

OF COUNSEL:
DAVIS LEVIN LIVINGSTON

MARK S. DAVIS 1442
LORETTA A. SHEEHAN 4160
MATTHEW C. WINTER 8464
851 Fort Street, Suite 400
Honolulu, HI 96813
Telephone: (808) 524-7500
Facsimile: (808) 356-0418
Email: mwinter@davislevin.com

Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
05-APR-2022
03:52 PM
Dkt. 333 MOT

LAW OFFICES OF JAMES S. ROGERS

JAMES S. ROGERS 5335 *[Pro Hac Vice]*
1500 Fourth Avenue, Suite 500
Seattle, WA 98101
Telephone: (206) 621-8525
Facsimile: (206) 223-8224
Email: jsr@jsrogerslaw.com

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-profit
unincorporated religious organization, a.k.a.
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
KENNETH L. APANA, Individually; and Does
1 through 100, inclusive,
Defendants.

CIVIL NO. 1CCV-20-0000390
(Non-Motor Vehicle Tort)

**PLAINTIFF'S RULE 37 MOTION TO
HOLD THE DEFENDANTS IN
CONTEMPT FOR FAILURE TO
COMPLY WITH THE COURT'S
ORDER AND FOR THE IMPOSITION
OF SANCTIONS INCLUDING THE
ENTRY OF JUDGMENT ON THE**
[caption continued on next page]

Hearing:

Date : April 26, 2022

Time : 9:00 a.m.

Judge : Honorable Dean E. Ochiai

Trial: June 20, 2022

Judge: Honorable Dean E. Ochiai

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; and WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation,

Crossclaimants,

vs.

KENNETH L. APANA, Individually,

Crossclaim Defendant.

ISSUE OF LIABILITY PURSUANT TO RULE 37(b)(2)(B) AND FOR THE ADDITIONAL SANCTION OF REVOCATION OF PRO HAC VICE STATUS OF JOEL TAYLOR; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF MARK S. DAVIS; EXHIBITS A - C; NOTICE OF REMOTE HEARING AND CERTIFICATE OF SERVICE

PLAINTIFF'S HRCP RULE 37 MOTION TO HOLD DEFEDANTS IN CONTEMPT FOR FAILURE TO COMPLY WITH THE COURT'S ORDER AND FOR IMPOSITION OF SANCTIONS INCLUDING THE ENTRY OF JUDGMENT ON THE ISSUE OF LIABILITY PURSUANT TO RULE 37(b)(2)(B) AND FOR THE ADDITIONAL SANCTION OF REVOCATION OF PRO HAC VICE STATUS OF JOEL TAYLOR

Plaintiff N.D. moves for an order holding the Defendants in contempt for failure to comply with the Court's order entered on March 30, 2022 granting Plaintiff's Motion to Compel Documents from Defendants Watchtower Bible and Tract Society of New York, Inc. and Makaha, Hawaii Congregation of Jehovah's Witnesses, a.k.a. Makaha Congregation of Jehovah's Witnesses and Kingdom Hall, Makaha Congregation of Jehovah's Witnesses.

This Motion is made pursuant to Rules 7 and 37(b)(2)(B) of the Hawai'i Rules of Civil Procedure and Rule 7 of the Circuit Court Rules of the State of Hawai'i. It is supported by all legal authorities provided in the attached Memorandum, Declaration of Mark S. Davis with exhibits thereto, and the records and files herein

DATED: Honolulu, Hawai'i. April 5, 2022.

/s/ Mark S. Davis
MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW C. WINTER
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-profit
unincorporated religious organization, a.k.a.
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
KENNETH L. APANA, Individually; and Does
1 through 100, inclusive,

Defendants.

CIVIL NO. 1CCV-20-0000390
(Non-Motor Vehicle Tort)

**MEMORANDUM IN SUPPORT OF
MOTION**

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-profit
unincorporated religious organization, a.k.a.
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; and
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a New York
corporation,

Crossclaimants,

vs.

KENNETH L. APANA, Individually,

Crossclaim Defendant.

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

For months, Plaintiff has sought to obtain investigative reports prepared by Defendants about known child sexual abuse—including and specifically the abuse she experienced at the hands of Defendant Apana. In these reports, Defendants took statements from witnesses, the perpetrator, and multiple child victims, as well as received instructions on how to cover up child molestation from the national organization. Instead of producing readable versions of these reports, Defendants, represented by *pro hac vice* counsel Joel Taylor, produced documents riddled with heavy redactions, claiming clergy privilege and attorney-client privilege. These redactions blocked the names of witnesses, confessions of the abuser, and the involvement of the national church in protecting an admitted child molester. Plaintiff filed a motion to compel on November 18, 2021, which was heard by the Court on March 7, 2021, at which time the Court requested a full review of the unredacted documents in chambers. On March 31, 2022, the Court ordered that the Defendants produce all contested documents to Plaintiff “by March 9, 2022 at 4:30 p.m. HST with no redactions.” Regrettably, Defendants have not complied. Instead, they and their counsel have continued to blatantly disregard the Rules of Civil Procedure and the orders of this Court. Defendants produced some of the unredacted documents but refused, in spite of the Court’s order to produce “all” documents, to produce the documents marked “attorney client” claiming a confusion as to whether the Court’s order applied to “all” of the documents.

In the instant case, there is absolutely no ambiguity in the Court’s ruling. The Court ruled that **all** records which were reviewed *in camera* be produced with no redactions. The Court’s order did not apply to some records; it applied to **all** records, and it required in clear language that the documents be produced to Plaintiff. At the hearing, Mr. Taylor suggested that Defendants may

appeal, but they have not done so—nor have they moved pursuant to Rule 54(b) for an interlocutory right to appeal the disclosure of these documents. Instead, Defendants have chosen to openly defy the Court’s order and not produce the records Plaintiff has requested. This failure to comply with Court order necessitates this motion for appropriate sanctions.

Plaintiff seeks that pursuant to Hawaii Rule of Civil Procedure 37(b)(2)(B), Defendants be precluded from denying liability for the sexual abuse that their Elder/clergy committed on the Plaintiff. Plaintiff also seeks the revocation of Mr. Taylor's *pro hac vice* status as a sanction.

II. DEFENDANTS SHOULD BE PRECLUDED FROM DENYING LIABILITY FOR THEIR FAILURE TO COMPLY WITH COURT DISCOVERY ORDERS

Hawai‘i Rule of Civil Procedure 37(b)(2)(B) states that, as a discovery sanction, a court may issue an “order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence.” Courts have “broad discretion in determining the sanctions to be imposed” under this Rule. See Wong v. City & County, 66 Haw. 389, 394 (1983).

Such sanctions are particularly appropriate where the wrongdoing party has behaved willfully. See Aloha Unlimited, Inc. v. Coughlin, 79 Haw. 527, 533–34 (Ct. App. 1995). And willfulness is demonstrated where a party has either “‘wrongfully failed to provide discovery,’ or if ‘the record clearly shows delay or contumacious conduct.’” Aloha Unlimited, Inc., 79 Haw. at 533–34 (quoting Richardson v. Sport Shinko (Waikiki Corp.), 76 Hawai‘i 494, 507 (1994); Azer v. Courthouse Racquetball Corp., 9 Haw. App. 530, 540 (1993)). Bad faith discovery abuse may even warrant dismissal as a sanction. See U.S. for Use & Ben. of Wiltec Guam, Inc. v. Kahaluu Const. Co., 857 F.2d 600, 603 (9th Cir. 1988).

Defendants’ actions are clearly willful, and as will be discussed below, part of a broader pattern of conduct of refusing to comply with court orders in other courts. They have known since

March 7, 2021 that they are required by law to produce the records subject to Plaintiff's Motion to Compel. The Court ordered production "by March 9, 2022 at 4:30 p.m. HST." Nearly one month after the Court's deadline, there is no excuse. While Plaintiff recognizes that liability sanctions are not to be taken lightly, Defendants' flagrant disregard of the Court's orders justifies such sanctions.

III. MR. TAYLOR'S PRO HAC VICE STATUS SHOULD BE REVOKED

In addition to sanctions precluding Defendants' ability to deny liability in this case, Plaintiff also seeks the revocation of Mr. Taylor's *pro hac vice* status as a sanction for his disregard of the Court's order. Plaintiff seeks this revocation on the basis that: (a) Mr. Taylor has openly defied the Court's order; (b) such conduct appears to be part of a pattern of practice displayed in other jurisdictions, as evidenced by a near-identical case in Montana; and (c) Mr. Taylor failed to supplement his required Hawaii Professional Rule 1.9 disclosure to notify the Court that he and his clients have been the subject of Montana contempt proceedings.

A. PRO HAC VICE STATUS IS A PRIVILEGE, NOT A RIGHT

Pro hac vice status is a privilege, not a right, and the Court may exercise its discretion to revoke an attorney's *pro hac vice* status pursuant its inherent powers. See Bank of Haw. v. Kunimoto, 91 Haw. 372, 389 (Haw. 1999). And though Defendants have a right to choice of counsel, their exercise of this right "cannot unduly hinder the fair, efficient, and orderly administration of justice." United States v. Walters, 309 F.3d 589, 591 (9th Cir. 2002). In Hawai'i, stripping an attorney's *pro hac vice* status as a sanction requires a finding of bad faith. See Kukui Nuts of Hawaii v. R. Baird & Co., Inc., 6 Haw. App. 431, 436 (1986) (holding that "a finding that counsel's conduct constituted or was tantamount to bad faith [is] a necessary precedent.");

Kunimoto, 91 Haw. at 389-90 (“It is well settled that a court may not invoke its inherent powers to sanction an attorney without a specific finding of bad faith.”).

“Bad faith” means attorney actions which are “entirely without color,” or which are “taken for reasons of harassment or delay or other improper purposes.” Kunimoto, 91 Haw. at 390, but it also means “actual or constructive fraud or neglect or refusal to fulfill some duty... not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive.” Id. The “interested” motive need not be intentional or knowing; “bad faith” is satisfied when an attorney conduct is “reckless.” Id. “Bad faith” may also be found in an attorney’s failure to take part in proceedings with a reasonable degree of propriety. See, e.g., U.S. v. Engstrom, 16 F.3d 1006, 1012 (9th Cir. 1994) (upholding revocation where attorney made remarks which were disruptive and personally insulting to judge, e.g. “I don’t know what you’re talking about, and I don’t think you do, either.”).

An attorney who has been admitted *pro hac vice* retains a limited property interest in his admission, and revocation cannot occur, therefore, unless the court provides the attorney with notice and a meaningful opportunity to respond. Kunimoto, 91 Haw. at 388. A court is not required to conduct an evidentiary hearing; the opportunity to brief the issue fully satisfies due process requirements. Pacific Harbor Capital v. Carnival Airlines, 210 F.3d 1112, 1118 (9th Cir. 2000).

As discussed above, Mr. Taylor’s counsel to his client and behavior after the Court’s order granting Plaintiff’s Motion to Compel meet this bad faith standard. At this point, Defendants are in open contempt of a Court order. Mr. Taylor and Defendants are refusing to fulfill their duty to turn over discovery unambiguously ordered produced by the Court. This conduct is, at the very least, reckless—but it would also be fair to consider it knowing. After all, Defendants and Mr.

Taylor are aware they must produce all documents subject to the Motion to Compel, right away, without redaction, and they have not. And while the entity subject to the Court's order is the Defendants, Defendants' actions in this suit are effectuated through their counsel. It appears that Mr. Taylor is the logjam here.

This Court has the power to revoke Mr. Taylor's *pro hac vice* status as a sanction for his discovery malfeasance because a "trial court's power to protect its pending proceedings includes the authority to dismiss an attorney who cannot, or will not, take part in them with a reasonable degree of propriety." Kunimoto, 91 Haw. at 390 (quoting Royal Indemn. Co., v. J.C. Penney Co., Inc., 27 Ohio St.3d 31 (1986)). The efficient and proper exchange of discoverable information is the backbone of civil litigation. If Mr. Taylor cannot, or will not, take part in such Court-ordered exchange, his presence as counsel in this suit detracts from the Court's ability to protect its pending proceedings and creates undue distraction and delay. In other words, unless he abides by the rules of this Court, Mr. Taylor has no place in these proceedings.

B. MR. TAYLOR'S BEHAVIOR IS A PATTERN

Though this Motion was necessitated by the actions of Mr. Taylor and Defendants in this case, Plaintiff has become aware of other cases which reveal a disturbing pattern of behavior. Specifically, discovery has revealed that the Jehovah's Witnesses have engaged in an active process of concealing discoverable evidence regarding the identification and investigation of child molesters within its own ranks. The National Church, which Mr. Taylor represents, advises its member churches not to comply with subpoenas without consulting the National legal office, and not to report criminal conduct of its clergy elders to the police—even if required to do so by law—without first consulting its headquarters. See Exhibit A. Local clergy are further instructed by National to conceal evidence in criminal and civil cases on the basis that the Bible does not deem

the failure to provide information as a sin akin to lying. Id. Finally, the National Church has repeatedly used frivolous claims of clergy privilege and attorney-client privilege in order to prevent the production of appropriate documents clearly calculated to lead to discoverable evidence. Id.

On July 22, 2021, the Montana Seventh Judicial Circuit handed down an order enforcing a May 26, 2021 order assessing sanctions and attorney's fees. A copy of that document is attached hereto as Exhibit B. The order indicates that Joel Taylor, on behalf of Watchtower, signed and filed an affidavit indicating that certain documents Watchtower refused to produce contained no information relevant to the pending litigation. Upon review of documents, the Court found Mr. Taylor's representation to be false—and in fact, the documents Watchtower refused to produce were completely relevant to plaintiff's claims in that case. The similarities between the Montana case and this one are shocking. There, as here, a plaintiff alleges child sexual abuse, and that such abuse was enabled and then covered up by the Jehovah's Witness organization. There, as here, the Jehovah's Witness organization fought their obligation to turn over discovery with every possible excuse—that documents were not relevant, that they were covered by attorney client privilege, that they were covered by clergy privilege. There, as here, the court saw through those contentions and ordered the production of documents relevant to the child sexual abuse at issue without redaction. There, as here, Mr. Taylor refused to comply with the court's order to produce documents to the plaintiff. Bizarrely, in the Montana case, Mr. Taylor contended that he had actually complied with the court's order—a blatant lie—and continued to withhold documents by “offering a modified privilege log.” Exh. B, p. 5. Plaintiff expects a similar contention will be made here.

Ultimately, the Montana court concluded that Watchtower, represented by Mr. Taylor, had been “deliberate in the violation of the court’s orders and the plaintiff’s right to discovery.” Moreover, Watchtower’s claims that it could not understand the plain language in the court's order were “absurd and frivolous.” The plaintiffs in that case asked the court to sanction the defendants by entering a default judgment in light of the “flagrance and felicity with which Watchtower willfully obstructed justice and wasted judicial resources.” The court ultimately concluded that it would “strongly consider the ultimate sanction of judgment on liability” and imposed monetary sanctions against the defendants.

Though the Montana court ultimately avoided liability sanctions, repeated bad behavior justifies harsher penalty. Defendants and Mr. Taylor should not be permitted to frivolously claim attorney-client privilege in exactly the way they did in front of the Montana court, as it is clear is their custom. This Court has the opportunity to issue harsher sanctions to deter this conduct here and wherever else Defendants and Mr. Taylor are doing the same. Indeed, the instant case is now the second time (of which Plaintiff is aware) in which the identical pattern of practice has been implemented by Mr. Taylor and his clients. Mr. Taylor and Defendants have continued to frivolously claim attorney-client privilege in exactly the way they did in front of the Montana court, and although they escaped liability sanctions then, this is now the second time they have engaged in an identical practice. They should not be so lucky as to continue their pattern of open defiance of a Court’s order. While this bad behavior justifies the liability sanctions requested above, it also justifies a focus on the common denominator: Mr. Taylor. He and Defendants must not be able to use the multiple lawsuits filed against the Jehovah’s Witness organization for the sexual abuse of children as test labs for different discovery evasion strategies. If he continues to

repeat the same strategies in different courtrooms, it becomes highly implausible that his disrespect for the rule of law is anything other than knowing.

C. MR. TAYLOR FAILED TO SUPPLEMENT HIS REQUIRED DISCLOSURES

There exists one additional justification for revocation of Mr. Taylor's *pro hac vice* status. Attorneys who practice in the Hawai'i courts must comply with the Hawai'i Rules of Professional Conduct. See Rules of the Supreme Court of the State of Hawai'i 2.2. And an attorney who is admitted to practice *pro hac vice* "is subject to the jurisdiction of Hawai'i courts with respect to all applicable Hawai'i statutes, laws, and rules of the courts to the same extent as any other attorney admitted to practice in the courts of this state. The attorney approved to appear *pro hac vice* is subject to the disciplinary jurisdiction of the Supreme Court of the State of Hawai'i." Rules of the Supreme Court of the State of Hawai'i 1.9(c).

On January 17, 2020, Defendants moved for admission *pro hac vice* of Joel Taylor. In accordance with Supreme Court Rule 1.9, Mr. Taylor was required to execute a Declaration, a copy of which is attached hereto as Exhibit C. Paragraph 5 says: "I have never been the subject of any disciplinary action by any Bar or Court and I am not currently under any suspension or disbarment by any State or Federal court." While, upon information and belief, such a statement was true when Mr. Taylor executed it, in July 2021—the date of the Montana sanctions order—it become untrue. This is problematic given that in January of each subsequent year, Mr. Taylor has renewed his *pro hac vice* application, and his application was accepted despite the fact that Paragraph 5 was no longer true.

Because his claim that he had never been subject to sanctions was a precondition of Mr. Taylor's *pro hac vice* status, Mr. Taylor had a continuing obligation to apprise this Court of

change in that condition. Such an obligation is implicitly contemplated by Rule 1.9, which states that “[a]n attorney allowed to appear *pro hac vice* in a case may continue on appeal or upon remand in the same case without filing a new petition . . . so long as the attorney complies with all applicable Hawai‘i statutes, laws, and rules of the court in addition to other provisions of this Rule.” Rules of the Supreme Court of the State of Hawai‘i 1.9(a). The Rule itself requires that an applicant’s declaration note material information about all disciplinary proceedings to which the attorney has been subject. Id. Therefore, Mr. Taylor had an obligation to continuously apprise the Court of salient information regarding his *pro hac vice* status, but neglected to do so.

Ultimately, regardless of whether Mr. Taylor is in violation of his duty to correct a prior representation, Mr. Taylor’s conduct and failure to comply with the Court’s March 30, 2022 order justifies a revocation of his *pro hac vice* status and an order compelling him to disclose this matter and the Montana order to all subsequent courts to which Mr. Taylor seeks *pro hac* admission.

DATED: Honolulu, Hawai‘i. April 5, 2022.

/s/ Mark S. Davis
MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW C. WINTER
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-profit
unincorporated religious organization, a.k.a.
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
KENNETH L. APANA, Individually; and Does
1 through 100, inclusive,

Defendants.

CIVIL NO. 1CCV-20-0000390
(Non-Motor Vehicle Tort)

DECLARATION OF MARK S. DAVIS

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii non-profit
unincorporated religious organization, a.k.a.
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES and KINGDOM
HALL, MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; and
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC., a New York
corporation,

Crossclaimants,

vs.

KENNETH L. APANA, Individually,

Crossclaim Defendant.

DECLARATION OF MARK S. DAVIS

I, MARK S. DAVIS, declare as follows:

1. I am an attorney licensed to practice in the State of Hawai'i and am one of the attorneys for Plaintiff in the above action.

2. In compliance with Rule 37(a)(2) of the Hawai'i Rules of Civil Procedure Plaintiff's counsel initiated a meet and confer telephonic conference held on March 31, 2022.

3. Attached as Exhibit A is a collection of correspondence dated July 1, 1989, August 5, 1995, October 10, 2002, and April 9, 2012 from the National Church to its Elders advising its member churches not to comply with subpoenas and not to report criminal conduct of its clergy elders to the police without consulting the National legal office.

4. Attached as Exhibit B is a true and correct copy of the "Order Enforcing May 26, 2021, Order Assessing Sanctions and Attorney's Fees" in *Nunez v. Watchtower, et al.* (Case No. DV-16-084) filed in the Montana Seventh Judicial District Court, Sanders County.

5. Attached as Exhibit C is a true and correct copy of the Declaration of Joel Taylor, filed in conjunction with Defendant Watchtower's Motion for Admission *Pro Hac Vice* of Joel Taylor filed on June 17, 2020 in the instant case.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, April 5, 2022.

/s/ Mark S. Davis

MARK S. DAVIS



WATCHTOWER

BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

CABLE WATCHTOWER

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

PHONE (718) 625-3600

July 1, 1989

TO ALL BODIES OF ELDERS IN THE UNITED STATES

C O N F I D E N T I A L

Dear Brothers:

We are writing to help all of you as individual elders be aware of a growing concern regarding the handling of your duties that may involve legal issues or questions. **Due to its importance, the presiding overseer should arrange for a special meeting of the body of elders to read and consider this letter carefully.**

In spreading the Kingdom message, it is appropriate that we be bold and outspoken. Jesus commanded that "what you hear whispered, preach from the housetops." (Matthew 10:27) Even when worldly authorities demand that we keep silent, we reply as did the apostles: "We cannot stop speaking about the things we have seen and heard." (Acts 4:20) The Christian congregation will continue to declare the Kingdom message boldly until Jehovah says the work is done.

Elders share the obligation to shepherd the flock. However, they must **be careful not to divulge information about personal matters to unauthorized persons.** There is "a time to keep quiet," when "your words should prove to be few." (Ecclesiastes 3:7; 5:2) Proverbs 10:19 warns: "In the abundance of words there does not fail to be transgression, but the one keeping his lips in check is acting discreetly." Problems are created when elders unwisely reveal matters that should be kept confidential. Elders must give special heed to the counsel: "Do not reveal the confidential talk of another." (Proverbs 25:9) Often the peace, unity, and spiritual well-being of the congregation are at stake. Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation, and even the Society.

While we as Christians are ready to forgive others who may wrong us, those in the world are not so inclined. Worldly persons are quick to resort to lawsuits if they feel their "rights" have been violated. Some who oppose the Kingdom preaching work readily take advantage of any legal provisions to interfere with it or impede its progress. Thus, elders must especially guard the use of the tongue. Jesus faced opposers who tried to "catch him in speech, so as to turn him over to the government." (Luke 20:20) He instructed us to be "cautious as serpents and yet innocent as doves" in such situations. (Matthew 10:16) Where such a threat exists, our position as elders should be in line with David's words: "I will set a muzzle as a guard to my own mouth, as long as anyone wicked is in front of me."—Psalm 39:1.

EXHIBIT A

WTNY000228

TO ALL BODIES OF ELDERS
July 1, 1989
Page 2

In recent years, this matter has come to be a cause for increasing concern. The spirit of the world has sensitized people regarding their legal "rights" and the legal means by which they can exact punishment if such "rights" are violated. Hence, a growing number of vindictive or disgruntled ones, as well as opposers, have initiated lawsuits to inflict financial penalties on the individual, the congregation, or the Society. **Many of these lawsuits are the result of the misuse of the tongue.** As elders, remember that ill-advised statements or actions on your part can sometimes be interpreted legally as violating others' "rights."

The need for elders to maintain strict confidentiality has been repeatedly stressed. Please see The Watchtower of April 1, 1971, pages 222-4, and September 1, 1987, pages 12-15. The September 1977 Our Kingdom Service, page 6, paragraph 36, and the ks77 text-book, page 65, also provide helpful direction and counsel. That material strongly emphasized the elders' responsibility to avoid revealing confidential information to those not entitled to it.

The legal consequences of a breach of confidentiality by the elders can be substantial. If the elders fail to follow the Society's direction carefully in handling confidential matters, such mistakes could result in successful litigation by those offended. Substantial monetary damages could be assessed against the elders or congregation. In some cases where the authorities are involved, certain complications could lead to a fine or imprisonment. These possibilities underscore **the need for elders to be discerning and to follow carefully directions provided by the Society.**

I. WHAT TO DO IN SPECIFIC CASES

A. Judicial Committee Matters

Judicial committees must follow carefully the Society's instructions in carrying out their duties. (Note ks77, pages 66-70; ks81, pages 160-70.) Anything submitted in writing to the committee by the alleged wrongdoer or by witnesses should be kept in strict confidence. If it is necessary to continue at a later time a committee hearing, the members of the committee should submit to the chairman any personal notes they have taken. The chairman will keep these notes in a secure place to prevent breaches of confidentiality. The notes may be returned to the individual elders when the hearing resumes. Upon conclusion of the case, the chairman should place only necessary notes and documents, a summary of the case, and the S-77 forms in a sealed envelope for the congregation file. Nothing should be preserved outside of this sealed envelope (including unnecessary personal notes) by any elder on the committee. Obviously, no committee will ever allow judicial proceedings to be tape recorded or allow witnesses testifying before the committee to take notes.

B. Child Abuse

Many states have child abuse reporting laws. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. Victims of such abuse need to be protected from further danger.—See "If the Worst Should Happen," Awake! January 22, 1985, page 8.

C. Search Warrants and Subpoenas

1. A search warrant is a court order authorizing the police to search premises to locate evidence that may be used in a criminal prosecution. No elder should ever consent to the search of a Kingdom Hall or any other place where confidential records are stored. However, armed with a search warrant the police do not need consent and may even use force to accomplish their task. Likely before obtaining a search warrant, the police or other governmental officials will make inquiries regarding confidential records, make request to obtain the records, or indicate that they will seek a search warrant if the elder(s) involved does not cooperate. In any such situation, the Society's Legal Department should be called immediately.

At any time an elder is confronted with a search warrant (whether given advance notice or not), the elder should first ask to read the warrant. After reading it he should ask if he can call for legal guidance and then call the Society's Legal Department. If for some reason the Legal Department cannot be contacted, the elders involved should make every effort to obtain the assistance of a local attorney for the purpose of protecting the confidentiality of the records. It may be impossible to stop determined officers from conducting the search authorized by the warrant. Conscientious elders will want to do all they reasonably and peaceably can to preserve the confidentiality of the congregation in harmony with the principle set out in Acts 5:29.

2. Subpoenas are demands for records or for the appearance of an individual at a trial or deposition to give testimony. Subpoenas may be issued by a court or in some cases by a governmental agency or an attorney. If an elder receives a subpoena, he should contact the Society's Legal Department immediately. Never turn over records, notes, documents, or reveal any confidential matter sought by subpoena without receiving direction from the Legal Department.

D. Crimes and Criminal Investigations

In some cases the elders will form judicial committees to handle alleged wrongdoing that also could constitute a violation of Caesar's criminal laws (e.g., theft, assault, etc.). Generally, a secular investigation into a matter that is a concern to the congregation should not delay conducting a judicial hearing. To avoid entanglement with the secular authorities who may be investigating the same matter, the strictest confidentiality (even of the fact that there is a committee) must be maintained.

If the alleged wrongdoer confesses to the sin (crime), no one else should be present besides the members of the committee. When evidence supports the accusation but genuine repentance is not displayed resulting in a decision to disfellowship, this should be handled in the normal course regarding advice of appeal rights and announcements to the congregation. In cases of serious criminal wrongdoing (e.g., murder, rape, etc.), or where the criminal conduct is widely known in the community, the body of elders should contact the Society before proceeding with the judicial committee process.

E. When Servants and Publishers Move

A considerable number of publishers, including **elders and ministerial servants move from one congregation to another.** Sometimes the circumstances surrounding their departure are unsettled. Some appointed brothers may be experiencing problems that have brought their qualifications into question. It is not uncommon for a body of elders to hold back in giving counsel, allowing a brother to move without discussing his problem. Thereafter, they decline to recommend his reappointment in his new congregation. Often such a brother protests, requiring extensive correspondence between the bodies of elders. Much personal, and sometimes embarrassing, information must then be passed on. Such mishandling of things greatly increases the potential for serious repercussions. Problems can be avoided by the body of elders assuming its responsibility to inform a brother that he will not be favorably recommended, fully explaining the reasons why. **Every effort should be made to resolve any difference before he leaves, eliminating any need for controversy involving his new congregation.** The body should assign two elders to meet with him before he moves, letting him know whether they are recommending him to the new congregation.

This would likewise apply to publishers who move at a time when their personal conduct requires investigation by the elders. **If serious accusations of wrongdoing have been made against an individual and he moves to another congregation before matters are finalized, usually it is best for the elders in the original congregation to follow through in handling matters, if possible and if distance permits.** They are acquainted with the individual and the circumstances surrounding the alleged wrongdoing; this ordinarily puts them in the best position to get the facts and to handle the case. Handling matters in this way will eliminate the need to reveal confidential information unnecessarily about the private lives of individuals.

F. When Lawsuits Are Threatened

If the congregation or the elders (in their capacity as elders) are threatened with a lawsuit, the Society's Legal Department should be contacted immediately. No statements should be made by any member of the body of elders about the merits or validity of an actual or threatened lawsuit without authorization from the Society.

G. Child Custody

Elders may learn that a publisher is facing a dispute over child custody in a divorce proceeding. If the parental rights of such is challenged on the basis of our Christian beliefs, or on the assertion that our beliefs are harmful to a child's best interests, the elders should immediately write to the Society's Legal Department. In a rare emergency, a telephone call may be necessary. The Legal Department will assess the facts and determine the degree of its involvement, if any. Elders have no authority to make any promises about the Society's paying legal fees or handling specific cases. There is no need to contact the Society if there is no indication that the beliefs and practices of Jehovah's Witnesses will be attacked in a child custody dispute.

When you write to the Society's Legal Department about a specific case, please provide the following information:

1. The names of the parents and their attorneys.
2. The number of children involved and their ages.
3. A brief description of the facts, including the presence of any apostates.
4. An assessment of the Christian parent's spiritual condition—Is he or she new in the truth? Active? Inactive? Balanced?
5. The status of the legal proceedings—Has the matter gone to trial? Has the trial date been set? If so, when?

II. POINTS TO REMEMBER

A. Appreciate the Importance of Maintaining Confidentiality

Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out favorably, valuable time and energy that could have been devoted to Kingdom interests will be lost.

B. Do Not Make Statements to Secular Authorities Until You Receive Legal Advice from the Society

You are not legally required to make immediate responses to secular authorities about matters that could involve the disclosure of confidential information. Voluntarily allowing the Kingdom Hall or confidential records to be searched, where no search warrant is produced, could infringe on the legal rights of the congregation or of others. No statements should be made until you have an understanding of your legal position from the Society's Legal Department.

C. Be Extremely Careful with Written Material

All material related to judicial matters should be kept in a safe place, accessible only to elders. **Final reports on the handling of judicial matters should be placed in a sealed envelope in the congregation file.** A judicial committee should avoid sending to an individual any kind of correspondence that accuses him of specific wrongdoing. (Note ks77, pages 68-9.) **Nothing should be put in writing to any disfellowshipped person to advise him of his status or the reasons for it without specific direction from the Society.** The rules and procedures of Jehovah's Witnesses do not require such written disclosures. Anything in writing submitted to a judicial committee should be kept in strict confidence. If a judicial committee disfellowships an individual, he should be informed **orally** of the action taken and of the right to appeal. If the wrongdoer refuses to attend the hearing, two members of the judicial committee should attempt to contact the individual at his home and inform him **orally** of the decision. If this is not possible, the two elders may be able to inform him by telephone.

D. Guard the Use of Your Tongue

Think before you speak. Do not discuss private and judicial matters with members of your family, including your wives, or with other members of the congregation. Be extremely careful not to inadvertently disclose private information when others are present, such as when speaking on the telephone with others listening in or nearby. (Note ks77, page 65.) At times, complicated judicial cases may necessitate consultation with an experienced, mature elder in another congregation or with the circuit overseer. Unless the circuit overseer is the elder consulted, only the pertinent details should be discussed and names should not be used.

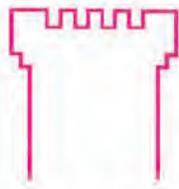
Elders bear a heavy responsibility in ministering to the needs of the Christian congregation, and observing confidentiality as they do so. (1 Corinthians 16:13) We trust that the information in this letter will help you carry this burden. Please be assured of our love and prayers, and may Jehovah continue to bless you as you shepherd his flock.—1 Peter 5:1-3.

Your brothers,

Watchtower B. & T. Society

OF NEW YORK, INC.

P.S. Due to the importance of the information that is presented herein it is suggested that the body of elders jointly read and consider this letter as soon as possible after its receipt in the congregation. Please do not make any copies of this letter, nor should it be read by others. It should be kept in the congregation's confidential files for any future reference that may be required by the body of elders.



WATCHTOWER

BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A. PHONE (718) 560-5000

August 1, 1995

TO ALL BODIES OF ELDERS IN THE UNITED STATES

Dear Brothers:

We are pleased to outline below some guidelines that we hope will be helpful to you in protecting victims of child abuse and in dealing with a brother or sister in the congregation who has been guilty of sexually abusing a child.

When a member of the congregation is accused of child molestation, the elders should contact the Society's Legal Department immediately. Many states make it mandatory that elders report an accusation to the proper authorities but other states do not. In those states where such is required, oftentimes the parent, the guardian, or the accused person himself can do the reporting. In this way the confidentiality protected by ecclesiastical privilege is not violated. Still, whether or not the accusation is reported to the authorities, when it is established that a member of the congregation is guilty of child abuse, appropriate steps should be taken in keeping with initial direction from the Society's Legal Department.

Additionally, steps should be taken to protect the child, or other children, from further sexual abuse. Obviously, parents would be keenly interested in taking adequate precautions in this regard. Helpful information along these lines can be reviewed in the January 22, 1985, and October 8, 1993, issues of *Awake!* Loving elders, too, will want to act in a way that demonstrates their protective care, since the word "overseer" carries the thought of one who watches over, a guardian, a shepherd of the flock. (See "*Pay Attention to Yourselves and to All the Flock*," pages 90 and 93.) Thus, they would want to take steps to protect a child abuse victim when a judicial committee determines that the child molester is repentant and will remain a member of the Christian congregation. The same concern would be shown when a pedophile is disfellowshipped and later cleans up his life and is reinstated.

It would be appropriate to talk very frankly to a former child abuser, strongly cautioning him as to the dangers of hugging or holding children on his lap and that he should never be in the presence of a child without another adult being present. This may prevent putting that one in the way of temptation or unfounded accusation. At the same time, it is good to remember that the Bible, at Matthew 12:31 and 1 Corinthians 6:9-11, shows it is possible for a person to stop his or her wrongful course, repent, and thereafter live in harmony with God's righteous standards. This is true of all wrongdoers—even a former child abuser.

WTNY000499

TO ALL BODIES OF ELDERS IN THE UNITED STATES

August 1, 1995

Page 2

While it is unscriptural to say that a former child abuser could never enjoy exemplary privileges of service in the congregation, certainly the elders will want to be very cautious, especially when one had repeatedly engaged in this kind of wrongdoing or had been disfellowshipped for such an offense. Before extending privileges, therefore, it is necessary that one would meet the qualification of having a fine testimony from individuals inside and outside the congregation. This means that he must have lived down the reproach which resulted from his wrongdoing. Generally, it will take a considerable number of years to achieve such irreprehensibility depending on the notoriety involved. So it would be up to the elders to determine whether such a one is extended privileges, taking into account all factors in each individual case. (1 Tim. 3:7) At any rate, this should never be done hastily. Considerable time should always pass before a former child abuser is used, if ever.

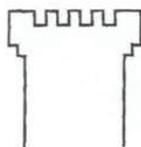
What if a former child abuser moves to another congregation? The Congregation's Publisher Record card(s) for that person should be sent to the new congregation, along with a letter of introduction. If he is under judicial restrictions, the committee in his former congregation should clearly and discreetly inform the elders in the new congregation about the problem, outlining the counsel given and the restrictions imposed and pointing out what they have been doing to monitor and assist him. Even if years have passed and the individual is no longer restricted but there is still some concern (as outlined in the preceding paragraph), the elders in the new congregation should be informed.

It is hoped that the above direction will help you brothers in handling matters in the congregation so as to protect victims and potential victims from child abuse, and at the same time, balance justice with mercy. With this letter we send our warm Christian love and greetings.

Your brothers,

Watchtower B. & F. Society
OF NEW YORK, INC.

WTNY000406



WATCHTOWER

BIBLE AND TRACT SOCIETY OF AUSTRALIA

BOX 280, INGLEBURN, NSW 1890 AUSTRALIA

ABN 42 002 861 225

PHONE: (02) 9829 5600

FAX: (02) 9829 3618

LLA October 10, 2002

TO ALL BODIES OF ELDERS IN AUSTRALIA

Dear Brothers:

Some questions have arisen concerning the statement on page 2 of our letter To All Congregations in Australia dated August 28, 2002: "We have long instructed elders to report allegations of child abuse to the authorities where required by law to do so, even where there is only one witness." This statement needs to be understood in the following context: (1) This was a general letter addressed to the congregation and not specifically to the elders; and (2) the Society has long instructed elders to follow the following procedure:

"When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Department immediately. Victims of such abuse need to be protected from further danger."—See letter AB:AS To All Bodies of Elders, August 25, 1989, page 3.

"When a member of the congregation is accused of child molestation, the elders should contact the Society immediately. Some states make it mandatory that elders report an accusation to the proper authorities but other states do not. ... Before speaking to the one accused, the elders should contact the Society."—See letter SA To All Bodies of Elders, November 1, 1995, page 1.

It must be appreciated that the question of child abuse is a complicated matter and that there can be no blanket direction given to the elders throughout the country, or even state by state. Whether or not they are "required by law to do so," can only be determined at the time when elders contact the Society after receiving a report of child abuse. If the law requires them to report the matter, the Society has always, at that time, advised elders to do so. Since there is no clear precise legal definition of "child abuse," and since laws may vary from state to state and are changed from time to time, it is only when all the facts of a particular case are available that proper direction can be given in such matters. Some elders have been concerned about the question of confidentiality, having in mind what the Scriptures say on the subject. (Proverbs 11:13; 15:22) If, after contacting the Society, it is determined that the elders should report a matter such as child abuse to the authorities, it would not be considered to be a breach of confidentiality to make such a report. At times, there may be other Bible principles that must be weighed against the need for confidentiality. (For example, see *Awake!* January 22, 1985, page 8.) Nevertheless, elders should always be conscious of their Scriptural responsibility to keep matters confidential. In this way they can be "like a hiding place from the wind and a place of concealment from the rainstorm." (Isaiah 32:2; See also *The Watchtower* April 1, 1971, pages 222-224.) However, there are times when elders must reveal confidential matters in order to protect the sheep. For example, *Our Kingdom Ministry*, April 1999, on page 7, stated:

"The question has been asked whether elders should supply information to secular authorities when they learn that a brother or sister has been involved in a serious crime. ... If an elder learns of some serious crime on the part of a member of the congregation, they may, in some circumstances, be obliged to report the matter, or provide information to secular authorities."

TO ALL BODIES OF ELDERS IN AUSTRALIA
LLA October 10, 2002

Page 2

In all such cases, the elders would want to reach any decision to report the matter or provide information to secular authorities only *after* consultation with the Society, as stated in *Our Kingdom Ministry*:

“Even in such cases, it is important that the elders maintain confidentiality to the extent possible, and elders should *always* contact the Society *before* providing any information on confidential matters to secular authorities.”

We also want to encourage you to continue providing follow-up assistance for those who have been victims of child abuse. From time to time, the Society has provided assistance to elders to help them to become more effective shepherds, genuinely interested in the welfare of individuals under their care. (1 Peter 5:2.) For example, some helpful articles are: “Help for Victims of Incest”—*The Watchtower*, October 1, 1983; “Child Molesting—Every Mother’s Nightmare”—*Awake!* January 22, 1985; “How Can We Protect Our Children?” and “Prevention in the Home”—*Awake!* October 8, 1993; and “Let Us Abhor What Is Wicked!”—*The Watchtower*, January 1, 1997. While we do not take a secular approach in this regard, by imitating the tender qualities of our loving heavenly Father, Jehovah, and his Son, Jesus, much good can be accomplished in rendering assistance to those who have experienced abuse, or who have other distressing circumstances to deal with.—Matthew 11:28, 29.

To assist in protecting our young children, we are now asking the body of elders to write to the Society before allowing a former child molester to receive any privileges in the congregation that would indicate congregational approval. This would include the handling of microphones, being an attendant, working with the literature, volunteering at a convention or assembly, or even auxiliary pioneering.

We appreciate the time and effort you brothers expend in shepherding the sheep. Please accept our very warm Christian love and greetings.

Your brothers,

Watchtower B.S.J. Society
OF AUSTRALIA

Christian Congregation of Jehovah's Witnesses

2821 Route 22, Patterson, NY 12563-2237 Phone: (845) 306-1100

April 9, 2012

TO ALL BODIES OF ELDERS

Re: Procedures when legal issues are involved

Table of Contents	
Confidentiality	Pars. 5-12
Crimes and criminal investigations	Pars. 13-17
Disruptive individuals at congregation meetings.....	Pars. 18-19
Suicides and attempted or threatened suicides	Pars. 20-21
When lawsuits are threatened	Par. 22
Child custody.....	Pars. 23-25
Vehicle accidents.....	Par. 26
When a publisher has a personal legal question	Par. 27
Nonneutral activity	Pars. 28
Witnessing difficulties.....	Pars. 29-35

Dear Brothers:

1. This letter replaces the letters dated July 1, 1989, November 20, 1996, March 24, 2000, September 27, 2004, November 1, 2005, March 1, 2007, and December 12, 2008, to all bodies of elders. Those letters should be removed from the congregation permanent file of policy letters and be destroyed. *No one should keep originals or copies of any of those letters.*

2. Elders carry a heavy responsibility in these "critical times." (2 Tim. 3:1) You must teach and shepherd the flock, set a good example in field service, maintain good spiritual habits, and care for your families' spiritual, emotional, and physical needs. We very much appreciate and commend you for your sincere efforts to care for each of these responsibilities.

3. Your task is made more challenging by the fact that we live in a complex society in which people have become increasingly proud, greedy, and litigious. (2 Tim. 3:2-4) Further, in response to growing social problems, governments at times enact laws that impose additional responsibilities on the ministers of all religions. As Christians, we recognize Jehovah's supreme authority and obey laws of the land that do not conflict with God's law. (Matt. 22:21; Rom. 13:1, 2) It is therefore important that as elders you act wisely and with discernment and always follow the organization's procedures and directions for handling congregation matters that involve legal issues.—Prov. 2:6-9.

4. Direction on handling child abuse matters can be found in separate correspondence. However, we are now pleased to provide consolidated direction on handling other congregation matters involving legal issues. Please give this information your prayerful consideration.

CONFIDENTIALITY

5. As overseers, you are often entrusted with knowledge of sensitive and confidential information. Elders must be careful never to divulge confidential information to persons who are not authorized to receive it. There is "a time to keep quiet" and a time when "your words should prove to be few." (Eccl. 3:7; 5:2) Proverbs 10:19 warns: "In the abundance of words there does not fail to be transgression, but the one keeping his lips in check is acting discreetly." Unnecessary spir-

itual and legal problems result when elders unwisely reveal matters that should be kept confidential. You must therefore give special heed to the counsel: “Do not reveal the confidential talk of another.” (Prov. 25:9) When elders disregard this counsel, trust in the elder body is threatened.—w96 3/15 p. 18 par. 12; w97 11/15 p. 23 par. 19; w87 9/1 pp. 12-15.

6. If an elder were to breach confidentiality, he could subject himself and the organization to civil liability. In addition, an elder’s breach of confidentiality could result in a legal waiver of the minister-communicant privilege or the attorney-client privilege. The minister-communicant privilege generally prevents an elder, under specific circumstances, from having to disclose confidential communications between the elder and a member of the congregation, and the attorney-client privilege generally protects an elder from having to disclose confidential communications between the elders and his attorney, including the Legal Department.

7. **Wireless communication:** It is also important to avoid *inadvertently* revealing confidential information. While what is presented at our meetings and assemblies is generally not confidential, on occasion meetings are held that are of a confidential nature. For example, the branch office may sponsor schools for congregation elders and ministerial servants held at a Kingdom Hall. On such occasions, cordless microphones should not be used.

8. When calling the branch office or when otherwise discussing confidential matters by phone with persons entitled to such information, make sure that no one—including family members—can overhear the conversation. For such conversations, it is permissible to use a cordless *digital* telephone. Cordless *analog* telephones do not provide adequate privacy and should not be used. If you are not certain whether you have a *digital* cordless telephone, it may be best to use a landline telephone. Therefore, please make sure that your telephone is not a cordless *analog* telephone.

9. Most cellular telephone providers today have replaced older analog networks with more secure digital networks. These signals are encrypted and considered to be secure from people seeking to monitor conversations. Therefore, cellular telephones may be used when calling the branch office or when discussing confidential matters with fellow elders.

10. **When someone seeks confidential information:** You should never reveal confidential information to anyone unless theocratic procedure requires it or the branch office has instructed you to do so. (Persons seeking confidential information may include an investigator, an attorney, a policeman, a detective, other law enforcement officers or government officials, school personnel, parties to a lawsuit, family members [whether they are Jehovah’s Witnesses or not], and even other elders or other persons who may not be entitled to the information.) This applies to written materials and unwritten knowledge possessed by the elders. It applies to records pertaining to a particular case and general materials, such as letters from the organization, the *Shepherding* textbook, and the *Organized* book. Even when secular authorities request confidential information, you are not obligated to answer questions before consulting the branch office. (*ks10* chap. 6 par. 19) You should then ask to speak to the Legal Department. Oftentimes secular authorities request confidential information to which they are not legally entitled. Thus, you could subject yourself and the organization to civil liability if you reveal such confidential information.

11. If any unauthorized person seeks confidential information from you, simply state: “As a minister I have a duty to keep certain matters confidential and must consult my attorney before answering any questions.” There is no need to state that you will be contacting the Legal Department. If the inquiring party presses for more information about a confidential matter or for the identity of your attorney, do not be intimidated by threats and do not make any other statements. Simply ask for the person’s name, telephone number, title, and the office he represents, and tell him that you

will need to talk to your attorney before you respond to his request. Then, call the Legal Department immediately for legal direction.

12. **Subpoenas:** A subpoena or subpoena duces tecum is an official written demand for oral testimony or records. If you receive a subpoena, or if you hear that one may be issued seeking oral or written information from someone concerning a congregation matter, call the Legal Department immediately. If possible, have the subpoena that has been served on hand when you make the call, and be prepared to fax a copy of it. **Never turn over records, notes, or other documents or reveal any confidential matter** sought by subpoena without first receiving legal direction from the Legal Department. Many documents and records in congregation files may be protected from disclosure based on the minister-communicant privilege or the attorney-client privilege. If you receive a subpoena intended for someone else, call the Legal Department immediately, even before you contact the party for whom the subpoena was intended. If someone threatens to get a subpoena for congregation-related records or testimony, call the Legal Department immediately, even if no actual subpoena has yet been served.

CRIMES AND CRIMINAL INVESTIGATIONS

13. **Handling reports of the abuse of elderly and disabled persons:** At times, the law may require ministers to report the abuse of elderly and disabled persons to the authorities. Elders should therefore call the Legal Department for legal advice whenever they receive an allegation that an elderly or disabled person has been abused. The types of adult abuse that are reportable to authorities differ from state to state. Adult abuse can be physical, sexual, or emotional and can include neglect or abandonment by a caretaker, self-neglect, forced labor, and financial or other types of exploitation. Some states define "elderly" as anyone 60 years of age and older; others specify over 65. In some states adult abuse reporting statutes apply to disabled persons who are 18 years old or older. In any event, we want to do all we can to protect elderly and disabled persons from harm, in harmony with the principles of God's Word that direct us to have tender compassion for disadvantaged ones. —Ps. 72:13, 14.

14. **Handling reports of other crimes:** When the elders learn of alleged criminal activity on the part of one of Jehovah's Witnesses or someone associated with the congregation as the accused or the victim, they should immediately call the Legal Department. In some cases, the elders will form a judicial committee to handle alleged wrongdoing that may also constitute a violation of criminal law (e.g., murder, rape, child abuse, fraud, theft, assault). Generally, the elders should not delay the judicial committee process, but strict confidentiality must be maintained to avoid unnecessary entanglement with secular authorities who may be conducting a criminal investigation of the matter. For example, even the fact that a judicial committee has been formed should not be disclosed to persons not entitled to know. (*ks10* chap. 6 par. 18) In addition, the Legal Department should be contacted for legal advice on how to protect confidentiality that is specific to the circumstances of the case.

15. **Search warrants:** Elders should never give consent for anyone to search a Kingdom Hall or any other place where confidential records are stored. Conscientious elders do all they reasonably and peaceably can to preserve the confidentiality of the congregation in harmony with the principle set out in Acts 5:29. However, law enforcement officers do not need your consent if they have a search warrant. A search warrant is a court order authorizing the authorities to search certain premises to locate evidence that may be used in a criminal prosecution.

16. If a law enforcement officer claims to have a search warrant, ask to see and read it. If your request is denied, tell the officer that you do not consent to the search, but do not try to physically stop him. Then, whether you have been allowed to read the search warrant or not, call the Le-

gal Department immediately for legal advice. If for some reason you are not allowed to call or you are unable to contact the Legal Department at that moment, call as soon as possible. If the authorities threaten to get a search warrant to look for congregation records or other confidential information, call the Legal Department immediately, even if the warrant has not yet been issued.—*ks10* chap. 6 par. 19.

17. **Restraining orders or orders of protection:** At times an individual will obtain a restraining order or order of protection against someone else. The elders should not try to read, understand, or enforce a restraining order between private parties, and neither should an elder try to provide legal advice. If anyone asks the elders any questions about the restraining order, politely tell the person that a restraining order is a personal legal matter that does not involve the congregation. Thereafter, the elders should call the Legal Department immediately for direction.

DISRUPTIVE INDIVIDUALS AT CONGREGATION MEETINGS

18. It is best to ignore trivial or minor disturbances created by individuals at congregation meetings. But if an individual persists in this course of action and is distracting others, two elders should ask him to leave. If a second elder is not readily available, a mature ministerial servant can be asked by an elder to join him. If the disruptive individual refuses to leave, you should inform him that if he does not leave and continues to distract others, you will contact the police to have them deal with him. If the individual does not cooperate, you should telephone the police. When the police arrive, you may inform them that the individual is causing a disturbance and that his implied invitation to attend the meeting has been revoked. You may also inform the police that you are willing to file trespassing charges if it seems prudent and necessary under the circumstances. If you feel the need for further direction, please contact the Service Department.

19. Elders wisely avoid being provoked into physically removing a disruptive person from the premises, as the individual may be attempting to create a basis for legal action. Thus, the elders should generally not try to forcibly remove a disruptive individual from the Kingdom Hall. If an individual is violent from the outset, the police can be called immediately. There is no need to warn him. In the event that a person is physically attacked, that person has the right to defend himself from harm, and the elders should do what they reasonably can to help protect the individual. If those who are being physically attacked are unable to flee from an assailant who appears determined to cause injury, a Christian may try to ward off such attacks and even strike out in defense if necessary. Of course, any such defensive action would be solely to protect oneself or others from the attacker until the police arrive.—*g91* 7/8 p. 13; *g87* 11/22 p. 28.

SUICIDES AND ATTEMPTED OR THREATENED SUICIDES

20. At times, judicial committees may deal with someone who is so distraught that he attempts or threatens to commit suicide. In such cases it may be best for the committee to suspend the hearing and focus on helping the person to regain his balance. In any event, the elders should treat the person with extreme thoughtfulness and kindness.—*ks10* chap. 5 par. 4; chap. 6 par. 16.

21. In addition, elders should immediately call the Legal Department for legal direction whenever they learn of an actual suicide, a threatened suicide, or an attempted suicide, since legally this is also defined as self-murder or *felo-de-se*. Whether a family member or close friend with knowledge of the suicide threat or suicide attempt reports it to authorities is a personal decision for him to make. (Gal. 6:5) Elders should not discourage anyone from reporting the matter. Family members who are aware of the suicide threat or attempt should be encouraged to take positive steps to prevent the person from harming himself.

WHEN LAWSUITS ARE THREATENED

22. Elders should call the Legal Department immediately when they learn of any threatened legal action or actual lawsuit against the organization, congregation, or elders. If you are contacted by an attorney or the media regarding a threatened or actual lawsuit before you have had an opportunity to call the Legal Department, get the caller's name, law office name, telephone numbers, deadline, and cause of action, and let the caller know you will try to call them back before that deadline. Then call the Legal Department immediately for assistance. No elder should make any statement about the merits or validity of an actual or threatened lawsuit before calling the Legal Department.—*ks10* chap. 6 par. 18.

CHILD CUSTODY

23. A packet of legal material is available to assist publishers who are involved in lawsuits over child custody and visitation matters in which our religion is under attack. The packet should be requested by the *body of elders only* in a case in which it is evident that the publisher's religious beliefs will be at issue. For those facing secular issues on child custody or visitation, helpful information can be found in the October 2009 *Awake!*, pages 21 and 27; the December 8, 1997, *Awake!*, pages 3-12; the chart found in the April 22, 1991, *Awake!*, page 9; and the October 22, 1988, *Awake!*, pages 2-14.

24. Elders should not make any promises to publishers about the organization's involvement. If a publisher requests the packet, please determine the following before calling the Legal Department to request a packet:

- **Is there litigation?** In other words, has someone been served with papers to appear in court? If litigation has not begun, the Legal Department will not send the packet. It is better if the parties can settle the issue between themselves without going to court. Sending the packet prematurely may give the impression that we are encouraging litigation.
- **Is the litigation between the two biological parents?** Sometimes the litigation involves a parent and grandparent, two sets of grandparents, parent and step-parent, and so forth. The packet is specifically crafted to address *only* the law that applies to biological parents. It will not apply to any other situation and will not be sent in such cases. Nevertheless, if it appears one party is actively using a religious issue against the other, you may write to the Legal Department to explain the extenuating circumstances and inquire whether any type of assistance would be available.
- **Is the publisher requesting the packet one of Jehovah's Witnesses in good standing?** Unbaptized publishers, advanced Bible students, or baptized persons on judicial restrictions will be considered on a case-by-case basis. In the judgment of the elders, would it shock or upset the congregation if they learned that the organization was helping this person? If so, a packet will not be sent.
- **Is the other party to the litigation not one of Jehovah's Witnesses?** This includes those who were never in the truth as well as disfellowshipped and disassociated persons. However, the packet will not be sent if both parties are Witnesses, even if the other party is currently inactive and not leading a Christian life. Nevertheless, if it appears one parent is actively using a religious issue against the other, you may write to the Legal Department to explain the extenuating circumstances and inquire whether any type of assistance would be available.
- **Is there a religious issue?** Does the non-Witness party allege that the Witness is not a fit parent because she will not allow the children to celebrate holidays, get a college education, receive a blood transfusion, participate in school sports, or associate with anyone outside of the congregation? Does he allege that exposure to two religions will confuse

the child or that Jehovah's Witnesses are a cult? If disfellowshipped, does he allege that he will be alienated from his children because of being "shunned?" If these or similar religious issues are not present in the litigation, the packet is not appropriate and will not be sent.

25. If the answer to all five questions is yes, a packet may be requested. Please be prepared to provide the names of the parents and their attorneys; the number of children involved and their respective ages; the spiritual condition of the Christian parent; a brief description of the facts, including any apostate involvement; and the status of the litigation. If the answer to all five questions is not yes, please explain to the publisher why a packet will not be requested at this time. If circumstances change, this matter can be revisited. The *Awake!* issues listed previously may still be helpful to an individual who does not qualify to receive a packet.

VEHICLE ACCIDENTS

26. When elders become aware that a publisher driving a vehicle in the ministry, traveling to or from a meeting, or engaging in any other theocratic activity was involved in a vehicle accident resulting in a death or serious injury, the elders should immediately call the Legal Department. If you are contacted by anyone (attorney, other driver, passenger, investigator, or policeman) who requests a statement, you should not discuss the accident or publishers involved. You should simply ask for the caller's name, telephone number, title, and the office he represents and tell him that you will need to talk to your attorney before responding to any questions or inquiries. There is no need to state that you will be contacting the Legal Department. You should then call the Legal Department immediately for further direction on how to proceed.

WHEN A PUBLISHER HAS A PERSONAL LEGAL QUESTION

27. At times, publishers may approach elders with personal legal questions. Elders should not give legal advice to publishers. Kindly tell the publisher that you are not qualified to give legal advice and suggest that he consult his own legal counsel. Of course, if an elder happens to be a lawyer, he may have clients who are Jehovah's Witnesses. In such cases, it is the elder's professional qualifications, and not his position as an elder in the congregation, that enable him to provide legal advice in his professional capacity to a fellow Witness. Any professional services that he renders would not be sponsored by the congregation but would be a private arrangement between a legal professional and his client. *Additionally, elders should never direct or suggest that publishers call or write the Legal Department to receive legal advice and direction regarding personal matters.*

NONNEUTRAL ACTIVITY

28. When reporting to the branch office that an individual has disassociated himself by engaging in nonneutral activity, the wording on the report should be in harmony with Scriptural guidelines. Please use such expressions as "violated neutrality" or "took a nonneutral course." Isaiah 2:4 and John 15:17-19 support these descriptions. Other expressions should not be used. The same caution is to be exercised in all correspondence with the branch office or with other congregations.—Each elder should make the following notation next to the last bullet in paragraph 3 of chapter 9 in the *Shepherding* textbook: "See letter dated April 9, 2012, regarding procedures when legal issues are involved."

WITNESSING DIFFICULTIES

29. **Courtesy telephone notifications before working in the door-to-door ministry:** Prior to engaging in the public ministry, publishers (1) should not obtain a permit or register with police or municipal officials; (2) should not physically go to any police station or government office; and (3) should not provide the police or municipal officials, whether in person, by fax, or by mail, any

papers, forms, lists, or other documents. Of course, if your congregation has received previous direction from the Legal Department regarding courtesy telephone notifications, you should continue to abide by that direction.

30. In the unlikely event that a publisher is stopped by the police while engaged in the door-to-door ministry and is directed to obtain a permit, to provide prior notification in person or by telephone to police or any other municipal official, or to respond to demands for any other information, the publisher should not get involved in a discussion of his legal rights in an attempt to resolve the matter. Rather, he should promptly and politely leave the territory if directed to do so. (Rom. 12:18) The publisher should then inform the body of elders of any such incident. Thereafter, please immediately contact the Legal Department for further direction rather than trying to resolve the matter on your own.

31. **“No Trespassing” signs at individual dwellings:** As a general rule, householders have a right to privacy and the right to prohibit anyone, including publishers, from entering their property by posting a “No Trespassing” sign. Publishers need to be aware of the possible consequences of ignoring a “No Trespassing” sign. If publishers call at a home or enter the grounds around a home where a “No Trespassing” sign is posted, they may be subject to criminal prosecution and resulting monetary sanctions and/or incarceration. Fines in some states are very high, and incarceration for any length of time can be extremely traumatic. To be prosecuted for such conduct is a real possibility and a serious matter. In addition, we are living in litigious times. Publishers ignoring a posted directive to stay away may also face civil liability if sued by an irate householder. (Matt. 10:16) Publishers should keep in mind that if they decide not to go to a particular door because of a posted “No Trespassing” sign, other means of contacting the homeowner are available, such as telephone witnessing and letter writing.—*km* 1/10 pp. 4-6; *km* 5/02 p. 7.

32. **“No Trespassing” signs in communities and apartment complexes:** It is important to note that a “No Trespassing” sign posted on a *home* may be viewed differently from a “No Trespassing” sign placed on a *public street* or at the entrance to a *community* or *apartment complex*. With that in mind, we have no legal objection to publishers preaching in subdivisions and apartment complexes in which they have not experienced difficulties with the authorities or the management, even if there is a sign posted at the entrance.

33. If you experience difficulties with the management of any subdivision or apartment complex, immediately comply with any demands to leave the territory and then write to the Legal Department providing the name and address of the subdivision or apartment complex, the name of the on-site manager (if applicable), a description of the difficulty, and the date(s) of the incident(s). On the other hand, if a *resident* of a subdivision or apartment complex, rather than the *management*, applies a posted sign to our ministry or insists that we cannot preach in the complex, you may wish to mark the individual as a do-not-call and return to preach at another time.

34. **“No Soliciting,” “No Peddling,” or “No Canvassing” signs:** “No Trespassing” signs are different from signs such as “No Soliciting,” “No Peddling,” or “No Canvassing.” If a *municipality* endeavors to enforce the application of such signs to our preaching activity, please contact the Legal Department. However, if a *householder* at any time informs a publisher that such a sign posted on his property applies to our ministry, the publisher should assure the householder that future calls at his home will cease.

35. **“Do-not-calls”:** If a householder insists that no further visits be made by Jehovah’s Witnesses, the home should be listed in a special telephone territory for the elders to call annually to

Re: Procedures when legal issues are involved
April 9, 2012
Page 8

determine if there has been any change in the occupant's attitude toward our ministry. Such direction would apply whether or not the householder has posted a sign indicating his wishes.

36. Elders bear a heavy responsibility in ministering to the needs of the Christian congregation while observing confidentiality and complying with Caesar's laws. (Rom. 13:1-4) We trust that the information in this letter will help you carry out this responsibility. Please be assured of our love and prayers, and may Jehovah continue to bless you as you shepherd his flock.—1 Pet. 5:1-3.

Your brothers,
*Christian Congregation
of Jehovah's Witnesses*

cc: Traveling overseers

PS to secretary:

This letter should be retained in the congregation permanent file of policy letters. You may wish to update the congregation copy of *Index to Letters for Bodies of Elders (S-22)* at this time as well.

FILED July 22 20 21
Candace Fisher
SANDERS COUNTY CLERK OF DISTRICT COURT
BY [Signature]
DEPUTY

MONTANA SEVENTH JUDICIAL DISTRICT COURT, SANDERS COUNTY

<p>ALEXIS NUNEZ, Plaintiff, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.; CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES and THOMPSON FALLS CONGREGATION OF JEHOVAH'S WITNESSES, Defendants.</p>	<p>Cause No. DV-16-084 ORDER ENFORCING MAY 26, 2021, ORDER, ASSESSING SANCTIONS AND ATTORNEY'S FEES</p>
<p>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. IVY MCGOWAN-CASTLEBERRY, Third-Party Defendant.</p>	

This Court issued Orders on May 28, 2021 (Doc. 210) and on June 23, 2021 (Doc. 214) in which it set forth relevant law on discovery and its expectations of all

parties during discovery. The May 28, 2021, Order compelled production of certain specific documents by Watchtower. Watchtower not only flouted its disobedience of that Order, in subsequent pleadings it asserted that an order issued by Judge Manley (Doc. 116) was the “law of the case” and that, therefore, it is “confused” about this Court’s orders, and seeks “guidance” before producing documents the Court has ordered produced. The Court finds Watchtower’s arguments to be frivolous and specious, interposed solely to obstruct and delay.

Based on the Court’s review of Watchtower’s documents submitted for *in camera* review, the Court immediately recognized Watchtower’s obstruction and issued another Order, this time assessing sanctions. (Doc. 214). Watchtower defied that Order and continues to refuse to produce 22 pages of documents, and unabashedly misrepresents the truth. As to documents the Court expressly ordered it to produce, Watchtower asserts that it complied and is simply waiting for the Court to address its embellished claims of privilege, and its “confusion” and its claim that a previous order issued by Judge Manley, before the first trial, supersedes this Court’s Orders.

Watchtower’s representations raise other very serious concerns about its candor with the Court from the outset. Before the Court’s first Order of May 28, 2021, counsel **Joel Taylor (Taylor), on behalf of Watchtower, signed and filed an**

affidavit¹ in which he represented, *inter alia*, that the fourth page of one document at issue “contains no information.” The document, later reluctantly produced, contains information about Max Reyes abusing Peter McGowan, and notably contains blank spaces in response to a question, “Efforts to protect the victim?” which is obviously potentially probative of Nuñez’s claims of breach of a duty to protect minors. Failure to answer such a question is, actually, “information,” which is apparent to any competent lawyer.

Likewise, Watchtower initially opposed the Motion to Compel by representing that withheld documents were “unrelated” to previously disclosed documents, and Taylor attested to the truth of this representation in his affidavit. It is clear that this representation was false. Documents 1a and 1b relate to Max’s abuse of Peter and Holly beginning in 1994.² Watchtower pretended, in its initial briefing, not to understand the term, “database.” It turns out, from the few documents now produced, that they were indeed part of an “electronic database” - in Watchtower’s own words. (Defendant’s Brief in Opposition to Plaintiff’s Motion to Compel, Doc. 208).

Nuñez’s discovery requests were based on an email from Watchtower lawyer Taylor, in which he described them as “the other 7 pages involve Peter/Alexis” and

¹ Taylor Affidavit, May 7, 2021, Ex. H to Plaintiffs’ brief.

² Documents filed under seal as Sealed Ex. B.

“the remaining pages involve Peter Jr.’s confession [to] the Polson Congregation regarding his abuse of Alexis.”³

After the Court’s first order to produce the documents, Watchtower produced only seven pages of documents, **none of which relate to Peter abusing Alexis.** Rather, the produced documents relate to evidence already known to Nuñez, the abuse of Peter, Holly, and Alexis by Max Reyes. The missing pages regarding Peter’s abuse of Alexis have not been produced at all. **In sum, then, Watchtower has misrepresented to the Court that it has even partially complied with the Court’s Order.**

On June 11, 2021⁴ (after the May 28, 2021, Order), Watchtower identified an **additional 22 pages of documents** that had, until that date, never been disclosed to Nuñez or the Court.⁵ Simultaneously, it filed a new and improved privilege log listing documents **in random order**, many of which clearly refer to evidence of Peter abusing Alexis, which the Court had ordered produced. **Appallingly, Watchtower continues to withhold documents about Peter’s abuse of Alexis, and appears to be attempting a sleight of hand by offering a modified privilege log.**

³ Quoted passages are from an email authored by Taylor to Nuñez’s lawyers in 2018, attached to Nuñez’s briefing as Ex. A.

⁴ Watchtower filed two different sets of documents, with the same title, “Notice of Submission for *In Camera* Review on June 11, 2021, as well as a supplemental privilege log, identifying 22 pages of newly disclosed documents. Ex. F to Nuñez’s briefing.

⁵ Notice of Sub. for *In Camera*, attached as Ex. F to Nuñez’s briefing.

Watchtower has reasserted its claims of privilege, ignored the Court's Order overruling those claims, asserted "confusion" and lack of understanding of the Orders [asserting that it does not "understand" whether the Court's Orders apply to congregations, even though they briefed that very issue and claimed privilege for congregations starting in February 2021], and simultaneously inconsistently asked the Court to alter or amend Orders which it feigns not to understand. These arguments are frivolous, neither based on fact or law, and will not be tolerated, as the Court has previously warned. Watchtower's defiance is breathtaking and must, as the Montana Supreme Court has often said, not be dealt with leniently. Instead, courts are instructed to "intently punish transgressors rather than patiently encouraging their cooperation." *Morris v. Big Sky Thoroughbred Farms*, 1998 MT 229, ¶13, 291 Mont. 29, 965 P. 2d 890 (citations omitted).

Rule 37 (b)(2), Mont. R. Civ. P., authorizes sanctions for violations of an order compelling discovery. Sanctions may include judgment by default, "where counsel or a party has acted willfully or in bad faith [in violating rules or court orders or].... in flagrant disregard of those rules." *Kraft v. High Country Motors, Inc.*, 2012 MT 83, ¶37, 364 Mont. 465, 276 P. 3d 908. The Court has discretion to determine whether a party has chosen to "callously disregard" their opponents' rights and to determine appropriate sanctions. *Linn v. Whitaker*, 2007 MT 46, ¶13, 336 Mont. 131, 152 P. 3d 1282. The Montana Supreme Court expressly approved judgment by

default as a sanction in the face of blatant, systematic “willful and bad faith conduct.” *Richardson v. State*, 2006 MT 43, ¶23, 331 Mont. 231, 130 P. 3d 634.

The Court concludes that Watchtower has been deliberate in its violations of the Court’s orders, and the Plaintiffs’ right to discovery. Its claims that it could not understand the plain language in the Court’s orders are absurd and frivolous. Its decision to obstruct has wasted many hours of scarce time and resources for the Plaintiffs, and for the Court itself, and has prevented Nuñez from preparing for trial, which is obviously Watchtower’s intent. Every time a party chooses attrition and stonewalling, not only the opposing party in the case involved, but parties in numerous other cases lose opportunities to exercise their fundamental right to access to the Courts.

Second chances for discovery abuse are not to be encouraged. *Spotted Horse v. BNSF Railway Co.*, 2015 MT 148, ¶ 21, 379 Mont. 314, 320, 350 P. 3d 52. To ensure compliance, “...the price for dishonesty must be made unbearable to thwart the inevitable temptation that zealous advocacy inspires.” *Schuff v. A.T. Klemens & Son*, 2000 MT 357, ¶71, 303 Mont. 274, 16 P. 3d 1002. “[I]t is the attitude of unresponsiveness to the judicial process, regardless of the intent behind that attitude, which warrants sanctions.” *McKenzie v. Scheeler*, 285 Mont. 500, 508; 949 P. 2d 1168 (1997). The Court expressly warned that it, “will not tolerate further

obstruction and will consider sanctions for similar conduct in the future.” (Doc. 210).

While the Court is tempted to assess default judgment in light of the flagrancy and felicity with which Watchtower willfully obstructed justice and wasted judicial resources, it is also mindful of the importance of trial by a jury on the merits.

Richardson, ¶68. The Court therefore has considered a sanction which, while preserving a trial on the merits, relates to the extent and nature of the discovery abuse, relates to the prejudice the abuse caused to the Plaintiffs, and is consistent with the Court’s explicit warning. See, *Linn v. Whitaker*, 2007 MT 46, ¶20, 336 Mont. 131, 152 P. 3d 1282. Among available sanctions, the Court considers fees and costs, deeming some of Nuñez’s claims to have been established, foreclosing certain defenses or claims by Watchtower, or a combination. See, Rule 37 (c)(1), 37(d)(3), 37(b)(2)(A)(i) and (ii), Mont. R. Civ. P.

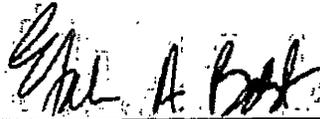
The Court ordered: “Defendants shall immediately respond to the following discovery requests: Requests for Production 2-8 and Interrogatory No. 1, except for the “erroneous” page containing the name of Anthony Montoya.” Watchtower’s refusal to comply, its lack of candor with the Court, and its frivolous and disrespectful treatment of the purpose of discovery and justice itself cannot be condoned or further tolerated.

Out of respect for juries and the rights of citizens to access to the courts, the Court at this time reluctantly declines to grant judgment on liability. However, it follows the guidance of the Montana Supreme Court and will not tolerate this level of discovery abuse, and will strongly consider the ultimate sanction of judgment on liability. Defendants are ORDERED to produce all withheld discovery, including any that they continue to claim is privileged, and including the 22 pages still in dispute. Further, **the Court ORDERS SANCTIONS as follows:**

1. Watchtower and all Defendants are prohibited from arguing, making innuendo, mentioning, offering evidence of any **“advice of counsel” defense**, and from offering any evidence about the advice their attorneys gave them at any time before trial.
2. Watchtower and all Defendants are prohibited from offering any evidence that they believed that they were “complying with” any law, regulation, or interpretation of law by any person, including their lawyers, when they failed or refused to protect Plaintiff from Max Reyes’s abuse.
3. **Watchtower and all Defendants shall be jointly and severally liable for a fine of \$500 per day for each day after the date of this Order** in which they have failed and refused to comply with this Order, and the Orders dated May 28, 2021, and June 23, 2021.

4. Watchtower and all Defendants shall pay to the Plaintiffs \$11,075.00 to reimburse them for the attorneys' fees and costs associated with this discovery dispute.

DATED this 22nd. day of July, 2021.



Elizabeth A. Best
District Court Judge

7/22/2021

Copies sent via email by JA Sheehan Cobb.

cc:

James P. Molloy

D. Neil Smith/Ross Leonoudakis

Bradley J. Luck/Tessa A. Keller

Joel M. Taylor

Ivy McGowan-Castleberry

WILLIAM S. HUNT 1259
CANDACE M. HOUGH 10658

DENTONS US LLP
1001 Bishop Street, Suite 1800
Honolulu, Hawai'i 96813-3689
Telephone: (808) 524-1800
Facsimile: (808) 524-4591
Email: bill.hunt@dentons.com
candace.hough@dentons.com

Electronically Filed
FIRST CIRCUIT
1CCV-20-0000390
17-JUN-2020
11:37 AM

Attorneys for Defendant
WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF
JEHOVAH'S WITNESSES, a Hawaii
non-profit unincorporated religious
organization, a.k.a. MAKAHA
CONGREGATION OF JEHOVAH'S
WITNESSES and KINGDOM HALL,
MAKAHA CONGREGATION OF
JEHOVAH'S WITNESSES; WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW
YORK, INC., a New York corporation;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES, a New York
non-profit corporation; KENNETH L.
APANA, Individually; and Does 1 through
100, inclusive,

Defendants.

Civil No. 1CCV-20-0000390
(Other Non-Vehicle Tort)

DEFENDANT WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK,
INC.'S **MOTION FOR ADMISSION PRO
HAC VICE OF JOEL M. TAYLOR;**
DECLARATION OF WILLIAM S. HUNT;
DECLARATION OF JOEL M. TAYLOR;
NOTICE OF HEARING; and
CERTIFICATE OF SERVICE

HEARING MOTION:

Hearing Judge: Hon. Dean. E. Ochiai
Hearing Date: July 13, 2020
Hearing Time: 9:00 a.m.

Trial Date: None

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a New York non-profit corporation; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

Civil No. 1CCV-20-0000390
(Other Non-Vehicle Tort)

DECLARATION OF JOEL M. TAYLOR

DECLARATION OF JOEL M. TAYLOR

I, Joel M. Taylor, do hereby declare and state under penalty of perjury that the following facts are true and correct:

1. I am an attorney licensed to practice law in the States of New Jersey and New York. I make this Declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.

2. I make this Declaration in support of the Motion for Admission *Pro Hac Vice* of Joel M. Taylor filed by Defendant Watchtower Bible and Tract Society of New York, Inc. ("WTNY").

3. I am engaged in the practice of law as Associate General Counsel for WTNY. My office address is 100 Watchtower Drive, Patterson, New York, 12563, and my office phone number is (845) 306-0700.

4. I was admitted in 2003 to practice in the State of New Jersey. I was admitted in 2005 to practice in the State of New York. I am a member of good standing of the Bars of the States of New Jersey and New York.

5. I have never been the subject of any disciplinary action by any bar or court and am not currently under any suspension or disbarment by any state or federal court.

6. I am eligible to be admitted *pro hac vice* inasmuch as I do not reside in Hawai'i, I am not regularly employed in the State of Hawai'i, and I am not regularly engaged in business, professional, or other activities in the State of Hawai'i.

7. I acknowledge and understand that I have or will read the local rules of this Court.

8. I have not made any previous *pro hac vice* applications to this Court in any other matter.

9. I am familiar with this matter and my admission *pro hac vice* will neither hinder nor delay this litigation. As Associate General Counsel for WTNY, I will be able to assist in protecting WTNY's interests and hopefully aid in resolving this dispute.

10. If admitted, I will comply with all applicable Hawai'i statutes, laws, and rules of the courts including the Hawai'i Rules of Professional Conduct and Guidelines of Professional Courtesy and Civility for Hawai'i Lawyers.

11. I understand that if admitted, I will be subject to all applicable Hawai'i statutes, laws, rules of the court, and the Hawai'i disciplinary process with respect to any acts or omissions during representation pursuant to this Rule.

12. Upon approval of the Motion for Admission, I agree to pay the annual Disciplinary Board fee for each year of my *pro hac vice* appearance as required by Rule 1.9 of the Rules of the Hawai'i Supreme Court.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed in Patterson, New York, on June 16, 2020.



JOEL M. TAYLOR

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

N.D.,

Plaintiff,

vs.

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation; KENNETH L. APANA, Individually; and Does 1 through 100, inclusive,

Defendants.

CIVIL NO. 1CCV-20-0000390
(Non-Motor Vehicle Tort)

**NOTICE OF REMOTE HEARING and
CERTIFICATE OF SERVICE**

MAKAHA, HAWAII CONGREGATION OF JEHOVAH'S WITNESSES, a Hawaii non-profit unincorporated religious organization, a.k.a. MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES and KINGDOM HALL, MAKAHA CONGREGATION OF JEHOVAH'S WITNESSES; and WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a New York corporation,

Crossclaimants,

vs.

KENNETH L. APANA, Individually,

Crossclaim Defendant.

NOTICE OF REMOTE HEARING

TO: WILLIAM S. HUNT, ESQ.
JENNY J.N.A. NAKAMOTO, ESQ.
Dentons US LLP
1001 Bishop Street, Suite 1800
Honolulu, Hawaii 96813

and

JOEL M. TAYLOR (*Pro Hac Vice*)
1000 Watchtower Drive
Patterson, New York 12563

Attorneys for Defendants/Crossclaimants
MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII; and WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK, INC.

KENNETH APANA
P. O. Box 331
Kailua-Kona, HI 96745

Defendant

NOTICE IS HEREBY GIVEN that *Plaintiff's HRCP Rule 37 Motion to Hold Defendants in Contempt for Failure to Comply with the Court's Order and for Imposition of Sanctions Including the Entry of Judgment on the Issue of Liability Pursuant to Rule 37(b)(2)(B) and for the Additional Sanction of Revocation of Pro Hac Vice Status of Joel Taylor* shall come on for hearing before the Honorable Dean E. Ochiai, Judge of the above-entitled court, via ZOOM video conferencing on April 26, 2022 at 9:00 a.m., or as soon thereafter as the matter can be heard.

If you fail to appear at the hearing, the relief requested may be granted without further notice to you.

All parties are directed to appear at least **10 minutes** prior to the scheduled start time. The Zoom meeting ID is: **895 888 6479**. No password is required.

Self-represented parties unable to appear by video may call **888-788- 0099 (U.S. toll free)** or **646 558-8656** to participate by telephone. You must enter the above noted Zoom meeting ID when prompted. You must also notify the assigned judge’s chambers that you intend to participate by telephone at least 48 hours before the hearing and you must provide the court with the telephone number that you will be using to dial-in for the hearing.

Attorneys and self-represented parties must enter a user name that sets forth their full name, otherwise you will not be admitted into the hearing. Attorneys must also include the suffix “Esq.”

All attorneys and parties shall dress appropriately for the hearing. Recording court proceedings is strictly prohibited unless permission is granted by the court. The court may impose sanctions for failure to comply with this notice.

DATED: Honolulu, Hawai‘i. April 5, 2022.

/s/ Mark S. Davis
MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW C. WINTER
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, a true and correct copy of the foregoing document was duly served on the following persons electronically through the Judiciary Electronic Filing and Service System (JEFS):

WILLIAM S. HUNT, ESQ.
JENNY NAKAMOTO, ESQ.

bill.hunt@dentons.com
jenny.nakamoto@dentons.com

and

JOEL M. TAYLOR (Pro Hac Vice)
1000 Watchtower Drive
Patterson, New York 12563

Email: jmtaylor@jw.org

Attorneys for Defendants/Crossclaimants
MAKAHA CONGREGATION OF JEHOVAH'S
WITNESSES, HAWAII; and WATCHTOWER BIBLE
AND TRACT SOCIETY OF NEW YORK, INC.

I further certify that, on the date below, a true and correct copy of the foregoing document was duly served on the following person by depositing same in the U.S. Mail, postage prepaid, addressed as follows:

KENNETH APANA
P. O. Box 331
Kailua-Kona, HI 96745

Pro Se Defendant/Crossclaim Defendant

DATED: Honolulu, Hawai'i. April 5, 2022.

/s/ Mark S. Davis
MARK S. DAVIS
LORETTA A. SHEEHAN
MATTHEW C. WINTER
Attorneys for Plaintiff