 Pa.C.S. §§ 6301, *et seq.*, is a statutory scheme governing reporting and investigating child abuse.

34. Among other things, the CPSL includes a provision requiring certain individuals to report all incidents of suspected child abuse, *see* 23 Pa.C.S. § 6311 (the "Mandatory Reporting Provision"), including individuals who are a "clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization." *See* 23 Pa.C.S. § 6311(a)(6).

35. Any person who is obligated to report suspected abuse under the Mandatory Reporting Provision must submit an oral or written

report to DHS "immediately," 23 Pa.C.S. § 6313(a)(1), which report, if oral, must be followed within 48 hours with a "written report." 23 Pa.C.S. § 6313(a)(2).

36. A violation of the Mandatory Reporting Provision is a criminal offense. *See* 23 Pa.C.S. § 6319; *see also* 18 Pa.C.S. § 4304.

37. Under Section 6311.1 of the CPSL, confidential communications subject to the clergymen privilege found in the Judicial Code are exempt from the Mandatory Reporting Provisions and the penalties associated therewith. *See* 23 Pa.C.S. § 6311.1(b)(1) (citing 42 Pa.C.S. § 5943).

38. The clergymen privilege, codified at 42 Pa.C.S. § 5943 ("Clergymen Privilege Statute"), which the CPSL incorporates by reference, was codified in 1959 (*see* Act 443 of 1959) but is premised on a common-law doctrine that had been recognized in Pennsylvania prior to its enactment. *See In re Shaeffer's Estate*, 52 Dauphin Co. Reports 45 (1942).

39. Specifically, Section 5943 of the Judicial Code, entitled "Confidential communications to clergymen," provides:

> No clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

40. As reflected in its plain language, the statute applies the privilege to communications made to a "clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization." 42 Pa.C.S. § 5943.

41. However, the privilege does not apply to communications to clergymen or ministers who are either (a) self-ordained; or (b) "members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers[.]" 42 Pa.C.S. § 5943.

42. The Pennsylvania House floor debate regarding the incorporation of the Clergymen Privilege Statute into the CPSL demonstrates the General Assembly's policy decision that the inclusion of the privilege was central to encouraging individual spiritual growth and protecting religious liberties. *See* Pa.H.R. Legis. J. at 1851-52 (Oct. 5, 1993).

43. Nevertheless, understanding the exact interaction of the CPSL and the Clergymen Privilege Statute has proven evasive since, among other things, the Commonwealth has historically refused to give complete meaning to the two statutory schemes, even when asked for information directly by Jehovah's Witnesses. *See* 3/26/98 & 4/6/98 Letters (Exhibit A).

***D. Recent enforcement action under the CPSL.***

44. In accordance with the Scriptural beliefs and practices of Jehovah's Witnesses, elders in the Ivy Hill Congregation receive information regarding serious sins, including possible abuse of minors, which – absent the Clergymen Privilege Statute – would implicate the Mandatory Reporting Provision.

45. These communications generally occur under the aegis of religious and spiritual guidance, premised on the understanding and the sincerely held belief by all parties involved that the communications will remain confidential.

46. A recent news report, however, has highlighted the lack of clarity in the application of the Clergymen Privilege Statute to elders in the Ivy Hill Congregation and suggests that when they receive

confidential communications regarding child abuse they may be subject to criminal prosecution under the CPSL for following the plain language of the Clergymen Privilege Statute.

47. Specifically, the application of the Clergymen Privilege Statute came into sharp focus following a recent criminal complaint filed in Lancaster County against Levi Esh, a Bishop in the Amish faith, alleging that his failure to report a confession of child abuse by a member of the Amish community constituted a violation of Section 6319 of the CPSL. *See* Matt Miller, *Amish bishop charged with failing to report suspected sex abuse of girls,* PennLive (Apr. 22, 2020) (Exhibit B); Docket, *Com. v. Esh*, No. MJ-02303-CR-100-2020 (Magisterial Dist. Ct.) (Exhibit C).

48. In light of the foregoing recent development, the Ivy Hill Congregation is concerned about the unclear application of the Clergymen Privilege Statute, which legal ambiguity has and will continue to negatively impact their ability to practice their religion in accordance with the dictates of their faith.

49. Under the religious beliefs and practices of Jehovah's Witnesses, divulging confidential communications without a Scriptural

basis not only violates the beliefs and practices of their faith and harms an elder's relationship with God, but also calls into question his qualifications and could result in his removal from his role.

50. The difficulties faced by the Ivy Hill Congregation are compounded by the fact that upon receipt of any communication in the course of their duties giving rise to a suspicion of child abuse, elders have to decide "immediately" whether the communication is protected by the Clergymen Privilege Statute or not, which decision triggers a duty to report or not under the Mandatory Reporting Provision.

51. Based on the recent criminal complaint described above, the elders of the Ivy Hill Congregation are now faced with an even more critical dilemma: if they legitimately believe a communication is privileged, both under their faith and the law, and law enforcement later disagrees, then they are subject to a felony charge under Section 6319(b) for a continuing failure to report, which has the potential to become a felony of the second degree if certain conditions exist.

52. They also face the likelihood of having to make decisions on these matters "immediately," which permits no opportunity to seek judicial relief.

53. In other words, the elders of the Ivy Hill Congregation face utter legal uncertainty about where the legitimate practice of their faith ends and a duty to communicate to DHS and law enforcement begins; relief from this Court will abate this legal uncertainty and allow all members of the Ivy Hill Congregation to fully exercise their faith, while still complying with the law.

**COUNT I**

54. The foregoing Paragraphs are incorporated by reference as if set forth fully herein.

55. Under the CPSL, a communication that is subject to the Clergymen Privilege Statute is exempt from the Mandatory Reporting Provision.

56. Specifically, it is apparent from the plain language and legislative history of the CPSL that the exception to the Mandatory Reporting Provision under Section 6311.1 is conterminous with the Clergymen Privilege Statute.

57. Because elders of the Ivy Hill Congregation are clergymen, and specifically "ministers of the gospel" of a "regularly established church," and because the statutory exceptions to clergymen privilege

are inapplicable to them, any communication regarding suspected child abuse that otherwise satisfies the privilege criteria set forth in Section 5943 is not subject to the Mandatory Reporting Provision.

***Clergymen (Ministers) of a Regularly Established Church***

58. As detailed *supra*, under the beliefs and practices of Jehovah's Witnesses' faith, elders are assigned a distinct oversight role within their congregation, providing spiritual guidance to congregants and performing functions ordinarily associated with ministers in other faiths; *e.g.*, officiating funerals, solemnizing weddings, etc.

59. As such, elders in the Ivy Hill Congregation are "clergymen" within the meaning of the Clergymen Privilege Statute, a generic term for various, specifically enumerated religious leaders in the statute, which includes elders who are "ministers of the gospel."

60. Further, the Ivy Hill Congregation is a "regularly established church" – in both the spiritual and physical sense of the word.

61. Spiritually, it is a "church" in that all Jehovah's Witnesses share a common set of religious beliefs rooted in Scripture and the

Congregation regularly gathers to worship in accordance with the dictates and traditions of their faith.

62. Further, Jehovah's Witnesses also have a recognized creed and form of worship, a definite and distinct ecclesiastical government, a formal code of doctrine and discipline, a distinct religious history, specific literature published and promulgated on a regular basis, and hold regular services.

63. In terms of the physical sense of the term "church," Jehovah's Witnesses believe the word is a precise Biblical term carrying a specific religious meaning (*i.e.*, a congregation of people), and, therefore, Jehovah's Witnesses do not call their physical place of worship a "church." However, the Kingdom Hall is the place where Jehovah's Witnesses regularly gather together, including at Ivy Hill Congregation's Kingdom Hall, to worship Jehovah, the God of the Bible, and to witness, or testify, about him.

64. Accordingly, given that Kingdom Halls, including Ivy Hill Congregation's Kingdom Hall, are buildings used by members to profess their united Christian faith, which are dedicated to the honor of God

and religion, a congregation of Jehovah's Witnesses is also a physical "church," as used in secular parlance.

***Exceptions to the Clergymen Privilege***

65. Because the exceptions to the Clergymen Privilege Statute are inapplicable to elders of the Jehovah's Witnesses faith, any communication regarding suspected child abuse that otherwise satisfies the privilege criteria set forth in the Clergymen Privilege Statute is not subject to the Mandatory Reporting Provision.

66. To begin, the ordained ministers of the gospel who serve as elders in the Ivy Hill Congregation were appointed to their position only after a specific process controlled by the existing body of elders and the circuit overseer, and, thus, are not "self-ordained."

67. Furthermore, elders of the Ivy Hill Congregation are not "members of *religious organizations* in which members other than the leader thereof are deemed clergymen or ministers." (Emphasis added.)

68. Under the rules of statutory construction, the term "religious organizations," as used in the Clergymen Privilege Statute, is distinct from "regularly established church."

69. Specifically, the Clergymen Privilege Statute's use of the phrase "regularly established church ***or*** religious organization" in conferring the privilege, followed by the use of ***only*** "religious organization" in creating an exception to that privilege, creates a presumption that the legislature intended the two terms to have different meanings.

70. Because the Ivy Hill Congregation and Jehovah's Witnesses are a regularly established church – and not a "religious organization" – the above exception is inapplicable.

71. Setting aside the distinction between the two terms, the Clergymen Privilege Statute's exception also does not apply because the Jehovah's Witnesses do not deem members other than their leaders "clergymen or ministers."

72. The ordinary meaning of terms "clergyman" or "minister," which controls statutory interpretation, denotes simply an individual who is recognized by the adherents of a given religion as a spiritual leader or an authoritative figure conferred a certain degree of responsibility for overseeing the religious affairs of a congregation or church.

73. As explained above, under the Scriptural practices of the Jehovah's Witnesses, an elder of the Ivy Hill Congregation squarely comports with the above definition; whereas a non-elder congregant of the Ivy Hill Congregation does not comply with this definition.

WHEREFORE, Petitioner Ivy Hill Congregation requests that the Court enter judgment in its favor declaring that elders of the Ivy Hill Congregation are entitled to the protections set forth in Section 6311.1(b)(1) of the CPSL and the privilege afforded to clergymen by Section 5943 of the Judicial Code, because they are ministers of the gospel of a regularly established church and are neither "self-ordained" nor "members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers."

**COUNT II (In the Alternative)**

74. The foregoing Paragraphs are incorporated by reference as if set forth fully herein.

75. To the extent the exception set forth in the Clergymen Privilege Statute relating to "members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers" precludes elders of the Ivy Hill Congregation from availing

themselves of the clergymen privilege, the statute is facially unconstitutional, or unconstitutional as applied to Jehovah's Witnesses, under both the State and Federal Constitutions.

76. Specifically, the above clause, if interpreted to exclude the elders of the Ivy Hill Congregation, not only grants a denomination preference by identifying religions deemed worthy of protection (such as Catholicism, with the use of the word "priest," and Judaism with the use of the word "rabbi"), but also expressly and intentionally singles out a similarly situated religion – Jehovah's Witnesses – for unfavorable treatment. Thus, on its face, or as applied, the Clergymen Privilege Statute violates the Establishment Clause provisions and Equal Protection safeguards accorded Jehovah's Witnesses under the Federal and State Constitutions.

77. Under the First Amendment to the United States Constitution, a statute that grants denomination preferences is subject to "strict scrutiny" and, thus, is unconstitutional unless it is:

(a) necessary to advance a compelling governmental interest; and

(b) narrowly tailored to further that purpose.

78. Although, broadly speaking, states may have various compelling interests in regulating evidentiary privileges, the above exception to Section 5943 does not serve any governmental interest – let alone one that is compelling.

79. Moreover, even if Section 5943's exception can somehow be justified under the guise of the government's interest in controlling the boundaries of a privilege, it is not narrowly tailored to further any legitimate purpose.

80. Quite apart from the violation of the Federal Constitution, the exception in the Clergymen Privilege Statute barring the application of the privilege to clergymen who are "members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers" also violates Article I, Section 3 of the State Constitution. *See* Pa. Const. art I, § 3.

81. In fact, the religious liberties afforded under the Pennsylvania State Constitution transcend those of its Federal counterpart.

82. To begin, the text of Article I, Section 3 is decisively more forceful in its pronouncement that religious liberties must be scrupulously protected:

> All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

Pa. Const. art. I, § 3.

83. Among other things, Article I, Section 3 *expressly* proscribes laws granting denominational preferences – a prohibition which is only *implicit* in its Federal counterpart. *See* Pa. Const. art. I, § 3 (providing that "no preference shall ever be given by law to any religious establishments or modes of worship").

84. The history of the provision, including relevant case-law, also reflects the broader protections afforded under the State Constitution.

85. Furthermore, decisions from other state courts with similar constitutional provisions also counsel in favor of interpreting Article I, Section 3 more broadly than the First Amendment.

86. Finally, the General Assembly, as noted above, has already expressed a policy preference for protecting faith-based confidential communications; in addition, certain factors unique to Pennsylvania – such as the religious liberties at the very foundation of the Commonwealth – militate in favor of jealously guarding against violations of religious liberties.

87. Accordingly, the exception to the Clergymen Privilege Statute relating to "members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers" is facially unconstitutional under the Federal and State Constitutions, and the offending portion of that provision must be severed.

WHEREFORE, Petitioner Ivy Hill Congregation requests that the Court enter a judgment in its favor (a) declaring that Section 5943 of the Judicial Code is facially unconstitutional, or unconstitutional as applied to Jehovah's Witnesses, under the Free Exercise and Establishment Clauses of the First Amendment of the United States Constitution, and under Article I, Section 3 of the Pennsylvania State Constitution, and also violates the Equal Protection Clause of the 14th

Amendment to the United States Constitution and its Pennsylvania counterpart; and (b) severing the offending parts of the statute.

Respectfully submitted,

Dated: May 20, 2020

/s/ Matthew H. Haverstick
Matthew H. Haverstick (No. 85072)
Mark E. Seiberling (No. 91256)
Joshua J. Voss (No. 306853)
Shohin Vance (No. 323551)
KLEINBARD LLC
Three Logan Square
1717 Arch Street, 5th Floor
Philadelphia, PA 19103
Ph: (215) 568-2000
Fax: (215) 568-0140
Eml: mhaverstick@kleinbard.com
mseiberling@kleinbard.com
jvoss@kleinbard.com
svance@kleinbard.com

*Attorneys for Petitioner*

## VERIFICATION

I hereby verify that the statements made in the foregoing Petition for Review are true and corrected based upon my personal knowledge or information and belief. I understand that false statements therein are subject to penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: 5-19-2020

Charles Duncan
Coordinator for body of elders of
Ivy Hill Congregation of
Jehovah's Witness

# Exhibit A

# WATCHTOWER

BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

LEGAL DEPARTMENT
100 WATCHTOWER DRIVE. PATTERSON. NEW YORK 12563-9204. U.S.A.

PHONE (914) 878-7000
FAX (914) 878-2060


**March 26, 1998**

Honorable Mike Fisher
Attorney General of Pennsylvania
Office of the Attorney General
Strawberry Square
Harrisburg, PA 17120

**Re: Child Abuse Reporting**

**Dear Mr. Fisher**

**I represent the Watchtower Bible and Tract Society of New York, Inc., which serves the interests of Jehovah's Witnesses throughout the United States. We have reviewed the pertinent statutes, various cases,, and other materials relating to child abuse reporting in your jurisdiction. However* several situations are unclear. In the interest of assisting ministers of Jehovah's Witnesses to comply with local child abuse reporting laws, we request your opinion on the following questions:**

1. **Is there a duty to report instances of child abuse if:**
   - **(a) The victim is now an adult but was a minor when the abuse took place?**
   - **(b) The victim is a minor but was married when the abuse took place?**
   - **(c) The victim was not married when the abuse took place, but is now a married minor?**

2. **Is there a duty to report abuse when the victim is a mentally incompetent *adult?***

3. **Which of the following would be considered a confidential communication that exempts a minister from the reporting requirements? (In each case assume the communicant wishes the information to remain confidential and conveys it in a confidential setting.)**
   - **(a) The communicant is the victim.**
   - **(b) The communicant is not the accused, but is related to either the victim or the accused, or to both.**
   - **(c) The communicant is neither the victim nor the accused and is not related to either.**

**Your assistance in clarifying these issues will be greatly appreciated. Thank you in advance for your attention to this matter.**

**Very**

**Raul F. Ortiz**
**Associate General Counsel**

**RFO:eln**

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL



MIKE FISHER
ATTORNEY GENERAL

April 6, 1998

1600 Strawberry Square
Harrisburg, PA 17120
(717) 783-3014

Raul F. Ortiz, Esquire
Associate General Counsel
Watchtower - Legal Department
100 Watchtower Drive
Patterson, NY 12563-9204

Dear Mr. Ortiz:

I am writing in response to your recent correspondence to the Office of Attorney General. Attorney General Fisher has referred your letter to the Criminal Law Division for a reply.

Under Pennsylvania law and the Commonwealth Attorneys Act, the Attorney General is empowered to give legal advice and opinions only to the Governor or to the head of a state government agency. The Attorney General has no authority to advise local government or public officials or private citizens. Accordingly, the Office of Attorney General is not able to give you an opinion on the matter you have presented in your letter.

We recommend that you refer your questions to a private attorney for review.

Sincerely,

Stephen S. Cook
Deputy Attorney General
Criminal Prosecutions Section

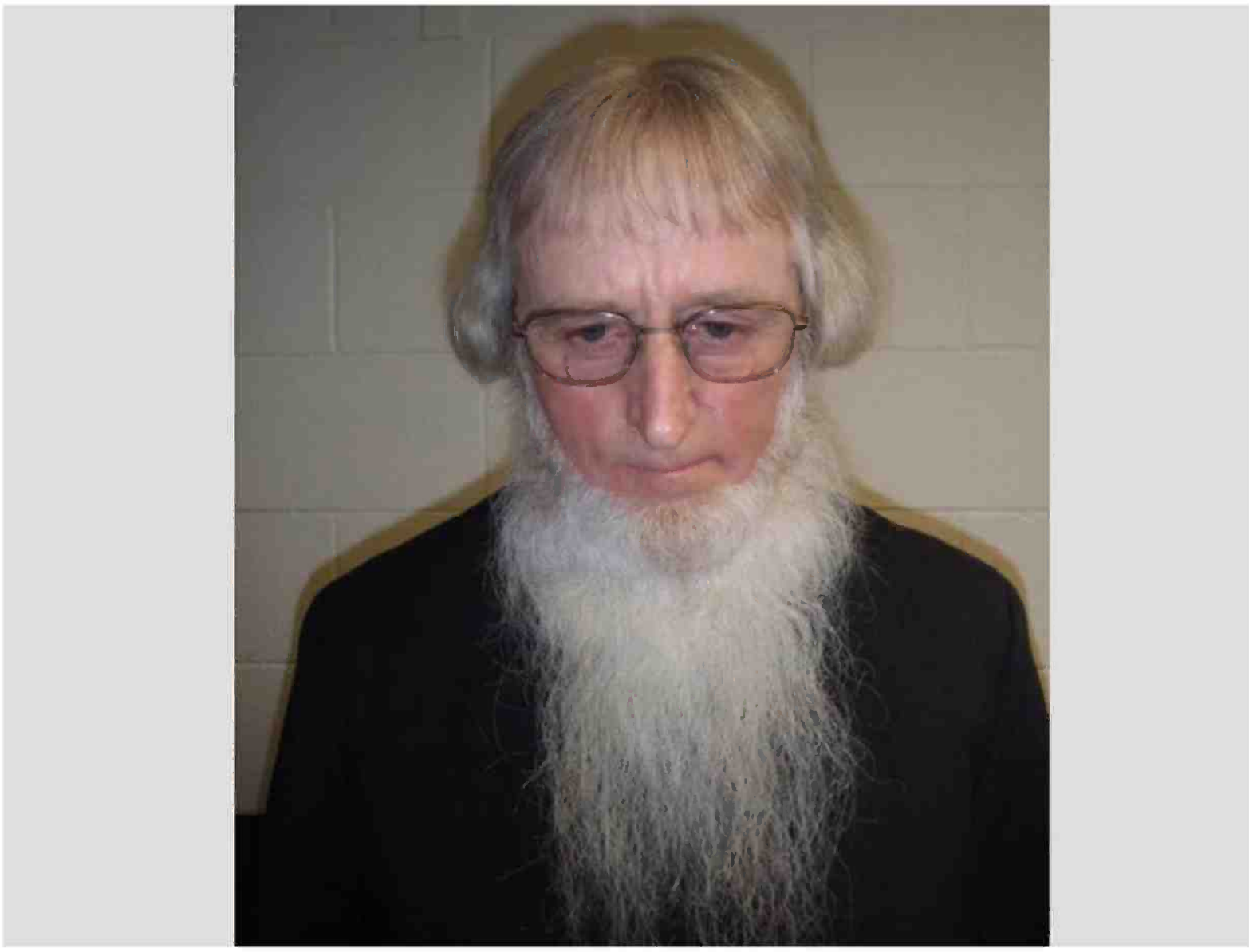
SSC/pjc
CLD980370

# Exhibit B

Pennsylvania Real-Time News

# Amish bishop charged with failing to report suspected sex abuse of girls

Updated Apr 22, 2020; Posted Apr 22, 2020



Bishop Levi Esh Sr.

By Matt Miller | mmiller@pennlive.com

Police in Lancaster County said Wednesday that they have charged an Amish bishop with failing to report suspected child sexual abuse after a parishioner confessed to molesting three girls.

The subject of the charges lodged by Pequea Township police is 63-year-old Levi Esh Sr. He is the bishop of two churches in the community.

Police said the parishioner made the confession to Esh in 2012 or 2013. Investigators said they were alerted after members of the Amish community had conversations with Esh and other bishops about child-sex abuse in October 2019 and were told to "let it go" and that it had "been taken care of."

The charges against Esh were filed a week after police arrested one of his parishioners, John G. Beiler, 41, on charges that he molested three girls between 2011 and 2015.

Police said Beiler confessed to Esh, who told him to apologize to the fathers of the victims. Beiler also was ex-communicated from the church, they said, but Esh didn't notify police or any social services agencies.

Investigators said they "were told by Amish church leaders and community members that the Beiler matter was handled internally."

The investigation is ongoing, police said.

Esh remains free on $25,000 unsecured bail. Beiler, who faces multiple charges of indecent assault of a child, corruption of minors and unlawful contact with minors, is free on $75,000 unsecured bail, court records show.

# Exhibit C

# Magisterial District Judge 02-3-03

## DOCKET

Docket Number: MJ-02303-CR-0000100-2020

## Criminal Docket

Commonwealth of Pennsylvania
v.
Levi S. Esh Sr.



## CASE INFORMATION

| | | | |
|---|---|---|---|
| Judge Assigned: | William E. Benner Jr. | Issue Date: | 04/21/2020 |
| OTN: | U 868277-4 | File Date: | 04/21/2020 |
| Arresting Agency: | Pequea Township Police Dept | Arrest Date: | |
| Complaint/Incident #: | 2004007650 | Disposition: | |
| County: | Lancaster | Disposition Date: | |
| Township: | Pequea Township | Case Status: | Active |

## STATUS INFORMATION

| Case Status | Status Date | Processing Status |
|---|---|---|
| Active | 04/22/2020 | Awaiting Preliminary Hearing |
| | 04/21/2020 | Awaiting Preliminary Hearing |

## CALENDAR EVENTS

| Case Calendar Event Type | Schedule Start Date | Start Time | Room | Judge Name | Schedule Status |
|---|---|---|---|---|---|
| Preliminary Arraignment | 04/22/2020 | 10:15 am | | William E. Benner Jr. | Scheduled |
| Preliminary Hearing | 05/13/2020 | 10:00 am | | William E. Benner Jr. | Scheduled |

## DEFENDANT INFORMATION

| | | | |
|---|---|---|---|
| Name: | Esh, Levi S. Sr. | Sex: | Male |
| Date of Birth: | 02/11/1957 | Race: | White |

Address(es):

**Home**
Pequea, PA 17565

| | |
|---|---|
| Advised of His Right to Apply for Assignment of Counsel? | No |
| Public Defender Requested by the Defendant? | No |
| Application Provided for Appointment of Public Defender? | No |
| Has the Defendant Been Fingerprinted? | Yes |

## CASE PARTICIPANTS

| Participant Type | Participant Name |
|---|---|
| Arresting Officer | Burger, Robert P. |
| Defendant | Esh, Levi S. Sr. |

# Magisterial District Judge 02-3-03

## DOCKET

Docket Number: MJ-02303-CR-0000100-2020

## Criminal Docket

Commonwealth of Pennsylvania
v.
Levi S. Esh Sr.



## BAIL

**Bail Set:** **Nebbia Status: None**

| Bail Action Type | Bail Action Date | Bail Type | Percentage | Amount |
|---|---|---|---|---|
| Set | 04/22/2020 | Unsecured | | $25,000.00 |

## CHARGES

| # | Charge | Grade | Description | Offense Dt. | Disposition |
|---|---|---|---|---|---|
| 1 | 23 § 6319 | M3 | Penalties/Failure to Report | 01/01/2012 | |
| 2 | 23 § 6319 §§ A1 | F3 | Failure to Report or Refer | 04/21/2020 | |

## ATTORNEY INFORMATION

**District Attorney**

Name: Lancaster County District Attorney's Office

Representing: Commonwealth of Pennsylvania

Counsel Status: Active

Supreme Court No.:

Phone No.: 717-299-8100

Address: Lancaster County Courthouse
50 North Duke Street
P.O. Box 83480
Lancaster, PA 17608

**Private**

Name: Alan Gary Goldberg, Esq.

Representing: Esh, Levi S. Sr.

Counsel Status: Active

Supreme Court No.: 034192

Phone No.:

Address: Law Offices
Goldberg & Beyer
40 East Grant Street
Lancaster, PA 17602

**Private**

Name: Christopher A. Sarno, Esq.

Representing: Esh, Levi S. Sr.

Counsel Status: Inactive

Supreme Court No.: 311511

Phone No.: 717-299-7101

Address: Clymer Musser & Sarno P.c.
408 W Chestnut St
Lancaster, PA 17603

## DOCKET ENTRY INFORMATION

| Filed Date | Entry | Filer | Applies To |
|---|---|---|---|
| 04/22/2020 | Fingerprint Order Returned - Criminal Case | Magisterial District Court 02-3-03 | Levi S. Esh Sr., Defendant |
| 04/22/2020 | First Class Fingerprint Order Issued | Magisterial District Court 02-3-03 | Levi S. Esh Sr., Defendant |
| 04/22/2020 | Fingerprint Order Issued | Magisterial District Court 02-3-03 | Levi S. Esh Sr., Defendant |
| 04/21/2020 | Criminal Complaint Filed | Magisterial District Court 02-3-03 | |

# Magisterial District Judge 02-3-03

## DOCKET

Docket Number: MJ-02303-CR-0000100-2020

## Criminal Docket

Commonwealth of Pennsylvania
v.
Levi S. Esh Sr.



## CASE FINANCIAL INFORMATION

Case Balance: $18.50
Next Payment Amt:
Last Payment Amt:
Next Payment Due Date:

| | Assessment Amt | Adjustment Amt | Non-Monetary Payment Amt | Payment Amt | Balance |
|---|---|---|---|---|---|
| Miscellaneous Issuances | $18.50 | $0.00 | $0.00 | $0.00 | $18.50 |