

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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IVY HILL CONGREGATION OF	:	
JEHOVAH’S WITNESSES,	:	
Petitioner	:	
	:	
v.	:	No. 316 MD 2020
	:	
DEP’T OF HUMAN SERVS.,	:	
Respondent	:	<i>Electronically Filed Document</i>

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NOTICE TO PLEAD

To: Ivy Hill Congregation of Jehovah’s Witnesses, Petitioner  
C/O Matthew H. Haverstick, Esquire  
Kleinbard LLC  
Three Logan Square  
1717 Arch Street, 5th Floor  
Philadelphia, PA 19103

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

Respectfully submitted,

JOSH SHAPIRO  
Attorney General

By: s/ Nicole R. DiTomo

Office of Attorney General  
1000 Madison Avenue, Suite 310  
Norristown, PA 19403  
Phone: (610) 631-6205  
[nditomo@attorneygeneral.gov](mailto:nditomo@attorneygeneral.gov)

NICOLE R. DITOMO  
Deputy Attorney General  
Attorney ID: 315325

KAREN M. ROMANO  
Chief Deputy Attorney General  
Civil Litigation Section

Date: July 16, 2021

Counsel for Respondent

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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RESPONDENT'S ANSWER WITH NEW MATTER  
TO THE PETITION FOR REVIEW

AND NOW, comes Respondent the Pennsylvania Department of Human Services (hereinafter "Department" or "Respondent"), through counsel, and hereby responds to the Petition for Review ("Petition") filed by Petitioner Ivy Hill Congregation of Jehovah's Witnesses (hereinafter "Ivy Hill" or "Petitioner") as follows:

I. INTRODUCTION<sup>1</sup>

1. DENIED. The allegations contained within Paragraph 1 are denied as they are conclusions of law to which no responsive pleading is required.

2. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the

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<sup>1</sup> Respondent is adopting the headings utilized by the Petitioner purely for organization and convenience of the reader. In using these headings, Respondent is not making any admission regarding their content and expressly denies any factual averments contained therein.

allegations contained within Paragraph 2 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

3. DENIED. The allegations contained within Paragraph 3 are denied as they are conclusions of law to which no responsive pleading is required.

4. DENIED. The allegations contained within Paragraph 4 are denied as they are conclusions of law to which no responsive pleading is required.

## II. JURISDICTION

5. ADMITTED.

## III. PARTY SEEKING RELIEF

6. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained within Paragraph 6 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

## IV. GOVERNMENT UNIT WHOSE ACTIONS ARE IN ISSUE

7. ADMITTED.

8. ADMITTED IN PART AND DENIED IN PART. It is ADMITTED that under the Child Protective Services Law (the “CPSL”), 23 Pa. C.S. §§ 6301, *et seq.*, the Department is tasked with:

(a) promulgating regulations necessary to implement the law (*see id.* § 6306);

(b) providing “specific information” through “continuing publicity and education programs” by working jointly with each county agency and by individually addressing topics, including, but not limited to, “[p]ersons classified as mandated reporters[,]” and “[r]eporting requirements and procedures” (*see id.* §§ 6383(a) and 6383(a.2)(2)(ii)-(iii));

(c) establishing and maintaining a “statewide database of protective services[;]” (*see id.* §§ 6331 and 6334(g));

(d) creating and maintaining a toll-free hotline for reporting abuse (*see id.* §§ 6332-6333);

(e) ensuring the Department is “[c]ontinuous[ly] availab[le]” to “receiv[e] oral reports of child abuse” and “monitor[] the provision of child protective services 24 hours a day, seven days a week” (*see id.* § 6333);

(f) gathering and receiving reports of suspected child abuse from county agencies and law enforcement personnel (*see id.* § 6334(a));

(g) identifying to any law enforcement official the existence, or non-existence, of a report in the Statewide database, which may be used for the purposes of investigating whether a mandatory reporter failed to report suspected child abuse as required (*see id.* § 6335(c)(1)(ii)); and, separately, protecting the confidentiality of the information contained within the reports received and only

releasing the reports to the entities identified in the statute, including the Attorney General (*see id.* §§ 6339 and 6340(a)(7)).

Any inference that the Department conducts investigations as to whether an individual failed to report an instance of suspected abuse is specifically DENIED. After receipt of a report of suspected child abuse, the Department transmits a notice to the appropriate county agency. *See id.* § 6334(b). If the report of abuse also alleges that a criminal offense has been committed, the Department transmits a notice to appropriate law enforcement officials for investigation. *See id.* § 6334(c). The statutory sub-section identified by Petitioner in Paragraph 8(f) of the Petition, only provides the Department with responsibility to establish procedures as to whether a response to address the reported abuse should come from a county agency or a law enforcement official based solely upon the identity of the person allegedly committing the suspected abuse. *See id.* § 6334.1.

V. STATEMENT OF MATERIAL FACTS

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

9-20. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained within Paragraphs 9-20 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

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

21-32. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained within Paragraphs 21-32 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

*C. The Child Protective Services Law.*

33-36. ADMITTED.

37. ADMITTED IN PART AND DENIED IN PART. It is ADMITTED that “members of the clergy”<sup>2</sup> are obligated to report suspected child abuse, unless the information was obtained “in the course of [their] duties” . . . “secretly and in confidence” and the member of the clergy does not have consent from the communicant to disclose the information (hereinafter a “confidential communication”). *See* 23 Pa. C.S. § 6311.1(b)(1); 42 Pa. C.S. § 5943. Any expressed or implied inference that members of the clergy have a blanket exemption from reporting suspected child abuse or a blanket exemption from the penalties associated with failing to report suspected child abuse is strictly DENIED.

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<sup>2</sup> “Members of the clergy” is used herein to describe individuals, including “a clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization” who are mandated to report suspected abuse to the Department. *See* 23 Pa. C.S. § 6311(a)(6).

38-42. ADMITTED IN PART AND DENIED IN PART. It is ADMITTED that 42 Pa. C.S. § 5943 and the Pennsylvania House floor debate speak for themselves. The remainder of these averments are DENIED as they are conclusions of law to which no responsive pleading is required.

43. ADMITTED IN PART AND DENIED IN PART. It is ADMITTED that Petitioner's Exhibit A speaks for itself, in that counsel for the Watchtower Bible and Tract Society of New York, Inc. (a non-party in this action) sent a letter in 1998 to the Office of Attorney General (a non-party in this action) to obtain a legal opinion as to whether ministers of Jehovah's Witnesses are exempt from reporting suspected child abuse based on the identity of the communicant. The remainder of this averment is DENIED as it is a conclusion of law to which no responsive pleading is required.

*D. Recent Enforcement Action Under the CPSL.*

44-45. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained within Paragraphs 44-45 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

46-48. ADMITTED IN PART AND DENIED IN PART. It is ADMITTED that the Lancaster County District Attorney's Office, not the Respondent, took an enforcement action against the identified bishop. (*See* Pet. Exs. B-C.) The news

article attached to the Petition stated that investigators “were alerted [to the incident of failing to report abuse] after members of the Amish community had conversations with [the bishop] and other bishops about the child-sex abuse [in question] and were told to ‘let it go’ and that it had ‘been taken care of.’” (*See* Pet. Ex. B.) It is DENIED that this enforcement action highlights any lack of clarity in the application of the clergymen privilege under the CPSL. Any inference that the elders in the Ivy Hill Congregation may be subject to criminal prosecution under the CPSL by the Department is also DENIED.

49-50. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained within Paragraphs 49-50 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

51. ADMITTED IN PART AND DENIED IN PART. It is ADMITTED that Section 6319(b) of the CPSL provides the penalty scheme for a failure to report suspected child abuse. The remainder of this averment is DENIED.

52. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained within Paragraph 52 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.



53. DENIED. The allegations contained within Paragraph 53 are denied as they are conclusions of law to which no responsive pleading is required.

### COUNT I

54. This paragraph incorporates others by reference and no response is required.

55. DENIED. The allegations contained within Paragraph 55 are denied as they are conclusions of law to which no responsive pleading is required. By way of further answer, Respondent reincorporates its response to Paragraph 37 here.

56-57. DENIED. The allegations contained within Paragraphs 56-57 are denied as they are conclusions of law to which no responsive pleading is required.

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

58-64. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained within Paragraphs 58-64 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

#### *Exceptions to the Clergymen Privilege*

65. DENIED. The allegations contained within Paragraph 65 are denied as they are conclusions of law to which no responsive pleading is required.

66-67. DENIED. After a reasonable investigation, Respondent is without knowledge or information sufficient to form a belief as to the truth or falsity of the

allegations contained within Paragraphs 66-67 and therefore deny them. Strict proof will be demanded at the time of trial if the same be material.

68-73. DENIED. The allegations contained within Paragraphs 68-73 are denied as they are conclusions of law to which no responsive pleading is required.

WHEREFORE, Respondent respectfully requests that the Court dismiss the Petition for Review or, alternatively, enter judgment upon a full and complete record obtained from necessary discovery.

COUNT II (In the Alternative)

74. This paragraph incorporates others by reference and no response is required.

75-81. DENIED. The allegations contained within Paragraphs 75-81 are denied as they are conclusions of law to which no responsive pleading is required.

82. ADMITTED IN PART AND DENIED IN PART. It is ADMITTED that the text of Article I, Section 3 of the Pennsylvania Constitution is as stated. The remainder of the averment is DENIED as they are conclusions of law to which no responsive pleading is required.

83-87. DENIED. The allegations contained within Paragraphs 83-87 are denied as they are conclusions of law to which no responsive pleading is required.

WHEREFORE, Respondent respectfully requests that the Court dismiss the Petition for Review or, alternatively, enter judgment upon a full and complete record obtained from necessary discovery.

NEW MATTER

In addition to the responses provided herein, Respondent asserts the following new matter:

88. Respondent preserves its argument that any declaration entered against it, related to whether or not the elders at Ivy Hill Congregation may invoke the evidentiary privilege found at 42 Pa. C.S. § 5943, is a declaration against a party without antagonistic claims because the Department cannot take enforcement action against the elders.

89. To the extent that Petitioner has identified that it has been seeking a resolution to this matter since, at the earliest 1998 (*see* Pet. Ex. A), Respondent asserts that Petitioner is outside of the applicable statute of limitations period to bring this action. *See* 42 Pa. C.S.A. § 5527(b).

90. The question raised by Ivy Hill in its Petition, if answered, will not remove an uncertainty over whether the elders at Ivy Hill will be subject to future enforcement actions for failing to report suspected child abuse equating a declaration in this case to an advisory opinion.

91. Declaratory relief should be withheld when the request for relief is an attempt to adjudicate the validity of a defense to a potential future lawsuit.

92. Even if a declaration is obtained, it must be prospectively applied because a declaratory judgment is an inappropriate remedy if it is used solely to adjudicate past conduct.

93. In the alternative, if the Court determines that the elders at Ivy Hill Congregation are not entitled to invoke the evidentiary privilege found at 42 Pa. C.S. § 5943, such determination does not render the evidentiary privilege unconstitutional. The statutory evidentiary privilege is not a guaranteed privilege based upon a member of the clergy's status and a case-by-case analysis must occur before a court determines whether the privilege applies.

WHEREFORE, Respondent respectfully requests that the Court dismiss the Petition for Review or, alternatively, enter judgment upon a full and complete record obtained from necessary discovery.

Respectfully submitted,

JOSH SHAPIRO  
Attorney General

By: *s/ Nicole R. DiTomo*

NICOLE R. DITOMO  
Senior Deputy Attorney General  
Attorney ID: 315325

KAREN M. ROMANO  
Chief Deputy Attorney General  
Civil Litigation Section

Counsel for Respondent

Office of Attorney General  
1000 Madison Avenue, Suite 310  
Norristown, PA 19403  
Phone: (610) 631-6205  
[nditomo@attorneygeneral.gov](mailto:nditomo@attorneygeneral.gov)

Date: July 16, 2021

CONFIDENTIAL INFORMATION CERTIFICATION

I certify that this filing complies with applicable state and local rules and the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, which require filing confidential information and documents differently than non-confidential information and documents.

*s/ Nicole R. DiTomo*  
NICOLE R. DITOMO  
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I, Nicole R. DiTomo, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on July 16, 2021, I caused to be served a true and correct copy of the Respondent's Answer and New Matter to the following:

VIA ELECTRONIC FILING

Matthew H. Haverstick, Esquire  
Mark E. Seiberling, Esquire  
Joshua J. Voss, Esquire  
Shohin Vance, Esquire  
Kleinbard LLC  
Three Logan Square  
1717 Arch Street, 5th Floor  
Philadelphia, PA 19103  
[mhaverstick@kleinbard.com](mailto:mhaverstick@kleinbard.com)  
[mseiberling@kleinbard.com](mailto:mseiberling@kleinbard.com)  
[jvoss@kleinbard.com](mailto:jvoss@kleinbard.com)  
[svance@kleinbard.com](mailto:svance@kleinbard.com)  
*Counsel for Petitioner*

ADDITIONAL COPIES SENT VIA REGULAR MAIL TO:

Commonwealth Court of Pennsylvania  
Attn: Michael F. Krimmel, Chief Clerk  
601 Commonwealth Avenue, Suite 2100  
P.O. Box 69185  
Harrisburg, PA 17106

*s/ Nicole R. DiTomo*  
NICOLE R. DITOMO  
Senior Deputy Attorney General