

RELIGION LAW

Expert Analysis

## Hiring and Firing Clergy Of Congregational Houses of Worship

New York's Religious Corporations Law (RCL) recognizes two general categories of houses of worship: *hierarchical*, where congregations belong to a common ecclesiastical body with other similar houses of worship and with a common ruling convocation or ecclesiastical head, and *congregational*, which are run and governed by their members.

Once a congregational house of worship is incorporated, its trustees are designated significant authority over its corporate affairs, such as its property and finances, as indicated in RCL §5. The RCL is clear, however, that the critical acts of hiring and firing clergy are not within the power of the trustees of a congregational house of worship.

Indeed, several sections of the RCL specifically provide that trustees have no control over the "dismissal or removal" of clergy. For example, RCL §139, which governs Baptist churches, states that the trustees of an incorporated Baptist church have "no power to settle or remove a minister." RCL §200, which is applicable to "other denominations" not specifically enumerated elsewhere in the RCL, also provides that trustees have "no power

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to settle or remove" a member of the clergy, unless the trustees are also its "spiritual officers."

For such houses of worship, the power to hire and dismiss clergy resides in the congregation. For instance, RCL §170,

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which applies to three denominations, provides that ministers "shall be called, settled or removed" only by the vote of a majority of the members of such corporation (or of "the unincorporated church connected with such corporation"). The underlying reason for this is that the hiring and firing of clergy is an ecclesiastical matter, and a congregation's trustees may not make religious decisions for the congregation.

This principle is well established in New York, as illustrated by the almost 80-year-old decision by the New York Court of

Appeals in *Walker Memorial Baptist Church v. Saunders*, 285 N.Y. 462 (1941).

### The 'Saunders' Case

The *Saunders* case involved a dispute between the trustees of Walker Memorial Baptist Church, Inc., a religious corporation that owned a Baptist church in Harlem, and the church's minister, the Rev. John W. Saunders.

Rev. Saunders and some of his followers urged the corporation to sell its church building, located at 39-41 East 132 St. in New York City, and to purchase a larger building. The corporation's trustees opposed the proposal and refused to sanction a campaign for funds for a larger church.

Apparently without the consent of the trustees, and in defiance of the directions of the trustees, Rev. Saunders and certain members of the congregation proceeded to collect funds for this purpose. The trustees ordered them to hand over the funds they raised, but they refused.

The trustees then charged the minister and others with misappropriation of funds and called a meeting to consider the charges and whether to remove Rev. Saunders.

On the night set for the meeting, the minister and almost 300 church communicants met in the church's large auditorium. The trustees and their followers met in a smaller room in the basement of the church at the same time.

The large group's moderator called for the presentation of charges against

the minister, among others, but no charges were presented and the moderator dismissed the meeting.

The smaller group conducted its own meeting and, after presentation of charges, voted to discharge the minister.

The minister refused to recognize the validity of his discharge, and the corporation went to court, seeking to enjoin the minister from interfering in any way in the corporation's affairs and from entering the church or using the church for religious services.

The trial court granted an injunction in favor of the corporation, the Appellate Division, First Department, affirmed, and the dispute reached the Court of Appeals, which reversed.

In its decision, the court explained that, under the RCL, trustees of an incorporated Baptist church had no power to remove a minister without the consent of a meeting of members of the church.

The court then ruled that the trial court had erred when it found that the trustees—as opposed to the ecclesiastical body of the church, i.e., its membership—had the power to remove the minister. The court pointed out that witnesses had testified that Rev. Saunders had been called to the church pursuant to a call issued by a “church meeting,” that is, a meeting of the unincorporated religious society after a recommendation by the board of deacons of the church. This, according to these witnesses, was the usual custom for issuing a call in a Baptist church and the trustees of a Baptist church had no voice in this matter, except as members of the religious society.

The court distinguished the unincorporated church, as a religious society, from the corporation that existed to serve the ecclesiastical entity, and concluded that the trustees alone had no power to discharge Rev. Saunders from his position as minister of the church. It reversed the lower court judgments and ordered the complaint dismissed.

### Practical Considerations

There are a number of steps and best practices that counsel for a

congregational house of worship or its trustees, and clergy who have been offered a position at such a congregation, should consider to help smooth out the clergy hiring and firing process in an effort to limit the risk of a dispute tearing the congregation apart—and even resulting in costly litigation.

First, although the membership ultimately must hire or discharge its clergy, the congregation's certificate of incorporation and bylaws can and should designate the procedures to follow in both situations. A congregation can use the period prior to hiring its next minister to strengthen its governing documents by clarifying the relationship between clergy and other ecclesiastical and corporate representatives. The bylaws may discuss in detail the procedures to hire and fire clergy, the authority of the clergy and of the lay leadership, and even the congregation's expectations of its clergy.

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When trustees understand their role, and when the procedures for hiring and for discharging clergy are clearly spelled out, the risk of a painful dispute arising decreases significantly.

Moreover, the procedures can spell out who has the power to mediate and resolve complaints about the clergy and disputes between the clergy and the congregation or its leadership.

A congregation's procedures also may delegate the first phase of the hiring work to a search committee. They can explain the qualifications for each position and how candidates can be vetted. For example, the procedures can provide for the committee to make a recommendation in favor of a candidate to the trustees, who, in turn, would make a recommendation to the congregation.

In addition, the procedures also may cover the manner and timing of notice to the congregation, consistent with relevant statutory requirements. Similarly,

the procedures can address the specific qualifications and parameters for members voting on retention or discharge of clergy, how to calculate a quorum, who should lead any meeting where hiring or discharge is to be considered, and how the results of such a meeting should properly be documented.

Finally, a congregation would be wise to use the pre-hiring period to craft an employment contract that reflects an understanding of the powers, duties, and limits of the clergy's role that is consistent with its polity. A clergy employment contract should include clear renewal and termination clauses, as well as the procedures for dismissing the clergy. The parties should seriously consider including an arbitration provision, which might under some circumstances provide clergy with their only means of resolving a conflict with the congregation, particularly concerning a discrimination claim. See Barry Black and John B. Madden, “When #MeToo Leads to Litigation Against a Church,” *NYLJ*, May 30, 2018.

All of these issues are best considered before the clergy hiring process even begins.

### Conclusion

Among the most important decisions a congregation's members are asked to make are whether to hire or fire their clergy. A decision to dismiss a religious leader can divide a congregation and lead to costly litigation and, in some cases, even to a congregation's demise. When trustees understand their role, and when the procedures for hiring and for discharging clergy are clearly spelled out, the risk of a painful dispute arising decreases significantly. Counsel for all parties involved should try to focus—well in advance of any problem—on the solutions discussed in this column in an effort to limit that danger.