



## **Week #6b: Abuse of Power in Pastoral Ministry**

### **Prayer Before Studying Ethics:**

#### Undue Influence in Relation to Wills and Legacies

(Thomas F. Taylor, *7 Deadly Lawsuits*, p. 135 has noted that undue influence is recognized as a problem in regard to family law, sexual conduct, employment law, commerce and real estate transactions: Ex. 22:21-23; Lev. 25:14,17; Deut. 24:14; 1 Thess. 4:3-6)

Because ministers often spend significant time with those whose minds have grown weak and unstable with age or who are seriously ill or dying, they are sometimes named in the person's will (occasionally to the surprise of the person's heirs, who may resent this). Since the ill and dying are susceptible to persuasion and the minister has the capacity to exert a certain power over the infirm (through his role and his knowledge of confidential information), it is important that ministers should not suggest or draft any provision of a person's will in which the minister (or the minister's family or friends) is a beneficiary.

- If the person tells the minister that he or she wishes to leave the minister something, the minister should recommend he or she discuss the matter with a friend or family member and contact a lawyer. (The minister should not suggest or recommend a particular lawyer or obtain a lawyer for the person and should remain a disinterested party in regard to the contents of the will.)
- If the person tells the minister that he or she wishes to leave the minister's church something, the minister should leave the person literature with the relevant information or recommend that he or she discuss the matter with a member of the church's finance committee and then contact a lawyer who is not a member of the church.
- The minister may serve as a witness to a person's will in which neither the minister nor the minister's church, family or friends are mentioned. The requirements to be a witness to a will are that they
  - are over 18;
  - personally know the testator;
  - are not related to the testator by blood or marriage;
  - are not entitled to any portion of the estate;
  - saw the testator sign the will;
  - can affirm that the testator knew that the document signed was his or her will
  - knew that the testator was of sound mind, over 18 and not under any undue influence in regard to the will.

### Respondeat superior and Negligent Selection/Hiring, Retention and Supervision of Employees

Members of the church board may be personally liable for negligent supervision of church workers; the fiduciary duties that an officer owes to a corporation include due care.

Vicarious liability (*respondeat superior*="let the superior answer" for what the employee/staff member did in acting within the scope of their employment/volunteer duties, i.e. within the parameters of time, location and responsibilities of employment and for the furtherance of the purpose of the church or religious society).

- Selection of volunteers/hiring of staff:
  - Application forms for volunteer/staff positions should include the question: "Have you ever been convicted of a crime involving moral turpitude (e.g., murder; rape; child or elder abuse; soliciting, obtaining, possession or distribution of child pornography; felony convictions involving injuries of any kind to another person; etc.)? If yes, please state details."
  - Those working with persons under the age of 18 should also sign a statement giving permission for background checks. (Some states actually require that such persons be fingerprinted and the fingerprints be checked against records of felonies and/or misdemeanors.)
  - The applicant should supply two personal references, who should both be contacted. (Legally, all references must be checked.) Past employers should be telephoned or contacted before a prospective employee is hired.
  
- Supervision, evaluation and retention of staff
  - Staff should have a clearly defined list of responsibilities and the criteria upon which their performance will be evaluated should be clearly stated.
  - Annual reviews are by far the best option, although a majority of ministers are currently evaluated only once every 3-5 years (even though they are often on annual contracts), which is unsatisfactory for a number of reasons (lets problems boil over or blow up before they are recognized and dealt with, the pastor lacks a satisfactory vehicle for expressing certain professional concerns, e.g. a need to renegotiate terms of work or seek additional resources for professional development, etc.)
  - A church or religious organization can be sued when it knew or should have known that an employee or person under its supervision posed a public danger (i.e. the church or religious organization had or should have had any information that might lead the supervisor to believe that the employee/supervisee might pose a threat to clients=there was a preexisting occasion for misconduct such that the misconduct was foreseeable). Given the foreseeability of the harm, the church or religious organization should have engaged in investigation on a case-by-case basis and undertaken preventative action.
  - Both employees and volunteers fall under this because they are agents acting on behalf of the church/organization and the latter has the duty of

due care in overseeing and supervising them. Negligence involves failure to exercise reasonable care.