

Date: 8/4/92  
Time: 8:32 P.M.

Electronically Filed  
FIRST CIRCUIT  
1CCV-20-0000390  
18-NOV-2021  
03:37 PM  
Dkt. 243 EXH

Re: judicial hearing regarding accusations of loose conduct directed at Kenneth Apana  
Judicial Committee: David Shima (chairman), John Gray, Phillip Man

J. Gray opens with prayer.

D. Shima opens with reading of James 5:13-16.

Informed that charge is of loose conduct; that two witnesses are available to testify; identified as L.M. and S.A.

CP (K. Apana)

Asked to relate what occurred.

L.M. CP  
CP CP

At first CP but later CP  
CP (J. Gray & D. Shima; 7/26/92).

CP  
CP CP L.M. CP  
CP

Inquired as to conduct toward daughter.

CP CP  
CP

After further questioning, CP CP  
CP

Also related CP  
CP

At this time further CP CP L.M.  
CP

At this point, K. Apana asked to go to second room; committee discusses need for witnesses, then dismisses them.

K. Apana called back and asked regarding attitude toward his own actions.

CP

CP

CP CP CP

CP CP

K. Apana dismissed to second room.

After deliberation, K. Apana returns. Adds that he CP CP

Action taken: Judicially reproved by committee.

No public announcement yet. K. Apana informed that circumstances may require later public announcement.

Restrictions: Restricted from commenting, public prayers, and all other activity except field service.

Removed as elder. Asked to return all appropriate materials.

States that CP

CP

650 Per telcom w/ P. Mann requested info w/ v brother  
P.M. @ Hall

Prayer = B. Shima

12/4/92 KH - J. Shima / P. Mann

(K. Apana)

KA

(Kyle's age) (7-9) = CP

[Redacted] CP

Early Part 91- '92 =

[Redacted] CP N.D. CP

Jan-Mar '92

[Redacted] CP

[Redacted] CP

①

[Redacted] CP

[Redacted] CP or N.D.

[Redacted] CP

[Redacted] CP

[Redacted] CP

[Redacted] CP

Told wife 12/4/92 A.M. - of

CP

CP

DA -

CP

CP

CP

CP

CP

CP

CP

S.A.

CP

L.M.

CP

CP

2

CP

L.M.

CP

CP

CP



DS / JG / Pm

7 Pm KH

11/1/92 Mon - Re: K. Apena

Prayer: J. Gray

Post 18:13

CP CP

CP

CP N.D. CP

CP

CP

CP

JG -  
KA -

(Gen 4:6-7)

CP CP

CP CP CP CP K.L.

Phone Call -

CP

CP

CP

CP

Decision: DF - all in agreement  
(Agree ~~with~~) - w/ person  
Attend KH Bk Study  
Not legally absolved from laws of state.

ND / KL - Maa  
Asana - Agasa / SA  
LM - Gray / Shoma

Date: December 7, 1992

Time: 7:00 P.M.

Re: judicial hearing regarding CP Kenneth Apana of CP

Judicial Committee: David Shima (chairman), John Gray, Philip Main

(Note: Hearing on two separate incidences of the same kind of conduct was held on 8/4/92. Kenneth Apana CP and was reproved by a judicial committee.)

J. Gray opens with prayer.

D. Shima opens with reading of Proverbs 28:13.

K. Apana CP ND CP

CP

Thinks this occurred CP at his home(possibly during April) CP N.D. CP

When asked why this was not revealed during prior judicial hearing of 8/4/92 he replied that CP

CP

Also, mentioned CP L.M. CP

Did not mention at prior judicial hearing as CP Also CP

CP K.L. CP

J. Gray makes reference to Gen. 4:6,7.

CP

CP

CP

CP

CP

When asked what assurance he could give that such conduct would not occur again, he states that CP

CP

Dismissed K. Apana to back room.

After deliberation by committee, K. Apana called back.

Decision is to disfellowship due CP CP

He is informed of right to appeal and steps to take to return to Jehovah's organization. He is dismissed.

(Postscript: On 12/17/92, announcement of disfellowshipping made at service meeting's conclusion by J. Gray.)

EXHIBIT 3

MAKAHA 000010 REV



NOTIFICATION OF DISFELLOWSHIPPING OR DISASSOCIATION
(Please use typewriter or neatly print all information in ink.)

Makaha Waianae HI 91934
Name of congregation City State Congregation Number

Kenneth Apana 12/17/92
Name of disfellowshipped or disassociated person Date disfellowshipped or disassociated Date reinstated

Check if applicable: [ ] Elder [ ] Ministerial servant [ ] Regular or special pioneer [ ] Listed with the Society as person to receive literature or magazine shipments to congregation (If so, new name and address should be sent to the Society.)

Offense(s) for which disfellowshipped (if disassociated give reason):

CP

Please give a brief but complete review of the matter: (1) What led up to the wrongdoing? (2) Was the individual previously counseled or reproved? (3) What factors, including lack of works befitting repentance, convinced you that this action was necessary? (See Point #3 on other side.) (Use additional sheet if more space is needed.)

K. Apana previously CP CP He was dealt with on these incidents during a judicial hearing held on 8/4/92. At the time, CP CP and was reproved by the judicial committee. Since that time, new information came to light showing that K. Apana had CP CP prior to the last judicial hearing. When confronted, K. Apana at first CP CP later he CP CP after the last judicial action. the more recent hearing (held on 12/7/92), makes clear that CP CP No works befitting repentance were evident to this committee.

What evidence established the wrongdoing, such as confession, two or more witnesses?

K. Apana CP

Elders who served on the committee sign below. (Print or type names below the line. Sign on the line.) (If disassociation, committee selected to handle the matter should sign.) (Indicate who served as chairman.)

David Shima (chairman) Philip Main

John Gray

Did individual appeal your decision? no If so, this form should be completed and handed to the chairman of the appeal committee who will send it to the Society with the letter from the appeal committee. If the original committee has further observations they should put them in writing and give them to the appeal committee to send to the Society.

If individual was previously disfellowshipped or disassociated show: 1. Date 2. Name at that time 3. Date reinstated 4. Congregation that took the action: Name of congregation City State

NOTE: Send original copy of this form to the Society along with S-79a and S-79b cards you have filled out. Retain a copy of this form for the congregation's confidential files. After the Society receives these forms, the S-79b card will be returned to you. If person is reinstated (or dies) send the S-79b card to the Society, and on your copy of this S-77 form record the date of reinstatement (or death).

(SEE OVER)

MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES  
C/O  
85-175 FARRINGTON HWY., #C225  
WAIANAE, HI 96792

August 6, 1992

Watchtower Bible & Tract Society  
Attn: Service Department  
2055 Kam IV. Rd.  
Honolulu, HI 96819

Attn: Service Department

Re: removal of Kenneth Apana from position as elder due to judicial action

Dear Brothers:

This letter is written to inform you of the removal of Kenneth Apana as an elder in the Makaha Congregation. This removal is due to judicial action taken towards him.

On July 22nd (last month), a sister in our congregation approached our body of elders with an accusation of loose conduct (improper touching of private parts) against Brother Apana. This sister is a friend of Brother Apana's daughter, and the alleged incident occurred when she slept over at the Apana family's home.

Brother Apana was confronted by two elders regarding this accusation. He CP

CP

The accusing sister had mentioned that Brother Apana's daughter might also be a victim. After meeting again with the accusing sister to determine if this second allegation had substance, we approached the daughter involved on August 1st. She stated that she too had similar experiences.

On August 3rd, we confirmed with both witnesses that they were willing to testify.

The judicial hearing was held on August 4th. CP CP CP

CP

CP (The witnesses, who were waiting outside the hearing room were dismissed at this time.) CP CP CP

CP

and to

CP

CP

All of these incidents occurred within the last three years, with the latest occurring within the last six months.

CP

After deliberating, the judicial committee came to the conclusion that Brother Apana

CP CP CP CP CP CP CP

Our decision was to reprove him. At this time, there is no widespread knowledge of the incidents in question. For this reason, there are no plans at this time to publicly announce that he was reprovved. However, we informed him that:

- 1) He is no longer an elder, and that he must immediately return all items in his possession (such as the "Pay Attention" elder's handbook) that are for elders and/or servants only.
- 2) He is restricted from any privileges within the congregation (including commenting, prayers, etc.)
- 3) Field service time will still be accepted from him.
- 4) Changes in circumstance may require that at some future point we announce publicly his having been reprovved.

(Please note: Some of Brother Apana's conduct CP  
CP  
CP

If you have any questions, or if we have left out important information that you require, please contact David Shima (PH: 696-6220) or Philip Main (PH: 696-7464) at your convenience.

Thank you for your consideration of this matter.

Your brothers,

  
John Gray

  
Philip Main

  
David Shima

December 7, 2020

VIA E-MAIL: [jsr@jsrogerslaw.com](mailto:jsr@jsrogerslaw.com)  
AND ORIGINAL BY U.S. MAIL

James S. Rogers, Esq.  
Law Offices of James S. Rogers  
1500 Fourth Avenue, Suite 500  
Seattle, WA 98101

VIA E-MAIL: [mwinter@davislevin.com](mailto:mwinter@davislevin.com)  
AND ORIGINAL BY U.S. MAIL

Matthew Winter, Esq.  
Davis Levin Livingston  
851 Fort Street, Suite 400  
Honolulu, HI 96813

Re: *N.D. v. Makaha, Hawaii Congregation of Jehovah's Witnesses, et. al.*;  
Civil No. 1CCV-20-0000390

Dear Counsel,

This responds to your letter dated October 27, 2020 in an effort to resolve your concerns over the defendants' discovery responses.

Makaha Congregation's Discovery Responses

Response to Interrogatory No. 1(B):

You have questioned the information provided about the congregation's "conduct in the investigations or actions" taken by various individuals and seek further information in response to Interrogatory No. 1(B). You incorrectly assume that the Makaha Congregation's response to Interrogatory 1(B) indicates that the congregation's action "was limited to reviewing Mr. Apana's elder status." However, as stated in response 1(B), the three elders identified in response to interrogatory No. 1(A) conducted an ecclesiastical review of Mr. Apana's "congregation status," inclusive of both his role as an elder and his status as a member of the congregation. An ecclesiastical review is an investigation/response by a Congregation's elders that arises when there has been an allegation of a serious sin, as described in the Bible at 1 Corinthians 6:9, 10;

Galatians 5:19-21, including but not limited to sexual immorality, as was alleged by a Makaha Congregation member. Makaha Congregation relies on the information contained in the documents that were produced because it cannot recover information that may have been available nearly three decades ago in the memory of two persons now deceased, and when the third person, Mr. Phillip Main, has no recollection of the details of the investigation.

Further, the response to interrogatory No. 13 accurately (and consistently) states that in August and December 1992 the three individuals identified in Answer 1(A) reviewed Mr. Apana's status in the congregation. That review may have included consideration of Scriptural qualifications for elders set forth in the Bible at 1 Timothy 3:1-13; Titus 1:5-7; James 3:17, 18; and 1 Peter 5:2,3, but, as outlined in response to Interrogatory No. 18, inquiry into congregation membership status involves matters of sin and repentance based upon Scriptural principles in James 5:13-15, Galatians 6:1-2, Proverbs 10:19, Proverbs 25:9, Romans 13:1-7, Matthew 22:17-21; 1 Corinthians 11:3 and Romans 14:12, all of which are beyond the purview of civil court proceedings. As the Response to Interrogatory No. 12 states: Kenneth Apana was disfellowshipped (expelled) from the congregation as a result of the ecclesiastical review and application of Scriptural principles. Defendants asserted proper objections to further disclosure of information regarding the ecclesiastical review process. See objection (b) in the Response to Interrogatory Nos. 1(B).

As to the objections based on the religion clauses of the federal and state constitutions, it should be noted that the congregation has not withheld any documents based on those objections. They were asserted to protect the record. Still, it bears noting that that under Article I, Section 6 of the Hawai'i constitution, the right to privacy "shall not be infringed without the showing of a compelling state interest" and applies to all information that is "highly personal and intimate." See *Brende v. Hara*, 134 Hawai'i 424, 430, 153 P.3d 1109 (2007) (discussing privilege in content of medical records under Rule 504).

As to the Defendant's objection based on HRS § 626-1, Rule 506 of the Hawai'i Rules of Evidence, you make unsupported statements based on the assumptions that the Defendant shared information with others outside "the clergy pertinent [sic] relationship." The California cases you rely on do not analyze Hawai'i's evidence code, which is broader than California's. The Hawai'i statute does not mention "penitential" communications. Rather, it encompasses communications with a congregation elder acting "as a spiritual advisor." Mr. Apana has the exclusive ability to waive his privilege in confidential communications, and not our clients. See Rule 506(b).

Notably, subsection (c) of the rule permits a member of the clergy to claim the privilege on behalf of the communicant but only Mr. Apana can waive the privilege. The Editor's Notes to this rule explain:

No clergymen of any church or religious denomination shall, without the consent of the person making the confidential communication, divulge in any action or proceeding, whether civil or criminal, any confidential communication made to him in his professional character according to the uses of the church or religious denomination to which he belongs.



SSC AUG 15 2011  
original

## KONA ENGLISH CONGREGATION

73-4176 Alaha Place  
Kailua-Kona, HI 96740  
808-936-5116

0 230 5116  
att to elbe

August 2, 2011

Christian Congregation of Jehovah's Witnesses  
2821 Route 22  
Patterson, NY 12563-2237

RE: Letter SDH:SSL January 4, 2011 – Kenneth Apana born [REDACTED] 1944, baptized 1-27-1974

Greetings Brothers:

This letter is regarding your January 4, 2011 inquiry of Kenneth and Donna Apana. While writing this letter of response, evidence surfaced of his fondling a teen-age girl in 2001, [REDACTED] N.N. [REDACTED] N.N. 13 years old, not one of Jehovah's Witnesses. He was subsequently disfellowshipped on June 2, 2011. An S-77 report was sent in separately with the summation therein. We also copied the summation on a separate page and enclosed it with this letter.

Kenneth and Donna Apana moved from the Kaloko congregation to Kona English congregation (formerly Kailua-Kona) in March 2007. Donna passed away in 2007. Kenneth has remained in the congregation since then. (Kaloko and Kona English congregations are in the same Kingdom hall.) He was associated with the Kaloko congregation starting in 1996 or 1997.

Until evidence surfaced in May 2011 that Kenneth [REDACTED] CP [REDACTED] Kenneth Apana was viewed by the congregation in general as a good example of Christian living. There had been no reports or suspicions of violating a proper code of behavior in his familiarity with children while here and no reports of such were presented to us from his previous congregation, Kaloko.

He commented regularly at the meetings and was enrolled in the Theocratic Ministry School, giving #1 and #3 talks and was active weekly in the ministry. He was not being used in 2011 on service meeting parts, congregation meeting prayers or other privileges nor able to auxiliary pioneer or assist in circuit assemblies and district convention department work assignments.

Regarding the questions in the March 14, 1997 letter to the bodies of elders, page 3, these are the most accurately we can answer them. No interviews were made. However, as suggested in your letter we spoke with one of the elders, Philip Maim, in the Makaha congregation and he was able to assist us with the answers.

- *How long ago did he commit the sin?*  
August to December 1992.
- *What was his age at the time?*  
47 to 48 years old.

EXHIBIT 7

WTNY-C000004

- **What was the age of his victim(s)?**  
Four minor aged girls, ages 8 to 13; one was [REDACTED] one was [REDACTED]  
[REDACTED] S.A. [REDACTED]  
➤ Regarding the February 25, 2003 letter of accusation of sexual abuse from Nicole K. Curaisma-Das forwarded to us from the Kaloko congregation in February 2011; she was one of the four victims. It is our understanding she is currently on the other side of the Hawaii (Big Island) attending college.
- **Was it a one-time occurrence or a practice?**  
Practice.
- **If it was a practice, to what extent?**  
It occurred over a period of four months, more than once with two or three of the girls over a period of time.
- **How is he viewed in the community and by the authorities?**
  - ✓ Makaha [Waianea, Hawaii]: [REDACTED] CP  
not listed on the public website.
  - ✓ Kona English [Kailua-Kona, Hawaii]: The community and authorities are not informed as far as we know.
- **Has he lived down any notoriety in the community?**
  - ✓ Makaha [city of Waianea]: Notoriety unknown.
  - ✓ Kailua-Kona: Notoriety unknown.
- **Are members of the congregation aware of what took place?**
- **How do they and/or his victim(s) view him?**  
We are unsure without asking. The following includes what we do know about others who have been in the congregation and a victim. Also, both the 1992 and 2001 abuse time lines are included.
  - ✓ Makaha: The family of one of the victims is in the congregation; she is currently on the other side of the Hawaii [Big Island] attending college. A few others in the congregation also know of what happened.
  - ✓ Kaloko: Most of the elders know.
  - ✓ Kona English: His daughter, [REDACTED] S.G. [REDACTED] and her husband Mason knew of the 1992 abuse involving [REDACTED] S.A. [REDACTED]. The elders also know. Up until the allegation and admittance in May 2011 to the 2001 abuse, the congregation and witness family members treated Kenneth with love and helped him out where needed.
- **2001 abuse:**
  - The victim, [REDACTED] N.N. [REDACTED] (not a Witness), lives on this island, Hawaii. Unsure how she views him without asking. Two elders were told by his daughter, Samantha, [REDACTED] N.N. [REDACTED] became a lesbian because of what Kenneth did to her.'
  - Samantha Apana; not a 'Witness' and attending our congregation. She is very angry at Kenneth for his 2001 abuse. [REDACTED] N.N. [REDACTED] was a friend of hers when young. She also told two elders and some of the family she and [REDACTED] N.N. [REDACTED] may file charges. No charges have been filed as far as we know. (If we come to know of charges filed we will contact the legal department immediately.)
  - His daughter, [REDACTED] S.G. [REDACTED] and her husband, Mason; both Jehovah's Witnesses. [REDACTED] S.G. [REDACTED] is a regular pioneer and this discouraged her immensely to the point of not wanting to pioneer any longer. Although, she has continued and attended pioneer school in July. Mason was very angry and would not

allow Kenneth to associate with their family after his admittance. Both are recovering.

- His [REDACTED] S.A. a 'Witness' not associating with a congregation lives in Oahu and also one of the four victims in 1992 was in our congregation two years ago kept her distance from him while here, also her ex-boyfriend; not a 'witness.' Reportedly, he was very upset. (Kenneth said he also called her over the past couple of years to encourage her to return to the meetings.)
- His son, Kingston Apana; not a Witness and not associating. He is angry and chided Kenneth for what he did.
- His son, Kaile Apana; a 'Witness.' (Unsure if he knows about [REDACTED] knows about [REDACTED] S.A.) Lived in Kona until July 2011, cards still in Kona English
- Dan and Tasha Shanahan; 'Witnesses.' Presumably they do not know of the 2001 abuse. They may know of the 1992 abuse. it was noticed that Tasha Shanahan sometimes kept her distance from Kenneth and did not work in the same group in the ministry. Tasha studied with [REDACTED] S.A. while she was associating here 2 years ago. Also, Dan approached and elder, Jeff Neubauer, earlier this year and asked that his son, Sage, 14 years old, not be put in the service car group with Kenneth.
- *Has he ever been disfellowshipped, reproved, counseled, or otherwise dealt with?*
  - ✓ Reproved for loose conduct in the Makaha, Hawaii congregation August 4, 1992.
  - ✓ Further information surfaced indicating [REDACTED] CP Met judicially in the Makaha, Hawaii congregation December 7th, disfellowshipped December 17 1992, reinstated June 20, 1995.
  - ✓ Counseled in the Kona English congregation for an inappropriate e-mail to a single sister and visiting her at work while he was still married in approximately 2006 - 2007. (His wife had suffered a major stroke and was basically incapacitated a few years ago.)
- *If he has moved to another congregation, please identify the congregation to which he has moved?*

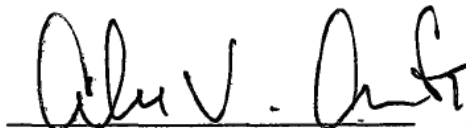
Kenneth and Donna Apana moved from the Makaha congregation on the island of Oahu to the Kaloko congregation on the island of Hawaii, and then to Kona English congregation (formerly Kailua-Kona; Kaloko and Kona English congregations are in the same Kingdom hall). Donna passed away in 2007. Kenneth has remained in the congregation since then. He has lived in the city of Kailua-Kona since 1997.
- *Was that congregation advised of his past conduct of child molestation, and if so, when?*
  - ✓ Kaloko informed by Makaha congregation February 8, 1997.
  - ✓ Kona English informed by Kaloko congregation August 25, 2006.

If there is anything that we can be of assistance with or if you have any more questions, please feel free to contact us.

Your fellow brothers in Kailua-Kona, *Kona English* congregation  
Judicial committee



Jeff Neubauer (ch)  
808-989-6979



Alex Armenta  
808-936-5116



Ray Burk  
808-331-2418



577

SSC AUG 15 2011

NOTIFICATION OF DISFELLOWSHIPING OR DISASSOCIATION

(Please type or print neatly in ink.)

Date of baptism 1-27-1974

Individual's full name: APANA KENNETH (Last) (First) (Middle) (Jr, Sr, II, III, etc.)

Male Female (Date of birth) (Date of announcement of disfellowshipping or disassociation)

FOR OFFICE USE ONLY SDO AUG 17 2011

100123 KONA ENGLISH KONA ENGLISH HI (Congregation number) (Congregation name) (City) (State)

Check if applicable: Elder Ministerial servant Regular pioneer (If so, include S-202 form with this form.) Special pioneer Listed with the branch office as the person to receive literature and/or magazine shipments for the congregation.

1. DISFELLOWSHIPING. Specify offense(s) for which disfellowshipped (See ks91 pp. 92-6.): CP At any point, did the wrongdoer confess to the committee? CP If not, what evidence substantiated the wrongdoing?

DISASSOCIATION. Specify by what action(s) the person disassociated himself (such as resignation, nonneutral activity, failure to abstain from blood, or joining another religion):

Did the individual submit a signed letter of resignation? If not, what evidence substantiated the disassociation?

2. Give a detailed summation of the case, explaining exactly what took place. (Use an additional sheet only if more space is needed.) For a disfellowshipping, include the reasons why you judged the person to be unrepentant. For a disassociation, include what led to the person's decision, how he responded to efforts to assist him, and what convinced you that his position was adamant.

Please see attached summation sheet.

3. Did the individual appeal your decision? CP (If so, follow the instructions on the reverse side regarding appeals.)

4. If the individual was previously disfellowshipped or disassociated, show Person's full name at that time: KENNETH KENNETH APANA Date of previous action: 12-17-92 Date of previous reinstatement: 6-20-95 Congregation that took the action: MAKAHA WAIANEA HI (Name of congregation) (City) (State)

5. Each member of the appointed committee should sign this form and any additional sheets. (Type name below each signature.) CHAIRMAN JEFF NEUBAUER ALEX ARMENTA RAYMOND BURK

Reinstated Deceased Date: 11-15-2012 (Month, day, year) (Signature of secretary)

FOR OFFICE USE ONLY SSC MAR 26 2013

2011

S-77 Summation June 2<sup>nd</sup> disfellowshipping

Victim: **N.N.** (not a Witness), age at the time of the abuse in 2001 was about 10 years old; current age, about 23 years old. Kenneth about 56 – 57 years old at the time. It occurred once. No known reporting to the authorities or elders in the past. No known notoriety in the community. Those who know are listed in paragraph 3.

In 2010 Kingston, Kenneth's son (not a Witness and not associating), was informed by **S.A.** boyfriend at the time (name unknown) that **S.A.** (a Witness and not associating), was abused by Kenneth in 1992 (handled judicially in 1992). Kingston told Kenneth he knew and also **S.G.** his sister. Mason her husband and her brother Kaile Apana was also informed. (**S.G.**, Mason, and Kaile are Witnesses in the Kona English congregation)

In May 2011 Kingston informed Samantha Apana, his sister (not a Witness and attending Kona English meetings), about **S.A.** being abused by Kenneth. She was very upset. She informed **S.G.** her sister about Kenneth abusing **N.N.** her childhood friend 10 years ago. She had not told anyone up until this time. **S.G.** reported it to the elders. In an investigation hearing in May 2011, Kenneth **CP**  
**CP** Aside from the Davy Toland and the judicial committee, as far as we know only the family members, Kingston, **S.G.** Mason, and Samantha know about **N.N.** A judicial committee was formed.

In the judicial hearing Kenneth said **CP**  
**CP** **N.N.** **CP**  
**N.N.** **CP** **N.N.** **CP**  
**CP**

**CP** As far as we know, no one reported it to the elders or authorities. Kenneth said **CP**  
**CP** **N.N.** **CP**

Asked **CP** he said, **CP**  
**CP** He said he  
**CP**

He also **CP**  
**CP** **CP** **CP** inconsistent with being clearly forthright  
considering he **CP** **CP** **CP** **CP** **N.N.** **CP**  
**CP**



CP

CP

CP

CP

CP

We felt this was peculiarly

not forthright that he

CP

CP

CP

N.N.

Further, when he was reminded of

CP

CP

he

CP

CP

CP

His wife had suffered a major stroke and was basically incapacitated a few years ago.

We asked if

CP

He

CP

CP

CP

He did not show a sincere attitude of zeal to right the wrong with those affected.

Kenneth stated

CP

He did not go into

details but we feel this has had a lasting negative effect on his life and decisions he has made regarding young girls and perhaps his dealing with sisters as mentioned in a previous paragraph. He also said

CP

CP

Our conclusion as a judicial committee is though making some improvement; he did not display clear works of repentance to an adequate degree. His spiritual weakness and temptations have kept his relationship with Jehovah weak enough that he

CP

CP

CP

CP

He told us when we informed him of our decision he

CP

CP

We are truly saddened to see what has happened to so many who have been affected by this sin. We are happy to see Samantha attending meetings regularly since the announcement on June 2. Kenneth had made apparent spiritual progress over the past few years and commented he was spiritually weak since his reinstatement in 1995. In 2002 when he started applying himself more seriously in personal study, meeting attendance, and the ministry. Even though Kenneth is no longer one of Jehovah's Witnesses he is continuing to attend all the meetings and our recent district convention. It is our hope he will stick with his repentant steps and at a future proper time he can again be recognized as our brother.

Note: The abuse was reported to the legal department on May 6, 2011, desk LPK by Jeff Neubauer and Alex Armenta. There is no known notoriety other than who has been mentioned in this summation in paragraph 3. This includes the authorities and the community. (If we come to know of charges filed we will contact the legal department immediately.)

End of S-77 Summation June 2<sup>nd</sup> 2011 disfellowshipping

X

Jeff Neubauer  
JEFF NEUBAUER

Alex V. Armenta  
Alex V. Armenta

Raymond Burk  
Raymond Burk

WTNY-C000009

# MEMORANDUM OF RECORD

SGZ November 3, 2015

Re: Kenneth Apana - Kona English Congregation, Kailua Kona, HI (#100123)

This is a summary of the case involving Kenneth Apana (Date of Birth: [REDACTED]/1944; Baptism: 01/27/1974).

*In August to December 1992*, over the 4 month period, Brother Apana sexually abused a number of girls ranging in age from 8 to 13. He was 47-48 years old and attended the Makaha Congregation, HI (#91934). Exactly what he did, and how many times to each girl, is not clear. These are the girl's names:

- [REDACTED] S.A. [REDACTED] more than once.
- [REDACTED] S.G. [REDACTED] Witnesses.
- Nicole K. Cuarisma-Das (Nicole Bustante?), Witness, age 12, fondled at least 2 different times, wrote to Ken and Donna in 2003 asking for financial help to cover psychiatric costs caused by Ken's abuse, and threatened legal proceedings.
- [REDACTED] L.M. [REDACTED]
- [REDACTED] M.M. [REDACTED] publisher, family friend.

Ken [REDACTED] CP [REDACTED] Later it came to light that he had also molested a different young girl, a family friend, *before* his stepdaughter, but had failed to mention it. He also [REDACTED] CP [REDACTED] He was disfellowshipped for child sexual abuse in December 1992, and reinstated in June 1995. Prior to his disfellowshipping, he previously served in an appointed capacity as an elder in the Makaha Congregation.

*One night in July 2001* Ken's daughter Samantha had her friend, [REDACTED] N.N. [REDACTED] sleep over. [REDACTED] N.N. [REDACTED] was either 10 or 13 years old. Ken entered their bedroom, picked [REDACTED] N.N. [REDACTED] up, and took her to his bed. His wife was not home. He became aroused and fondled her genital area, over her panties. She woke up and immediately went back to her bed. Samantha says he offered both of them money the next morning to not tell anyone. The elders did not learn about this until he confessed 10 years later in May 2011. At one point Samantha and [REDACTED] N.N. [REDACTED] considered filing charges against Ken. He was disfellowshipped for child sexual abuse in June 2011 and reinstated in November 2012.

*Sometime in 2006-2007* Ken was counseled in the Kona Congregation for sending an inappropriate email to a single sister, calling her "cutie", and visiting her at work while he was still married. His wife, Donna, died in 2007, after years of suffering from a stroke.

- August 2, 2011: The Kona English Congregation replied to questions in the March 14, 1997, letter to all bodies of elders, as requested by the branch office.
- April 11, 2013: The Legal Department indicates that [REDACTED] AC Privilege [REDACTED]
- June 3, 2013: The Service Department sent a #1 letter to the Kona English Congregation indicating that Brother Apana should not be extended privileges in the congregation. If he moves in the future his new congregation should be informed of the problem, his restrictions, and the need for caution.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

-----) )  
N.D., ) CIVIL NO:  
) 1CCV-20-0000390  
Plaintiff, )  
) )  
vs. )  
) )  
MAKAHA, HAWAII CONGREGATION )  
OF JEHOVAH'S WITNESSES, a )  
Hawaii non-profit )  
unincorporated religious )  
organization, a.k.a. MAKAHA )  
CONGREGATION OF JEHOVAH'S )  
WITNESSES and KINGDOM HALL, )  
MAKAHA CONGREGATION OF )  
JEHOVAH'S WITNESSES; )  
WATCHTOWER BIBLE AND TRACT )  
SOCIETY OF NEW YORK, INC., )  
a New York corporation; )  
CHRISTIAN CONGREGATION OF )  
JEHOVAH'S WITNESSES, a New )  
York non-profit corporation;) )  
KENNETH L. APANA, )  
Individually; and Does 1 )  
through 100, inclusive, )  
) )  
Defendants. )  
) )  
-----)

VIDEOTAPED VIDEOCONFERENCE  
DEPOSITION OF PHILIP N. MAIN

Taken on behalf of the Plaintiff N.D.,  
remotely via videoconference at 9:32 A.M., on  
Wednesday, May 26, 2021, pursuant to Notice.

BEFORE: APRIL D. GEDNEY, RPR, CLR  
Hawaii CSR No. 470  
California CSR No. 11756

1 Makaha Hawaii Congregation or the Makaha  
 2 Congregation, other than the three of you.  
 3 MR. HUNT: In what time period?  
 4 MR. ROGERS: I'm talking about the '90s.  
 5 I thought I said that. 1990s, '91, '92, the whole  
 6 decade, if you know.  
 7 THE WITNESS: I don't recall.  
 8 BY MR. ROGERS:  
 9 Q. Were there more than three of you that  
 10 you've identified a few minutes ago?  
 11 A. There were three of us on the judicial  
 12 committee.  
 13 Q. Okay. But there was also Mr. -- who's on  
 14 the phone, Mr. Ken Apana, right, he was an elder?  
 15 A. That's correct.  
 16 Q. Was he on the judicial committee?  
 17 A. No.  
 18 Q. Have you been deposed before, had your  
 19 deposition taken like what I'm doing now?  
 20 A. Years ago.  
 21 Q. What kind of a case? What was the nature  
 22 of the case?  
 23 A. I don't recall.  
 24 Q. Have you testified in trial before?  
 25 A. No.

1 Q. And Mr. Apana is on this call, and you --  
 2 he was an elder.  
 3 How long have you known Mr. Apana?  
 4 A. I don't recall.  
 5 Q. So the judicial committee you just  
 6 referenced, was that the committee that investigated  
 7 Mr. Apana's sexual abusing young girls in the  
 8 church? Was that the committee that did that?  
 9 A. Yes.  
 10 Q. And, again, as you mentioned, we have  
 11 been provided documents, so I have information.  
 12 That's what I'm basing a lot of what I know, and I'm  
 13 asking you questions that might be repetitive, but  
 14 I'm looking for other things too, and I'm not just,  
 15 again, asking the young girls who you investigated  
 16 that abused by -- sexually abused by Mr. Apana,  
 17 Kenneth Apana, were my client Nicole Das, is that  
 18 right? That's one.  
 19 A. I know her as N.D., yes.  
 20 Q. Sure, okay. Sorry, yeah, N.D., I know.  
 21 And because this deposition, I am using her name,  
 22 but N.D. is fine.  
 23 What about L.M., Lisa Mendoza, do you  
 24 know her? Was she one of the girls? I'll try to be  
 25 very succinct for you and see if that helps. Lisa

1 Mendoza?  
 2 A. Yes.  
 3 Q. Okay. Shawna Apana, Mr. Apana's  
 4 daughter, was she one of the girls that was sexually  
 5 abused by Kenneth Apana?  
 6 A. That I don't recall.  
 7 Q. S.A., is that helpful?  
 8 A. I'm not sure.  
 9 Q. What other -- you can use initials.  
 10 What other girls, young girls, and we're  
 11 talking, you know, teenage, 12, 13, young girls, did  
 12 you investigate on the judicial committee sexually  
 13 abused by Kenneth Apana?  
 14 A. No one else other than what you named.  
 15 Q. Based on -- and I'm -- just give me a  
 16 preference here, because I really want to make sure  
 17 it's clear. I feel like I'm your lawyer telling you  
 18 what to do, but I'm not trying to do that. I'm just  
 19 trying to be clear.  
 20 Where was -- I'm going to go through the  
 21 same questions for each. N.D., let's say Lisa --  
 22 Lisa -- Lisa Mendoza, L.M., and I'm going to say  
 23 Shawna Apana.  
 24 For N.D., who's my client, was she  
 25 sexually abused in the home of Mr. Kenneth Apana?

1 A. I don't recall.  
 2 Q. Do you recall where -- do you recall  
 3 where she was abused? Let me ask you that.  
 4 A. No.  
 5 Q. Lisa Mendoza, L.M., was she sexually  
 6 abused in the home of Kenneth Apana, the Apana home  
 7 residence?  
 8 A. I don't recall.  
 9 Q. And his daughter, was she abused in their  
 10 family home?  
 11 A. I don't know.  
 12 Q. Do you know -- again, because you're the  
 13 deponent I will ask you this -- whether these girls  
 14 were in bed in the bedroom sleeping or falling  
 15 asleep at the time they were sexually abused, each  
 16 of them?  
 17 A. I don't know.  
 18 Q. Let me ask.  
 19 Mr. Main, how did you -- what were your  
 20 feelings about the fact that your fellow elder,  
 21 Mr. Apana, sexually abused three girls, one being  
 22 his daughter?  
 23 MR. HUNT: Objection; irrelevant.  
 24 You can answer if you understand it.  
 25 ///



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1 BY MR. ROGERS:  
 2 Q. You can answer it.  
 3 A. I don't have any reply.  
 4 Q. The judicial committee, part of its  
 5 function was to investigate any incidents like these  
 6 that we're talking about, that did involve sexual  
 7 molestation of young people, young girls in the  
 8 congregation.  
 9 That's true, isn't it?  
 10 A. Yes.  
 11 Q. And in Hawaii -- and I'm not in Hawaii,  
 12 but it's a crime to sexually abuse a child, as an  
 13 adult to sexually molest somebody under 18; is that  
 14 right?  
 15 MR. HUNT: Objection; calls for a legal  
 16 conclusion.  
 17 BY MR. ROGERS:  
 18 Q. Do you know?  
 19 A. No, I don't know.  
 20 Q. But in your judicial committee, you  
 21 did -- that was one of the roles of the committee  
 22 was to investigate allegations of sexual abuse and  
 23 molestation by members of the congregation whether  
 24 they be elders or not, right?  
 25 A. That's correct.

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1 Q. Mr. Main, and I'm asking you a bunch of  
 2 these questions because you are the surviving elder  
 3 of that time period, to my understanding based on  
 4 your testimony and what I've read.  
 5 When did you first learn that Kenneth  
 6 Apana was sexually molesting young girls? What  
 7 year?  
 8 A. I believe it was 1992.  
 9 Q. And how did you first learn that  
 10 Mr. Apana was sexually abusing young girls?  
 11 A. That I don't recall.  
 12 Q. Okay. And let me just try to ask it a  
 13 different way.  
 14 Did any person who was not an elder tell  
 15 you that he was sexually abusing young girls? Were  
 16 you told it verbally?  
 17 A. I don't recall.  
 18 Q. Is an elder -- switch subjects.  
 19 Is it also considered, are you a clergy?  
 20 Is it part of the clergy in the Jehovah's Witness?  
 21 MR. HUNT: Objection; lacks foundation.  
 22 It's vague and ambiguous.  
 23 BY MR. ROGERS:  
 24 Q. Are you -- do you consider yourself a  
 25 clergy member? You know what I mean by that, right?

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1 A. Not in that sense, no. We're ministers  
 2 according to what the Bible-based counsel provides.  
 3 Q. You're ministers, okay. And I'm going to  
 4 talk about congregants.  
 5 Do the elders -- do the elders have  
 6 certain special relationships or certain  
 7 relationships with their congregants?  
 8 MR. HUNT: Objection; vague and  
 9 ambiguous.  
 10 THE WITNESS: I don't understand the  
 11 question.  
 12 BY MR. ROGERS:  
 13 Q. What is the relationship between an elder  
 14 and a congregant?  
 15 In other words, for example -- and I'm  
 16 not telling you what to say. I'm saying an example  
 17 is a clergy person, a priest, a rabbi. Somebody has  
 18 a relationship with their congregant. It's at the  
 19 synagogue, the church. It's at Jehovah's Witnesses  
 20 at Makaha.  
 21 Do you have -- what is the relationship  
 22 you have as an elder with the congregants, that's my  
 23 question, at Makaha Congregation of Jehovah's  
 24 Witnesses?  
 25 A. Again, to provide spiritual encouragement

Page 25

1 according to the Bible.  
 2 Q. Do elders give sermons or the equivalent  
 3 of a sermon in the congregation?  
 4 A. No.  
 5 Q. Who does that? What's the title? Is  
 6 that the ordained ministers that do that?  
 7 A. We give public talks.  
 8 Q. What's a public talk? Give me -- can you  
 9 give me an example of a public talk? Don't give me  
 10 the talk, but the title of the talk that you've  
 11 given and, you know, such a talk so I'll understand.  
 12 A. I don't recall.  
 13 Q. How many public talks have you given?  
 14 A. I don't know.  
 15 Q. When was -- Mr. Main, when was your last  
 16 talk? Do you know that?  
 17 A. That I don't recall.  
 18 Q. Are these talks on religious subjects  
 19 then or not?  
 20 A. Yes.  
 21 Q. Do elders teach what we call Sunday  
 22 school?  
 23 A. No.  
 24 Q. Do you have -- is there -- is there  
 25 Sunday school at the Makaha Congregation of



1 A. I don't know. I don't -- I don't have  
2 any knowledge of that.

3 Q. I'm going to in a second go to -- I only  
4 have 14 exhibits. We've done one. Let me just --  
5 one sec here.

6 I'm not looking at my phone. I'm looking  
7 at my notes, which are ironically on my phone.

8 Did you read the Notice of Deposition,  
9 which is Exhibit 1 in the case? I want to make that  
10 Exhibit 1. Sorry I didn't do it.

11 (Exhibit 1 identified.)

12 BY MR. ROGERS:

13 Q. The Notice of Deposition, have you seen  
14 it, Mr. Main?

15 A. I don't recall.

16 Q. Okay. Well, I don't want to know what  
17 you did with counsel or what they said, but I just  
18 have a right to know if you looked at it. It's  
19 Exhibit 1.

20 Can we look at Exhibit 1 just so you  
21 know, and put it up screen share. We'll scroll down  
22 a little bit so you can see the caption here.

23 It says, "Plaintiff's Amended Notice of  
24 Taking Deposition Upon Oral Examination."

25 Does this look familiar to you? It says,

1 child sexual abuse and molestation?

2 MR. HUNT: Objection; vague and  
3 ambiguous.

4 BY MR. ROGERS:

5 Q. Is this issue something that is important  
6 to the church on that issue?

7 MR. HUNT: Counsel, when you say "this  
8 issue," you're talking about this document or the  
9 issue --

10 MR. ROGERS: The magazine on the issue of  
11 child sexual abuse. We can go through some of it,  
12 but I'm just wanting to know based on the date,  
13 January 22nd, '85, that I've seen referenced in many  
14 articles, literature of the church, is this an  
15 important issue about child sexual abuse for the  
16 Jehovah's Witnesses?

17 MR. HUNT: Answer if you understand.

18 MR. ROGERS: What?

19 THE WITNESS: All subject matter that's  
20 provided in the Awake! is relevant to Jehovah's  
21 Witnesses --

22 BY MR. ROGERS:

23 Q. Okay.

24 A. -- and the public.

25 Q. All right. I mean, it seems to be quoted

1 "Re: Philip Main."

2 A. Yes.

3 Q. You've seen it before?

4 A. Yes.

5 Q. We can scroll -- I'm sorry. What?

6 A. Yes.

7 Q. Okay. Thank you. That's all I need to  
8 do right now on it. Counsel, we all are familiar  
9 with it.

10 Exhibit -- let's go to Exhibit 2 produced  
11 by you.

12 (Exhibit 2 identified.)

13 BY MR. ROGERS:

14 Q. This is Awake! -- is this the publication  
15 Awake! that we're showing on the screen here that  
16 I've got up here.

17 A. Yes.

18 Q. And it says "January 22nd, 1985," right?

19 A. Yes.

20 Q. I've read what was produced to us and  
21 I've seen that issue, January 22nd, '85, be  
22 referenced on this issue of sexual abuse quite a  
23 bit.

24 Is this a fundamental -- or is this an  
25 important issue to the church on the subject of

1 in Jehovah's Witnesses literature. That's all I was  
2 trying to say.

3 I want to point out -- and I'm going to  
4 get into more articles that were produced to me.  
5 The date of this article was January 22nd, 1985.  
6 Can you see that?

7 A. Yes.

8 Q. Scroll -- I'm going to scroll -- can we  
9 scroll here on the screen share. Farther. Farther.  
10 There's a little girl holding a doll. It says "You  
11 can protect your child."

12 Do you see that?

13 A. Yes.

14 Q. Child molesting.

15 And then let's go -- let's go farther  
16 down, Mr. Main.

17 Is it Mr. Main or Elder Main? What would  
18 you rather be called?

19 A. Mr. Main is fine. Philip is fine.

20 Either way.

21 Q. I'm not going to call you Philip, but  
22 I'll say Mr. Main.

23 A. Okay.

24 Q. Right here it says Awake!, and make sure  
25 you can see it on the screen there. (As read):

**FILED**

SEP 29 2005

Clerk of the Napa Superior Court

By: *Jean E. Pihl*  
Deputy

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA,  
COUNTY OF NAPA**

**CHARISSA W., et al.,  
Plaintiffs,**

v.

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

**Defendants.**

Case No.: 26-22191  
JCCP No. 4374

**RULING ON SUBMITTED MOTION TO  
COMPEL PRODUCTION OF DOCUMENTS**

Plaintiffs' Motion To Compel Production Of Documents came on for hearing on August 31, 2005. The court, having read and considered the papers and heard oral argument, took the matter under submission and now rules as follows:

Plaintiff's motion to compel production of documents is GRANTED in part and continued in part to allow for the production of an attorney-client privilege log.

Although defendants raised a number of objections when responding to plaintiffs' request for production of documents, they address only two of those objections in opposing plaintiffs' motion to compel: the penitential communication privilege and the attorney-client privilege, which the court will discuss in more detail below. As to the other objections not discussed by defendants, the court finds the objections are not well taken. The requested discovery requests

are not overbroad, are relevant, and are not barred by *Serbian East Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696.

### 1. Penitential Privilege

Evidence Code section 1032 provides:

As used in this article, "penitential communication" means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

Defendants object to the production of a number of documents requested by plaintiffs on the ground that they are protected by the penitential communication privilege contained in Evidence Code section 1032. This court finds that the privilege does not apply to communications between the alleged abusers and the Judicial Committee. The evidence presented by both sides establishes that communications with the Judicial Committee do not fall within the scope of the privilege. First, it is clear that the Judicial Committee's purpose is to investigate sins for which disfellowship is a potential penalty. This is established not only by the deposition excerpts provided by plaintiffs, but by the Watchtower publication provided by defendants in connection with the objections to plaintiffs' evidence ("Judicial action is necessary only if a gross sin has been committed that could lead to disfellowshipping" p. 18.) Second, the privilege does not apply because the Judicial Committee was under no duty to keep the communications private. In fact, the evidence establishes that the Judicial Committee was required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters.

Because the penitential communication privilege does not apply, within 20 days defendants shall produce all documents for which it previously asserted this privilege.

### 2. Attorney-client privilege

Defendants have not produced a privilege log for those few documents they apparently claim are protected by the attorney client privilege. Neither the plaintiffs nor the court can adequately address the objection without a privilege log. Defendants shall serve a privilege log

on plaintiffs within 10 days. Plaintiffs may thereafter file and a supplemental brief addressing the log within 10 days. The court will then issue a written ruling on the matter.

Dated: 9/27/05

Raymond A. Guadagni  
Raymond A. Guadagni, Judge