

OUTSIDE COUNSEL

Expert Analysis

## When Can State Courts Decide Religious Disputes?

**T**en years ago, on Nov. 20, 2007, the New York Court of Appeals issued a significant religion law decision in *Matter of Congregation Yetev Lev D'Satmar v. Kahana*, 9 N.Y.3d 282 (2007), exploring the power of state courts to resolve religious disputes. The court held that it could not decide a controversy over the election of a religious organization's leaders because, to do so, would mean that it would improperly intrude into matters of religious doctrine.

Since that ruling, other New York courts have had to determine whether to apply what is known as the "ecclesiastical abstention doctrine" to a wide variety of situations. One thing is very clear from these decisions: Counsel for religious institutions, clergy, congregations, and individual congregants contemplating filing a lawsuit—and attorneys



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considering initiating a civil suit against any of those parties—first must analyze the ability of the courts to hear and decide the case under *Kahana* and its progeny.

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### The Satmar Feud

*The Kahana* case involved Congregation Yetev Lev D'Satmar, the religious center of a Hassidic sect of Orthodox Judaism known as Satmar that was founded in Hungary in 1928

by Grand Rabbi Joel Teitelbaum and reestablished in Brooklyn after World War II. The congregation's bylaws set forth the purpose of the congregation, the functions of the Grand Rabbi, and issues involving membership in the community. The bylaws provided for a board of directors and officers to preside over the congregation and, among other things, to assure compliance with the congregation's rules.

In 1974, the Grand Rabbi expanded the Satmar community by establishing a new congregation in Monroe, N.Y. Several years later, that congregation was incorporated in New York as Congregation Yetev Lev D'Satmar of Kiryas Joel, Inc.

In 1979, the Grand Rabbi died. He was succeeded by his nephew, Moses Teitelbaum, who appointed his elder son, Aaron Teitelbaum, as chief rabbi of the Monroe congregation and his younger son, Zalman Leib Teitelbaum, as chief rabbi of the Brooklyn congregation. When Rabbi Aaron's supporters and Rabbi Zalman's supporters disagreed about who should succeed as Grand Rabbi, the Brooklyn congregation split into two rival factions.

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Thereafter, each faction conducted separate elections. The first election resulted in Berl Friedman being named president of the congregation, while the second led to Jacob Kahan being named president.

Friedman's supporters filed an action in the Supreme Court, Kings County, seeking an order declaring Kahan's election null and void. They claimed that their election had resulted in certain members of the congregation, including Friedman, becoming duly elected officers; that Kahan's supporters had illegally attempted to remove these duly elected officers and expel Friedman from membership; and that the election of Kahan and his supporters had violated the congregation's bylaws or the N.Y. Religious Corporations Law (RCL).

Among other things, Kahan and his supporters challenged the jurisdiction of the Supreme Court, arguing that it should refrain from interfering in the internal affairs of the congregation.

The Supreme Court held that it could not decide the election dispute. The Appellate Division, Second Department, agreed, and the dispute reached the Court of Appeals.

### The Court's Decision

The court affirmed.

In its decision, the court explained that the First Amendment forbids civil courts from "interfering in or determining religious disputes" because of the "substantial danger" that the state would become entangled in essentially religious controversies or intervene on behalf

of groups espousing particular doctrines or beliefs.

The court added, however, that civil disputes involving religious parties or institutions could be adjudicated without offending the First Amendment as long as "neutral principles of law" were the basis for their resolution. The "neutral principles of law" approach, the court said, required a court to apply "objective, well-established principles of secular law to the issues." In that regard, it continued, courts could rely on internal documents, such as a congregation's bylaws, but "only" if those documents did "not require interpretation of ecclesiastical doctrine."

In other words, the court explained, judicial involvement was permitted when a case could be "decided solely upon the application of neutral principles of ... law, without reference to any religious principle."

The court then found that the dispute between the two Satmar factions involved issues "beyond mere notice and quorum challenges," such as whether Friedman had been removed or expelled from the congregation for rebelling against the authority of the Grand Rabbi and the Grand Rabbi's son and whether Kahan had succeeded Friedman as president and had the authority to conduct the second election. The court reasoned that these "membership issues" were at the core of the case and were "an ecclesiastical matter."

The court added that although courts generally had jurisdiction to determine whether a congregation

had adhered to its own bylaws in making determinations as to the membership status of individual congregants, in this case the congregation's bylaws conditioned membership "on religious criteria," including whether a congregant followed the "ways of the Torah."

Accordingly, the court held, whether Friedman had been expelled from the congregation "inevitably" called into question religious issues beyond any membership criteria found in the congregation's bylaws. With Friedman's religious standing within the congregation essential to resolution of the election dispute, the court ruled, matters of an ecclesiastical nature "clearly" were at issue. The issues dividing the parties had to be resolved by the members of the congregation themselves, and not the courts, the court concluded.

### 'Kahana' and Its Progeny

Over the past decade, quite a number of New York courts have had to determine the applicability of the ecclesiastical abstention doctrine. Certainly, state courts may not entertain a party's efforts to show that a marriage ceremony was invalid as a matter of Islamic law, *Estate of Weisberg*, No. 2012-3470 (Surrogate's Ct. N.Y. Co. Apr. 21, 2014), or permit testimony concerning the tenets and principles of the Sikh religion, *Badesha v. Soch*, 136 A.D.3d 1415 (4th Dep't 2016). Other situations, however, are more complicated.

**Defamation:** The ecclesiastical abstention doctrine has arisen in

defamation cases. In *Kaplan v. Khan*, 31 Misc.3d 1227(A) (Sup. Ct. Kings Co. 2011), a case in which co-author Jonathan Robert Nelson represented the defendant pastor, the plaintiff alleged that, at a church prayer meeting, the defendant had called the plaintiff a “whore” and stated that she “ran a house of prostitution.”

Although the pastor denied that he had used the words alleged by the plaintiff, he argued that the words he had uttered on that occasion had been made in “rebuke” during a religious service and, as a consequence, that the ecclesiastical abstention doctrine required dismissal of the complaint.

The court agreed, concluding that neither the religious practice of rebuke itself nor the pastor’s determination that it was appropriate in light of the plaintiff’s alleged failure to follow church teachings could be the subject of inquiry by a civil court.

**Governance:** Courts often have had to determine whether they could hear cases involving disputes over a religious organization’s management, as in *Kahana*. For instance, the plaintiffs in *Drake v. Moulton Memorial Baptist Church of Newburgh*, 93 A.D.3d 685 (2d Dep’t 2012), had been removed from their positions as trustees of Moulton Memorial Baptist Church of Newburgh, New York, and they sued the church and its pastor.

The Supreme Court, Orange County, dismissed the complaint, and the Appellate Division, Second

Department, affirmed. It found that, with a limited exception, the plaintiffs’ claims were non-justiciable as they could not be resolved based on neutral principles of law. Rather, it said, resolution would “necessarily” involve an “impermissible inquiry into religious doctrine or practice.”

Interestingly, the appellate court also decided that, to the extent that the plaintiffs alleged that certain procedural irregularities had marred the proceeding by which they had been removed from their positions

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at the church, those claims “could be resolved based on neutral principles of law.” The Second Department concluded, however, that the plaintiffs had waived any purported procedural defects and that, as a result, their causes of action predicated on alleged due process violations also were not viable.

**Real Property:** Almost exactly a year after deciding *Kahana*, the Court of Appeals issued a decision in *Episcopal Diocese of Rochester v. Harnish*, 11 N.Y.3d 340 (2008), which involved a dispute over church property.

The court decided that, applying neutral principles of law, it could decide whether a parish held real

and personal property in trust for the benefit of the Episcopal Diocese of Rochester and the national church such that on the parish’s separation from the diocese its property reverted back to the diocese or the national church.

The court found nothing in any deeds, the parish’s certificate of incorporation, or the RCL that established an express trust in favor of the diocese or the national church. The court, however, found that the parish was subject to the diocese’s constitution and canons—including the trust doctrine in those canons. Accordingly, it concluded, the parish held its property in trust for the diocese and the national church.

## Conclusion

Many courts across the country put their own gloss on the ecclesiastical abstention doctrine, interpreting it somewhat differently in different cases. The U.S. Supreme Court also has issued decisions that affect the application of the doctrine.

In New York, though, *Kahana* has set the standard. With the growing prominence of religious issues here and across the country, as well as internationally, the ecclesiastical abstention doctrine undoubtedly will play an increasingly important role in the years to come.