SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 07/01/2011 TIME: 10:30:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Steven R. Denton
CLERK: Yvette Terronez
REPORTER/ERM: Paula Rahn CSR# 11510
BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2010-00092450-CU-PO-CTL** CASE INIT.DATE: 05/20/2010
CASE TITLE: **Dorman vs. La Jolla Church**
CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Discovery Hearing
MOVING PARTY: John Dorman, Joel Gamboa
CAUSAL DOCUMENT/DATE FILED: Motion to Compel Discovery, 04/28/2011

APPEARANCES
Devin M Storey, counsel, present for Plaintiff(s).
James M McCabe, counsel, present for Defendant(s).
George L De la Flor, counsel, present for Defendant(s).
The Watchtower Bible and Tract Society of New York Inc, self represented Defendant, present telephonically.
Irwin Zalkin is present for plaintiff

The Court hears oral argument and confirms the tentative ruling as follows:
Plaintiffs JOHN DORMAN and JOEL GAMBOA'S motion to compel further responses to Requests for Production of Documents (Set One) is GRANTED IN PART. C.C.P. § 2031.310. As set forth in detail below, defendant DOE SUPERVISORY ORGANIZATION is ordered to produce all of the withheld documents <u>except</u> the following: 4/27/95 letter from the national church to the local church; 10/13/95 letter from defendant perpetrator to the local church; 9/14/98 letter from defendant perpetrator to the local church; and 1/27/99 letter from defendant perpetrator to the local church. Defendant must serve its supplemental responses, including the production of documents, within two weeks of this hearing. The Court will return to defendant the documents submitted for the *in camera* review.

Both a penitent and a member of the clergy have "a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege." Evidence Code §§ 1033 and 1034. A "penitential communication" is one "made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret." Evidence Code § 1032. In order for a statement to be privileged, it must satisfy all of the conceptual requirements of a penitential communication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed

to hear such communications; and (3) such member of the clergy has a duty under the discipline or tenets of the church, religious denomination or organization to keep such communications secret. Doe 2 v. Superior Court (2005) 132 Cal.App.4th 1504, 1516 (quoting People v. Edwards (1988) 203 Cal.App.3d 1358, 1362–1363). In order for a statement to be privileged, it must be intended to be in confidence. Id. at 1518. Even if third parties are not physically present at the time of the communication, the privilege may still be inapplicable if the penitent does not intend for the contents of the communication to be kept in confidence. Id. See also Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417, 444-445 (privilege not available when third party present).

The Court has now carefully reviewed the disputed documents. The majority of the documents consist of (a) an ongoing investigation into the perpetrator's conduct, and/or (b) an ongoing discussion as to whether and what extent the perpetrator should be reinstated. Several people at both the local and national levels were privy to the documents, and generally were cognizant of the facts surrounding the instances of alleged sexual abuse. Not all of these individuals have the status of clergy. Though many of the letters make spiritual references, fundamentally they discuss the secular business of investigating the claims of sexual abuse and the extent to which the perpetrator may repeat this abuse. The April 13, 1994 letter from an elder of a local church to the national church notes that John Dorman is not a member of the church (his wife is a member). As a result, the April 11, 1994 letter from John and Manuela Dorman to the local church is not privileged. Also, the October 28, 2006 meeting notes appear to be signed by individuals who are not clergy in the church. Given all of these reasons, the majority of the documents must be produced.

On the other hand, the April 27, 1995 letter from the national church to the local church will not be compelled. This letter consists of the local church elders receiving spiritual guidance from elders at the national level and is privileged on this basis. The three letters drafted by defendant perpetrator are also privileged. In essence, these letters consist of a penitent seeking spiritual guidance from members of his clergy.

Regarding relevancy, "[a]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence...." CCP § 2017.010. For discovery purposes, information is relevant if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. Gonzalez v. Superior Court (1995) 33 Cal. App. 4th 1539, 1546. Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. Id. These rules are applied liberally in favor of discovery. All of the disputed documents are relevant for purposes of discovery because they could demonstrate knowledge of the sexual abuse followed by reinstatement within the church.

Third party privacy rights are preserved because third party names have been redacted. Finally, there is no First Amendment issue because the court has applied the law surrounding the penitent-clergy privilege is neutral manner such that the court's decision to permit the discovery of certain documents need not be justified by a compelling governmental interest. Roman Catholic Archbishop of Los Angeles v. Superior Court (2005) 131 Cal.App.4th 417, 431.

Steven R Denton

Judge Steven R. Denton