

Bishop Long's Sex Assault Lawsuit: will he lose?

Last week, Bishop Eddie Long of New Birth Baptist Church in Atlanta Georgia was accused of sexually assaulting four 17-year old males that attended the church. What to do if your church's leader is accused in civil court of committing sexual assault. Because the priest, bishop, reverend or pastor is the leader of your organization, the organization has an interest in the outcome of this case. First step, don't panic. Because someone has filed a lawsuit against you, does not mean the allegations are true or that the plaintiff will prevail in court. Second step, hire an attorney to analyze and review the complaint. Your attorney's job will be to address the claim, one by one, and discuss the claim's likelihood of success. I will use Bishop Long's complaint as an example of this analysis. [You can read the lawsuit here.](#)

Vicarious liability

Vicarious liability in Pennsylvania means the employer shares liability for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of the employment. This claim is not likely to prevail because clearly sexual assault is outside the scope of the Bishop's duties as it pertains to the organization's published mission statement.

Negligent Hiring

Negligent hiring in Pennsylvania means an employer is responsible for harm resulting from employing an improper person in work involving a risk of harm to others, or improperly supervising the employee, or permitting or failing to prevent his employees from tortuous conduct upon the premises under the employer's control. To win, the plaintiff must prove that the organization has evidence or proof that the bishop was or is likely to become a sexual predator when he was hired. What kind of evidence would suffice? A criminal record or a report from his former employer, or complaints from your members. In addition, the sexual assault must have occurred on the church's property. Without this kind of evidence, the claim is likely to fail.

Negligence Per Se

Negligence Per Se in Pennsylvania means that the defendant violated a specific statute and this violation injured the plaintiff. In the Bishop Long case, the plaintiff cites to a confidential relationship statute. But that statute merely defines a confidential relationship; it does not create a duty to act. The statute limits itself to fiduciary relationship created by contract or by law. In Pennsylvania, there is no law that prohibits a preacher from having sex with his parishioner (in comparison, consider the law prohibiting an attorney from having sex with his client). Thus this claim will probably fail because it is not specific enough.

Intentional Infliction of Emotional Distress

Intentional Infliction of Emotional Distress means the defendant's conduct was so outrageous and extreme, that the plaintiff suffered emotional distress. In Pennsylvania, the law requires the plaintiff to suffer a severe medical injury as a result of the defendant's actions. The complaint does not specifically list the plaintiff's medical injuries, so this claim will probably fail because it is not specific enough.

Breach of fiduciary duty

A fiduciary duty is an obligation to act in the best interest of another party. Pennsylvania recognizes that a fiduciary duty can exist between a priest and his parishioners. However, this duty does not develop when the plaintiff is merely a member of the church. The relationship must rise to one of special dealings giving one side an unequal influence and the other side weakness and dependence. The court will examine the nature of the relationship between the plaintiff and defendant to determine if a fiduciary duty existed. The relationship must not be too general in nature. It must rise to a higher level of association, like counselor-patient, clergy-penitent. The federal courts have refused to find a cause of action based merely on the relationship between parishioner and clergy. The basis of this refusal is the First Amendment. But some federal courts have permitted a breach of fiduciary duty claim where the plaintiff received counseling or participated in church-sponsored activities. When the plaintiff is a child, the disparity between the plaintiff and the priest is more obvious. However, when the plaintiff is an adult, the age disparity does not automatically lend to a finding of fiduciary duty.

The First Amendment claim is also a powerful shield. Many state courts, including Pennsylvania, have ruled that a breach of fiduciary duty claim based on the priest's failure to adhere to the church's canon is precluded by the First Amendment. To prove its theory, plaintiff would necessarily involve excessive governmental entanglement with religion. The court or jury would have to inquire into the propriety of the church's decisions, matters of discipline, internal organization, ecclesiastical rule and custom. Such an inquiry would violate the First Amendment. The law does not recognize clergy malpractice for the same reason. So, this breach of fiduciary duty claim against Bishop Long probably will not prevail, unless plaintiff received counseling and participated in church-sponsored activities.

Sharmil McKee | Business Attorney | <http://blog.mckeeoffice.com> | 215-242-5260

About the Author:

I am a licensed business attorney and owner of McKee Law Office. The firm focuses on providing small and mid-sized companies with strategic legal advice. I help businesses prevent and resolve contract disputes, debt collections, employee disputes and tax problems. I have helped over 100 businesses and have tried over 200 cases. In addition, I am the only business attorney in Philadelphia with over 10 years of experience owning and operating a business.