

START

OF

REEL

REEL: S-11138

FILM
DATE: 4-26-94

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START: 86-2-18176-8
SUB 268

END: 86-2-18176-8

MICROFILM CERTIFICATE

COUNTY OF KING

STATE OF WASHINGTON

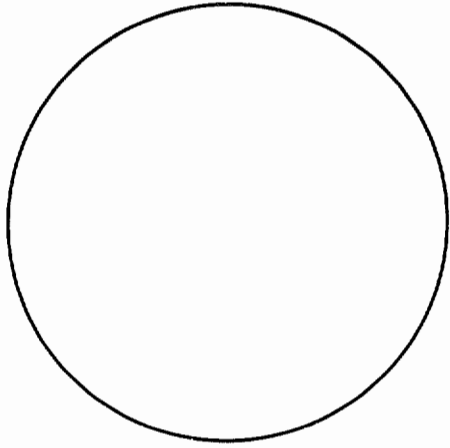
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Wilbur A. Jones 4-26-94
SIGNATURE DATE

NORTHWEST CENTER INDUSTRIES

PM-PLN 11"x14" PLANETARY PHOTOGRAPHIC



150mm

6"

POINT SIZE

4 Z35g 1ub7 Y0b8 Eub9
 6 Hg47j W9pa9 A7o7q Ge92
 8 Su1xi 33q7n Oelvf 4ef8k

10 2xbiy Gmn0c
 Y5a5o E1t9g

12 7n34a K2b8t
 D6fmh 9ss9d
 Wcuzl L1cdg
 14 6Y3sl Okjdg
FUTURA

NEWS GOTHIC
 14 K2b8t Okjdg
 4ef8k Gmn0c
 12 Zlo6x Ge92
 7n34a 6Y3sl

10 Y0r8j A7o7q
 Oelvf 2xbiy
 9ss9d L1cdg
 33q7n E1t9g
 8 Z35g Hq47j Su1xi Y5a5
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 4 D6fmh Wcuzl 1ub7 W9pa9

POINT SIZE

1.0	2.8	2.5
1.1	3.2	2.2
1.25	3.6	2.0
	4.0	1.8
	4.5	1.6

POINT SIZE SANS SERIF (MICROFONT)

4 C6jfm Zm79a
 6 IZC6B U5M7P PMS6B D1K0G
 8 XMBBO HMEKH XYAHQ SIDDS

POINT SIZE SERIF (BASKERVILLE)

4 Jm10 Anm10 Gm10 Gm10
 6 8t1zx W08nk C6jfm Zm79a
 8 T1wpa 2h9oz bun7r Dm5a5
 10 KP7Yc Rho9t Umkh9 Ecafd
 12 C6jfm Zm79a 3s43l iskrY I26FRKM EB7AU FUDWMB00NF
 14 Oz7h9B5e1P W08nk 8t1zx I4C9E83 B18AJ Z7QY1 OKJDG

PRECISIONSM RESOLUTION TARGETS



1303 Geneva Avenue
 St. Paul, MN 55119

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CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et. ux.,)
et. al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et. ux.,)
et. al.,)

Defendants,)
Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

_____)
SANDY EHRLICH, et. ux., et. al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et. ux., et. al.,)

Defendants.)

_____)
MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et. al.,)

BARNETTS' BRIEF IN SUPPORT
1500\4789\801 - Page: 1

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

BARNETTS' BRIEF IN SUPPORT
OF MOTION FOR PARTIAL
DISMISSAL

268

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SEATTLE, WASHINGTON 98104

(206) 386-5555

1 Defendants.)
2)

3 AMERICAN CASUALTY COMPANY OF)
4 READING PENNSYLVANIA, a)
5 Pennsylvania corporation,)

6 Plaintiff,)

7 v.)

8 KATHY LEE BUTLER, et al.,)

9 Defendants.)
10)

11 ST. PAUL FIRE AND MARINE)
12 INSURANCE COMPANY, a foreign)
13 corporation,)

14 Plaintiff,)

15 v.)

16 KATHY LEE BUTLER, et al.,)

17 Defendants.)
18)

19 I. BACKGROUND FACTS

20 The Community Chapel and Bible Training Center was
21 established by Donald and Barbara Barnett in 1967. In that year,
22 it was incorporated as a non-profit religious organization.
23 Donald Barnett served the church as head pastor and president of
24 the religious corporation from 1967 until his removal from those
25 positions in January, 1989, as a result of unrelated litigation.
26 Pastor Barnett's removal from his leadership position in the
27 church is currently on appeal.

28 Donald and Barbara Barnett were married in August, 1949, and
29 have two adult children. The Barnetts became separated in June,
30

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1 1987.

2 Over the years, the Community Chapel experienced substantial
3 growth, and at one time had approximately 3,500 members.

4 In 1986, these consolidated lawsuits were filed and rumors
5 surfaced in the church dealing with alleged sexual and other
6 misconduct having occurred between church members, and among
7 church members and leaders, including Donald Barnett. Since that
8 time, the church membership rolls have greatly diminished, and
9 the beliefs, teachings and intimately private sex lives of church
10 members and leaders have been subjected to scrutinizing
11 examination through the legal discovery process, accompanied by
12 intense media publicity.

13 All plaintiffs in these consolidated suits have, for varying
14 lengths of time, been regular and voluntary attendees and
15 participants at Community Chapel. With minor exceptions to be
16 noted, all events complained of occurred, if at all, during
17 periods of time when each complaining plaintiff was a voluntary
18 participant in the life of the church.

19 II. NATURE OF PROCEEDINGS

20 This action, consolidated for the purpose of discovery, is
21 comprised of three separate lawsuits filed in 1986. Kathy
22 Butler, et ux. and her children, Sandy Brown, et ux. and her
23 children, and Christine Hall, et ux. commenced suit against
24 Donald and Barbara Barnett and others July 31, 1986, King County
25 Cause No. 86-2-18176-8. Hereinafter, this is referred to as the
26 BUTLER SUIT.

27 Sandy Ehrlich, et ux., Larry Lemke, Sybil Lemke, Kathryn
28 Reynolds, and Dee Chabot and her children commenced suit against
29 Donald and Barbara Barnett and others July 31, 1986, King County
30 Cause No. 86-2-18429-5. Kathryn Kitchell, et ux., and her
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1 children were added as party plaintiffs against the Barnetts and
2 others by amended complaint filed in the Ehrlich suit March 8,
3 1988. Hereinafter, this is referred to as the EHRlich SUIT.

4 Maureen Jorgensen originally filed suit against the
5 Community Chapel and Bible Training Center on December 17, 1986,
6 King County Cause No. 86-2-26360-8, later amending to join the
7 Barnetts on February 10, 1988. Hereinafter, this is referred to
8 as the JORGENSEN SUIT.

9 The aforementioned pending lawsuits have been consolidated
10 for the purposes of discovery, the court having reserved the
11 entry of orders granting any separate trials pending further
12 discovery and evaluation.

13 III. STATUS OF PLEADINGS

14 The defendants Barnett have served and filed answers to the
15 foregoing complaints alleging affirmative defenses,
16 counterclaims, etc. Of the affirmative defenses alleged against
17 all plaintiffs, those of particular import to this pending motion
18 are:

- 19 1. Lack of subject matter jurisdiction;
- 20 2. Failure to state claims upon which relief can be
21 granted;
- 22 3. Conduct protected and privileged by the Constitutions
23 of the State of Washington and the United States;

24 IV. SUMMARY OF CLAIMS

25 The lawsuits consolidated herein contain a variety of
26 claims. Some of these claims are common to various plaintiffs,
27 and some are not. Consequently, the legal arguments stated
28 herein relate to the claims of all plaintiffs in certain
29 instances and particular plaintiffs in other instances. However,
30 it would be unnecessarily repetitive to reassert common legal
31 arguments with respect to each plaintiff. For the purpose of

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1 clarity, defendants state their legal arguments by reference to
2 claim rather than plaintiff and submit the following summary of
3 claims. The summary identifies the plaintiff, the claim, and
4 page of the Law and Argument section herein at which discussion
5 of the particular claim may be found.

6 A. BUTLER SUIT SUMMARY

7 In the BUTLER SUIT, the various plaintiffs have alleged
8 against Donald Barnett an amalgam of legal theories of recovery.
9 Defendants Barnett have moved for dismissal of all claims therein
10 insofar as they are based upon the preaching and practice of
11 spiritual connections. See, Law and Argument, beginning at page
12 19. Additionally, dismissal is requested upon entire claims as
13 detailed herein.

14 Kathy Butler alleges against Donald Barnett:

- | | | |
|----|-----------------------------|---------|
| 15 | 1. Assault and Battery; | |
| 16 | 2. Outrage; | |
| 17 | 3. Ministerial malpractice; | Page 14 |
| 18 | 4. Counselor malpractice; | Page 14 |
| 19 | 5. Negligent counseling; | |
| 20 | 6. Wrongful disfellowship; | Page 17 |
| | 7. Loss of consortium; | Page 29 |
| | 8. Defamation. | |

21 Steven Butler has alleged against Donald Barnett:

- | | | |
|----|---------------------------|---------|
| 22 | 1. Outrage; | Page 28 |
| 23 | 2. Wrongful disfellowship | Page 17 |
| 24 | 3. Loss of consortium | Page 28 |
| | 4. Defamation. | |

25 On behalf of her children, Scott Lien and Randy Lien, Butler
26 has alleged against Donald Barnett:

- | | | |
|----|--------------------------------------|---------|
| 27 | 1. Outrage; | |
| 28 | 2. Infliction of emotional distress; | Page 23 |
| 29 | 3. Loss of parental consortium; | Page 30 |
| 30 | 4. Defamation. | |
| | 5. Wrongful disfellowship | Page 17 |

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1
2 Sandy Brown has alleged against Donald Barnett:

- 3 1. Assault and Battery;
4 2. Outrage;
5 3. Ministerial malpractice; Page 14
6 4. Counselor malpractice; Page 14
7 5. Negligent counseling;
8 6. Wrongful disfellowship; Page 17
9 7. Loss of consortium; Page 29
10 8. Defamation.

11 Lyle Brown has alleged against Donald Barnett:

- 12 1. Outrage; Page 28
13 2. Wrongful disfellowship; Page 17
14 3. Loss of consortium; Page 28
15 4. Defamation.

16 The guardian ad litem acting on behalf of the minor Brown
17 children, has alleged against Donald Barnett:

- 18 1. Outrage;
19 2. Wrongful disfellowship; Page 17
20 3. Infliction of emotional distress; Page 23
21 4. Loss of parental consortium; Page 30
22 5. Defamation.

23 Christine Hall alleges against Donald Barnett:

- 24 1. Assault and Battery;
25 2. Outrage;
26 3. Ministerial malpractice; Page 14
27 4. Counselor malpractice; Page 14
28 5. Negligent counseling;
29 6. Wrongful disfellowship; Page 17
30 7. Loss of consortium; Page 29
31 8. Defamation.

32 Donald Hall has alleged against Donald Barnett:

1. Outrage; Page 28
2. Wrongful disfellowship; Page 17
3. Loss of consortium; Page 28
4. Defamation.

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1 None of the above plaintiffs have asserted any factual or
2 legal allegation against Barbara Barnett.

3 B. EHRLICH SUIT SUMMARY

4 In the EHRLICH SUIT, plaintiffs have stated a variety of
5 common claims, and some claims which apply to only particular
6 plaintiffs. Defendants Barnett have moved for dismissal of all
7 claims therein insofar as they are based upon the preaching and
8 practice of spiritual connections. See, Law and Argument
9 beginning at page 19. Additionally, dismissal is requested upon
10 entire claims as detailed herein.

11 Sandy Ehrlich has alleged against Donald Barnett:

- 12 1. Negligent supervision of other defendants;
13 2. Outrage;
14 3. Counselor malpractice; Page 14
15 4. Negligent counseling;
16 5. Ministerial malpractice; Page 14
17 6. Defamation;
18 7. Wrongful disfellowship. Page 17
19 8. Loss of Consortium. Page 29

20 Michael Ehrlich has alleged against Donald Barnett:

- 21 1. Negligent supervision other defendants; Page 27
22 2. Outrage; Page 27
23 3. Counselor malpractice; Pages 14, 27
24 4. Negligent counseling; Page 27
25 5. Ministerial malpractice; Pages 14, 27
26 6. Defamation;
27 7. Wrongful disfellowship. Page 17
28 8. Loss of Consortium. Page 27

29 Catherine Kitchell has alleged against Donald Barnett:

- 30 1. Negligent supervision of other defendants;
31 2. Outrage;
32 3. Counselor malpractice; Page 14
4. Negligent counseling;
5. Ministerial malpractice; Page 14
6. Defamation;
7. Wrongful disfellowship. Page 17
8. Loss of Consortium. Page 29

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- 1 9. Destruction parent/child relationship. Page 32
2 Ronald Kitchell has alleged against Donald Barnett:
3 1. Negligent supervision other defendants; Page 28
4 2. Outrage; Page 28
5 3. Counselor malpractice; Pages 14, 28
6 4. Negligent counseling; Page 28
7 5. Ministerial malpractice; Pages 14, 28
8 6. Defamation;
9 7. Wrongful disfellowship. Page 17
10 8. Loss of Consortium. Page 28
11 9. Destruction parent/child relationship. Page 28, 32

12 Wendy Kitchell, through Catherine Kitchell as guardian ad
13 litem, has alleged against Don Barnett:

- 14 1. Negligent supervision of other defendants;
15 2. Outrage;
16 3. Counselor malpractice; Page 14
17 4. Negligent counseling;
18 5. Ministerial malpractice; Page 14
19 6. Defamation;
20 7. Wrongful disfellowship. Page 17
21 8. Children Loss of Consortium. Page 30

22 Sybil Lemke, through Larry Lemke as guardian ad litem, has
23 alleged against Donald Barnett:

- 24 1. Negligent supervision of other defendants;
25 2. Outrage;
26 3. Counselor malpractice; Page 14
27 4. Negligent counseling;
28 5. Ministerial malpractice; Page 14
29 6. Defamation;
30 7. Wrongful disfellowship; Page 17
31 8. Children's loss of Consortium. Page 30

32 Larry Lemke has alleged against Donald Barnett:

1. Negligent supervision of other defendants;
2. Outrage;
3. Counselor malpractice; Page 14
4. Negligent counseling;
5. Ministerial malpractice; Page 14
6. Defamation;
7. Wrongful disfellowship; Page 17

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1 8. Destruction Parent/Child relationship.

2 Dee Chabot has alleged against Donald Barnett:

- 3 1. Negligent supervision other defendants; Page 26
4 2. Outrage; Page 26
5 3. Counselor malpractice; Pages 14, 26
6 4. Negligent counseling; Page 26
7 5. Ministerial malpractice; Pages 14, 26
8 6. Defamation;
9 7. Wrongful disfellowship. Page 17
10 8. Destruction parent/child relationship. Page 26

11 Shawna Chabot, Michael Chabot, Nicholas Chabot, through Dee
12 Chabot as their guardian ad litem, have alleged against Donald
13 Barnett:

- 14 1. Negligent supervision of other defendants;
15 2. Outrage;
16 3. Counselor malpractice; Page 14
17 4. Negligent counseling;
18 5. Ministerial malpractice; Page 14
19 6. Defamation;
20 7. Wrongful disfellowship. Page 17
21 8. Children Loss of Consortium. Page 30

22 Kathryn Reynolds, an original plaintiff in King County Cause
23 No. 86-2-18429-5, has dropped all claims.

24 None of the above plaintiffs have asserted any factual or
25 legal allegation against Barbara Barnett.

26 C. JORGENSEN SUIT SUMMARY

27 The allegations of Maureen Jorgensen against Donald Barnett
28 and Barbara Barnett in the JORGENSEN SUIT are:

- 29 1. Undue influence resulting in the existence of a
30 constructive trust over money and property;
31 2. Breach of contract;
32 3. Intentional or negligent infliction of emotional distress.

Defendants Barnett have moved for dismissal of all claims by
Maureen Jorgensen insofar as they are based upon the preaching
and practice of spiritual connections. See, Law and Argument,

BARNETTS' BRIEF IN SUPPORT
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1 page 19. Defendants Barnett have also moved for dismissal of her
2 claims insofar as they are based upon the alienation of her
3 husband's affections. See, Law and Argument, Page 25.

4 V. LAW AND ARGUMENT

5 A. THE CR 12(b)(6) STANDARD

6 Washington law is clear that motions to dismiss for failure
7 to state a claim for relief are not to be lightly granted. In
8 order for such a motion to be granted, it must appear from the
9 pleadings that plaintiffs can prove no set of facts consistent
10 with the complaint, which would entitle them to relief. Collins
11 v. Lomas & Nettleton Company, 29 Wn.App 415, 628 P.2d 855 (1981).

12 A motion to dismiss under CR 12(b)(6) admits the truth of
13 the facts as alleged in plaintiffs' complaint, and all reasonable
14 inferences that may be drawn therefrom. Bowman v. Two, 104 Wn.2d
15 181, 704 P.2d 140 (1985).

16 Notwithstanding this demanding standard by which motions to
17 dismiss must be judged, dismissal must be granted upon certain
18 causes of action, even assuming the truth of the allegations made
19 by plaintiffs.

20 B. CONSTITUTIONAL PROTECTIONS

21 The first amendment to the Constitution of the United States
22 serves as the solid foundation from which the causes of action in
23 this case must be examined. The first amendment states in
24 pertinent part:

25 FREEDOM OF RELIGION, OF SPEECH, AND OF THE
26 PRESS. Congress shall make no law respecting
27 an establishment of religion, or prohibiting
28 the free exercise thereof; or abridging
freedom of speech, . . . ;

29 Civil courts in the United States are prohibited from
30 inquiry into religious beliefs and teachings. The Supreme Court,

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1 in U.S. v. Ballard, 322 U.S. 78, 87, 64 S.Ct. 882, 88 L.Ed. 1148
2 (1944), stated that:

3 The religious views espoused by respondents
4 might seem incredible, if not preposterous,
5 to most people. If these doctrines are
6 subject to trial before a jury charged with
7 finding their truth or falsity, then the same
8 can be done with the religious beliefs of any
9 sect. When the triers of fact undertake that
10 test, they enter a forbidden domain.

11 These fundamental rights afforded citizens of the United
12 States are protected against intrusion by any state government by
13 virtue of the 14th amendment:

14 CITIZENSHIP RIGHTS NOT TO BE ABRIDGED BY
15 STATES. All persons born or naturalized in
16 the United States and subject to the
17 jurisdiction thereof, are citizens of the
18 United States and of the state wherein they
19 reside. No state shall make or enforce any
20 law which shall abridge the privileges or
21 immunities of citizens of the United States; .
22 . . . nor deny to any person within its
23 jurisdiction the equal protection of the
24 laws.

25 The imposition of tort liability constitutes state action
26 which is subject to the limitations of the First Amendment to the
27 United States Constitution and Article 1, Sec. 11 (Amendment 34)
28 to the Washington State Constitution. It is subject to the
29 defense of constitutional privilege. Paul v. Watchtower Bible &
30 Tract Soc. of New York, 819 F.2d 875, 880 (9th Cir., 1987).

31 1. FREEDOM OF BELIEF

32 The free exercise clause protects freedom to believe and
freedom to act. Only an individual's conduct and freedom to act
may be regulated.

Thus, the amendment embraces two concepts,-
freedom to believe and freedom to act. The

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1 first is absolute but, in the nature of
2 things, the second cannot be. Conduct
3 remains subject to regulation for the
4 protection of society.

5 Cantwell v. State of Connecticut, 310 U.S. 296, 303, 60 S.Ct.
6 900, 903, 84 L.Ed. 1213 (1940). Quoted with approval in State Ex
7 Rel Holcomb v. Armstrong, 39 Wn.2d 860, 864, 239 P.2d 545
(1952).

8 In Sherbert v. Verner, 374 U.S. 398, 402, 835 S.Ct. 1790,
9 1793, 10 L.Ed.2d 965 (1963) the United States Supreme Court
10 wrote:

11 The door of the Free Exercise Clause stands
12 tightly closed against any governmental
13 regulation of religious beliefs as such,
14 Government may neither compel affirmation of
15 a repugnant belief,...; nor penalize or
16 discriminate against individuals or groups
17 because they hold religious views abhorrent
18 to authorities, ...; nor employ the taxing
19 power to inhibit the dissemination of
20 particular religious views,... . (Emphasis
21 added) (Citations omitted)

22 Therefore, any attempt to have this court evaluate religious
23 beliefs must fail. This area is absolutely protected.

24 2. FREEDOM TO ACT

25 Further, the freedom to act may be regulated only in limited
26 instances. A religious practice may be regulated only when the
27 "conduct or actions so regulated have invariably posed some
28 substantial threat to public safety, peace, or order." Sherbert
29 v. Verner, 374 U.S. 398, 403, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965
30 (1963).

31 The test for upholding an action based upon a religious
32 practice is as stringent as any imposed under the Constitution.
"Only in extreme and unusual cases has the imposition of a direct

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1 burden on religion been upheld." Paul v. Watchtower Bible &
2 Tract Soc. of New York, 819 Fed. 2d 875, 883 (9th, 1987).

3 Washington follows the clear-and-present danger test to
4 determine whether burdens upon religious freedom will be
5 tolerated. In State Ex. Rel Holcomb v. Armstrong, 39 Wn.2d 860,
6 239 P.2d 545 (1952) the Washington Supreme Court wrote at 864:

7 This freedom can be restricted "only to
8 prevent grave and immediate danger to
9 interests which the State may lawfully
10 protect." ... Other restatements of the
11 "clear-and-present-danger" test have been
12 made in numerous cases since Justice Holmes
13 gave it life in 1919 in Schenck v. United
14 States, 249 U.S. 47, 63 L.Ed. 470, 39 S.Ct.
15 247. Their citation or review would not be
16 helpful. The test must be applied to the
17 facts of each case because, as its author
18 said, "It is a question of proximity and
19 degree."

20 It is anticipated that plaintiffs shall attempt to avoid
21 this test and the strict scrutiny that this court must give to
22 plaintiffs' claims by labelling the acts of the defendants herein
23 as licentious and arguing that Article 1, Sec. 11 (Amendment 34)
24 to the Washington State Constitution does not extend protection
25 to acts of licentiousness.

26 This argument is without merit. Defendants assert
27 protection under both the Washington Constitution and the United
28 States Constitution. The latter does not contain language
29 referring to licentiousness. This additional limitation upon
30 religious freedom found within the Washington Constitution cannot
31 be tolerated. It is Hornbook law that the United States
32 Constitution is the supreme law of the land. Washington State
33 Constitution Art. 1, Section 2. It establishes minimum rights
34 which must be accorded, and states are not prohibited from
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1 affording greater protections. Oregon v. Hass, 420 U.S. 714, 95
2 S.Ct. 1215, 43 L.Ed.2d 570 (1975). Therefore, the Washington
3 State Constitution may not be utilized to further limit the free
4 exercise of religion.

5 Accordingly, plaintiffs' causes of action seeking to enter
6 into this forbidden domain must fail.

7 C. Ministerial Malpractice & Counselor Malpractice.

8 Claims of ministerial (pastoral) malpractice are made in the
9 Third Cause of Action in the BUTLER SUIT and the Fourth Cause of
10 Action in the EHRLICH SUIT. Claims of counselor malpractice are
11 made in the Fourth Cause of Action in the BUTLER SUIT and the
12 Second cause of action in the EHRLICH SUIT.

13 Causes of action for Ministerial Malpractice and Counselor
14 Malpractice may not be stated, because they lead to impermissible
15 inquiry into religious beliefs.

16 Washington has not recognized a cause of action for pastoral
17 malpractice. In Lund v. Caple, 100 Wn.2d 739, 747, 675 P.2d 226
18 (1984), the Supreme Court stated in dicta that there may be an
19 action for malpractice in the setting of ministerial counseling.
20 However, such an action was not established and the claims in
21 that case were dismissed upon other grounds. Consequently, the
22 court neither addressed what the applicable standard of care
23 would be nor whether constitutional limitations would prohibit
24 establishment of such a standard. See *id* at 744.

25 An action for malpractice presupposes that there exists a
26 professional standard of care. A malpractice standard of care is
27 determined by inquiry into the degree of skill and learning
28 possessed by those within a particular profession. See, Cook,
29 Flanagan & Berst v. Clausing, 73 Wn.2d 393, 438 P.2d 865 (1968),
30 and Walker v. Bangs, 92 Wn.2d 854, 601 P.2d 1279 (1979) (attorney

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1 malpractice); Harris v. Robert C. Groth, M.D., Inc., P.S., 99
2 Wn.2d 438, 663 P.2d 113 (1983) (medical malpractice); and Hoffman
3 v. Connall, 108 Wn.2d. 69, 736 P.2d 242 (1987) (realtor
4 malpractice).

5 In the areas of ministerial malpractice and religious
6 counselor malpractice such a standard could be established only
7 by impermissible inquiry into the beliefs of a particular faith.
8 As the court wrote in Hester v. Barnett, 723 S.W.2d 544, 553
9 (Mo.App., 1987):

10 Nally leaves unresolved the unavoidable and
11 more vexatious question: whether a theory of
12 clergy malpractice inevitably implicates the
13 freedom to believe aspect of the free
14 exercise clause, and hence unduly involves
15 courts in matters purely sacerdotal. That is
16 because a theory of malpractice is defined
17 in terms of the duty to act with that degree
18 of skill and learning ordinarily used in the
19 same or similar circumstances by members of
20 that profession. (citation omitted). It is a
21 theory of tort, therefore, which presupposes
22 that every cleric owes the same duty of care,
23 whatever the religious order which granted
24 ordination, or the cleric serves, or the
25 beliefs espoused. It is a theory of tort,
26 moreover, which inevitably involves the court
27 in a judgment of the competence, training,
28 methods and content of the pastoral function
29 in order to determine whether the cleric
30 breached the duty "to act with that degree of
31 skill and learning ordinarily used in the
32 same or similar circumstance by members of
that profession." Thus, the question Nally
leaves unanswered is whether pastoral
counseling is so ineluctably a function of
the particular religion that no one
definition of its malpractice can evolve into
a standard of professional performance, and
is otherwise so purely sacerdotal a function,
that it is both unfeasible as a theory of

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1 tort and not constitutionally permissible.

2 The Nally case referred to in Hester v. Barnett, 723 S.W.2d
3 544, 553 (Mo.App., 1987) is Nally v. Grace Community Church of
4 the Valley, 157 Cal.App.3d 912, 204 Cal.Rptr. 303 (1984). In
5 the second appeal of that case a professional duty was imposed
6 upon church counselors, but only in the limited setting of
7 dealing with suicidal individuals. In that limited setting, the
8 court of appeals found a paramount state interest allowing
9 interference with religious freedom. See, Nally v. Grace Com.
10 Church of the Valley, 194 Cal.App.3d 1147, 240 Cal.Rptr. 215,
11 230-237 (1987). However, this case has been recently reversed
12 without discussion of the constitutional issues. Nally v. Grace
13 Community Church of the Valley, 253 Cal Rptr. 97, 763 P2d 948
14 (Cal. Sup. Ct., 1988). Consequently, no authority exists in
15 Washington or any other jurisdiction which permits the type of
16 inquiry necessary to establish a professional standard in the
17 area of religion.

18 Washington courts have expressly avoided any inquiry into
19 religious beliefs. They will resolve church property disputes
20 only so long as they are not required to address ecclesiastical
21 or doctrinal matters. See, Organization of Lutherans v. Mason,
22 49 Wn.App. 441, 743 P.2d 848 (Div. One, 1987), and Southside
23 Tabernacle v. Church of God, 32 Wn.App. 814, 650 P.2d 231 (Div.
24 Two, 1982).

25 The imposition of a professional standard of care in either
26 the ministerial setting or the religious counseling setting could
27 be accomplished only by inquiry into the religious beliefs of the
28 Community Chapel and Bible Training Center and a comparison
29 between these beliefs and the beliefs held by Christian
30 counselors of other faiths. Only then could this court

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1 determine the degree of skill and learning possessed by those
2 within that particular profession. However, such inquiry is
3 absolutely prohibited by the Constitution and has been expressly
4 avoided by Washington courts in other areas.

5 All claims for ministerial malpractice and counselor
6 malpractice must be dismissed since no set of facts would allow
7 this court to engage in constitutionally prohibited inquiry. CR
8 12(b)(6).

9 D. Wrongful Disfellowship.

10 Plaintiffs allege that they were disfellowshipped from the
11 Community Chapel and Bible Training Center and therefrom suffered
12 emotional distress. Claims of wrongful disfellowship are made in
13 the Sixth Cause of Action in the BUTLER SUIT and the Tenth Cause
14 of Action in the EHRlich SUIT.

15 Such disfellowship is not actionable. The imposition of
16 tort liability for disfellowship is a direct burden upon the
17 freedom of defendants to practice their religion, and no
18 paramount state interest exists to overcome Constitutional
19 limitations.

20 In Paul v. Watchtower Bible & Tract Society of New York, 819
21 F.2d 875, 881 (9th Cir., 1987), the court addressed whether tort
22 liability could be imposed upon Jehovah's Witnesses upon its
23 religious practice of shunning. The plaintiff therein claimed
24 emotional distress arising from being shunned by church members
25 after leaving the church. The court held that such an action
26 could not be maintained under Washington tort law due to
27 constitutional limitations and the burden which the imposition of
28 tort liability would place upon religion, writing at page 881:

29 Here, by contrast, shunning is an actual
30 practice of the church itself, and the burden

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1 of tort damages is direct. Permitting
2 prosecution of a cause of action in tort,
3 while not criminalizing the conduct at issue,
4 would make shunning an "unlawful act."
5 ("[T]he very essence of a tort is that it is
6 an unlawful act."). Imposing tort liability
7 for shunning on the Church or its members
8 would in the long run have the same effect as
9 prohibiting the practice and would compel the
10 church to abandon part of its religious
11 teachings. Were we to permit recovery, "
12 'the pressure ... to forego that practice
13 [would be] unmistakable,' " The church
14 and its members would risk substantial
15 damages every time a former church member was
16 shunned. In sum, a state tort law
17 prohibition against shunning would directly
18 restrict the free exercise of the Jehovah's
19 Witnesses' religious faith. (Citations
20 omitted).

21 It held that intangible or emotional harms do not constitute a
22 sufficient basis to overcome constitutional privilege to impose
23 such a direct burden upon a religion. *id.* at 883.

24 The present claims for wrongful disfellowship fall squarely
25 within the decision in Paul v. Watchtower Bible & Tract Society
26 of New York, 819 F.2d 875, 881 (9th Cir., 1987). Plaintiffs
27 claim emotional distress for being wrongfully "put out" of the
28 Community Chapel and Bible Training Center and ostracized by its
29 members. Regardless of the label given to the cause of action by
30 plaintiffs, the alleged conduct is the same as that alleged in
31 Paul. In Paul, the plaintiff sought damages for being
32 disassociated from members of her former church. In both cases,
plaintiffs ask the court to interfere with church regulation of
its membership. Herein, plaintiffs' action for wrongful
disfellowship would require this court to determine who should
and should not be members of the church. Such inquiry is

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1 impermissible since it unduly entangles this court in purely
2 church matters and imposes an unconstitutional burden upon the
3 church any time someone is disfellowshipped. Tort liability
4 would effectively preclude the disfellowship of anyone for fear
5 that a damage award would destroy the financial resources of the
6 church. As stated in Paul, claims of emotional distress and
7 intangible harm simply do not create a sufficient interest to
8 allow infringement upon this protected area.

9 Dismissal must be granted, even assuming the allegations of
10 plaintiffs to be true, since Constitutional limitations prohibit
11 a cause of action for wrongful disfellowship. It is up to the
12 church to determine the makeup of its membership and not the
13 court.

14 E. Spiritual Connections.

15 All of the plaintiffs in the EHRlich SUIT, the BUTLER SUIT,
16 and plaintiff in the JORGENSEN SUIT make claims based upon the
17 doctrine of spiritual connections.

18 For the purpose of defendants' motion to dismiss, the
19 following allegations are considered to be true. It is alleged
20 that Don Barnett encouraged members of the Community Chapel and
21 Bible Training Center to form intimate attachments with members
22 of the opposite sex as part of a religious doctrine known as
23 spiritual connections, and that Don Barnett knew or should have
24 known that this doctrine would lead to family disharmony. It is
25 also alleged that Don Barnett taught submission to church
26 authority and complete obedience to church doctrine. Each
27 plaintiff claims family disharmony as a result of spiritual
28 connections and the formation of an intimate attachment between a
29 family member and someone outside of the family.

30 The liability of Don Barnett for his preaching of the
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1 doctrine of spiritual connections is stated in two different
2 ways. Plaintiffs allege liability for a) preaching and b) the
3 practice of spiritual connections. Plaintiffs' attempts to base
4 liability upon these areas is Constitutionally prohibited.

5 1. Preaching claims

6 Religious preaching falls within the first amendment
7 protection of freedom of belief. See, Sherbert v. Verner, 374
8 U.S. 398, at 402, 835 S.Ct. 1790, at 1793, 10 L.Ed.2d 965 (1963).
9 This right is absolutely protected. See, Cantwell v. State of
10 Connecticut, 310 U.S. 296, at 303, 60 S.Ct. 900, at 903, 84 L.Ed.
11 1213 (1940). This court cannot inquire into the validity of
12 these beliefs even if they sound preposterous. See, U.S. v.
13 Ballard, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944).
14 Therefore, no cause of action may be based upon religious
15 preaching since it would violate the absolute protection of
16 freedom of belief.

17 2. Practice claims

18 As alleged, the doctrine of spiritual connections was
19 practiced between church members. It is not a practice whereby
20 church members interact or interfere with persons outside of the
21 church. As Justice Jackson wrote in his concurring opinion in
22 Prince v. Massachusetts, 321 U.S. 158, 177, 64 S.Ct. 438, 445, 88
23 L.Ed. 645 (1944): "Religious activities which concern only
24 members of the faith are and ought to be free- as nearly
25 absolutely free as anything can be."

26 Tort liability cannot be imposed for the practice of
27 spiritual connections unless the practice constitutes a clear-
28 and-present danger. See, State Ex. Rel Holcomb v. Armstrong, 39
29 Wn.2d 860, 239 P.2d 545 (1952). A compelling state interest must
30 be shown. See, Paul v. Watchtower Bible & Tract Soc. of New

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1 York, 819 F.2d 875, 883 (9th, 1987). In the present instance, no
2 such interest exists to permit such intrusion.

3 In these consolidated cases, plaintiffs allege that the
4 doctrine of spiritual connections caused spouses to stray as a
5 result of extra-marital relationships. This is exactly the type
6 of interest which this state no longer wishes to oversee. In
7 Irwin v. Coluccio, 32 Wn.App. 510, 648 P.2d 458 (Div. One, 1982),
8 the tort of criminal conversation with the spouse of another was
9 abolished. In Wyman v. Wallace, 15 Wn.App. 395, 549 P.2d 71
10 (Div. One, 1976), affirmed in 94 Wn.2d 99, 615 P.2d 452 (1980),
11 the tort of alienation of affections was abolished. Therein, the
12 court wrote at page 399:

13 We find so little possible social utility in
14 the action, when balanced against the social
15 and individual harm it can cause, that we
16 cannot justify it in contemporary society.
17 The action brings out in the plaintiff spouse
18 deceit, jealousy, and greed. A prime
19 motivation for bringing the action is often
20 the need of the plaintiff to vindicate his or
21 her position and justify one's own past
22 shortcomings. In many actions the plaintiff
23 sacrifices his or her own dignity to gain
24 revenge, spite and humiliate others, and
25 exact punishment.... Insofar as the
26 defendant is concerned, he or she often would
27 not have been in such circumstances had the
28 marriage been viable in the first instance
29 and strong reciprocal affection present
30 between the spouses. The straying spouse may
31 well have chanced upon the defendant as a
32 refuge from an empty marriage.

Since this state no longer even allows a cause of action for the
behavior alleged by plaintiffs to have resulted from spiritual
connections, it is clear that this is not the type of interest
which may be relied upon to interfere with a Constitutionally

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1 protected religious practice.

2 The doctrine of spiritual connections presents no inherent
3 danger. Each of the persons engaging in the practice of
4 spiritual connections was free to act as he or she wished. The
5 harm for which they now ask this court to interfere with
6 religious practices could just as easily have been avoided by
7 their use of the word "no."

8 Plaintiffs attempt to overcome the legal defect in their
9 claims by asserting that "mind control" prevented free exercise
10 of their will. However, no jurisdiction has found a sufficient
11 interest to establish an independent cause of action for
12 "brainwashing" based upon religious indoctrination. See, Lewis
13 v. Holy Spirit Ass'n for Unification, 589 F.Supp 10 (D. Mass.,
14 1983) and Meroni v. Holy Spirit Ass'n for Unification, 119 A.D.
15 200, 506 N.Y.S.2d 174 (1986). There is no religion which teaches
16 its members not to follow its doctrines. Plaintiffs' "mind
17 control" arguments, if accepted, would open a pandora's box
18 allowing examination of the extent to which all religions attempt
19 to influence their members.

20 Those who wish not to follow the doctrine of spiritual
21 connections, or any religious teaching, possess the same freedom
22 to act as those who wish to participate. The failure of the
23 former to exercise their rights does not justify interference
24 with the rights of the latter to exercise theirs.

25 3. Conclusion upon Preaching and Practice claims

26 None of the plaintiffs entitle a specific cause of action as
27 a preaching claim or a practice claim. Rather, they attempt to
28 use preaching and practice allegations as the basis for their
29 enumerated causes of action. Due to constitutional limitations,
30 these allegations cannot form the basis of any cause of action.

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1 Defendants, therefore, request that this court enter an order of
2 dismissal of all claims insofar as they are based upon the
3 preaching or practice of spiritual connections.

4 F. Infliction of Emotional Distress Claims

5 Claims have been made in the BUTLER SUIT on behalf of Tara
6 Brown, Troy Brown, Scott Lien, and Randy Lien for infliction of
7 emotional distress from exposure to religious indoctrination
8 allegedly designed to make them psychologically dependent upon
9 the church and Don Barnett. This claim is labelled "infliction
10 of emotional distress."

11 This same type of claim was made against the Unification
12 church in Meroni v. Holy Spirit Ass'n for Unification, 119 A.D.
13 200, 506 N.Y.S.2d 174 (1986). Therein, brainwashing claims were
14 made against the Unification church by the parents of a former
15 member who had committed suicide. The parents claimed that the
16 indoctrination of the church had caused emotional distress to
17 their son.

18 The court in that case dismissed the action for failure to
19 state a claim finding the alleged program of brainwashing was not
20 sufficiently outrageous to support an independent action for
21 infliction of emotional distress. In ruling, the court deemed
22 true allegations that the former member was subjected to intense
23 fasting, a program of chanting, a heavy and protracted program of
24 exercises, and highly programmed behavioral control techniques.
25 However, the court recognized at page 177:

26 The conduct of the defendant Unification
27 Church as described in the plaintiff's
28 amended complaint and bill of particulars,
29 which the plaintiff seeks to classify as
30 tortious, constitutes common and accepted
religious proselytizing practices....

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1 In the present case, plaintiffs attempt to make exactly the same
2 claim as that attempted in Meroni, and point to indoctrination
3 techniques which are far less intense by comparison.

4 As in Meroni, the infliction of emotional distress by
5 religious indoctrination would be independently actionable
6 "...only where the conduct has been so outrageous in character,
7 and so extreme in degree, as to go beyond all possible bounds of
8 decency, and to be regarded as atrocious and utterly intolerable
9 in a civilized community." Grimsby v. Samson, 85 Wn.2d 52, 59,
10 530 P.2d 291 (1975).

11 In the present case, plaintiffs allege that they were
12 subjected to "repetitive sermons, submission practices,
13 indoctrination, retreats, counseling sessions and psychological
14 techniques that were designed to and did diminish their cognitive
15 functions." These same allegations could be made about the
16 Catholic church or any other religion. Clearly, these are not
17 the type of practices which would justify interference with
18 religious freedom. Therefore, the claim in the BUTLER SUIT for
19 infliction of emotional distress must be dismissed.

20 G. Alienation of Affections

21 The cause of action for alienation of affections has been
22 abolished in Washington. Wyman v. Wallace, 94 Wn.2d 99, 615 P.2d
23 452 (1980). Consequently, none of the plaintiffs have entitled
24 their causes of action as alienation of affection. However,
25 inquiry does not end here. This court is not bound by the labels
26 which plaintiffs give to their causes of action. It may treat
27 them as what they really are. As the court wrote in Lund v.
28 Caple, 100 Wn.2d 739, 745, 675 P.2d 226 (1984): "...[T]he
29 policies underlying Wyman require us to go beyond the mere labels
30 on appellant's claim and consider the nature of his claims."

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1 In Gazija v. Nicholas Jerns Co., 86 Wn.2d 215, 543 P.2d 333
2 (1975), the court was called upon to determine whether an action
3 was stated actually in Tort or Contract. Therein, the court
4 wrote at page 218:

5 Whether an action sounds in contract or tort
6 is determined from the pleadings and
7 complaint as a whole and the evidence relied
8 upon, not by particular words and
9 allegations, the form adopted by the pleader,
10 what the pleader calls it

11 The nature of a claim is not changed by the name given to it by
12 the pleader.

13 The prohibition upon alienation of affection actions extends
14 to situations in which a spouse claims consortium damages arising
15 from the extra-marital affair of the other spouse. See, Lund v.
16 Caple, 100 Wn.2d 739, 675 P.2d 226 (1984). In that case, a
17 spouse attempted to sue for the extra-marital affair between his
18 wife and a pastor. The spouse sued without joining the alienated
19 spouse, and the court held that the cause of action was,
20 therefore, really just an alienation of affections claim.

21 The claims of Maureen Jorgensen in the JORGENSEN CASE for
22 destruction of her marriage and the claims of Dee Chabot in the
23 EHRlich CASE for destruction of her marriage fall directly within
24 the holding in Lund v. Caple, 100 Wn.2d 739, 675 P.2d 226 (1984).

25 1. Jorgensen claims

26 Maureen Jorgensen alleges that the doctrine of spiritual
27 connections destroyed her marriage to Dennis Pangburn. These
28 allegations are incorporated into each of her claims against the
29 Barnetts in the JORGENSEN CASE for 1) Constructive Trust; 2)
30 Breach of Contract; and 3) Infliction of Emotional Distress.
31 However, Dennis Pangburn is not a party therein, and he does not

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1 assert a claim. As stated in Lund, that portion of her claims
2 based upon her marital breakup are actually alienation of
3 affection claims and may not be stated. Partial dismissal of her
4 claims is, therefore, appropriate.

5 2. Dee Chabot claims

6 Dee Chabot bases all of her claims in the EHRLICH CASE,
7 other than wrongful disfellowship and defamation, upon the
8 breakup of her marriage. These causes of action are labelled as
9 Outrage, Counselor Malpractice, Negligent Counselling, Pastoral
10 Malpractice, and Destruction of Parent-Child Relationship.
11 However, her alienated spouse, Grant Chabot, is not a party
12 therein and does not assert a claim. Consistent with Lund, all
13 of these claims must be dismissed, because they are simply
14 alienation of affection claims.

15 3. Husband Claims for Marital Disharmony

16 In the BUTLER CASE and the EHRLICH CASE, the claims of
17 various husbands and wives are made arising out of the extra-
18 marital affairs in which their respective spouses engaged. It is
19 anticipated that these spouses shall attempt to distinguish the
20 Lund decision on the basis that they do not attempt to sue alone.

21 In Lund v. Caple, 100 Wn.2d 739, 675 P.2d 226 (1984), a
22 lone spouse attempted to sue for marital breakup allegedly
23 arising from the extra-marital affair of his spouse. The court
24 held at page 747 that his attempt to sue for the extramarital
25 relationship without his spouse was in essence an action for
26 alienation of affections. However, this decision cannot be
27 distinguished simply by joinder of the claims of the alienated
28 spouse.

29 The court in that case expressly ruled that the failure to
30 join the alienated spouse was not the basis of dismissal. id at

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1 743-744. It wrote at page 747: "His wife did not join the
2 lawsuit, which alone would not bar the action, but does indicate
3 at least the possibility of a vengeful motive or a so-called
4 'forced sale' on the part of a wronged husband." The failure to
5 join the alienated spouse in that case was only a factor
6 considered by the court in determining that the claims in that
7 case were really for alienation of affection.

8 In determining whether the gravamen of a claim is really for
9 alienation of affections, the court must look to see if the
10 elements of the tort of an alienation of affections are present.
11 *id.* at 745. These elements are:

- 12 (1) an existing marriage relation; (2)
13 wrongful interference with the relationship
14 by a third person; (3) a loss of affection or
15 consortium; and (4) a causal connection
16 between the third party's conduct and the
17 loss.

18 *id.* at 745, quoting Carrieri v. Bush, 69 Wn.2d 536, 542, 419 P.2d
19 132 (1966).

20 In contrast, a true loss of consortium claim is based upon
21 impairment of the person of the other spouse. The Supreme Court
22 first recognized a wife's action for loss of consortium on the
23 same day that it handed down the Wyman decision which abolished
24 actions for alienation of affection. See, Lundgren v. Whitney's
25 Inc., 94 Wn.2d 91, 614 P.2d 1272 (1980). Therein, the court
26 discussed the nature of a true consortium claim which is based on
27 physical injury to the impaired spouse.

28 a. Michael Ehrlich claims

29 With the exception of claims for wrongful disfellowship and
30 defamation, Michael Ehrlich alleges his claims in the EHRlich
31 CASE based upon the extra-marital relationship between his wife

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1 and Ralph Alskog. These claims are labelled as 1) Outrage, 2)
2 Counselor Malpractice, 3) Negligent Counselling, 4) Pastoral
3 Malpractice, and 5) Loss of Consortium.

4 b. Ronald Kitchell claims

5 In the EHRlich CASE, Ronald Kitchell states exactly the same
6 type of claims as Michael Ehrlich. With the exception of claims
7 for wrongful disfellowship and defamation, his claims for 1)
8 Outrage, 2) Counselor Malpractice, 3) Negligent Counseling, 4)
9 Pastoral Malpractice, 5) Loss of Consortium, and 6) Destruction
10 of Parent-Child Relationship all arise from his wife's alleged
11 involvement with unnamed spiritual connections. Since all of
12 these claims are really based upon the alleged alienation of his
13 wife, they must be dismissed.

14 c. Butler, Brown, and Hall claims

15 Steven Butler, Lyle Brown, and Donald Hall each attempt to
16 state alienation of affection claims under the guise of different
17 labels in the BUTLER CASE. With the exception of claims for
18 defamation and wrongful disfellowship, each allege causes of
19 action for 1) Outrage and 2) Loss of Consortium arising out of
20 the relationship between their respective wives and Don Barnett.

21 d. Conclusion upon Spousal Claims for Marital
22 Disharmony

23 None of these plaintiffs state a claim based upon a physical
24 impairment to their spouse. Each of their claims are based upon
25 1) Their marital relationship, 2) the interference with this
26 relationship by a third person, 3) the loss of affection or
27 consortium of their respective wife, and 4) the causal relation
28 between the interference with their marriage and their alleged
29 damage. These are the precise elements of an action for
30 alienation of affections. See, Carrieri v. Bush, 69 Wn.2d 536,

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1 419 P.2d 132 (1966).

2 It is irrelevant that each of these claimants joined their
3 claims to that of their spouse. Admittedly, one factor
4 considered in the Lund case is not present. However, this one
5 factor is not determinative of whether or not a particular claim
6 is essentially one for alienation of affections. Consistent with
7 the decision in Lund, this court must look beyond the labels
8 given to the claims and dismiss them since they are really based
9 upon alienation of affections.

10 4. Wife Claims for Loss of Consortium

11 In the BUTLER CASE, Kathy Butler, Christine Hall, and Sandy
12 Brown each allege that their relationships with Don Barnett
13 caused them a loss of consortium. In the EHRLICH CASE, Sandy
14 Ehrlich and Catherine Kitchell allege that relationships with
15 their respective spiritual connections caused them a loss of
16 consortium. These allegations fail to state a claim for loss of
17 consortium.

18 A wife's action for loss of consortium was first recognized
19 in Lundgren v. Whitney's Inc., 94 Wn.2d 91, 614 P.2d 1272 (1980).
20 Therein, the court held that a wife may state a consortium claim
21 for physical injury to her husband.

22 Each of these women state claims for alleged injury to
23 themselves. Nowhere, is there an allegation of physical injury
24 to their husband. Consequently, no loss of consortium claim is
25 stated.

26 5. Loss of Parental Consortium Claims

27 A cause of action for loss of parental consortium was first
28 recognized in Washington in Ueland v. Pengo Hydra-Pull Corp., 103
29 Wn.2d 131, 691 P.2d 190 (1984). Therein an action was
30 established for a child's claim for loss of a parent's love,

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(206) 386-5555

1 care, companionship and guidance arising out of physical injury
2 to the parent.

3 a. Claims of Sybil Lemke

4 A child's consortium claim arises from injury to a parent.
5 In recognizing the cause of action, the court in Ueland, wrote at
6 page 140: "Accordingly, we hold that a child has an independent
7 cause of action for loss of the love, care, companionship and
8 guidance of a parent tortiously injured by a third party."

9 Sybil Lemke's claim for loss of consortium is not based upon
10 any alleged injury to her parent, Larry Lemke. She attempts to
11 claim loss of consortium based upon the alleged acts of Robert
12 Howerton toward her. In the absence of alleged injury to her
13 parent, she fails to state a claim for loss of parental
14 consortium, even assuming her allegations to be true.

15 b. Remaining Children Consortium Claims

16 Washington has not expanded such an action to situations in
17 which a child claims that a parent was enticed away. The weight
18 of authority in other jurisdictions disallows recovery to a child
19 for alienation of affections caused by enticement of the parent
20 and abandonment of the child. Arkansas, Mode v. Barnett, 361
21 S.W.2d 525 (1962); California, Rudley v. Tobias, 84 Cal. App.2d
22 454, 190 P.2d 984 (1948); Connecticut, Taylor v. Keefe, 56 A.2d
23 768 (1947); District of Columbia McMillan v. Taylor, 160 F.2d
24 221 (D.C. Cir. 1949); Hawaii, Hunt v. Chang, 594 P.2d 118
25 (1979); Iowa, Brookley v. Ranson, 376 F. Supp. 195 (N.D. Iowa
26 1974), and Wheeler v. Luhman, 305 N.W. 2d 466 (Iowa 1981);
27 Kansas, Whitcomb v. Huffington, 304 P.2d 465 (1956);
28 Massachusetts, Nelson v. Richwagen, 95 N.E.2d 545 (1950);
29 Michigan, Miller v. Kretschmer, 132 N.W.2d 141 (1965); Missouri,
30 Hale v. Buckner, 615 S.W.2d 97 (Mo.App. 1981); New Jersey,

31 BARNETTS' BRIEF IN SUPPORT
32 1500\4789\801 - Page: 30

Evans, Craven & Luckie, P.S.

LAWYERS

STATE AND COLUMBIA CENTER, 701 5th AVENUE
SEATTLE, WASHINGTON 98104

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1 Kleinow v. Ameika, 88 A.2d 31 (1952); New York, Morrow v.
2 Yanantuona, 152 Misc. 134, 273 N.Y.S. 912 (Sup. Ct. 1934); North
3 Carolina, Henson v. Thomas, 56 S.E.2d 432, 12 A.L.R.2d 1171
4 (1949) and Roth v. Parsons, 192 S.E.2d 659 (1973); Ohio, Kane v.
5 Quigley, 203 N.E.2d 338 (1964); Oklahoma, Nash v. Baker, 522
6 P.2d 1335 (Okla.App. 1974); Rhode Island, Zarella v. Robinson,
7 492 A.2d 833 (1985); Texas, Garza v. Garza, 209 S.W.2d 1012
8 (Tex. Civ. App. 1948); West Virginia, Wallace v. Wallace, 184
9 S.E.2d 327 (1971); Wisconsin, Scholberg v. Itnyre, 58 N.W.2d
10 698 (1953). In light of the considerations enunciated by the
11 court in Wyman v. Wallace, 15 Wn.App. 395, 549 P.2d 71 (Div. One,
12 1976), affirmed in 94 Wn.2d 99, 615 P.2d 452 (1980) abolishing
13 actions for alienation of spousal affections, these cases present
14 compelling authority that an action for alienation of parental
15 affections may not be stated in this jurisdiction subsequent to
16 the Wyman decision.

17 Claims have been made in the EHRlich SUIT on behalf of
18 Shawna Chabot, Michael Chabot, Nicholas Chabot, and Wendy
19 Kitchell arising out of their respective parents' extra-marital
20 affairs. Claims have also been made in the BUTLER SUIT on behalf
21 of Scott Lien, Randy Lien, Tara Brown, and Troy Brown arising out
22 of their respective parents extra-marital affairs. Each allege
23 that these affairs caused family disharmony. Even assuming the
24 truth of these allegations, enticement does not form the basis of
25 a child consortium claim. Such an action is stated only when a
26 parent is physically impaired.

27 Consistent with the decision in Lund, this court must look
28 beyond the labels given to the claims and dismiss them since they
29 are, in essence, claims for alienation of parental affections
30 which is heretofore unrecognized in Washington and contrary to
31 BARNETTS' BRIEF IN SUPPORT
32 1500\4789\801 - Page: 31

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SEATTLE, WASHINGTON 98104

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1 the weight of authority in other jurisdictions.

2 6. Destruction of Parent/Child relationship

3 Catherine and Ronald Kitchell have attempted to assert
4 claims for damage to their relationship with their children.
5 These claims allegedly arise from Catherine Kitchell's
6 involvement with spiritual connections.

7 Heretofore, claims for damage to a parent/child relationship
8 have been specially recognized for physical injury or death to
9 the child. RCW 4.28.010. An action has also been allowed for
10 malicious alienation of a child in Strode v. Gleason, 9 Wn.App.
11 13, 510 P.2d 250 (Div. One, 1973), but the current viability of
12 such a claim is questionable in view of the more recent decision
13 in Wyman v. Wallace, 15 Wn.App. 395, 549 P.2d 71 (Div. One,
14 1976), affirmed in 94 Wn.2d 99, 615 P.2d 452 (1980). In any
15 event, no authority can be found which allows a parent to state a
16 cause of action for damage to a parent/child relationship arising
17 from their own alleged injury.

18 In short, the Kitchells attempt to state a cause of action
19 for family disharmony based upon their own voluntary involvement
20 in the beliefs and practices of the Community Chapel and Bible
21 Training Center. For the reasons previously stated herein,
22 Constitutional protections prohibit establishment of a new cause
23 of action which the Kitchells attempt to assert.

24 VI. CONCLUSION

25 Defendants Barnett urge the court to dismiss plaintiffs'
26 claims which are premised on Constitutionally prohibited invasion
27 of religious rights and freedoms, and which therefore fail to
28 state causes of action upon which relief can be granted.

29 The Barnetts further urge dismissal of claims which fail to
30 state recognized causes of action under Washington law.

31 BARNETTS' BRIEF IN SUPPORT
32 1500\4789\801 - Page: 32

Evans, Craven & Lackie, P.S.

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SEATTLE, WASHINGTON 98104

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1 In summary, defendants Barnett request dismissal of the
2 claims against them as follows:

3 1. That all claims in the BUTLER SUIT, EHRLICH SUIT, and
4 JORGENSEN SUIT be dismissed insofar as they are based upon
5 the preaching or practice of spiritual connections.

6 2. That individual claims in the BUTLER SUIT be dismissed in
7 their entirety as follows:

8 A. That claims made by Kathy Butler, Sandy Brown, and
9 Christine Hall for 1) Counselor Malpractice; 2)
10 Ministerial Malpractice; 3) Wrongful disfellowship; and
11 4) Loss of Consortium be dismissed.

12 B. That claims made by Steven Butler, Lyle Brown, and
13 Donald Hall for 1) Outrage; 2) Wrongful disfellowship;
14 and 3) Loss of consortium be dismissed.

15 C. That claims made on behalf of Scott Lien, Randy Lien,
16 Tara Brown, and Troy Brown for 1) Wrongful
17 disfellowship; 2) Infliction of Emotional Distress; and
18 3) Loss of parental consortium be dismissed.

19 3. That individual claims in the EHRLICH SUIT be dismissed in
20 their entirety as follows:

21 A. That claims made by Sandy Ehrlich for 1) Counselor
22 malpractice; 2) Ministerial malpractice; 3) Wrongful
23 disfellowship; and 4) Loss of Consortium be dismissed.

24 B. That claims of Michael Ehrlich for 1) Negligent
25 supervision of other defendants; 2) Outrage; 3)
26 Counselor malpractice; 4) Negligent counselling; 5)
27 Ministerial malpractice; 6) Wrongful disfellowship; and
28 7) Loss of consortium be dismissed.

29 C. That claims of Catherine Kitchell for 1) Counselor
30 malpractice; 2) Ministerial malpractice; 3) Wrongful
31 disfellowship; 4) Loss of Consortium; and 5) Damage to
32 Parent/Child relationship be dismissed.

D. That the claims of Ronald Kitchell for 1) Negligent
supervision of other defendants; 2) Outrage; 3)

BARNETTS' BRIEF IN SUPPORT
1500\4789\801 - Page: 33

Evans, Craven & Lachic, P.S.
LAWYERS

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SEATTLE, WASHINGTON 98101

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1 Counselor malpractice; 4) Negligent counselling; 5)
2 Ministerial malpractice; 6) Wrongful disfellowship; 7)
3 Loss of consortium; and 8) Destruction of Parent/Child
4 relationship be dismissed.

5 E. That claims of Wendy Kitchell, Sybil Lemke, Shawna
6 Chabot, Michael Chabot, and Nicholas Chabot for 1)
7 Counselor malpractice; 2) Ministerial malpractice; 3)
8 Wrongful disfellowship; and 4) Children's loss of
9 consortium be dismissed.

10 F. That claims of Larry Lemke for 1) Counselor
11 malpractice; 2) Ministerial malpractice; and 3)
12 Wrongful disfellowship be dismissed.

13 G. That claims of Dee Chabot for 1) Negligent supervision
14 of other defendants; 2) Outrage; 3) Counselor
15 malpractice; 4) Negligent counseling; 5) Ministerial
16 malpractice; 6) Wrongful disfellowship; and 7)
17 Destruction of parent/child relationship be dismissed.

18 4. That all claims in the JORGENSEN SUIT be dismissed insofar
19 as they are based upon the breakup of her marriage to Dennis
20 Pangburn.

21 DATED this 23rd day of February, 1989.

22 EVANS CRAVEN & LACKIE, P.S.

23 By Tim Donaldson
24 TIM DONALDSON
25 Attorneys for the Barnetts

26
27
28
29
30
31 BARNETTS' BRIEF IN SUPPORT
32 1500\4789\801 - Page: 34

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5th AVENUE
SEATTLE, WASHINGTON 98104

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FILED

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SUPERIOR COURT CLERK
CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et. ux.,)
et. al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et. ux.,)
et. al.,)

Defendants,)
Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

SANDY EHRLICH, et. ux., et. al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et. ux., et. al.,)

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et. al.,)

NOTE FOR HEARING - 1
BARNETT MO FOR P.DISMISSAL
15004789\NFD.1

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

NOTE FOR HEARING

BARNETT MOTION FOR
PARTIAL DISMISSAL

(Clerk's Action Required)

Evans, Craven & Lachic, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 5th AVENUE
SEATTLE, WASHINGTON 98104

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[Handwritten initials]

Defendants.)


TO: THE CLERK OF COURT, and to all counsel on the attached list:

PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the Civil Motion Calendar.

DATE OF HEARING: FRIDAY, MARCH 17, 1989
TIME OF HEARING: 2:30 P.M.
PLACE OF HEARING: COURTROOM OF HONORABLE JOHN RILEY
E845 KING COUNTY COURTHOUSE
SEATTLE, WA
NATURE OF MOTION: BARNETT MOTION FOR PARTIAL
DISMISSAL

DATED: February 23, 1989

EVANS CRAVEN & LACKIE, P.S.
3100 Columbia Center
Seattle, WA 98104
386-5555

By 
TIM DONALDSON
Attorneys for Defendants
Barnett

OTHER PARTIES REQUIRING NOTICE:

See attached list of counsel

NOTE FOR HEARING - 2
BARNETT MO FOR P.DISMISSAL
15004789\NFD.1

Evans, Craven & Lackie, P.S.
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ATTORNEY LIST

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KING COUNTY CONSOLIDATED**

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7 Robert Rohan/J. Ronald Sims
8 Schweppe Krug & Taussend
9 800 Waterfront Place One
10 1011 Western Avenue
11 Seattle WA 98104
223-1600
Attorney for CCBTC

12 George Kargianis/Jeff Campiche
13 Kargianis Austin & Erickson
14 701 Fifth Avenue, #4700
15 Seattle, WA 98104
624-5370
16 Attorneys for Plf. Butler, Brown & Hall

17 Richard Adler/Ann Durham
18 Adler Giersch & Read
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22 Messina & Duffy
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24 Tacoma, WA 98409
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25 Co-Counsel for Plf. Ehrlich, et al.

26 Michael W. Bugni
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29 11320 Roosevelt Way NE
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30 Attorney for Def. Howerton
31
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Evans, Craven & Lackie, P.S.

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14 Co-Counsel for Def. Alskog

15 Bruce Winchell
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17 3800 Rainier Bank Tower
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20 Attorney for American Casualty

21 John S. Glassman
22 420 Old City Hall
23 625 Commerce St.
24 Tacoma, WA 98402
25 572-2746
26 Attorney for CCBTC

27 Don M. Gulliford
28 2200 - 112th Ave. NE
29 Bellevue, WA 98004
30 462-4000
31 Attorney for St. Paul Ins. Co.

32 Alvin D. Mayhew, Jr.
1016 Main Street
Sumner, WA 98390
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Attorney for Third Party
Defendant Gary Lien

Seattle Office:

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Seattle, WA 98104 Phone: 223-4770

Evans, Craven & Lackie, P.S.

LAWYERS

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SEATTLE, WASHINGTON 98104

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FILED

KING COUNTY, WASHINGTON

FEB 24 1989

SUPERIOR COURT CLERK
MELISSA R. KEATING
DEPUTY

CIVIL TRACK ONE
THE HONORABLE JOHN RILEY

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et vir, et al.,
Plaintiffs,

v.

DONALD LEE BARNETT, et ux., et al.,
Defendants.

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8 ✓

ORDER APPROVING
CONSOLIDATION OF
THE ADDITIONAL PETERSON
LITIGATION

SANDY EHRLICH, et vir, et al.,
Plaintiffs,

v.

RALPH ALSKOG, et ux., et al.,
Defendants.

NO. 86-2-18429-5

MAUREEN PANGBORNE JORGENSEN,
Plaintiff,

v.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,
Defendants.

NO. ²⁶³⁶⁰⁻⁸
~~86-2-26860-8~~

ORDER APPROVING CONSOLIDATION
OF PETERSON LITIGATION - 1
consolidate.ord

CIVIL TRACK I

ORIGINAL

LAW OFFICES OF
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P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

270
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1 ST. PAUL FIRE AND MARINE INSURANCE)
2 COMPANY, a foreign corporation,)

3 Plaintiff,)

4 v.)

5 KATHY LEE BUTLER, et vir, et al.,)

6 Defendants.)

NO. 88-2-18321-0

7 CARL A. PETERSON,)

8 Plaintiff,)

9 v.)

10 WAYNE SNOEY, et ux., et al.,)

11 Defendants.)

NO. 87-2-14919-6

12
13 THIS MATTER having come on regularly for presentation and
14 hearing before the undersigned Judge of the above-entitled court
15 on February 23, 1989, pursuant to the motion to consolidate the
16 litigation filed in King County Superior Court entitled Carl A.
17 Peterson v. Community Church and Bible Training Center, Barnett,
18 Snoey, et al., Cause 87-2-14919-6, with the declaratory judgment
19 of the plaintiff St. Paul Fire and Marine Insurance Company
20 previously consolidated with the underlying consolidated cases
21 shown in the above caption, and the matter not being resisted by
22 counsel, and it appearing to the court that such consolidation is
23
24

ORDER APPROVING CONSOLIDATION
OF PETERSON LITIGATION - 2
consolidate.ord

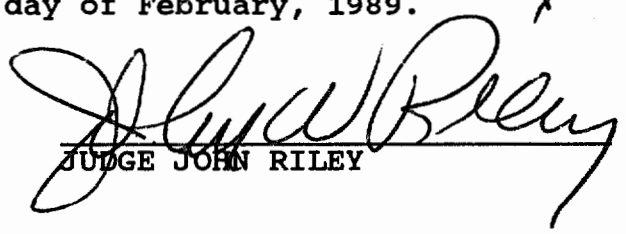
LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES
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P.O. Box 548, Bellevue, WA 98009-0548
Bellevue, WA 98004
(206) 462-4000

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appropriate and would further judicial economy and the interests of justice; now, therefore, it is hereby

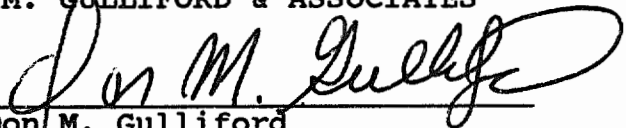
ORDERED, ADJUDGED and DECREED that the litigation filed in King County Superior Court entitled Carl A. Peterson v. Community Church and Bible Training Center, Barnett, Snoey, et al., Cause 87-2-14919-6, is consolidated with the consolidated cases herein under the above consolidated Civil Track One cause number for purposes of discovery at this time.

DONE and DATED this 23rd day of February, 1989.


JUDGE JOHN RILEY

PRESENTED BY:

LAW OFFICES OF
DON M. GULLIFORD & ASSOCIATES

BY 
Don M. Gulliford
Of Attorneys for Plaintiff St. Paul
Fire and Marine Insurance Company

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

KATHY LEE BUTLER, et vir,
et al,

Plaintiffs,

vs.

DONALD LEE BARNETT, et ux,
et al,

Defendants.

No. 86-2-18176-8 ✓

CONSOLIDATED WITH
88-2-04615-8

NOTICE OF WITHDRAWAL AND
CONSENT TO SUBSTITUTION
OF COUNSEL

SANDY EHRLICH, et vir, et al,

Plaintiffs,

vs.

RALPH ALSKOG, et ux, et al,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

vs.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al,

Defendants.

TO: THE CLERK OF THE COURT, and
TO: ALL PARTIES AND THEIR COUNSEL

PLEASE TAKE NOTICE that MICHAEL W. BUGNI, hereby with-
draws as Attorney of Record for the above-named Defendants

WITHDRAWAL & SUBSTITUTION - 1

CIVIL TRACK I

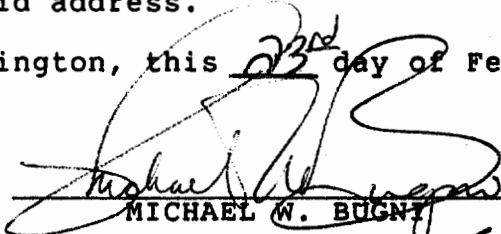
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MOREN, CORNELL & HANSEN, P.S.
ATTORNEYS AT LAW
11320 ROOSEVELT WAY NORTHEAST
SEATTLE, WASHINGTON 98125
(206) 365-5500

271

1 Howerton, and consents to the substitution of KEITH A. BOLTON,
2 1100 Norton Bldg., 801 2nd Ave., Seattle, WA 98104, as attorney
3 for Defendants Howerton, and all future pleadings in this matter
4 should be directed to him at said address.

5 DATED at Seattle, Washington, this ^{23rd} day of February,
6 1989.

7 
8 MICHAEL W. BUGNI

9 
10 KEITH A. BOLTON

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25 WITHDRAWAL & SUBSTITUTION - 2

MOREN, CORNELL & HANSEN, P.S.
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SEATTLE, WASHINGTON 98125
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FILED

Civil Track I
The Honorable John Riley

FEB 24 12 48 PM '89

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

KATHY LEE BUTLER, et vir.,)
et al.,)
Plaintiffs,)

Consolidated
No. 86-2-18176-8 ✓

v.)

No. 86-2-18176-8

DONALD LEE BARNETT, et ux.,)
et al.,)
Defendants.)

AGREED ORDER RE
JORGENSEN'S MOTION TO
DISQUALIFY

SANDY EHRLICH, et vir., et)
al.,)
Plaintiffs,)

v.)

No. 86-2-18429-5

RALPH ALSKOG, et ux., et)
al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)

v.)

No. 86-2-26360-8

COMMUNITY CHAPEL AND BIBLE)

AGREED ORDER RE JORGENSEN'S
MOTION TO DISQUALIFY - 1

272
LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

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TRAINING CENTER, et al.,)
)
Defendants.)

AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
Pennsylvania corporation,)
)
Plaintiff,)

v.)

No. 88-2-04615-8

KATHY LEE BUTLER, et al.,)
)
Defendants.)

ST. PAUL FIRE AND MARINE)
INSURANCE COMPANY, a foreign)
corporation,)
)
Plaintiff,)

v.)

No. 88-2-18321-0

KATHY LEE BUTLER, et al.,)
)
Defendants.)

Plaintiff Maureen Jorgensen, by her attorneys Preston, Thorgrimson, Ellis & Holman and Susan Delanty Jones, and defendant Community Chapel & Bible Training Center (CCBTC), by its attorneys Schweppe, Krug & Tausend, P.S. and Robert J. Rohan, stipulate and agree as follows:

1. Robert Beezer, a former partner at Schweppe, Krug, Tausend & Beezer, represented Jorgensen's father, Thomas I'Anson, in 1975, in a lawsuit brought by I'Anson, against Jorgensen. The issue in that lawsuit, I'Anson v. I'Anson, arose from the events surrounding Jorgensen's gift or loan of a large

AGREED ORDER RE JORGENSEN'S
MOTION TO DISQUALIFY - 2

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

1 sum of money to CCBTC. Those same events give rise to some of
2 Jorgensen's claims in this lawsuit.

3 2. Robert Beezer has not practiced with Schweppe, Krug,
4 Tausend & Beezer since he was sworn in as a judge of the Ninth
5 Circuit Court of Appeals in May 1984.

6 3. After receiving consent from Thomas I'Anson in 1986,
7 Schweppe, Krug & Tausend furnished Jorgensen with all files in
8 the firm's possession relating to I'Anson v. I'Anson. Some or
9 all of those files were subsequently produced by Jorgensen to
10 CCBTC's former counsel.

11 4. By January 1987, Schweppe, Krug & Tausend had
12 destroyed all its files relating to I'Anson v. I'Anson. All
13 files were destroyed in the ordinary course of business.
EXCEPT SOME COPIES OF DOCUMENTS FURNISHED JORGENSEN.

14 5. Schweppe, Krug & Tausend did not represent CCBTC in
15 any matter until August 8, 1988.

16 6. No one from Schweppe, Krug & Tausend has talked with
17 Robert Beezer about his representation of Thomas I'Anson.
18 Schweppe, Krug & Tausend agrees that no one from the firm will
19 discuss that matter with Robert Beezer prior to trial or
20 settlement of this case.

21 7. Jorgensen agrees to the ^{DENIAL}~~dismissal~~ of its motion to
22 disqualify Schweppe, Krug & Tausend as attorneys for defendant
23 CCBTC.

24
25
26
AGREED ORDER RE JORGENSEN'S
MOTION TO DISQUALIFY - 3

DATED this 23rd day of February, 1989.

PRESTON, THORGRIMSON,
ELLIS & HOLMAN

SCHWEPPE, KRUG &
TAUSEND, P.S.

By Susan Delanty Jones
Susan Delanty Jones
Attorneys for Plaintiff
Maureen P. Jorgensen

By Robert J. Rohan
Robert J. Rohan
Attorneys for Defendant
Community Chapel & Bible
Training Center

ORDER

THIS MATTER come before the court on the stipulation of plaintiff Maureen Jorgensen and defendant Community Chapel & Bible Training Center, by their undersigned attorneys. The Court reviewed the stipulation, heard the argument of counsel, and determined that the following Order should be entered. Now, therefore, it is hereby

ORDERED that the motion of Maureen Jorgensen to disqualify the law firm of Schweppe, Krug & Tausend, P.S., is denied. It is further

ORDERED that, prior to trial or settlement of this case, no person now or hereafter associated with Schweppe, Krug & Tausend, P.S., will discuss the firm's representation of Thomas I'Anson with Hon. Robert Beezer.

DATED this 23rd day of February, 1989.

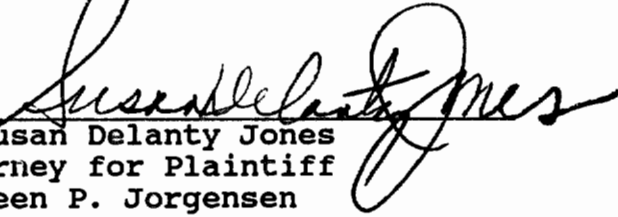
John W. Riley
Judge John Riley

AGREED ORDER RE JORGENSEN'S
MOTION TO DISQUALIFY - 4

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Approved and presented by:

PRESTON, THORGRIMSON,
ELLIS & HOLMAN

By 
Susan Delanty Jones
Attorney for Plaintiff
Maureen P. Jorgensen

Approved; notice of
presentation waived:

SCHWEPPE, KRUG &
TAUSEND, P.S.

By 
Robert J. Rohan
Attorneys for Defendant
Community Chapel & Bible Training
Center

AGREED ORDER RE JORGENSEN'S
MOTION TO DISQUALIFY - 5

LAW OFFICES OF
PRESTON, THORGRIMSON, ELLIS & HOLMAN
5400 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104-7011
(206) 623-7580

FILED

FEB 24 10 58 AM '83

COURT OF WASHINGTON

CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et. ux.,)
et. al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et. ux.,)
et. al.,)

Defendants,)

Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

SANDY EHRLICH, et. ux., et. al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et. ux., et. al.,)

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et. al.,)

DISMISSAL MOTION : 1
15004789.400

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

BARNETT MOTION FOR PARTIAL
DISMISSAL

Evans, Craven & Lach 273

LAWYERS

SUITE 3100 COLUMBIA CENTER 701 5TH AVENUE
SEATTLE, WASHINGTON 98101

(206) 386-5555

1 Defendants.)
 2 _____)
 3 AMERICAN CASUALTY COMPANY OF)
 4 READING PENNSYLVANIA, a)
 5 Pennsylvania corporation,)
 6 Plaintiff,)
 7 v.)
 8 KATHY LEE BUTLER, et al.,)
 9 Defendants.)
 10 _____)
 11 ST. PAUL FIRE AND MARINE)
 12 INSURANCE COMPANY, a foreign)
 13 corporation,)
 14 Plaintiff,)
 15 v.)
 16 KATHY LEE BUTLER, et al.,)
 17 Defendants.)
 18 _____)

- 19 1. Relief Requested. Defendants Barnett move this court
 20 for partial dismissal of plaintiffs' claims against them in the
 21 above-entitled consolidated actions.
- 22 2. Statement of Facts. Alleged facts are asserted in
 23 plaintiffs' amended complaints filed herein.
- 24 3. Statement of Issues. Various claims asserted by the
 25 plaintiffs herein are prohibited by Constitutional protections,
 26 and various claims are not recognized causes of action under
 27 Washington law.
- 28 4. Evidence Relied Upon. Plaintiffs' amended complaints
 29 filed herein. Copies of these complaints are annexed to the
 30 Judge's courtesy copy.

31 DISMISSAL MOTION : 2
 32 15004789.400

Evans, Craven & Lackie, P.S.
 LAWYERS
 SUITE 3100 COLUMBIA CENTER 701 5th AVENUE
 SEATTLE, WASHINGTON 98104
 (206) 386-5555

PROPOSED

CIVIL TRACK ONE
THE HONORABLE JOHN W. RILEY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHY LEE BUTLER, et. ux.,)
et. al.,)

Plaintiffs,)

v.)

DONALD LEE BARNETT, et. ux.,)
et. al.,)

Defendants,)
Third Party Plaintiffs,)

v.)

GARY LIEN,)

Third Party Defendant.)

SANDY EHRLICH, et. ux., et. al.,)

Plaintiffs,)

v.)

RALPH ALSKOG, et. ux., et. al.,)

Defendants.)

MAUREEN P. JORGENSEN,)

Plaintiff,)

v.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et. al.,)

DISMISSAL ORDER : 1
15004789.50

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8

ORDER ON BARNETT MOTION FOR
PARTIAL DISMISSAL FOR FAILURE
TO STATE A CLAIM

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER, 701 - 5TH AVENUE
SEATTLE, WASHINGTON 98104

(206) 386-5555

1 Defendants.)
2 _____)

3 I. HEARING

4 1.1 Date. March 17, 1989.

5 1.2 Appearances. Plaintiffs, Butler, Brown, and Hall, appeared
6 through their attorneys, Kargianis, Austin & Erickson, by _____
7 _____. Plaintiffs, Ehrlich, Chabot, Kitchell, and Lemke,
8 appeared through their attorneys, Adler, Giersch & Read, by _____

9 _____. Plaintiff Jorgensen appeared through her
10 attorneys, Preston, Thorgrimson, Ellis & Holman, by _____

11 _____. Plaintiff American Casualty Company appeared through its
12 counsel, Lane, Powell, Moss & Miller, by _____.

13 Defendants, Don and Barbara Barnett, appeared through their
14 attorneys, Evans, Craven & Lackie, P.S., by James S. Craven.

15 Defendant, Community Chapel and Bible Training Center, appeared
16 through its attorneys, Schweppe, Krug & Tausend P.S. by _____

17 _____. Defendants Alskog, appeared through their
18 attorneys, Rosenow, Hale & Johnson, by _____.

19 Defendants Howerton appeared through their attorneys, Moren,
20 Cornell & Hansen, by _____.

21 Intervenor, St. Paul Fire Insurance, appeared through its attorney, Don Gulliford.

22 1.3 Notice. Notice of hearing was given at least six court days
23 prior to hearing as required by LR 7 (b)(2)(C).

24 1.4 Purpose. To consider BARNETT MOTION FOR PARTIAL DISMISSAL
25 filed herein.

26 1.5 Evidence. The pleadings herein.

27 II. FINDINGS

28 2.1 Plaintiffs in the action filed in King County cause number
29 86-2-18176-8 have failed to state a claim upon which relief can
30 be granted insofar as the claims therein are based upon the

31 DISMISSAL ORDER : 2
32 15004789.50

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER 701 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 religious preaching and practice of Donald Barnett, Barbara
2 Barnett, and the Community Chapel and Bible Training Center.

3 Plaintiffs therein have also failed to state claims upon
4 which relief can be granted for alleged Ministerial malpractice,
5 Counselor malpractice, Wrongful disfellowship, Loss of
6 consortium, and Loss of Parental consortium.

7 Additionally, plaintiffs Steven Butler, Lyle Brown, and
8 Donald Hall have failed to state claims upon which relief can be
9 granted for alleged Outrage.

10 2.2 Plaintiffs in the action filed in King County cause number
11 86-2-18429-5 have failed to state a claim upon which relief can
12 be granted insofar as the claims therein are based upon the
13 religious preaching and practice of Donald Barnett, Barbara
14 Barnett, and the Community Chapel and Bible Training Center.

15 Plaintiffs therein have also failed to state a claim upon
16 which relief can be granted for alleged Ministerial malpractice,
17 Counselor malpractice, Wrongful disfellowship, Loss of
18 Consortium, and Children's Loss of Consortium.

19 Additionally, plaintiffs Michael Ehrlich, Ronald Kitchell,
20 and Dee Chabot have failed to state a claim upon which relief can
21 be granted for alleged Negligent Supervision by defendants
22 Barnett of other defendants, Outrage, and Negligent Counseling.
23 Plaintiffs Ronald Kitchell, Catherine Kitchell, and Dee Chabot
24 have failed to state a claim upon which relief can be granted for
25 alleged Destruction of Parent/Child relationship.

26 2.3 Plaintiff in the action filed in King County cause number
27 86-2-26360-8 has failed to state a claim upon which relief can be
28 granted insofar as her claims therein are based upon the
29 religious preaching and practice of Donald Barnett, Barbara
30 Barnett, and the Community Chapel and Bible Training Center, and

31 DISMISSAL ORDER : 3
32 15004789.50

Evans, Craven & Lachic, P.S.

LAWYERS

1000 THE COLUMBIA CENTER 701 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 the alleged damage to her marriage to Dennis Pangburn.

2 III. ORDER

3 3.1 The claims of plaintiffs in the action filed in King County
4 cause number 86-2-18176-8 are dismissed with prejudice insofar as
5 the claims therein are based upon the religious preaching and
6 practice of Donald Barnett, Barbara Barnett, and the Community
7 Chapel and Bible Training Center.

8 The claims therein for Ministerial malpractice, Counselor
9 malpractice, Wrongful disfellowship, Loss of consortium, and Loss
10 of Parental consortium are dismissed with prejudice.

11 The claims therein of Steven Butler, Lyle Brown, and Donald
12 Hall for Outrage are dismissed with prejudice.

13 3.2 The claims of plaintiffs in the action filed in King County
14 cause number 86-2-18429-5 are dismissed with prejudice insofar as
15 the claims therein are based upon the religious preaching and
16 practice of Donald Barnett, Barbara Barnett, and the Community
17 Chapel and Bible Training Center.

18 The claims therein for Ministerial malpractice, Counselor
19 malpractice, Wrongful disfellowship, Loss of Consortium, and
20 Children's Loss of Consortium are dismissed with prejudice.

21 The claims therein of Michael Ehrlich, Ronald Kitchell, and
22 Dee Chabot for Negligent Supervision by defendants Barnett of
23 other defendants, Outrage, and Negligent Counseling are dismissed
24 with prejudice.

25 The claims therein of Ronald Kitchell, Catherine Kitchell,
26 and Dee Chabot Destruction of Parent/Child relationships are
27 dismissed with prejudice.

28 3.3 The claims of plaintiff in the action filed in King County
29 cause number 86-2-26360-8 are dismissed with prejudice insofar as
30 the claims therein are based upon the religious preaching and

31 DISMISSAL ORDER : 4
32 15004789.50

Evans, Craven & Lachic, P.S.

LAWYERS

SUITE 1100 COLUMBIA CENTER 101 3RD AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

1 practice of Donald Barnett, Barbara Barnett, and the Community
2 Chapel and Bible Training Center and the alleged damage to her
3 marriage to Dennis Pangburn.

4 DATED this _____ day of December, 1988.

5
6
7 HONORABLE JOHN RILEY

8 Presented by:

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12 JAMES S. CRAVEN

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31 DISMISSAL ORDER : 5
32 15004789.50

Evans, Craven & Lackie, P.S.

LAWYERS

SUITE 3100 COLUMBIA CENTER 701 5th AVENUE
SEATTLE WASHINGTON 98104

(206) 386-5555

FILED
KING COUNTY, WASHINGTON
FEB 24 1989
SUPERIOR COURT CLERK
MELISSA R. KEATING
DEPUTY

1
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4
5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

6 KATHY LEE BUTLER, et vir, et al.,)

7 Plaintiffs,)

8 v.)

9 DONALD LEE BARNETT, et ux, et al.)

10 Defendants.)

CONSOLIDATED/TRACK ONE
NO. 86-2-18176-8 ✓

PRETRIAL ORDER NO. 3

11 SANDY EHRLICH, et vir, et al.,)

12 Plaintiffs,)

13 v.)

14 RALPH ALSKOG, et ux., et al.,)

15 Defendants.)

NO. 86-2-18429-5

16 MAUREEN PANGBORNE JORGENSEN,)

17 Plaintiff,)

18 v.)

19 COMMUNITY CHAPEL AND BIBLE)
20 TRAINING CENTER, et al.,)

21 Defendants.)

NO. 86-2-26860-8

22 ST. PAUL FIRE AND MARINE)
23 INSURANCE COMPANY, a foreign)
corporation,)

24 Plaintiff,)

25 v.)

26 KATHY LEE BUTLER, et vir, et al.,)

27 Defendants.)

NO. 88-2-18321-0

CIVIL TRACK I

273.5
JK

1 AMERICAN CASUALTY)

2 Plaintiff,)

3 v.)

NO. 88-2-04615-8

4 KATHY LEE BUTLER, et vir, et al.,)

5 Defendants.)

6 PETERSON, et al.,)

7 Plaintiffs,)

NO. 87-2-14919-6

8 v.)

9 *Snoeyu*
10 ~~KATHY LEE BUTLER~~, et vir, et al.,)

11 Defendants.)

12 Pursuant to CR 16, following discussions with counsel and
13 pretrial conferences with counsel and parties and the court being
14 fully advised,

15 IT IS ORDERED

16 1. On or before the 27th day of March, 1989, each
17 individual party plaintiff submit a statement of contentions of
18 fact and law, consistent with the parameters of existing
19 pleadings, specifying such parties contentions with respect to
20 the following.

21 1.1 The duties which the individual plaintiff believes are
22 owed by each respective defendant to said plaintiff.

23 1.2 The specific manner in which the plaintiff alleges that
24 the particular defendant or defendants reached such due.

25 1.3 The specific manner in which the alleged breach of duty
26 owed to such plaintiff damaged the plaintiff, and

27 1.4 The amount of damages claimed for such breach of duty.
28

RECEIVED

FEB 22 1989

ROSENOW, HALE & JOHNSON

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FEB 21 1989

Preston, Thorgrimson, Ellis & Holman

R

FEB 21 1989

LANE POWELL MOSS & MILLER

COPY RECEIVED

FEB 23

FEB 27 1989

EVANS, CRAVEN & LACKIE, P.S.

FILED 1989 FEB 27 PM 4:17 KING COUNTY SUPERIOR COURT CLERK SEATTLE, WA

FEB 24 1989

ROSENOW, HALE & JOHNSON

ADLER GIERSCH, P.S.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

4 KATHY LEE BUTLER, et vir,)
5 et al,)

6 Plaintiffs,)

7 vs.)

8 DONALD LEE BARNETT, et ux,)
9 et al,)

9 Defendants.)

10 SANDY EHRLICH, et vir, et al,)

11 Plaintiffs,)

12 vs.)

13 RALPH ALSKOG, et ux, et al,)

14 Defendants.)

15 MAUREEN P. JORGENSEN,)

16 Plaintiff,)

17 vs.)

18 COMMUNITY CHAPEL AND BIBLE)
19 TRAINING CENTER, et al,)

19 Defendants.)

20 MICHAEL W. BUGNI, on oath, certifies and declares

21 follows:

22 1. I am of the attorneys of record for the Defendants
23 Howerton in the consolidated action in king County Superior Court

24
25 DECLARATION OF M. W. BUGNI - 1

No. 86-2-18176-8

CONSOLIDATED WITH
88-2-04615-8

DECLARATION OF MICHAEL W. BUGNI
IN OPPOSITION TO PLAINTIFFS'
MOTION FOR ORDER STRIKING
WITNESS LIST OF DEFENDANTS
HOWERTON

RECEIVED

FEB 17 1989

LAW OFFICES OF
JOHN S. GLASSMAN

1989 FEB 27 PM 4:17 KING COUNTY SUPERIOR COURT CLERK SEATTLE, WA

FILED

ORIGINAL

MOREN, CORNELL & HANSEN, P.S.
ATTORNEYS AT LAW
11320 ROOSEVELT WAY NORTHEAST
SEATTLE, WASHINGTON 98125
(206) 365-5500

274

cause numbers 86-2-18176-8 and 88-2-04615-8, currently pending.

1 I have personal knowledge of and I am familiar with the records
2 and files contained herein.

3 2. Opposing counsel makes reference to an agreed order
4 for pre-trial discovery dated November 8, 1988. I did not first
5 appear on behalf of Defendants Howerton until November 10, 1988
6 (almost 28 months after this case was filed). I signed the order
7 along with everyone else at the November 10 hearing, with the
8 express understanding that because I was just then entering the
9 case on behalf of Defendants Howerton, I would not be able to
10 comply with the strict time deadlines in that order. No
11 objection was voiced. In fact, Judge Riley acknowledged my late
12 appearance in open court and stated his awareness that my
13 compliance with the discovery schedule would by necessity fall
14 behind that of other counsel, who have been in the case more than
15 2 years longer than me.

16 3. All counsel and the court have also been aware since
17 my December 19th Declaration that a question of conflict of
18 interest had been raised concerning my representation of Mr.
19 Howerton, and that I have been working diligently since that time
20 to obtain substitute counsel for Mr. Howerton. This has been
21 accomplished and the firm of Petersen, Lycette & Snook will be
22 substituting as counsel for Mr. Howerton at the time of the
23 hearin on this motion. Instead of waiting for new counsel to
24 comply with the discovery requests, I have done the investigation

25 DECLARATION OF M. W. BUGNI - 2

1 concerning our witnesses (contacting them, etc.), and have filed
2 our motions with due diligence so that new counsel can have a
3 running start effective February 23. This is a complex case,
4 almost 3 1/2 years old, and there has been no effort whatsoever
5 to delay disclosure of witnesses.

6 4. I got involved only because of a pressing motion
7 before the court forcing Defendants Howerton to do something
8 about retaining counsel. I had represented Robert Howerton in a
9 related gross misdemeanor and had some background on this case,
10 but I had done nothing regarding his case since March of 1987. I
11 was extremely busy at that time and have explained in a prior
12 declaration that I had a 3 week trial in Thurston County
13 immediately following my appearance.


14 5. It is still approximately 3 months until trial, and
15 probably longer in the case of Defendants Howerton, especially if
16 their motion for a separate trial is granted. Many of the names
17 on our witness list are well known to Plaintiffs' attorneys,
18 having been included in the previous witness lists of other
19 counsel. Some have already had their depositions scheduled.
20 There is no prejudice to Plaintiffs whatsoever, who have not yet
21 deposed numerous witnesses disclosed long ago. It would be
22 extremely prejudicial to Defendants Howerton, not to be able to
23 call witnesses very relevant to their defense, simply because
24 they could not afford independent counsel until very recently.
25 Opposing counsel states that "The Court's order for pre-trial

DECLARATION OF M. W. BUGNI - 3

1 discovery provided almost 5 months for discovery in trial
2 preparation relating to disclosed lay witnesses." I did not have
3 the benefit of that 5 months, having signed the order in question
4 the day it was entered, and 7 days before the cutoff! This is
5 hardly an "unexcused and unexplained failure to comply with the
6 initial cutoff date. . . " as alleged by opposing counsel. Ms.
7 Durham knew full well that we would be delayed in circulating our
8 witness list, because I told her this when the order was entered,
9 and also because Defendants Howerton had not yet disclosed any
10 witnesses.

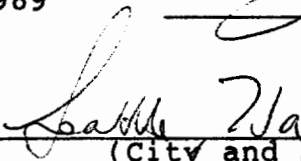
11 I certify and declare under penalty of perjury under the
12 laws of the State of Washington that the foregoing statement is
13 true and correct.

14 DATE: February 16, 1989



MICHAEL W. BUGNI

15 PLACE OF SIGNING:



(City and State)

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25 DECLARATION OF M. W. BUGNI - 4

1989 FEB 28 PM 4: 24

KING COUNTY
SUPERIOR CIVIL DECK I
HONORABLE JOHN RILEY

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF KING

KATHY LEE BUTLER and STEVEN L. BUTLER, wife and husband, and the marital community composed thereof; et al.,

Plaintiffs,

v.

DONALD LEE BARNETT and BARBARA BARNETT, husband and wife, and the marital community composed thereof; et al.,

Defendants.

NO. 86-2-18176-8 ✓
86-2-18429-5
86-2-26360-8
(consolidated)

DEFENDANT COMMUNITY CHAPEL & BIBLE TRAINING CENTER'S DESIGNATION OF EXPERT WITNESSES

SANDY EHRLICH and MICHAEL EHRLICH, wife and husband; et al.,

Plaintiffs,

v.

RALPH ALSKOG and ROSEMARY ALSKOG, husband and wife; et al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

v.

COMMUNITY CHAPEL AND BIBLE TRAINING CENTER, a Washington non-profit corporation; et al.,

Defendants.

///

COMMUNITY CHAPEL'S DESIGNATION OF EXPERT WITNESSES -1-

SCHWEPPE, KRUG & TAUSEND, P.S.

800 WATERFRONT PLACE
1011 WESTERN AVENUE
SEATTLE, WASHINGTON 98104
(206) 223-1600

275
JY

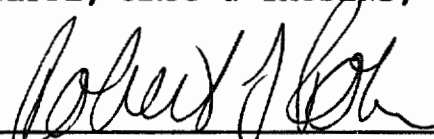
1 Defendant Community Chapel & Bible Training Center hereby
2 designates the following as expert witnesses:

- 3 1. Dr. Richard Zerbe, economist.
- 4 2. Professor Rodney Stark.
- 5 3. Professor James Richardson.
- 6 4. Professor H. Newton Malony, Jr.
- 7 5. Deborah Frank Murray, psychologist.
- 8 6. Defendant Community Chapel reserves the right, and

9 hereby gives notice, to call as its own expert any experts listed
10 by defendants Barnetts.

11 DATED this 28th day of February, 1989.

12 SCHWEPPE, KRUG & TAUSEND, P.S.

13
14 By 
15 ROBERT J. ROHAN
16 Attorneys for Community Chapel

17 0147-005\2022889.RJR

RECEIVED
In King County Superior Court
FEB 28 1989

FILED
1989 FEB 28 PM 4:24
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

CIVIL TRACK I
HONORABLE JOHN RILEY

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF KING

KATHY LEE BUTLER and STEVEN L. BUTLER, wife and husband, and the marital community composed thereof; et al.,

Plaintiffs,

v.

DONALD LEE BARNETT and BARBARA BARNETT, husband and wife, and the marital community composed thereof; et al.,

Defendants.

SANDY EHRLICH and MICHAEL EHRLICH, wife and husband; et al.,

Plaintiffs,

v.

RALPH ALSKOG and ROSEMARY ALSKOG, husband and wife; et al.,

Defendants.

MAUREEN P. JORGENSEN,

Plaintiff,

v.

COMMUNITY CHAPEL AND BIBLE TRAINING CENTER, a Washington non-profit corporation; et al.,

Defendants.

///

NO. 86-2-18176-8 ✓
86-2-18429-5
86-2-26360-8
(consolidated)

CERTIFICATE OF SERVICE

276
23

1 THE UNDERSIGNED certifies under penalty of perjury of the
2 laws of the State of Washington that on February 28, 1989, I
3 mailed a copy of Defendant Community Chapel's Designation of
4 Expert Witnesses to the following counsel, postage prepaid:

5 Susan Jones
6 Preston Thorgrimson Ellis & Holman
7 5400 Columbia Center
8 701 Fifth Ave.
9 Seattle, WA 98104-7011
10 Attorney for Pltf. Jorgensen

11 Jeff Campiche
12 Kargianis Austin & Erickson
13 4700 Columbia Center
14 701 Fifth Ave.
15 Seattle, WA 98104
16 Attorney for Pltf. Butler, et al.

17 Richard Adler/Ann Durham
18 Adler Giersch & Read
19 401 Second Ave. S. #600
20 Seattle, WA 98104
21 Attorney for Pltf. Ehrlich, et al.

22 John Messina
23 Messina & Duffy
24 4002 Tacoma Mall Blvd. #200
25 Tacoma, WA 98409
26 Attorney for Pltf. Ehrlich, et al.

John Graffe
Rosenow Hale & Johnson
1620 Key Tower
Seattle, WA 98104
Attorney for Defs. Alskog

Jack Rosenow
Rosenow Hale & Johnson
301 Tacoma Mall Office Bldg.
Tacoma, WA 98409
Attorney for Defs. Alskog

Pauline Smetka
Helsell Fetterman
1500 Washington Bldg.
1325 Fourth Ave.
Seattle, WA 98101
Attorney for Defs. Alskog

SCHWEPPE, KRUG & TAUSEND, P.S.

800 WATERFRONT PLACE
1011 WESTERN AVENUE
SEATTLE, WASHINGTON 98104
(206) 223-1600

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Rodney Hollenbeck
Evans Craven & Lackie
3100 Columbia Center
701 Fifth Ave.
Seattle, WA 98104
Attorney for Defs. Barnett

Bruce Winchell
Lane Powell Moss & Miller
3800 Rainier Bank Tower
Seattle, WA 98101-2647
Attorney for American Casualty

Don Gulliford
Attorney at Law
2200 - 112th Ave. N.E.
Bellevue, WA 98004
Attorney for St. Paul Insurance Co.

Alvin D. Mayhew, Jr.
Attorney at Law
1016 Main Street
Sumner, WA 98390
Attorney for Def. Gary Lien

Keith A. Bolton
Attorney at Law
1100 Norton Bldg.
801 Second Ave.
Seattle, WA 98104
Attorney for Def. Howerton

Donald Hall
P.O. Box 168
Big Fork, MT 59911
Pro se Plaintiff


NANCY BLANCHFIELD

0147-005\A022889.NB

NON-TRIAL

SCOMIS code:

PREHRG DISPHRG HEARING
POSTHRG MINUTE STTL CNF

Department No. 25

Date: February 28, 1989

Page 1 of 1
86-2-18429-5
86-2-26360-8
86-2-18176-8 ✓
87-2-14916-6
88-2-18321-0

JUDGE: John W. Riley

BAILIFF: Beth Custer

COURT CLERK: Melissa Keating

REPORTER: none

King County Cause No. 88-2-04615-8

Case Caption

Kathy Lee Butler et al vs. Donald Barnett et al

Litigants and attorneys

Ann Durham via telephone for Plaintiff Ehrlich, Jack Rosenow via telephone for Defendant Alskog, Robert Roman via telephone for Defendant CCRTC, Rodney Hollenbeck for Defendant Barnett via telephone, Bruce Winchell via telephone for Plaintiff American Casualty, Don Gulliford for Plaintiff St. Paul Fire and Marine

Minute Entry

Via telephone conference call, Plaintiffs motion to compel answers to interrogatories.

The Court grants the motion.

No Order signed.

X X X

sub #

276.5
X

CERTIFICATE

On this day I delivered a true and accurate copy of the document to which this certificate is affixed to LEGAL MESSENGERS, INC. for delivery to the attorneys of record of plaintiff/defendant.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED this 2nd day of March, 1989 at Tacoma, Washington.

Mary Ellen Ray

FILED

1989 MAR -3 PM 1:35

CIVIL TRACK I KING COUNTY
SUPERIOR COURT CLERK
The Honorable John Riley

SPECIAL SETTING FOR:
Friday, March 17, 1989
at 2:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

KATHY LEE BUTLER, et vir., et al.,
Plaintiffs,

vs.

DONALD LEE BARNETT, et ux., et al.,
Defendants.

(Consolidated)

NO. 86-2-18176-8

MOTION OF DEFENDANTS ALSKOG
FOR ORDER COMPELLING PLAINTIFF
TO SUBMIT TO AN IME IN
THE ABSENCE OF A THIRD
PARTY, OR IN THE ALTERNATIVE,
FOR A PROTECTIVE ORDER

SANDY EHRLICH, et vir., et al.,
Plaintiffs,

vs.

RALPH ALSKOG, et ux., et al.,
Defendants.

MAUREEN P. JORGENSEN,
Plaintiff,

vs.

COMMUNITY CHAPEL AND BIBLE
TRAINING CENTER, et al.,
Defendants.

Motion of Defendants Alskog
Re: IME of Plaintiff -1-
MWS/mer:l0

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

Ma

1 AMERICAN CASUALTY COMPANY OF)
 2 READING PENNSYLVANIA, a)
 3 Pennsylvania corporation,)
 4)
 5 Plaintiff,)
 6)
 7 vs.)
 8)
 9 KATHY LEE BUTLER, et al.,)
 10)
 11 Defendants.)
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I. RELIEF REQUESTED

Defendants, RALPH and ROSEMARY ALSKOG, move this Court pursuant to the Civil Rules for the Superior Courts of the State of Washington for an Order requiring Plaintiff, SANDY EHRLICH, to submit to an IME by Dr. Richard Carter, in the absence of a nurse from plaintiff's attorneys' office or any other third party. If the Court orders that a third person from plaintiff's attorneys' office may be present, then defendants move the Court for a protective order establishing the following parameters:

(1) Anyone accompanying plaintiff, Sandy Ehrlich, may not be present in the examination room while the evaluation is taking

Motion of Defendants Alskog
 Re: IME of Plaintiff -2-
 MWS/mer:10

1 place, but must remain in the waiting room to answer any questions
2 that may come up;

3 (2) The evaluation must be recorded with audiovisual
4 equipment; and

5 (3) Someone from the attorneys' office representing the
6 defendants, Ralph Alskog and Rosemary Alskog, should be allowed to
7 be present as well.

8
9 II. STATEMENT OF FACTS

10 An independent medical examination of plaintiff, SANDY
11 EHRLICH, has been scheduled for April 7, 1989, with Dr. Richard
12 Carter, a psychiatrist in Seattle, Washington. Plaintiff's attor-
13 ney has advised that a nurse from her office who is not an attorney
14 will be accompanying SANDY EHRLICH for the IME. Defendants
15 strongly oppose the presence of any third party at the examination
16 because the presence of a third party will greatly impede the eva-
17 luation process and the open flow of communication.

18 III. STATEMENT OF THE ISSUE

19 Whether plaintiff, SANDY EHRLICH, should be required to
20 attend the independent medical examination with Dr. Richard Carter
21 in the absence of any third party.

22 IV. EVIDENCE RELIED UPON

23 This Motion is based upon the Affidavit of Dr. Richard
24 Carter, and the Affidavit of Jack G. Rosenow, filed herewith.

25 Motion of Defendants Alskog
26 Re: IME of Plaintiff -3-

MWS/mer:10

1 V. AUTHORITY

2 Court Rule 35 authorizes the independent examination of a
3 party when his or her mental or physical examination is in issue.
4 A plaintiff does not have an absolute right to have his or her
5 attorney present at an independent medical examination. Dziwanoski
6 v. Ocean Carriers Corp., 26 F.R.D. 595 (D.C. 1960) (Construing
7 Federal Court Rule 35, which is identical to Washington Court Rule
8 35.) The court in Dziwanoski, supra, noted that the purpose of
9 FRCP 35 is to place the defendant on an equal footing in dis-
10 covering the true nature and extent of a plaintiff's injuries. The
11 court explained at page 598:

12 The presence of the lawyer for the party to be
13 examined is not ordinarily either necessary or
14 proper; it should be permitted only on appli-
15 cation to the court showing good reason there-
16 for. If the attorney desires to be present in
17 order to control the examination, that would
18 invade the province of the physician; if he
19 desires his observations to be the basis of
20 cross-examination or possible contradiction of
the doctor, he is making himself in effect a
witness, with the difficulties which are
likely to arise when an attorney asks ques-
tions on cross-examination based upon his
own observations, and the possibility that he
may wish to take the stand and thereby
disqualify himself from completing the trial
as the attorney.

21 Requiring a plaintiff to submit to an independent examina-
22 tion by a physician selected by the defendant, in the absence of
23 plaintiff's attorney, is a matter within the sound discretion of
24 the trial court. Pemberton v. Bennett, 381 P.2d 705 (Ore. 1963).

25 Motion of Defendants Alskog
26 Re: IME of Plaintiff -4-
MWS/mer:10

1 Thus, if the court determines that the presence of a third person
2 would impede a physician in performing an examination, the court
3 may order exclusion the third person.

4 The court in Pemberton, supra, held that in the absence of
5 any reason why it was desirable or necessary that plaintiff's
6 attorney be present at her examination, the trial court did not err
7 in requiring plaintiff to be examined by a physician out of the
8 presence of the plaintiff's attorney. The court explained that the
9 presence of an attorney "could create an atmosphere in which it
10 would be difficult to determine the examinee's true reactions."
11 Id. at p. 706.

12 The court's opinion, expressed in dicta, in Tietjen v.
13 Dept. of Labor & Indus., 13 Wn. App. 86, 534 P.2d 151 (1975) that a
14 plaintiff may have his or her attorney present at an examination,
15 does not apply here because plaintiff's attorney seeks to have
16 someone who is not an attorney present at the IME. Furthermore,
17 the reasons against allowing a third party to be present in this
18 case are compelling. Given the nature of a psychiatric examina-
19 tion, it is crucial that the atmosphere be conducive to the open
20 and free flow of communication between the physician and plaintiff.
21 This lawsuit involves allegations of sexual contact which are sen-
22 sative in nature, and the presence of a third party is likely to
23 impede the free flow of communication that is necessary for a
24 thorough and objective evaluation. If any third person is present,
25

26 Motion of Defendants Alskog
Re: IME of Plaintiff -5-
MWS/mer:10

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1 the patient's statements may very well be defensive, "staged," and
2 not completely candid.

3 Finally, defendants are entitled to be on equal footing
4 with the plaintiff in the discovery of the nature and extent of
5 plaintiff's alleged mental injuries. If an attorney or nurse from
6 plaintiff's attorneys' office is present, defendants will not be
7 given the opportunity to have an objective independent examination,
8 to which they are entitled.

9 If the Court orders that a third person may be present,
10 then the following parameters should be established in an effort to
11 minimize the problems associated with the presence of a third per-
12 son at the examination:

13 (1) Anyone accompanying Sandy Ehrlich to the IME should
14 not be present in the examination room while the evaluation is
15 taking place, but should remain in the waiting room to answer any
16 questions which may come up. This might help minimize the distrac-
17 tion that exists when a third person is actually present in the
18 examination room while the examination is taking place.

19 (2) If a third person is present, then the evaluation
20 should be recorded with the use of audiovisual equipment in an
21 effort to resolve any potential future questions that might arise;
22 and

23 (3) Someone from the defendants' attorneys' office should
24 also be allowed to be present in order to protect the defendants'

25
26 Motion of Defendants Alskog
Re: IME of Plaintiff -6-
MWS/mer:10

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

1 interests, and to address any legal questions raised by the third
2 party who is present on behalf of the plaintiff.

3 VI. CONCLUSION

4 A third party will greatly impede the evaluation process
5 and, therefore, plaintiff's attorney or a health care professional
6 from plaintiff's attorneys' office should not be allowed to accom-
7 pany plaintiff to the IME scheduled with Dr. Carter.

8 DATED this 2nd day of March, 1989.

9 ROSENOW, HALE & JOHNSON

10 BY: 
11 JACK G. ROSENOW

12 BY: 
13 MARILYN W. SCHULTHEIS

14 Of Attorneys for Defendants, ALSKOG
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25 Motion of Defendants Alskog
26 Re: IME of Plaintiff -7-
MWS/mer:l0

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

FILED

1989 MAR -3 PM 1:35



SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

(Consolidated)

NO. 86-2-18176-8

SANDY EHRLICH, et vir., et al.,
Plaintiffs,
vs.
RALPH ALSKOG, et ux., et al.,
Defendants.

NOTE FOR MOTION CALENDAR
(Clerk's Action Required)

TO: THE CLERK OF THE COURT; and to all other parties per list on reverse side:

PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the appropriate calendar.

Calendar Date: March 17, 1989 Day of Week Friday

Nature of Motion: Motion to Compel Plaintiff to Submit to IME

DESIGNATED CALENDAR

- Civil Motion (LR 7) (9:30)
 - Summary Judgment (LR 56) (9:30)
 - Supplemental Proceeding (LR 69) (1:30)
 - Presiding Judge (Trial Date Motions Only) (11:15 or 1:30 Daily)
- Time of Hearing: _____

FAMILY LAW MOTION [LR 94.04] (W291)

- Domestic Motion (9:30)
- Scaled File Motion (1:30)
- Support Motion (1:30)
- Modification (1:30)

EX PARTE MOTION [LR 0.9(b)] (W285)
The following motions are heard 9:00-12:00 and 1:30-4:15:

- Adoption Time of Hearing: _____
- Dissolution Time of Hearing: _____
- Ex Parte Motion Time of Hearing: _____
- Probate Time of Hearing: _____

- Receivership (LR 66) (2:00)
- Scaled File Motion (9:30)

DEPARTMENTAL HEARINGS [LR 40(h)]

[X] Special Setting Before Judge/Commissioner:
Time of Hearing: 2:30 p.m.

The Honorable John Riley

Room E-854

Typed Name: JACK G. ROSENOW
OF: ROSENOW, HALE & JOHNSON
Attorney for: Defendants Alskog
Telephone: 473-0725

DATED: March 1, 1989

LIST NAMES, ADDRESSES AND TELEPHONE NUMBERS OF ALL PARTIES REQUIRING NOTICE ON REVERSE SIDE. (See attached list of parties)

AEES
5/87

NOTE FOR MOTION CALENDAR (NTMTDK)
SC Form JO-138 5/87

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Attorney for Defendants Alsko

CERTIFICATE

On this day I delivered a true and accurate copy of the document to which this certificate is affixed to LEGAL MESSENGERS, INC. for delivery to the attorneys of record of plaintiff/defendant.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of March, 1989 at Tacoma, Washington.

Mary Ellen Ray

1
2 AMERICAN CASUALTY COMPANY OF)
3 READING PENNSYLVANIA, a)
4 Pennsylvania corporation,)

5 Plaintiff,)

6 vs.)

7 KATHY LEE BUTLER, et al.,)

8 Defendants.)

9 ST. PAUL FIRE AND MARINE INSURANCE)
10 COMPANY, a foreign corporation,)

11 Plaintiff,)

12 vs.)

13 KATHY LEE BUTLER, et al.,)

14 CARL A. PETERSON,)

15 Plaintiff,)

16 vs.)

17 WAYNE SNOEY, et al.,)

18 Defendants.)

19 STATE OF WASHINGTON)
20) SS
21 COUNTY OF KING)

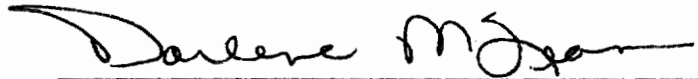
22 Darlene McLean, being first duly sworn on oath, deposes and
23 says:

24 That I am a citizen of the United States and a resident of
25 the State of Washington, over the age of twenty-one years, and not
26 a party to this action; that on the 3rd day of March, 1989,

AFFIDAVIT OF SERVICE BY MAIL - 2


LAW OFFICES
GORDON, THOMAS, HONEYWELL
MALANCA, PETERSON & DAHEIM
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2101
SEATTLE, WASHINGTON 98101-4185
(206) 447-9505

1 I caused a copy of plaintiff Carl Peterson's [DOCUMENT NAME] to be
2 deposited in the United States Mail in an envelope with first-
3 class postage prepaid, addressed to each of the parties listed on
4 Exhibit A attached hereto.
5

6 

7 DARLENE McLEAN

8 SUBSCRIBED AND SWORN TO before me this 3rd day of March, 1989.

9 
10 Notary Public in and for the State
11 of Washington, residing at Seattle
12 My Commission Expires: 2/0/93

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EXHIBIT A

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Seattle, Washington 98101
Attorneys for Plaintiff
American Casualty Company

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14 Jeff Campiche, Esquire
15 Kargianis, Austin & Erickson
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Butler, Lien, Brown, Fellhauer

17 John S. Glassman
18 Attorney at Law
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Attorney for Defendant
20 Community Chapel and Bible Training Center

21 Donald Hall
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Plaintiff Pro Se

23 Michael Bond, Esquire
24 Lee, Smart, Cook, Martin & Patterson
25 800 Washington Building
Seattle, Washington 98101

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Susan Jones, Esquire
Preston, Thorgrimson, Ellis & Holman
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Ronald Sim, Esquire
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600 UNIVERSITY, SUITE 2101
SEATTLE, WASHINGTON 98101-4185
(206) 447-9505

On this day I delivered a true and accurate copy of the document to which this certificate is affixed to LEGAL MESSENGERS, INC. for delivery to the attorneys of record of plaintiff/defendant.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of March, 1989 at Tacoma, Washington.

Mary Ellen Ray

FILED

1989 MAR -3 PM 1:36

CIVIL TRACK I KING COUNTY
SUPERIOR COURT CLERK
The Honorable John Riley

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

KATHY LEE BUTLER, et vir., et al.,)
Plaintiffs,)

vs.)

DONALD LEE BARNETT, et ux., et al.,)
Defendants.)

(Consolidated)

NO. 86-2-18176-8

AFFIDAVIT OF RICHARD
CARTER, M.D.

SANDY EHRLICH, et vir., et al.,)
Plaintiffs,)

vs.)

RALPH ALSKOG, et ux., et al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)

vs.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.,)
Defendants.)

Affidavit of Richard
Carter, M.D. -1-
mat(MWS:1, R.1/.4)

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

280

1 AMERICAN CASUALTY COMPANY OF)
2 READING PENNSYLVANIA, a)
3 Pennsylvania corporation,)

4 Plaintiff,)

5 vs.)

6 KATHY LEE BUTLER, et al.,)

7 Defendants.)

8 ST. PAUL FIRE AND MARINE INSURANCE)
9 COMPANY, a foreign corporation,)

10 Plaintiff,)

11 vs.)

12 KATHY LEE BUTLER, et al.,)

13 Defendants.)

14 STATE OF WASHINGTON)

15 County of King : ss.
)

16 I, RICHARD CARTER, M.D., being first duly sworn upon oath,
17 depose and state:

18 That I am a physician, specializing in psychiatry, and I
19 am licensed to practice medicine in the State of Washington. I
20 have been asked to perform an independent medical examination of
21 SANDY EHRLICH in the above-referenced case. The examination is
22 presently scheduled for April 7, 1989.

23 I always make every attempt to be a completely unbiased
24 and impartial examiner, and I regard examinations as an attempt to
25 find the objective facts relevant to the examination, regardless

26 Affidavit of Richard
Carter, M.D. -2-
mat(MWS:1, R.1/.4)

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LAWYERS
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TACOMA, WASHINGTON 98409
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1 of the ultimate legal consequences to any party.

2 The presence of a third party at an examination,
3 regardless whether that person is an attorney, health care pro-
4 vider, family member, or friend, may make it difficult or impos-
5 sible for me to adequately assess a patient and the patient's
6 psychiatric status. I am strongly opposed to having any third
7 party present at the time of an evaluation because it has been my
8 experience that the presence of a third party is likely to inhibit
9 the atmosphere of open communication, which is necessary to conduct
10 a thorough, objective evaluation.

11 A third party present at an evaluation is distracting and
12 can be disruptive. Even if the third party does not say anything
13 during the evaluation, the mere presence of a third person often
14 has a negative effect on the free flow of communication, and may
15 take away from my attempt to establish a rapport with the patient.
16 If a third party associated with the ongoing litigation is present,
17 the patient's statements often tend to be defensive and less than
18 completely candid.

19 It has been my experience in the past that the presence of
20 a third person can prevent me from forming a diagnosis and reaching
21 a medical conclusion.

22 If the court orders that a third person may be present,
23 however, then imposing the following parameters might help minimize
24 the distraction that exists when a third person is present: (1) the
25

26 Affidavit of Richard
Carter, M.D. -3-
mat(MWS:1, R.1/.4)

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

1 third person would remain in the waiting room and would be
2 available to answer any questions that might come up, (2) if the
3 third person is present, the evaluation should be recorded with the
4 use of audiovisual equipment, in an effort to resolve any potential
5 future questions that might arise, (3) someone from the attorneys'
6 office representing the Defendant should also be present, so if any
7 legal questions come up, the matter can be resolved between the
8 attorneys, and I do not have to become involved in that aspect.


9 FURTHER YOUR AFFIANT SAYETH NAUGHT.

10 

11 RICHARD CARTER, M.D.

12 SUBSCRIBED AND SWORN to before me this 26 day of

13 Feb, 1989.

14
15 
16 NOTARY PUBLIC in and for the State of
Washington, residing at: Seattle

17 My Commission Expires: 4/1/92

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26 Affidavit of Richard
Carter, M.D. -4-
mat(MWS:1, R.1/.4)

ROSENOW, HALE & JOHNSON
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CERTIFICATE OF MAILING

On this 2nd day of March, 1989, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the attorneys of record of Plaintiff, Sandy Ehrlich, containing a copy of the document to which this certification is attached.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of March, 1989, at Tacoma, Washington.

Mary Ellen Ray

MARY ELLEN RAY

CERTIFICATE

On this day I delivered a true and accurate copy of the document to which this certificate is affixed to LEGAL MESSENGERS, INC. for delivery to the attorneys of record of plaintiff/defendant.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of March, 1989 at Tacoma, Washington.

Mary Ellen Ray

FILED

1989 MAR -3 PM 1:36
CIVIL TRACK 1

The Honorable John Riley
KING COUNTY
SUPERIOR COURT CLERK

SPECIAL SETTING FOR: WA.
Friday, March 17, 1989
at 2:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

KATHY LEE BUTLER, et vir., et al.,)
Plaintiffs,)

vs.)

DONALD LEE BARNETT, et ux., et al.,)
Defendants.)

SANDY EHRLICH, et vir., et al.,)
Plaintiffs,)

vs.)

RALPH ALSKOG, et ux., et al.,)
Defendants.)

MAUREEN P. JORGENSEN,)
Plaintiff,)

vs.)

COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER, et al.,)
Defendants.)

(Consolidated)

NO. 86-2-18176-8

AFFIDAVIT OF JACK G. ROSENOW
IN SUPPORT OF DEFENDANTS
ALSKOG'S MOTION REQUIRING
PLAINTIFF TO SUBMIT TO AN
IME IN THE ABSENCE OF A
THIRD PARTY, OR IN THE
ALTERNATIVE, FOR A PRO-
TECTIVE ORDER

Affidavit of Jack G. Rosenow
in Support of Motion Re:
IME of Plaintiff -1-

MWS/mer:10

ROSENOW, HALE & JOHNSON
LAWYERS
SUITE 301 TACOMA MALL OFFICE BUILDING
TACOMA, WASHINGTON 98409
(206) 473-0725

281

1 AMERICAN CASUALTY COMPANY OF)
READING PENNSYLVANIA, a)
2 Pennsylvania corporation,)

3 Plaintiff,)

4 vs.)

5 KATHY LEE BUTLER, et al.,)
6 Defendants.)

7 ST. PAUL FIRE AND MARINE INSURANCE)
8 COMPANY, a foreign corporation,)

9 Plaintiff,)

10 vs.)

11 KATHY LEE BUTLER, et al.,)
12 Defendants.)

13
14 STATE OF WASHINGTON)
15 County of Pierce : ss.)

16 I, JACK G. ROSENOW, being first duly sworn upon oath,
17 depose and state:

18 That I am one of the attorneys of record for the
19 defendants, RALPH and ROSEMARY ALSKOG, and make this Affidavit in
20 support of said defendants' Motion for an Order Requiring
21 plaintiff, SANDY EHRLICH, to submit to an independent medical exa-
22 mination with Dr. Richard Carter in the absence of plaintiff's
23 attorney, a nurse from plaintiff's attorneys' office, or any other
24 third party.

25 Affidavit of Jack G. Rosenow
in Support of Motion Re:
26 IME of Plaintiff -2-

MWS/mer:10

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1 Dr. Richard Carter, a psychiatrist in Seattle, Washington,
2 is presently scheduled to perform an independent medical examina-
3 tion of Plaintiff, SANDY EHRLICH, at 2:30 p.m. on April 7, 1989.
4 On February 21, 1989, my office was advised that plaintiff's attor-
5 ney intended to have a health care professional from her office
6 accompany SANDY EHRLICH for the IME. Plaintiff's attorney advised
7 me on February 23, 1989, that the individual she wanted to accom-
8 pany SANDY EHRLICH to the IME was a nurse who is not an attorney.

9 FURTHER YOUR AFFIANT SAYETH NAUGHT.

10
11 
12 JACK G. ROSENOW

13 SUBSCRIBED AND SWORN to before me this 2nd day of

14 March, 1989.

15 Mary Ellen Ray
16 NOTARY PUBLIC in and for the State of
17 Washington, residing at: Tacoma

18 My Commission Expires: 6/20/90

19
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21
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23
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25 Affidavit of Jack G. Rosenow
26 in Support of Motion Re:
IME of Plaintiff -3-

MWS/mer:10

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