

HON. JAMES A. MANLEY
20th Judicial District Court
Lake County Courthouse
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Polson, MT 59860
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FILED April 10 2018
Candace Fisher
SANDERS COUNTY CLERK OF DISTRICT COURT
BY [Signature]
DEPUTY

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

Cause No. DV-16-84

ALEX NUNEZ and HOLLY McGOWAN,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA, INC.;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES and THOMPSON
FALLS CONGREGATION OF JEHOVAH'S
WITNESSES,

Defendants.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.; CHRISTIAN
CONGREGATION OF JEHOVAH'S
WITNESSES and THOMPSON FALLS
CONGREGATION OF JEHOVAH'S
WITNESSES,

Third-Party Plaintiffs,

vs.

MAXIMO NAVA REYES,

Third-Party Defendant.

**ORDER ON PLAINTIFF'S MOTION TO
COMPEL DISCOVERY**

ORDER

The Motion to Compel is granted and denied, in part.

The motion is granted as follows:

1. Defendants shall produce the following specific documents:
 - a. S-77 Notification of Disfellowship Form (4/1/04)
 - b. Glenn Wilson Handwritten Notes (3/22/04)
 - c. Elders' Response to Service Department Letter (4/12/2004)
 - d. Letter to Elders Providing Instruction as to How to Manage Child Molesters in a Congregation (8/25/05)
2. Defendants shall produce all documents and communications created, sent, or otherwise maintained, including all contents of any "special blue envelope(s)" related to the accusations, investigations, judicial committees, disfellowship, and reinstatement of Max Reyes related to the sexual abuse of children.
3. Defendants shall present witnesses to fully and truthfully testify regarding communications between the Thompson Falls Congregation and the Watchtower Service Department and/or Branch Office related to the accusations, investigations, judicial committee, disfellowship, and reinstatement of Max Reyes related to the sexual abuse of children.

The motion is denied as follows:

4. Defendants objections are sustained, and defendants do not have to produce discovery, as it pertains to testimony related to communications between Max Reyes and the Elders of Thompson Falls Congregation related to the accusations, investigations, judicial committee, disfellowship, or reinstatement of Max Reyes, related to the sexual abuse of children.

Rationale

Mont. Code Ann. § 26-1-804 provides that a member of the clergy or priest may not, without the consent of the person making the confession, be examined as to any confession made to the individual in the individual's professional character in the course of discipline enjoined by the church to which the individual belongs.

The Montana Supreme Court held, in *State v. Gooding*, 1999 MT 249, 296 Mont. 234, 989 P.2d 304, that communications made directly to a member of the clergy are protected when the cleric is acting in an official capacity or in his or her religious role. The Montana Supreme court explained the competing policy interests, at ¶16:

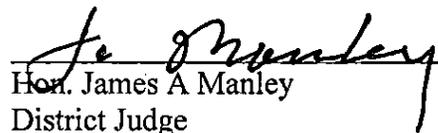
“...testimonial privileges must be strictly construed because they contravene the fundamental principle that the public has the right to everyone's evidence [*citations omitted*]; however, the clergy-penitent privilege must not be so strictly construed as to violate the right to the free exercise of religion that is guaranteed by the First Amendment of the United States Constitution, as Article II, Section 5 of the Montana Constitution...”

In *State v. MacKinnon*, 1998 MT 78, ¶¶ 23-29, 288 Mont. 329, 957 P.2d 23, the Montana Supreme Court adopted a broad, but not unlimited, interpretation of the privilege, following the reasoning of *Scott v. Hammock*, 870 P.2d 947 (Utah Sup.Ct. 1994), and held that statements made by defendant in the presence of two church members, but also in the presence of the victim and his ex-wife, were not protected by the clergy-penitent privilege embodied in Mont. Code Ann. § 26-1-804, where the church members did not make any representations of confidentiality.

Like the *Scott* case, the Defendants here seek to exclude evidence that was made outside of communications between the penitent person and the clergy for purposes of forgiveness or discipline, and not made pursuant to any representation of confidentiality, and where some of

this information has been in documents provided to third parties (and possibly used for purposes of a Third Party Complaint or Cross Complaint against the alleged confessor.

DATED this 5th day of April, 2018.



Hon. James A. Manley
District Judge

cc: **James P. Molloy**, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen
D. Neil Smith, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen
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Mathew M. Stevenson / David M. Maldonado, Attorneys for Third-Party Defendant Maximo Nava Reyes

04/05/18 ~~SCB~~ *anmc*