

CLERGY COMMUNICATIONS & COUNSELING

“You won’t believe what I just heard.”

I. Competing Legal Interests

“Communications between clergymen and their communicants force the law to balance two competing policies: the need to elicit evidence important to the judicial process’ search for the truth, and the desire to maintain the integrity of the religious community by protecting the secrecy of spiritual counseling.”

Jane E. Mayes: *Striking Down the Clergyman-Communicant Statutes: Let Free Exercise of Religion Govern*, 62 Ind. L.J. 397

II. Legal Origins of Penitential Communications

- a. Clergy penitent privilege was recognized under English Law from 1066 until the Protestant Reformation. After the Reformation, there was hostility towards anything Catholic and the right disappeared. *Nestle v. Commonwealth*, 22 Va. App. 336 (1996).
- b. Subsequently, there was no clergy penitent privilege at Common Law. Blackstone Commentaries 789.
- c. First known American case involving clergy penitent privilege was *People v. Phillips* (N.Y.Ct. Gen. Sess. 1813). No rule of evidence or other statute provided for a privilege. In an unusual move, the court rejected the Common Law and held for the priest based on the First Amendment liberty interest in the free exercise of religion.
- d. Four years later another NY court denied the privilege to an Anglican priest because he was protestant. *People v. Smith*, 2 N.Y. City Hall Rec. 77 (1817). This resulted in the NY legislature passing the first statutory privilege.
- e. The U.S. Supreme Court recognized the privilege in *dicta*. “[S]uits cannot be maintained which would require a disclosure of the confidences of the confessional, or those between husband and wife.” *Totten v. United States*, 92 U.S. 105, 107 (1875). See also, *Trammel v. U.S.*, 445 U.S. 40, 51 (1980).
- f. Does the privilege rest in the First Amendment or is it purely by legislative grace?
 - i. Split of authority.
 1. “The privilege, in modern practice, traces its existence to state statute or, in very rare cases, to state decisional law...”. *Seidman v. Fishburne-Hudgins Educ. Found., Inc.*, 724 F.2d 413 (4th Cir. 1984)
 2. “No question” that wiretapping of confession by inmate to Catholic priest “burdened Father Mockaitis's exercise of religion as understood in the First Amendment.” *Mockaitis v. Harcleroad*, 104 F.3d 1522, 1530 (9th Cir. 1997)

Atty Practice Tip: Raise the Free Exercise Clause if the statutory privilege is not available in a given case, particularly when the statute allows for a secular privilege such as attorney-client privilege. Argue that the statute is not neutral and generally applicable. “[G]overnment

regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294 (2020) citing *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67, (2020) (*per curiam*) (emphasis in original).

III. Elements of Clergy/Penitent Privilege

- a. Uniform Rules of Evidence, Rule 505
 - i. **(a)Definitions.** As used in this rule: **(1)** "Cleric means" a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or a person that an individual who consulted that person for spiritual advice reasonably believed to be a cleric. **(2)** "Confidential communication" means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.
 - ii. **(b)General rule of privilege.** An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the individual and the cleric while the cleric is serving as the individual's spiritual adviser.
 - iii. **(c)Who may claim the privilege.** The individual may claim the privilege on the individual's own behalf. The cleric is presumed to have authority to claim the privilege on the individual's behalf. If the individual is incompetent or deceased, then an authorized personal representative may claim the privilege on the individual's behalf.
- b. State Statutes – Each state has its own statutes and many vary from the Uniform Rules. (See Appendix 1)

IV. Who is a Minister?

- a. In a case for slander testimony was introduced of a conversation with a deacon and elder of a church who was charged with investigating complaints against members. The objection to privilege was overruled because the deacon and elder were not ministers under the rules of that denomination. *Knight v. Lee*, 80 Ind. 201 (1881)

V. Penitent

- a. A Methodist minister voluntarily visited a man in jail accused of murder. During the conversation the man said that he lost his temper and shot the victim. The accused did not belong to the minister's church. The minister was called to testify and an objection was made. The trial court overruled and on appeal it was found that "there is nothing in the record tending to indicate that the communication to the witness was penitential in its character or that it was made to him "in his professional character, in the course of discipline enjoined" by the rules of

practice of his denomination.” *Johnson v. Commonwealth*, 310 Ky. 557, 221 S.W.2d 87 (1949)

- b. Treasurer told the priest at her Episcopal church that she had “done something worse than murder.” The treasurer had embezzled \$30,000 from a church account. The priest asked permission to tell the church wardens and vestry about it to help resolve the matter. No clergy/penitent privilege attached because she sought the priest on a “problem solving entreaty.” *People v. Edwards*, 248 Cal.Rptr. 53 (1988)

VI. Discipline or Practice of the Religion

a. Identifying Religious Traditions That Have Confidential Ministerial Communications.

- i. Confidential communications between clergy and penitent are established by church doctrine or tradition in other religions, e.g., Buddhist and Church of Scientology. See Appendix 2 (letter in opposition to bill limiting clergy penitent privilege)
- ii. Do not assume a privilege because one party to a communication is a minister. First, identify the religion or denomination as the first step to determine if the privilege exists.

Atty Practice Tip: Refer to the language in the legislative opinion letter (Appendix 2) for citations to various faiths when drafting a motion to quash a subpoena if the privilege is at issue.

- b. Some Christian denominations and religions have well-established guidelines.
 - i. Roman Catholic: Code of Canon Law of the Roman Catholic Church, Canon 960-991.
 - ii. Eastern Orthodox: Gregory of Neocaesarea, *Canon XII*
 - iii. Episcopal: *The Book of Common Prayer*, “The Reconciliation of a Penitent”
 - iv. American Baptist: *American Baptist Policy Statement on Privileged Communications* (June 18, 2019)
 - v. Lutheran: *The Book of Concord – The Confessions of the Lutheran Church*, Augsburg Confession Article XI.
 - vi. LDS: Mosiah 26:29
 - vii. Scientology: *The Auditor’s Code*
 - viii. Buddhist: *The Bhikkhus’ Rules, A Guide for Laypeople compiled and explained by Bhikkhu*

VII. The Special Problem with Pastors from Independent or Nondenominational Churches.

- a. Not all denominations have a practice or custom relative to confidential communications.

- i. Some ministers do not know the position of their own church or denomination on whether something said to the pastor must remain secret.
- ii. If the minister is in a nondenominational or independent church, the pastor and elders should look at the pros and cons of the privilege and take a position on it – one way or the other.
- iii. Pastors cannot decide whether the privilege should attach on a case by case basis.

Atty Practice Tip:

- As the lawyer, don't make assumptions about what the church or pastoral policy is. Probe the practice and custom. Ask: "Do you take secrets to your grave?" If non-denominational, ask with whom was the minister ordained or licensed. Was the minister taught anything on this in seminary, Bible or divinity school. *Don't ask the minister what was said in the communication.*
- Does the church have a "members only" practice for penitential confessions? In other words, the pastors do not open up the doors of their office for counseling to the general public. See, 2 Jefferson, Cal. Evidence Benchbook Privileges, § 39.5, p. 884.

VIII. Communication

- a. Is there a communication?
 - i. A letter can be a communication. Or not.
 - ii. A man comes into a church and wants to speak with a minister. A police officer who also serves as an assistant pastor at a church identifies himself as one. The man says I want to give you something. He gave him a pistol. Later in a trial for murder a prosecutor wanted to introduce into evidence the giving of the gun to the minister. An objection was made and it was sustained because the act of giving the weapon was a communication.
 - iii. Catholic priest shown gun. – Priest was called to testify and was willing to do so. An objection was made and sustained. It was reasonable for the man to believe the conversation was for spiritual purposes.
- b. Presence of a Third Person
 - i. Narrowly construed
 1. California court held that the privilege was broken during marriage counseling session with rabbi when both spouses present. *Simrin v. Simrin*, 233 Cal. App. 2d 90 (1965)
 2. No privilege when the pastor *and his wife* were present during the communication. *State v. Melvin*, 564 A.2d 458 (N.H. 1989); *State v. West*, 345 S.E.2d 186 (N.C. 1986)
 - ii. Broadly construed
 1. Presence of interpreter does not break the privilege. *People v. Harris*, 2011 934 N.Y.S.2d 639 (Sup. Ct.)
 2. Presence of stenographer, clerk, or secretary does not break the privilege. Mississippi Rules of Evidence, Rule 505

3. Husband & wife at marriage counseling with chaplain was privileged. *United States v. Harris*, No. 2020-07, 2021 CCA LEXIS 176 (A.F. Ct. Crim. App. Apr. 16, 2021)
 4. In some jurisdictions, the privilege may attach during church disciplinary hearings *Doe v. Corp. of the Pres. Of the Church of Jesus Christ of Latter-Day Saints*, 90 P.3d 1147 (Wash.App. 2004)
- c. Not Intended for Further Disclosure
 - i. Sometimes a person will come to a pastor and confess wrong doing. The person says “please tell my mother what I’ve told you, I’m sorry and want to come home.” There is no privilege because it a communication which is not expected to be in confidence.
 - d. Made in Confidence
 - i. Are their words spoken like, “Can you keep this secret?” “Please keep what I’m about to tell you private?”

IX. Who holds the privilege?

- a. Penitent
 - i. A defendant waived the privilege and subpoenaed a priest to testify. Priest found in contempt of court for refusing to testify. *Commonwealth v. Kane*, 388 Mass. 128, 445 N.E.2d 598 (1983).
 - ii. A defendant wanted to prevent the testimony of a stake president of an LDS church who counseled him. It was error to allow in the testimony under Oregon law because penitent holds the privilege. *State v. Cox*, 87 Or. App. 443 (1987) Or. Evid. Code 506(2)
 - iii. A high school conducted an audit. There were some questions about missing money that the bookkeeper couldn’t explain. The bookkeeper had access to checks and funds and was tried for embezzlement. At trial the bookkeeper was asked about her communications with her pastor. There was an objection and the trial court kept statements out of evidence. A layperson under the Virginia Code is not a holder of the privilege, but only the minister. *Nestle v. Commonwealth*, 22 Va. App. 336, 470 S.E.2d 133 (Va. Code Ann. § 19.2-271.3).
- b. Cleric
 - i. Some jurisdictions confer a testimonial privilege only on clergy. They alone may elect to waive that privilege in their sole discretion and within the dictates of their religious beliefs. See, *Nestle v. Commonwealth*, 22 Va. App. 336, 470 S.E.2d 133 (1996) (Va. Code Ann. § 19.2-271.3)
- c. Both
 - i. The privilege can be asserted by either the penitent or the cleric.

X. Provide a Notice

- a. Many parishioners or members of the public seeking spiritual counsel from ministers assume that their communications are confidential. This may not be

accurate. A court in Illinois found that statements made by a minor in juvenile detention to a Pentecostal chaplain were not privileged because the practice of the chaplain's denomination did not encompass penitential confessions. The minor thought the communications were confidential because he was speaking to a minister. "[T]he [clergy-penitent privilege] statute does not provide that the penitent's 'perception' determines when this confidence arises." *People v. Thomas*, 2014 IL App (2d) 121001.

Atty Practice Tip: When advising clergy, the best practice is to provide full disclosure to a penitent **before** the pastoral communication starts as to whether what is said in private will remain a secret or not. (See Appendix 3A for notice of privilege and 3B for notice of no privilege).

XI. Difficulties with the Bi-Vocational Minister

- a. Many pastors working in churches are both licensed counselors and ordained ministers.
 - i. For what reason is the person seeking help from the minister? Does the minister and the counselee have the same understanding of the reason for the meeting?
 - ii. Is there payment?

XII. What about Child Abuse Reporting?

- a. Some states have expressly done away with the privilege as it relates to child abuse reporting.
 - i. New Hampshire: "The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client, shall not apply to proceedings instituted pursuant to this chapter and shall not constitute grounds for failure to report as required by this chapter." NH Rev. Stat. § 169-C:32
 - ii. North Carolina: "No privilege, except the attorney-client privilege, shall be grounds for excluding evidence of abuse, neglect, or dependency in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse, neglect, or dependency is in issue." NC Stats. § 7B-310
 - iii. Rhode Island: "The privileged quality of communication between husband and wife and any professional person and his or her patient or client, except that between attorney and client, is hereby abrogated in situations involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required by this chapter." RI Gen. Laws § 40-11-11
 - iv. Tennessee: All persons are mandatory reporters. TN Code § 37-1-411. However, a member of the clergy may be exempt from testifying. TN Code § 24-1-206
 - v. Texas: "In a proceeding regarding the abuse or neglect of a child, evidence may not be excluded on the ground of privileged communication except in

the case of communications between an attorney and client.” TX Family Code § 261.202

- b. Determine what constitutes abuse and neglect in your state or county.
 - i. Some counties read abuse or neglect broadly to cover parental failure to support gender transitioning or lack of support for minors coming out as gay, lesbian, or bisexual.
 - ii. Others assert that “excessive yelling” constitutes abuse. *Emotional abuse* is defined as “failure to provide warmth, attention, supervision, normal living experiences See, Los Angeles County Dept. of Children and Family Services (FAQ).
 - iii. In addition to sexual and physical abuse, there is *spiritual, financial, and technological* abuse. *Health Education Framework*, Chapter 6: Grades Nine Through Twelve (April 2019 Revision), p. 43-44 and 59 at line 1444.

XIII. How to Assert the Privilege?

- a. Written discovery. Object and cite to the statute from your state – even if in federal court – and do not provide a response beyond the objection. Do not agree to stipulations to seal the record.
- b. Depositions. Object, cite to the statute from your state, and direct deponent not to answer the question.
- c. Trial. Object, cite to the statute from your state.
 - i. By failing to raise this issue in the trial court, defendant may not now claim error. *People v Watkins*, 468 Mich. 233, 235, 238-239 (2003).
- d. Minister subpoenaed to testify. File motion to quash. (See Appendix 4: sample notice of motion, memorandum of law, clergy declaration, attorney declaration, proposed order.)

Atty Practice Tips on Writing: The best practice for motions to quash is a minimalist approach. File an affidavit or declaration signed by the cleric with the motion in which the factual statements address each element of the privilege statute. In the memorandum of law, add a short paragraph on the First Amendment religion clauses so that issue is preserved for appeal. On appeal, refer to the legislative opinion letter in Appendix 2 for a fuller discussion which should include an overview of the historical background, the evolution of the privilege, and fully developed free exercise of religion argument).

APPENDIX 1

Clergy/Penitent Privilege Statutes & Rules

Federal Rules of Evidence – Privilege in General

The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

UNIFORM RULES OF EVIDENCE

RULE 505. RELIGIOUS PRIVILEGE.

(a) Definitions In this rule:

(1) "Cleric" means a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the individual consulting the cleric.

(2) A communication is "confidential" if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the individual to a cleric in the cleric's professional capacity as spiritual adviser.

(c) Who may claim the privilege. The privilege under this rule may be claimed by an individual or the individual's guardian or conservator, or the individual's personal representative if the individual is deceased. The individual who was the cleric at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

AK: Rules of Evidence, Rule 506 Communications to Clergymen

(a) Definitions. As used in this rule: (1) A member of the clergy is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual. (2) A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in that individual's professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The authority so to do is presumed in the absence of evidence to the contrary.

AL: Rules of Evidence, Rule 505

(a) Definitions. As used in this rule:

(1) A "clergyman" is any duly ordained, licensed, or commissioned minister, pastor, priest, rabbi, or practitioner of any bona fide established church or religious organization; the term "clergyman" includes, and is limited to, any person who regularly, as a vocation, devotes a substantial portion of his or her time and abilities to the service of his or her church or religious organization.

(2) A communication is "confidential" if it is made privately and is not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. If any person shall communicate with a clergyman in the clergyman's professional capacity and in a confidential manner, then that person or the clergyman shall have a privilege to refuse to disclose, and to prevent another from disclosing, that confidential communication.

(c) Who may claim the privilege. The privilege may be claimed by the communicating person, by that person's guardian or conservator, or by that person's personal representative if that person has died, or by the clergyman.

AR: Rules of Evidence, Rule 505 – Religious Privilege

(a) Definitions. As used in this rule: (1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him. (2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

AZ: Ariz. Rev. Stat. Ann. § 12-2233

In a civil action a clergyman or priest shall not, without the consent of the person making a confession, be examined as to any confession made to him in his character as clergyman or priest in the course of discipline enjoined by the church to which he belongs.

Ariz. Rev. Stat. Ann. § 13-4062

A person shall not be examined as a witness in the following cases:

1. A husband for or against his wife without her consent, nor a wife for or against her husband without his consent, as to events occurring during the marriage, nor can either, during the marriage or afterwards, without consent of the other, be examined as to any communication made by one to the other during the marriage. These exceptions do not apply in a criminal action or proceeding for a crime committed by the husband against the wife, or by the wife against the husband, nor in a criminal action or proceeding against the husband for abandonment, failure to support or provide for or failure or neglect to furnish the necessities of life to the wife or the minor children. Either spouse may be examined as a witness for or against the other in a prosecution for an offense listed in section 13-706, subsection F, paragraph 1, for bigamy or adultery, committed by either spouse, or for sexual assault committed by the husband if either of the following occurs:

(a) Before testifying, the testifying spouse makes a voluntary statement to a law enforcement officer during an investigation of the offense or offenses about the events that gave rise to the prosecution or about any statements made to the spouse by the other spouse about those events.

(b) Either spouse requests to testify.

2. An attorney, without consent of the attorney's client, as to any communication made by the client to the attorney, or the attorney's advice given in the course of professional employment.

3. A clergyman or priest, without consent of the person making the confession, as to any confession made to the clergyman or priest in his professional character in the course of discipline enjoined by the church to which the clergyman or priest belongs.

4. A physician or surgeon, without consent of the physician's or surgeon's patient, as to any information acquired in attending the patient which was necessary to enable the physician or surgeon to prescribe or act for the patient.

CA: Evid. Code §§ 1030-1034

ARTICLE 8. Clergy Penitent Privileges [1030 - 1034] (*Heading of Article 8 amended by Stats. 2002, Ch. 806, Sec. 18.*)

1030.

As used in this article, a “member of the clergy” means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.
(Amended by Stats. 2002, Ch. 806, Sec. 19. Effective January 1, 2003.)

1031.

As used in this article, “penitent” means a person who has made a penitential communication to a member of the clergy.
(Amended by Stats. 2002, Ch. 806, Sec. 20. Effective January 1, 2003.)

1032.

As used in this article, “penitential communication” means a communication 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.

(Amended by Stats. 2002, Ch. 806, Sec. 21. Effective January 1, 2003.)

1033.

Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege.

(Amended by Stats. 2002, Ch. 806, Sec. 22. Effective January 1, 2003.)

1034.

Subject to Section 912, a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege.

(Amended by Stats. 2002, Ch. 806, Sec. 23. Effective January 1, 2003.)

CO: Colo. Rev. Stat. § 13-90-107

(b) A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.

Colo. Rev. Stat. § 13-90-107 (k) (II)

Does not include an advocate employed by any law enforcement agency whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault, has undergone not less than fifteen hours of training as a victim's advocate or, with respect to an advocate who assists victims of sexual assault, not less than thirty hours of training as a sexual assault victim's advocate, and who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.

CT: Conn. Gen. Stat. § 52-146b (2022)

A clergyman, priest, minister, rabbi or practitioner of any religious denomination accredited by the religious body to which he belongs who is settled in the work of the ministry shall not disclose confidential communications made to him in his professional capacity in any civil or criminal case or proceedings preliminary thereto, or in any legislative or administrative proceeding, unless the person making the confidential communication waives such privilege herein provided.

DC: D.C. Code Ann. § 14-309

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the Federal courts in the District of Columbia and District of Columbia courts with respect to any —

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3)(A) communication made to him, in his professional capacity, by either spouse or domestic partner, in connection with an effort to reconcile estranged spouses or domestic partners, without the consent of the spouse or domestic partner making the communication.

(B) for the purposes of this paragraph, the term “domestic partner” shall have the same meaning as provided in § 32-701(3).

DE: Del. R. Evid. 505 – Religious Privilege

(a) Definitions. As used in this rule: **(1)** "Cleric means" a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or a person that an individual who consulted that person for spiritual advice reasonably believed to be a cleric. **(2)** "Confidential communication" means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the individual and the cleric while the cleric is serving as the individual's spiritual adviser.

(c) Who may claim the privilege. The individual may claim the privilege on the individual's own behalf. The cleric is presumed to have authority to claim the privilege on the individual's behalf. If the individual is incompetent or deceased, then an authorized personal representative may claim the privilege on the individual's behalf.

FL: Fla. Stat. § 90.505

90.505 Privilege with respect to communications to clergy.—

(1) For the purposes of this section:

(a) A “member of the clergy” is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.

(b) A communication between a member of the clergy and a person is “confidential” if made privately for the purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.

(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.

(3) The privilege may be claimed by:

(a) The person.

(b) The guardian or conservator of a person.

(c) The personal representative of a deceased person.

(d) The member of the clergy, on behalf of the person. The member of the clergy’s authority to do so is presumed in the absence of evidence to the contrary.

GA: Ga. Stat § 24-9-22

Every communication made by any person professing religious faith, seeking spiritual comfort, or seeking counseling to any Protestant minister of the Gospel, any priest of the Roman Catholic faith, any priest of the Greek Orthodox Catholic faith, any Jewish rabbi, or to any Christian or Jewish minister, by whatever name called, shall be deemed privileged. No such minister, priest, or rabbi shall disclose any communications made to him by any such person professing religious faith, seeking spiritual guidance, or seeking counseling, nor shall such minister, priest, or rabbi be competent or compellable to testify with reference to any such communication in any court.

HI: Rules of Evidence, Rule 506 Communications to Clergymen (2020)

(1) A "member of the clergy" is a minister, priest, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the communicant.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the latter's professional character as spiritual advisor.

(c) Who may claim the privilege. The privilege may be claimed by the communicant or by the communicant's guardian, conservator, or personal representative. The member of the clergy may claim the privilege on behalf of the communicant. Authority so to do is presumed in the absence of evidence to the contrary.

ID: Id Code § 9-203

(3) A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

IL: 735 Ill. Comp. Stat. 5/8-803

Sec. 8-803. Clergy. A clergyman or practitioner of any religious denomination accredited by the religious body to which he or she belongs, shall not be compelled to disclose in any court, or to any administrative board or agency, or to any public officer, a confession or admission made to him or her in his or her professional character or as a spiritual advisor in the course of the discipline enjoined by the rules or practices of such religious body or of the religion which he or she professes, nor be compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor.

IN: Ind. Ann. § 34-46-3.1 (2020) – Persons Not Required to Testify

Sec. 1. Except as otherwise provided by statute, the following persons shall not be required to testify regarding the following communications:

(3) Clergymen, as to the following confessions, admissions, or confidential communications:

(A) Confessions or admissions made to a clergyman in the course of discipline enjoined by the clergyman's church.

(B) A confidential communication made to a clergyman in the clergyman's professional character as a spiritual adviser or counselor.

IW: Iowa Code § 622.10

A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

KS: Kan. Stat. § 60-429

(a) **Definitions.** As used in this section, (1) the term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his or her regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization; (2) the term "regular minister of religion" means one who as his or her customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he or she is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister; (3) the term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his or her church, sect, or organization; (4) "penitent" means a person who recognizes the existence and the authority of God and who seeks or receives from a regular or duly ordained minister of religion advice or assistance in determining or discharging his or her moral obligations, or in obtaining God's mercy or forgiveness for past culpable conduct; (5) "penitential communication" means any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent's moral obligations, or to obtaining God's mercy or forgiveness for past culpable conduct.

(b) **Privilege.** A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the minister, and (3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent.

KY: Ky. Rev. Stat. § 505

(a) **Definitions.** As used in this rule:

(1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the person and a clergyman in his professional character as spiritual adviser.

(c) Who may claim the privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

LA: La. Code Evid. Ann. § art.511 – Communications to clergymen (2003)

A. Definitions. — As used in this Article:

(1) A “clergyman” is a minister, priest, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is “confidential” if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. General rule of privilege. — A person has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

C. Who may claim the privilege. — The privilege may be claimed by the person or by his legal representative. The clergyman is presumed to have authority to claim the privilege on behalf of the person or deceased person.

MA: Mass. Ann. Laws ch. 233, § 20A

Section 20A. A priest, rabbi or ordained or licensed minister of any church or an accredited Christian Science practitioner shall not, without the consent of the person making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a priest, rabbi or ordained or licensed minister of any church or an accredited Christian Science practitioner testify as to any communication made to him by any person in seeking religious or spiritual advice or comfort, or as to his advice given thereon in the course of his professional duties or in his professional character, without the consent of such person.

MD: Md. Code Ann., Cts. & Jud. Proc. § 9-111 – Privileged Communications – Minister Clergyman or Priest

A minister of the gospel, clergyman, or priest of an established church of any denomination may not be compelled to testify on any matter in relation to any confession or communication made to him in confidence by a person seeking his spiritual advice or consolation.

ME: Me. R. Evid. 505 – Religious Privilege

(a) Definitions. As used in this rule:

(1) A "member of the clergy" is an individual who has been ordained or accredited as a spiritual advisor, counselor, or leader by any religious organization established on the basis of a community of faith and belief, doctrines, and practices of a religious character, or an individual reasonably believed so to be by the person consulting that individual.

(2) A communication is "confidential" if:

(A) It is made privately; and

(B) It is not intended for disclosure other than to other persons present in furtherance of the purpose of the communication.

(b) General rule. A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made to a member of the clergy who was acting as a spiritual adviser at the time of the communication.

(c) Who may claim the privilege. The privilege can be claimed by:

(1) The person who made the communication;

(2) The person's guardian or conservator; or

(3) The person's personal representative, if the person is deceased.

The person who was a clergy member at the time of the communication also has presumptive authority to claim the privilege on behalf of the person who made the communication.

MI: Mich. Comp. Laws Serv. § 600.2156

No minister of the gospel, or priest of any denomination whatsoever, or duly accredited Christian Science practitioner, shall be allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

MN: Minn. Stat. Ann. § 595.02

(1) (c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

MO: Mo. Rev. Stat. § 491.060

The following persons shall be incompetent to testify:

- (4) Any person practicing as a minister of the gospel, priest, rabbi or other person serving in a similar capacity for any organized religion, concerning a communication made to him or her in his or her professional capacity as a spiritual advisor, confessor, counselor or comforter;

MS: Miss. R. Evid. 505 – Communications to Clergy (2016)

(a) **Definitions.** — In this rule:

- (1) “Clergy member” means a minister, priest, rabbi, or other similar functionary of a church, religious organization, or religious denomination.
- (2) A communication is “confidential” when:
 - (A) made privately, and
 - (B) not intended to be disclosed except to further the purpose of the communication.

(b) **General rule of privilege.** — A person has a privilege to refuse to disclose – and to prevent others from disclosing – a confidential communication made by the person to a clergy member as spiritual adviser.

(c) **Who may claim the privilege.** —

- (1) The privilege may be claimed by:
 - (A) the person who made the communication;
 - (B) the person’s guardian or conservator; or
 - (C) a deceased person’s personal representative.
- (2) Unless the privilege is waived, the clergy member must claim it on the person’s behalf.

(d) **Clerical staff.** — A clergy member’s secretary, stenographer, or clerk must not be examined about any fact learned in that capacity without the clergy member’s consent.

MT: Mont. Code Ann. § 26-1-804 – Confessions made to members of the clergy

A member of the clergy or priest may not, without the consent of the person making the confession, be examined as to any confession made to the individual in the individual’s professional character in the course of discipline enjoined by the church to which the individual belongs.

ND: N.D.R. Ev. Rule 505 – Religious Privilege

(a) **Definitions.** In this rule:

- (1) "Cleric" means a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the cleric.
- (2) A communication is "confidential" if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege. An individual has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the individual to a cleric in the cleric's professional character as spiritual adviser.

(c) Who may claim the privilege. The privilege under this rule may be claimed by an individual or the individual's guardian or conservator, or the individual's personal representative if the individual is deceased. The individual who was the cleric at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

NC: N.C. Gen. Stat. § 8-53.2 – Communications between clergymen and communicants

No priest, rabbi, accredited Christian Science practitioner, or a clergyman or ordained minister of an established church shall be competent to testify in any action, suit or proceeding concerning any information which was communicated to him and entrusted to him in his professional capacity, and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted, provided, however, that this section shall not apply where communicant in open court waives the privilege conferred.

NE: Neb. Rev. Stat. § 27-506

(1) As used in this rule:

(a) A clergyman is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him; and

(b) A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(2) A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual advisor.

(3) The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman may claim the privilege on behalf of the person. His authority so to do is presumed in the absence of evidence to the contrary.

NH: N.H. Rev. Stat. Ann. § 516:35 – Religious Leaders

A priest, rabbi or ordained or licensed minister of any church or a duly accredited Christian Science practitioner shall not be required to disclose a confession or confidence made to him in his professional character as spiritual adviser, unless the person confessing or confiding waives the privilege.

NJ: N.J. Stat. § 2A:84A-23 – Clergy-penitent privilege

Rule 511.

Any communication made in confidence to a cleric in the cleric's professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which the cleric belongs or of the religion which the cleric professes, shall be privileged. Privileged communications shall include confessions and other communications made in confidence between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counseling role.

As used in this section, "cleric" means a priest, rabbi, minister or other person or practitioner authorized to perform similar functions of any religion.

The privilege accorded to communications under this rule shall belong to both the cleric and the person or persons making the communication and shall be subject to waiver only under the following circumstances:

- (1) both the person or persons making the communication and the cleric consent to the waiver of the privilege; or
- (2) the privileged communication pertains to a future criminal act, in which case, the cleric alone may, but is not required to, waive the privilege.

NM: 11-506 NMRA – Communications to clergy

A. Definitions. For purposes of this rule,

- (1) a "member of the clergy" is a minister, priest, rabbi, or similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting that person;
- (2) a communication is "confidential" if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

B. Scope of the privilege. A person has a privilege to refuse to disclose, or to prevent another from disclosing, a confidential communication made for the purpose of seeking spiritual advice by the person to a member of the clergy.

C. Who may claim the privilege. The privilege may be claimed by

- (1) the person who consults with a member of the clergy;
- (2) the person's guardian or conservator; or
- (3) the person's personal representative if the person is deceased.

The privilege may be asserted on the person's behalf by the member of the clergy. Authority to claim the privilege is presumed absent evidence to the contrary.

NV: Nev. Rev. Stat. § 49.255

A member of the clergy or priest shall not, without the consent of the person making the confession, be examined as a witness as to any confession made to the member of the clergy or priest in his or her professional character.

NY: N.Y. C.P.L.R. Law § 4505

Confidential communication to clergy privileged. Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion or duly accredited Christian Science practitioner, shall not be allowed disclose a confession or confidence made to him in his professional character as spiritual advisor.

OH: Ohio Rev. Code Ann. § 2317.02 (2017)

The following persons shall not testify in certain respects:

(C)

(1) A cleric, when the cleric remains accountable to the authority of that cleric's church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric's professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of [section 2151.421 of the Revised Code](#) to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.

(2) As used in division (C) of this section:

- (a) "Cleric" means a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.
- (b) "Sacred trust" means a confession or confidential communication made to a cleric in the cleric's ecclesiastical capacity in the course of discipline enjoined by the church to which the cleric belongs, including, but not limited to, the Catholic Church, if both of the following apply:
 - (i) The confession or confidential communication was made directly to the cleric
 - (ii) The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.

OK: Okla. Stat. tit. 12, § 2505 – Religious Privilege

A. As used in this section:

1. A "cleric" is a minister, priest, rabbi, accredited Christian Science practitioner or other similar functionary of a religious organization, or any individual reasonably believed to be a cleric by the person consulting the cleric; and
2. A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. A person has a privilege to refuse to disclose and to prevent another from disclosing his confidential communication made to a clergyman acting in his professional capacity.

C. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The cleric is presumed to have authority to claim the privilege but only on behalf of the communicant.

OR: Or. Rev. Stat. § 40.260 Rule 506

(1)

As used in this section, unless the context requires otherwise:

(a)

“Confidential communication” means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b)

“Member of the clergy” means a minister of any church, religious denomination or organization or accredited Christian Science practitioner who in the course of the discipline or practice of that church, denomination or organization is authorized or accustomed to hearing confidential communications and, under the discipline or tenets of that church, denomination or organization, has a duty to keep such communications secret.

(2)

A member of the clergy may not be examined as to any confidential communication made to the member of the clergy in the member's professional character unless consent to the disclosure of the confidential communication is given by the person who made the communication.

(3)

Even though the person who made the communication has given consent to the disclosure, a member of the clergy may not be examined as to any confidential communication made to the member in the member's professional character if, under the discipline or tenets of the member's church, denomination or organization, the member has an absolute duty to keep the communication confidential.

PA: 42 Pa. Cons. Stat. Ann. § 5943 – Privileged communications to clergymen

No clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

RI: R.I. Gen. Laws Section 9-17-23 – Privileged communications to clergy.

In the trial of every cause, both civil and criminal, no member of the clergy or priest shall be competent to testify concerning any confession made to him or her in his or her professional character in the course of discipline enjoined by the church to which he or she belongs, without the consent of the person making the confession. No duly ordained minister of the gospel, priest, or rabbi of any denomination shall be allowed in giving testimony to disclose any confidential communication, properly entrusted to him or her in his or her professional capacity, and necessary and proper to enable him or her to discharge the functions of his or her office in the usual course of practice or discipline, without the consent of the person making the communication.

SC: S.C. Code Ann. § 19-11-90 – Priest-penitent privilege

In any legal or quasi-legal trial, hearing or proceeding before any court, commission or committee no regular or duly ordained minister, priest or rabbi shall be required, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline of his church or religious body. This prohibition shall not apply to cases where the party in whose favor it is made waives the rights conferred.

SD: S.D. Codified Laws § 19-19-505 – Religious privilege – Definitions – General Rule - Who may claim

(a) **Definitions.** As used in this section:

- (1) A “clergyman” is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him;
- (2) A communication is “confidential” if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) **General rule of privilege.** A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) **Who may claim privilege.** The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

TN: Tenn. Code Ann. § 24-1-206 Clergy – Communications confidential – Waiver – Misdemeanor offense

(a)

- (1) No minister of the gospel, priest of the Catholic Church, rector of the Episcopal Church, ordained rabbi, or regular minister of religion of any religious organization or denomination usually referred to as a church, over eighteen (18) years of age, shall be allowed or required in giving testimony as a witness in any litigation, to disclose any information communicated to that person in a confidential manner, properly entrusted to that person in that person's professional capacity, and necessary to enable that person to discharge the functions of such office according to the usual course of that person's practice or discipline, wherein such person so communicating such information about such person or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.
- (2) It shall be the duty of the judge of the court wherein such litigation is pending, when such testimony as prohibited in this section is offered, to determine whether or not that person possesses the qualifications which prohibit that person from testifying to the communications sought to be proven by that person.

(b) The prohibition of this section shall not apply to cases where the communicating party, or parties, waives the right so conferred by personal appearance in open court so declaring, or by an affidavit properly sworn to by such a one or ones, before some person authorized to administer oaths, and filed with the court wherein litigation is pending.

(c) Nothing in this section shall modify or in any way change the law relative to “hearsay testimony.”

(d) Any minister of the gospel, priest of the Catholic Church, rector of the Episcopal Church, ordained rabbi, or any regular minister of religion of any religious organization or denomination usually referred to as a church, who violates this section, commits a Class C misdemeanor.

TX: Texas Rules of Evidence, Rule 505

Rule 505 - Privilege For Communications to a Clergy Member(a) Definitions. In this rule:(1) A "clergy member" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or someone whom a communicant reasonably believes is a clergy member.(2) A "communicant" is a person who consults a clergy member in the clergy member's professional capacity as a spiritual adviser.(3) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present to further the purpose of the communication.(b) General Rule. A communicant has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication by the communicant to a clergy member in the clergy member's professional capacity as spiritual adviser.(c) Who May Claim. The privilege may be claimed by:(1) the communicant;(2) the communicant's guardian or conservator; or(3) a deceased communicant's personal representative.

The clergy member to whom the communication was made may claim the privilege on the communicant's behalf-and is presumed to have authority to do so.

UT: Utah Code Ann. § 78B-1-137 – Witness - privileged communications

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

VT: Vt. Stat. Ann. Title 12 § 1607

A priest or minister of the gospel shall not be permitted to testify in court to statements made to him or her by a person under the sanctity of a religious confessional.

VA: Va. Code Ann. § 8.01-400 – Communications between ministers of religion and persons they counsel or advise

No regular minister, priest, rabbi, or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required to give testimony as a witness or to relinquish notes, records or any written documentation made by such person, or disclose the contents of any such notes, records or written documentation, in discovery proceedings in any civil action which would disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about

himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

WA: Wash. Rev. Code § 5.60.060 – Who is disqualified – Privileged communications (2020)

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

WI: Wis. Stat. § 905.06

(1) Definitions. As used in this section:

(a) A “member of the clergy” is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(b) A communication is “confidential” if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(2) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as a spiritual adviser.

(3) Who may claim the privilege. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The member of the clergy's authority so to do is presumed in the absence of evidence to the contrary.

(4) Exceptions. There is no privilege under this section concerning observations or information that a member of the clergy, as defined in s. 48.981 (1) (cx), is required to report as suspected or threatened child abuse under s. 48.981 (2) (bm) or as a threat of violence in or targeted at a school under s. 175.32.

WV: W. Va. Code § 57-3-9 – Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony

No priest, nun, rabbi, duly accredited Christian Science practitioner or member of the clergy authorized to celebrate the rites of marriage in this State pursuant to the provisions of article two [§§ 48-2-101 et seq.], chapter forty-eight of this code shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this State:

(1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or other religious body to which he or she belongs, without the consent of the person making such confession or communication; or

(2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication. This subsection is in addition to the protection and

privilege afforded pursuant to section three hundred one [§ 48-1-301], article one, chapter forty-eight of this code.

MILITARY RULES OF EVIDENCE: Mil. R. Evid. 503(a)

"A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience."

APPENDIX 2

PACIFIC JUSTICE INSTITUTE —
Center for Public Policy

P.O. Box 276600
Sacramento, CA 95827.
telephone: (916) 857-6900

March 25, 2019

Gerald A. Hill, Senator
State Capitol, Room 5035
Sacramento, CA 95814

Re: Senate Bill 360 – Oppose

Dear Senator Hill,

Pacific Justice Institute – Center for Public Policy¹ submits this letter to address Senate Bill 360. Because the proposed law seeks to criminalize a centuries-old religious practice, regretfully we must oppose the Bill.

SUMMARY OF THE BILL

The Bill removes the clergy-penitent privilege in communications involving suspicion of abuse or neglect of a minor.² This results in making all ministers mandatory reporters of abuse or neglect.³ Though engaged in a purely religious function of hearing a confidential communication from a penitent, a cleric who fails to report the contents of the communication immediately by telephone and file a written report within 36-hours⁴ faces prosecution with penalties including six months of incarceration, or a fine of \$1,000 or both.⁵

EXPLANATION OF CLERGY/PENITENT PRIVILEGE

Historically, the disclosure of sins stands as a practice dating back two millennia. The confession of sins frees the individual and facilitates reconciliation with others.⁶ “Through such an admission, man looks squarely at the sins he is guilty of, takes responsibility for them, and thereby opens himself again to God and to the communion of the Church in order to make a new future possible.”⁷ Sitting as one of the seven sacraments, the Roman Catholic Church refers to this as the sacrament of *Penance and Reconciliation*.⁸ The penitent makes the disclosure to a priest⁹ (hence the common name *Confession*). Confession involves initial conversion seen as “the first step in returning to the Father from whom one has strayed by sin.”¹⁰ Further, confession sits as part of the necessary ongoing part of the Christian life for sins committed and a reconciliation to others and the

¹ This organization is established pursuant to section 501(c)(4) of the Internal Revenue Code.

² Penal Code § 11166(d).

³ Penal Code § 11165.7(a)(32).

⁴ Penal Code § 11166(a).

⁵ Penal Code § 11166(c).

⁶ Code of Canon Law of the Roman Catholic Church, Canon 1455.

⁷ Id.

⁸ The sacraments stand as Baptism, Confirmation, Eucharist, Penance, Anointing of the Sick, Holy Orders, and Matrimony. Code of Canon Law of the Roman Catholic Church, Canon 1113.

⁹ Code of Canon Law of the Roman Catholic Church, Canon 1456.

¹⁰ Code of Canon Law of the Roman Catholic Church, Canon 1423.

reintegration of “forgiven sinners into the community of the People of God from which sin alienated or even excluded them.”¹¹ In the early centuries of Christendom, the custom was for public penance of certain grave sins.¹² However, during the seventh century “Irish missionaries, inspired by the Eastern monastic tradition, took to continental Europe the ‘private’ practice of penance.”¹³

This private practice is central to confession since that time. Communications made to a priest during confession cannot be subject to disclosure. “The sacramental seal is inviolable; therefore it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason.”¹⁴ The penalty for violating the confessional is excommunication.¹⁵

The Roman Catholic Church is not an outlier with regards to private disclosure of wrongdoing. Similarly, the Orthodox Church also practices the *Sacrament of Holy Confession*.¹⁶ The Church of England recognizes the inviolability of an act of confession by a penitent to a priest and the profound obligation of confidentiality. “Let the priest who dares to make known the sins of his penitent be deposed.”¹⁷ Likewise, the Church of Jesus Christ of Latter-Day Saints views confidential admissions of wrongdoing as an essential part of the repentance process.¹⁸ Moreover, the American Baptist Churches USA produced a position paper that reads in part, “The effective pastoral counseling of the ministry depends upon the assurance of those who seek it that the information they reveal in confidence to their pastoral counselor may be given with full freedom.”¹⁹ In a 1987 report the Presbyterian Church USA reaffirmed the historic position of the denomination “that it is a spiritual and professional duty of clergy to hold in confidence matters revealed to them in their counseling, caring and confessional ministries, and that being called to testify in a court of law does not negate this sacred obligation, the law of God being prior to the laws of human courts.”²⁰ Although Lutherans are not a homogenous group, on this issue they stand in one accord. The Augsburg Confession reads, “Of confession they teach that Private Absolution ought to be retained in the churches, although in confession an enumeration of all sins is not necessary.”²¹

Of course, this is a very compressed summary of Christian religious practices involving confidential confessions. The undersigned practice in the area of church law and can relate anecdotally that besides the denominations described above, about half of the Evangelical, Fundamentalist and Pentecostal churches for which he provides legal counsel related to this issue hold some form of confidentiality in pastoral counseling.

¹¹ Code of Canon Law of the Roman Catholic Church, Canon 1443.

¹² Such sins were committed after Baptism and included things such as idolatry, adultery, and murder. Code of Canon Law of the Roman Catholic Church, Canon 1447.

¹³ Id.

¹⁴ Code of Canon Law of the Roman Catholic Church, Canon 983 § 1.

¹⁵ Code of Canon Law of the Roman Catholic Church, Canon 1388.1.

¹⁶ *Apostolic Constitutions* 8, 8-9; Gregory of Neocaesarea, *Canon XII*. For confession before a spiritual father, cf. Socrates, *Ecclesiastical History* 5, 19 and 7, 16; John Chrysostom, *Sermon 4 on Lazarus* PG 48:1012.

¹⁷ “Let the priest who dares to make known the sins of his penitent be deposed.” *Decretum, Secunda pars, dist. VI, c. II* (1151). See also, The Episcopal Church’s *The Book of Common Prayer* rite, “The Reconciliation of a Penitent.”

¹⁸ Mosiah 26:29 and Doctrine and Covenants 59:12. See also, the discussion in *Scott v. Hammock*, 870 P.2d 947 (Utah 1994).

¹⁹ *American Baptist Policy Statement on Privileged Communications*, American Baptist Churches, U.S.A. (June 19, 1978)

²⁰ Report of the Advisory Council on Church and Society, A Resolution on Clergy Confidentiality, Minutes of the 199th General Assembly 344 (1987).

²¹ *The Book of Concord – The Confessions of the Lutheran Church*, Augsburg Confession Article XI (1530). Fifty years ago the American Lutheran Church issued a statement which reads, “The Church Council recognizes and reaffirms that it is a part of the traditional discipline and practice of the Lutheran church that the pastor hold inviolate and disclose to no one the confessions and communications made to him as a pastor without the specific consent of the person making the communication.” Minutes of the Church Council of the American Lutheran Church 16 (1960). The Missouri Synod also holds to the Seal of Confession. *The Pastor-Penitent Relationship - A Report of the Commission on Theology and Church Relations of The Lutheran Church—Missouri Synod* (September 1999).

Although these newer protestant denominations or independent churches do not have a well-developed theology on this issue as their counterparts, the nature of that practice is such that the ministers hold in confidence confessions of crimes. Further, these clerics decline to give testimony in a legal proceeding which solicits disclosure of confidential information revealed in pastoral counseling.

LEGAL DISCUSSION

More than a century ago the U.S. Supreme Court opined that “suits cannot be maintained which would require the disclosure of the confidences of a confessional.”²² The reason rests in the nature of privileged communications. In a case dating back to the Civil War involving breach of contract between the country’s Commander in Chief (President Lincoln) and a spy, the *Totten* court explained that the evidence necessary to prosecute such a case requires the parties to reveal national secrets. The high court explained that such a case cannot proceed under the same principle that protects the communications between an attorney and client, a physician and a patient, a husband and wife, and as quoted above, a priest and penitent. That precept has not gone out of legal fashion. In the modern era the Court wrote, “The privileges between priest and penitent, attorney and client, and physician and patient limit protection to private communications. These privileges are rooted in the imperative need for confidence and trust.”²³

By long tradition and public policy, statements made by and between these parties stand as outside of the reach of the judiciary. If the courts will not give ear to privileged statements, surely law enforcement possesses no greater right to access such communications.

Some protest that the right lies only in legislative grace. In other words, a statute provides the only basis for the privilege. If such were the case, then there is no principled reason why Senate Bill 360 could not be amended to make attorneys mandated reporters. But of course, conscripting lawyers into the ranks of law enforcement would turn the right to zealous and effective assistance of counsel on its head. The legal system, rooted in the constitutionally-based rule of law, would cease to exist as we know it.

Similarly, the clergy-penitent privilege rests in the right to the free exercise of religion. The First Amendment compels the privilege, regardless of the existence of a delineating statute. In a case in which a prosecutor relied on an Oregon statute to record a confession by a jailed suspect to a Catholic priest, the Ninth Circuit Court of Appeals found the argument that a state statute can override the free exercise of religion clause unconvincing. The Ninth Circuit explained that if the government could record such confessions, it would invade the religious rights of the inmates and make it impossible for clerics to administer this sacrament.²⁴ The appellate panel quoted at length from an 1813 case in which a court issued a subpoena for a minister to testify in a criminal trial. In that case, the defendant confessed to the receipt of stolen goods to a Reverend Anthony Kohlmann. Rev. Kohlmann refused to testify, citing “the law of God and his church [that] whatever is declared in confession, can never be discovered,” but must “remain an eternal secret between God and the penitent soul—of which the confessor cannot, even to save his own life, make any use at all to the penitent’s discredit, disadvantage, or any other grievance whatsoever.”²⁵ The court ruled in favor of Rev. Kohlmann stating,

The sacraments of a religion are its most important elements. We have but two in the Protestant Church – Baptism and the Lord’s Supper – and they are considered the seals of the covenant of

²² *Totten v. U.S.*, 92 U.S. 105, 107 (1875).

²³ *Trammel v. U.S.*, 445 U.S. 40, 51 (1980).

²⁴ *Mockaitis v. Harclerod*, 104 F.3d 1522, 1530 (9th Cir. 1997).

²⁵ *Cox v. Miller*, 296 F.3d 89 (2nd Cir. 2002) quoting *People v. Phillips* (N.Y. Ct. Gen. Sess. 1813), excerpted in *Privileged Communications to Clergymen*, 1 Cath. Law. 199, 200 (1955).

grace. Suppose that a decision of this court, or a law of the state should prevent the administration of one or both of these sacraments, would not the constitution be violated, and the freedom of religion be infringed?²⁶

Two things from the passage above demand notice. First, the New York Court of General Sessions centered its analysis on the First Amendment's free exercise of religion clause. Second, the court handed down the decision fifteen years prior to the codification of the clergy-penitent privilege, i.e., the New York Legislature enacted the privilege in 1828²⁷ whereas the New York Court of General Sessions handed down the decision in 1813. Therefore, the notion that the clergy-penitent privilege rests at the sole discretion of the legislature exercising its police powers is not tenable.

The removal of the clergy-penitent privilege under Senate Bill 360 violates religious liberties and thus falls short of the powers reserved to the States. As explained above, the Bill explicitly revokes an age-old Christian practice and, for some denominations, an actual sacrament. What is more, the revocation criminalizes this rite.²⁸ When lawmakers pass a law they know to breach the wall separating church and state erected through the First Amendment, such stands not as a legitimate exercise of the state's police powers but as an act of lawlessness.

The intrusion into religious liberties is exacerbated in light of the trajectory of what can trigger the reporting requirements. Consider this. Government entities and officials define *abuse* and *neglect* with such breadth that the ordinary turbulence of family struggles comes under the Child Abuse and Neglect Reporting Act.²⁹ The Legislative Analyst's Office wrote that under California law, "*Emotional abuse* is nonphysical mistreatment, resulting in disturbed behavior by the child, such as severe withdrawal or hyperactivity. Emotional abuse includes willfully causing any child to suffer, inflicting mental suffering, or endangering a child's emotional well-being."³⁰ The Los Angeles Department of Children and Family Services defines *emotional abuse* as "failure to provide warmth, attention, supervision, normal living experiences."³¹ The definition from the Humboldt County Department of Social Services defines *emotional abuse* as "non-physical mistreatment that endangers a child's emotional health."³²

Ordained youth pastors frequently counsel teenagers, or their parents, who seek help to navigate family conflicts. This could include a mother and 13-year-old daughter in a fiery argument over the amount of makeup or length of a skirt. Or the young teenage boy who finds himself distraught because his parents will not support his decision to come out as gay. Ordinarily, a pastor listens to confession of sin, explains the application of religious texts, provides counsel and comfort, and gives direction on how to make amends. Should the clergy-penitent privilege disappear from the legal landscape, young ministers must "immediately" determine if the level of family tension falls within the government's broad and amorphous meaning of *emotional abuse*.³³ But if instead of bringing in the police and child protective services, he hangs on to his religious duties of providing

²⁶ *Mockaitis*, 104 F.3d at 1532 quoting *People v. Phillips* (N.Y. Ct. Gen. Sess. 1813), 1 Cath. Law. at 207.

²⁷ N.Y. Rev. Stat. 1828, Pt. 3, ch. 7, tit. 3, § 72.

²⁸ Penal Code § 11166(c).

²⁹ Penal Code §§ 11164, et seq.

³⁰ *Child Abuse and Neglect in California – Part 1*, Legislative Analyst's Office, January 1996.

https://lao.ca.gov/1996/010596_child_abuse/cw11096a.html (accessed March 20, 2019). See also, "Child Abuse and Reporting Guidelines," California Department of Education <https://www.cde.ca.gov/lr/ss/ap/childabusereportingguide.asp> (accessed March 20, 2019).

³¹ *Frequently Asked Questions*. <http://dcfs.lacounty.gov/faq.html> (accessed March 20, 2019).

³² County of Humboldt, *Reporting Child Abuse*, <https://humboldt.gov.org/533/Reporting-Child-Abuse> (accessed March 20, 2019).

See also, Kern County Department of Human Services, *Child Abuse Reporting*, https://www.kerncounty.com/dhs/ChildWelfareServices/child_abuse_reporting.html (accessed March 20, 2019).

³³ Penal Code § 11166(a).

confidential spiritual counsel, the minister stands as subject to prosecution. In removing the clergy-penitent privilege, the Bill mandates a betrayal of confidence in violation of a traditional religious duty held by clergy. In order to protect themselves, parishioners, and the penitent, preachers will say, “Don’t come to us with your family problems.” In sum, the proposed Bill serves to drive a wedge of distrust between the faithful and their ministers.

CONCLUSION

The list of categories of mandated reporters now stands at forty-six (46).³⁴ This includes dog catchers³⁵ and computer technicians.³⁶ Needless to say, California has enlisted a sufficient host of vocations to adequately bring suspicions of child abuse and neglect to the attention of law enforcement. But unlike other professionals, Senate Bill 360 places California’s clergy in peril of violating the sacred trust that their faith requires or face prosecution. A tragic irony arises when ministers find themselves in a position of damned if they do and damned if they don’t. In sum, the Bill cannot be reconciled with the First Amendment, for the guarantee of the free exercise of religion will not allow clerics to be gored by one or the other horns of that dilemma. Therefore, Pacific Justice Institute – Center for Public Policy feels compelled to register our opposition to the Bill.

Very truly yours,



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³⁴ Penal Code Section 11165.7.

³⁵ Penal Code Section 11165.7(a)(31).

³⁶ Penal Code Section 11165.7(a)(43).

APPENDIX 3

COUNSELING NOTICE

(Appendix 3A)

The pastoral staff is aware that the law of this state recognizes a clergy-penitent privilege protecting confessions to members of the clergy.

It is the custom, duty, and practice under the discipline and tenets of this church to keep communications secret in the course of pastoral counseling. As such, communications made during counseling will not be revealed to any third party without your express consent.

I, _____, have read the above notice and willingly consent to undergo pastoral counseling.

Dated: _____

[Sign]

COUNSELING NOTICE

(Appendix 3B)

The pastoral staff is aware that State law recognizes a clergy-penitent privilege protecting confessions to members of the clergy. Under the clergy-penitent privilege, ministers cannot be compelled to reveal the substance of parishioners' confessions in a court of law, report criminal activities or child abuse. However, this privilege is not mandatory.

Please be aware that it is not the tradition, custom, or duty under the discipline and tenets of this church to keep communications secret in the course of pastoral counseling. As such, communications made during counseling *may* be revealed as follows:

- Law Enforcement
 - information regarding the commission of a crime
 - information to prevent the imminent commission of a crime

- Church leadership or members
 - information of particular needs that others can help you with
 - information for disciplinary reasons in accordance with biblical principles

- Family members
 - information that in the sole discretion of the pastor is appropriate to reveal to your immediate family

Please be further advised that communications that leads the pastor to reasonably believe that child abuse may have occurred will be reported to law enforcement.

I, _____, have read the above notice and willingly consent to undergo pastoral counseling.

Dated: _____

[Sign]

APPENDIX 4

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Attorney for Gary [REDACTED]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO, CENTRAL DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,

v.

[REDACTED],

Case No. [REDACTED]

NOTICE OF MOTION AND MOTION
TO QUASH SUBPOENA TO TESTIFY;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
PASTOR GARY [REDACTED]

Dept. V3

Date:

Time:

Hon.: Eric M. Nakata, Judge

NOTICE OF MOTION TO QUASH SUBPOENA TO TESTIFY

Please take notice that Pastor Gary [REDACTED] hereby moves for an order to quash the subpoena to testify in the above-captioned case. The motion is based on the clergy-penitent privilege (Cal. Evid. Code § 1034). In support of this motion, the movant submits the Memorandum of Points and Authorities and the declarations of Gary [REDACTED] and Kevin Snider.

Dated: December 23, 2021



Kevin T. Snider, Attorney for Pastor Gary [REDACTED]

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

On August 7, 2020, [REDACTED] came to Calvary [REDACTED] [REDACTED] to speak with a member of the clergy, Pastor Gary [REDACTED] in order to seek spiritual help. As an ordained minister since 2009, and Pastor of Calvary [REDACTED] [REDACTED] [REDACTED], Pastor [REDACTED] provided spiritual counsel to Mr. [REDACTED]. It is Pastor [REDACTED] custom to hear confidential matters from those in his church or others who seek spiritual solace. Mr. [REDACTED] is a member of the church and no third party was present at the time of their communication. Pastor [REDACTED] is asserting the clergy-penitent privilege.

ARGUMENT

Section 1034 of the Evidence Code provides in part that "...a member of the clergy, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege." Here, Pastor [REDACTED] claims the privilege. It is long settled law in California that penitential communications are subject to privilege. *In re Lifschutz*, 2 Cal. 3d 415 (1970).

CONCLUSION

Based on the foregoing, the motion to quash should be sustained.

Respectfully submitted,



Kevin T. Snider, Attorney for Pastor Gary [REDACTED]

DECLARATION OF GARY [REDACTED]

I, Gary [REDACTED] am not a party to the above-captioned case, and if called upon I could and would testify truthfully as to my own personal knowledge, as follows:

1. I serve as the pastor of Calvary [REDACTED] [REDACTED] and have held that position since 02/01/2021.
2. I am a duly ordained minister and have been so since 08/01/2009.
3. In my capacity as a minister it is my custom to hear confidential matters from those seeking spiritual help, comfort, counsel, repentance, and prayer. This frequently includes confession of sin, temptation, and deep emotional, psychological and spiritual needs.
4. During such spiritual counsel, what is communicated remains strictly confidential unless directed by the person seeking help to share the information with others. As a pastor that must bear the spiritual burdens of congregants and others, it is important that there be a strong level of trust so people know that I can keep their secrets. If that trust is broken, I cannot perform this task that God has given me to do. Therefore, it is my duty as a pastor to keep such conversations completely private.
5. On or about 08/07/2020 [REDACTED] came to the church to talk to me to seek spiritual help. Mr. [REDACTED] is a member of my church. There were no third parties present when we spoke and he requested that I keep our communication private.
6. Because the nature of the communication was of the kind that I ordinarily would keep confidential as a pastor providing spiritual counsel, I am exercising my duty to maintain the clergy penitent privilege.
7. On 03/15/2021 I was present in this Court and asked to testify. Judge [REDACTED] informed the prosecutor, Robert Knox, that I should not testify due to the clergy penitent privilege.

He said even if he asked that I testify, the defendant could then claim Clergy Privilege. As such, I was not required to testify.

8. I did not order a transcript, but remember the exchange between the judge and Mr. Knox on 03/15/2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge. Executed this Twenty-Third Day of _____
December, 2021, in the City of [REDACTED], California.

[REDACTED]

DECLARATION OF KEVIN T. SNIDER

I, Kevin T. Snider, am not a party to the above-encaptioned case, and if called upon I could and would testify truthfully, as to my own personal knowledge, as follows:

1. I am the attorney for Pastor Gary [REDACTED]
2. On December 23, Pastor [REDACTED] forwarded an e-mail exchange that he had with

Deputy District Attorney Robert Knox which read,

Pastor [REDACTED]: Sorry, my Bluetooth disconnected... and the phone hung up. I will call my Lawyer, and give him your information. I understand what you are saying.

Attorney Knox: Okay, thanks. He can either e-mail me or reach me at my desk phone. But, per our prior agreement, if you can come to court on Monday 1/3/22 at 8:30 a.m. in V3, we can discuss more then. If I don't hear from your lawyer before then, feel free to bring him with you on that Monday.

3. Pastor [REDACTED] informed me by telephone that he wished to assert the clergy-penitent privilege.
4. I thus e-mailed Mr. Knox as follows:

Dear Mr. Knox,

This office represents Pastor Gary [REDACTED]. The purpose of this e-mail is to provide notice that, if called upon to testify, Pastor [REDACTED] will be asserting the clergy penitent privilege pursuant to Cal. Evid. Code § 1034. If a subpoena is issued, our office will accept service.

Sincerely,

Kevin Snider

5. Mr. Knox e-mailed a subpoena to me and replied, in part as follows:

Mr. Snider:

Attached as a PDF is Pastor [REDACTED]'s subpoena. I'm happy to discuss in case we can come to an understanding, but I don't think the privilege applies in this circumstance.

6. Accompanying this Declaration is a true and correct copy of the subpoena that Mr.

Knox sent as an attachment mentioned in his e-mail.

7. I have submitted this motion to an attorney service for filing this same evening.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and of my own personal knowledge. Executed this Twenty-Fourth Day of December, 2021, in the County of Sacramento, California.



Kevin T. Snider, Attorney for Pastor Gary [REDACTED]

[Proposed ORDER]

The motion to quash to the subpoena of Pastor Gary [REDACTED] is **SUSTAINED**.

DATED: _____, 202__

Eric M. Nakata, Judge of the Superior Court