IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

KATINA COLLINS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 04C-02-121
	:	
THE AFRICAN METHODIST EPISOCOPAL ZION CHURCH, a North Carolina Corporation;	:	
BISHOP MILTON A. WILLIAMS, SR.;	:	
SCOTT A.M.E. ZION CHURCH; and	:	
REV. D. WILLIAM L. BURTON, JR.;	:	
	:	
Defendants.	:	

Submitted: December 13, 2005
Decided: March 29, 2006
Amended: April 10, 2006

Upon Consideration of Church Defendants' Motion for Summary Judgment.
GRANTED.

AMENDED MEMORANDUM OPINION

John M. LaRosa, Esquire, Wilmington, Delaware; Keith O. Dews, Esquire, Foley Thompson & Dews, LLP, Philadelphia, Pennsylvania; Attorneys for Plaintiff.

Robert C. McDonald, Esquire, Silverman McDonald & Friedman, Wilmington, Delaware; Thomas L. McCally, Esquire, and Tina M. Maiolo, Esquire, Carr Maloney, P.C., Washington, DC; Attorneys for Church Defendants.

SCOTT, J.

Having reviewed the decision of Defendant's Motion for Summary Judgment per Defendant's request, AME Church is hereby changed to AME Zion Church throughout the opinion. This is the amended opinion.

I. INTRODUCTION

This case arises from the alleged harassment of Plaintiff Katina Collins ("Collins") by Reverend William L. Burton, Jr. ("Burton"). Collins has sued the African Methodist Episcopal Zion Church, Bishop Milton A. Williams, Sr., and Scott African Methodist Episcopal Zion Church (hereinafter "the Church Defendants") for negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress. Presently before the Court is the Church Defendants' Motion for Summary Judgment. Because Collins is essentially seeking civil court review of ecclesiastical policies and procedures and the subjective judgments of religious officials concerning Reverend Burton, the Court grants the Church Defendants' Motion.[1] The Court is constitutionally precluded from entertaining religious

[1] *See Allen v. Board of Incorporators*, 1992 WL 390755, at *1 (N.D. Ill.)(defendants' motion to dismiss plaintiffs' complaint that alleged violation of ecclesiastical rules and documents was dismissed for lack of subject matter jurisdiction).

and ecclesiastical matters of this kind by virtue of the First Amendment to the Constitution.

II. BACKGROUND

Collins alleges Defendant Burton made sexually harassing, intimidating phone calls to her between the period of November 2002 until September 2003. Burton was pastor and Collins was a member and Vice Chairman of the Steward's Board at the Scott Church during the time in question. Collins states she initially went to the administration of Scott African Methodist Episcopal Zion Church ("Scott Church") to stop the harassing phone calls, but no action was taken. Collins next attempted to contact Bishop Milton A. Williams, Sr., ("Bishop Williams") who presided over the Mid-Atlantic District of the denomination and who was also a representative for International Ministers. Bishop Williams refused to listen to tape recordings of Burton's comments to Collins and initially refused certified letters from Collins.

In September 2003, Collins filed a complaint with the Wilmington Police Department who subsequently arrested Burton. Bishop Williams then convened a committee who found Burton guilty of sexual harassment in violation of International Ministers' and *The Book of Discipline of the A.M.E. Zion Church* ("*The Book of Discipline*").

Collins states she has suffered from a stroke, slurred speech, and mental and emotional anguish as the result of the Defendants failure to act.

III. STANDARD OF REVIEW

Summary judgment may only be granted when no genuine issues of material fact exist.[2] The moving party bears the burden of establishing the non-existence of genuine issues of material fact.[3] If the burden is met, the burden shifts to the non-moving party to establish the existence of genuine issues of material fact.[4] "Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, then the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial."[5] Summary judgment will not be granted if the record reasonably indicates a material fact in dispute or a need to inquire more thoroughly into the facts to clarify the application of law to the circumstances.[6] The court must view the facts in the light most favorable to the non-moving party.[7]

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[2] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[3] *Id*.
[4] *Id*. at 681.
[5] Super. Ct. Civ. R. 56(3); *Ramsey v. State Farm Mutual Automobile Insurance Co.*, 2004 WL 2240164, at *1 (Del. Super.)(citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)).
[6] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del.1962).
[7] *Lupo v. Medical Center of Delaware*, 1996 LEXIS 46, at *5 (Del. Super.).

Moreover, summary judgment is generally not appropriate for actions based on negligence.[8] It is rare in a negligence action "because the moving party must demonstrate 'not only that there are no conflicts in the factual contentions of the parties but that, also, the only reasonable inferences to be drawn from the uncontested facts are adverse to the plaintiff."[9]

IV. DISCUSSION

The Church Defendants argue that the Establishment Clause of the First Amendment bars consideration of Collins' claims against them because each count in the Second Amended Complaint arises out of the claim that the Defendants owed Collins a duty as set forth in the Policies & Procedures Concerning Sexual Misconduct contained in *The Book of Discipline*. Specifically, Counts IV and V set forth claims of negligent infliction of emotional distress and negligence against Scott Church. Collins contends that Scott Church had a duty as set forth in *The Book of Discipline* to refer all complaints of sexual misconduct to the Bishop.[10] Scott Church allegedly breached that duty by failing to notify the Bishop of Collins' complaint which was in direct violation of *The Book of Discipline*.[11] As a result of these actions, Collins suffered emotional distress, depression, a stroke,

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[8] *Ebersole*, 180 A.2d at 468.
[9] *Upshur v. Bodie's Dairy Market*, 2003 WL 21999598, at *3 (Del. Super.).
[10] Compl. at ¶¶ 87, 95.
[11] *Id*. at ¶¶ 88, 89, 96, 97.

headaches, and developed slurred speech.[12] In addition, Counts VII and VIII set forth claims of negligent infliction of emotional distress and negligence against Bishop Williams and the African Methodist Episcopal Zion Church ("A.M.E. Zion Church"). Collins contends that Bishop Williams, one of the twelve bishops with the authority to perform duties on behalf of the A.M.E. Zion Church, had a duty as set forth in *The Book of Discipline* to promptly and thoroughly investigate Collins' complaint of sexual misconduct.[13] Bishop Williams allegedly breached that duty by failing to take any action or by avoiding to deal with Collins' concerns.[14] Collins also contends that Bishop Williams did not appoint an investigative committee until September 2003, after Reverend Burton was arrested.[15] Moreover, it is alleged that Bishop Williams did not take any action against Burton after the investigative committee determined that he was guilty of violating *The Book of Discipline*.[16] These actions by Bishop Williams and the A.M.E. Zion Church are allegedly in direct violation of the Policies & Procedures Concerning Sexual Misconduct contained in *The Book of Discipline*.[17]

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[12] *Id*. at ¶¶ 90-91, 98.
[13] *Id*. at ¶¶ 115, 126.
[14] *Id*. at ¶¶ 116-117, 127-128.
[15] *Id*. at ¶¶ 118, 129.
[16] *Id*. at ¶¶ 119, 130.
[17] *Id*. at ¶¶ 121, 132.

In Count VI Collins alleges a claim of intentional infliction of emotional distress against Bishop Williams and the A.M.E. Zion Church. Collins contends that Bishop Williams was aware of the extreme and outrageous conduct of Reverend Burton but failed to take any action against him.[18] It is also alleged that Bishop Williams did not appoint an investigative committee until September 2003, after Reverend Burton was arrested.[19] Again, it is alleged that Bishop Williams did not take any action against Burton even after the investigative and trial committee had determined that Reverend Burton was guilty of violating *The Book of Discipline*.[20] Collins alleges that Bishop Williams' failure to act was intentional.[21] The Church Defendants, however, contend that Collins has failed to allege sufficient facts to support a claim of intentional infliction of emotional distress against Bishop Williams and the A.M.E. Zion Church. Specifically, the Church Defendants argue that there is no allegation that either Bishop Williams or the A.M.E. Zion Church acted extremely or outrageously. Rather, Collins' allegations for intentional infliction of emotional distress stem from the fact that Bishop Williams was aware of Burton's extreme and outrageous conduct but failed to take any action or

[18] *Id*. at ¶¶ 104, 105.
[19] *Id*. at ¶107.
[20] *Id*. at ¶108.
[21] *Id*. at ¶111.

avoided dealing with Collins' concerns.[22] The Defendants contend that these allegations rest upon their alleged failure to remove or discipline Burton, which is an ecclesiastical issue.

A. Overview Of The First Amendment

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof."[23] This constitutional guarantee is made applicable to the states through the Fourteenth Amendment.[24] The First Amendment contains two clauses regarding religion, the Free Exercise Clause and the Establishment Clause. The Free Exercise Clause guarantees "first and foremost, the right to believe and profess whatever religious doctrine one desires."[25] Moreover, "[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons."[26] The Free Exercise Clause protects religious relationships…by preventing the judicial resolution of ecclesiastical disputes

[22] *Id*. at ¶¶ 104, 105, 106.
[23] U.S. Const. amend. I.
[24] *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 301 (2000); *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 757 (1995).
[25] *Employment Div., Dept. of Human Resources v. Smith*, 494 U.S. 872, 877 (1990).
[26] *Church of the Lukumi Babalu Aye Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

turning on matters of "religious doctrine or practice."[27] The United States Supreme Court has explained that the Free Exercise Clause "embraces two concepts – freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."[28] Thus, the First Amendment has never been interpreted to mean that "when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from government regulation."[29] Government regulation includes both statutory law and court action through civil lawsuits.[30] Importantly, before the constitutional right to free exercise of religion is implicated, the threshold inquiry is whether the conduct sought to be regulated was "rooted in religious belief."[31] Further, in order to launch a free exercise challenge, it is necessary "to show the coercive effect of the enactment as it operates against [the individual] in the practice of his religion."[32] If it is demonstrated that the conduct at issue was rooted in religious beliefs, then the court must determine whether the law regulating

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[27] *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 335-36 (5th Cir. 1998).
[28] *Cantwell v. Connecticut*, 310 U.S. 296 (1940).
[29] *Smith*, 494 U.S. at 882.
[30] *See Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190, 191 (1960).
[31] *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *see Sanders*, 134 F.3d at 337-38; *Destefano v. Grabrian*, 763 P.2d 275, 283-84 (Colo. 1988).
[32] *School Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 223 (1963).

that conduct is neutral both on its face and in its purpose.[33] "[I]f the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest."[34] The State may, however, regulate conduct through neutral laws of general applicability.[35] Thus, "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice."[36]

The second aspect of the First Amendment religion clause, the Establishment Clause, states that government "shall make no law respecting an establishment of religion."[37] This aspect of the First Amendment involves the separation of church and state and prevents the government from passing laws that "aid one religion, aid all religions, or prefer one religion over the other."[38] The United States Supreme Court has explained that there are "three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active

[33] *See Lukumi,* 508 U.S. at 531.
[34] *Id*. at 533.
[35] *Id*. at 531.
[36] *Id*.
[37] U.S. Const. amend. I.
[38] *Schempp*, 374 U.S. at 216.

involvement of the sovereign in religious activity.'"[39] In *Lemon*, the Court provided a three-part test to determine whether a neutral law violates the Establishment Clause: (1) the law must have a secular legislative purpose; (2) the primary or principal effect of the law must neither advance nor inhibit religion; and (3) the law must not foster an excessive government entanglement with religion.[40] Under *Lemon*, entanglement is measured by the "character and purposes" of the institution affected, the nature of the benefit or burden imposed, and the "resulting relationship between the government and the religious authority."[41] More recent cases examining the Establishment Clause have clarified that excessive government entanglement is merely a factor to consider in evaluating the second prong; that is, whether the principal effect of the statute is to advance or inhibit religion.[42]

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[39] *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971)(quoting *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 668 (1970).
[40] *Lemon*, 403 U.S. at 612-13.
[41] *Id*. at 615.
[42] *See Mitchell v. Helms*, 530 U.S. 793 (2000); *Agostini v. Felton*, 521 U.S. 203, 233 (1997). We note that several U.S. Supreme Court Justices have expressed dissatisfaction with the *Lemon* test, advocating an alternative analytical framework for evaluating First Amendment claims. *See e.g.*, *Lee v. Weisman*, 505 U.S. 577 (1992)(advocating and applying a coercion-accommodation test); *Lynch v. Donnelly*, 465 U.S. 668, 691 (1984)(O'Connor, J., concurring)(advocating adoption of an endorsement test). *But see Pinette*, 515 U.S. at 766-67, plurality opinion by Scalia, J., joined by Rehnquist, C.J., and Kennedy and Thomas, JJ., (rejecting endorsement test because it "exiles private religious speech to a realm of less-protected expression …[T]he Establishment Clause … was never meant …to serve as an impediment to purely *private* religious speech connected to the State only through its occurrence in a public forum.") However, we must continue to apply the *Lemon* test until the U.S. Supreme Court reaches a consensus on the successor to the *Lemon* test.

As particularly relevant to the analysis of the First Amendment challenge in this case, the Supreme Court has also held that the First Amendment prevents courts from resolving internal church disputes that would require adjudications of questions of religious doctrines.[43] For example, the Supreme Court has stated that "it is not within 'the judicial function and judicial competence'" of civil courts to determine which of two competing interpretations of scripture are correct.[44] Instead, civil courts "are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law."[45] Thus, the First Amendment provides churches with the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."[46]

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[43] This protection has been referred to as the religious autonomy principle. *See Smith v. O'Connell*, 986 F.Supp. 73, 76 (D.R.I. 1997). Although the United States Supreme Court has often discussed this principle in the context of the Free Exercise Clause, *see United States v. Lee*, 455 U.S. 252, 256 (1982); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 107-08 (1952), the United States Supreme Court has also referred to this principle in the context of the Establishment Clause. *See Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church*, 393 U.S. 440, 449 (1969). It is apparent that the religious autonomy principle articulated by the United States Supreme Court may implicate both the Free Exercise Clause and the Establishment Clause.

[44] *Lee*, 455 U.S. at 256.

[45] *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S 696, 713 (1976).

[46] *Kedroff*, 344 U.S. at 116; *see Serbian Eastern Orthodox Diocese*, 426 U.S. at 724-25.

This rule, sometimes referred to as the "deference rule" was first enunciated by the U.S. Supreme Court in *Watson v. Jones*.[47] That case revolved around the attempt of the national body of the Presbyterian Church to regain possession of a church property in Louisville that had been seized by a group of pro-slavery dissidents. In deferring to the ruling concerning ownership made by the national body, the court stated:

> Whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.[48]

The court went further to hold:

> Each [church] has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, *their books of discipline,* in their collections of precedents, in their usage and customs, which as to each constitutes a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with it. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own.[49]

In addition to finding church authority better able to decide such disputes within the church, the *Watson* court eschewed the prospect of civil courts examining "with minuteness and care" not only the "subject of doctrinal theology," but also "the usages and customs, the written laws, and

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[47] 80 U.S. 679 (1871).
[48] *Watson*, 80 U.S. at 727.
[49] *Id*. at 729 (emphasis added).

fundamental organization of every religious denomination."[50] The court also quoted a decision of the Pennsylvania Supreme Court which stated:

> The decisions of ecclesiastical courts, like every other judicial tribunal, are final; as they are the best judges of what constitutes an offense against the word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline, and doctrine; and civil courts, if they be so unwise as to attempt to supervise their judgments on matters which come [before] their jurisdiction, would only involve themselves in a sea of uncertainty and doubt, which would do any thing but improve either religion or good morals.[51]

Despite the language in *Watson* this Court does not read this case or any of the following cases to say that the "deference rule" or the doctrine of church autonomy suggests blanket protection of the church from all accountability in our civil courts. We read *Watson* to hold only that civil courts may not take jurisdiction over a religious organization's internal, ecclesiastical matters. For instance, the Catholic Church only allows men to be priests. Such policy would not long survive a Title VII challenge in the secular world. However, Title VII recognizes an unwritten "ministerial exception" which places this Catholic policy outside the reach of civil courts.[52] Although *Watson* was not based on First Amendment grounds its "deference

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[50] *Id*. at 733.
[51] *The German Reformed Church v. Seibert*, 1846 WL 4859, at *8.
[52] *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 955-57 (9th Cir. 2004); *Bollard v. California Province of the Society of Jesus*, 196 F.3d 940, 945 (9th Cir. 1999).

rule" did explicitly become part of the body of First Amendment law in *Kedroff*.

In *Kedroff*, the Supreme Court held unconstitutional a New York state statute which was passed specifically to address an intrachurch property dispute.[53] *Kedroff* explained that the *Watson* "opinion radiates … a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."[54] Moreover, in *Serbian Eastern Orthodox Diocese*, the U.S. Supreme Court reviewed a ruling by the Illinois Supreme Court that had held that the church's proceedings were procedurally and substantively defective under the internal regulations of the church and were therefore arbitrary and invalid.[55] In reversing the judgment of the state court, the Supreme Court explained:

> The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes… To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide … religious law [governing church polity] … would violate the First Amendment in much the

[53] *Kedroff*, 344 U.S. at 121.
[54] *Id*. at 116.
[55] *See Serbian Eastern Orthodox Diocese*, 426 U.S. 696 (1976).

> same manner as civil determination of religious doctrine. *For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them*, in their application to the religious issues of doctrine or polity before them.[56]

The U.S. Supreme Court ruled that it was immaterial that the church authorities' actions were "arbitrary" in the sense they were not done in accordance with church laws and regulations, and the inquiry by the civil court was impermissible because it was bound to accept the decisions of the church authorities "on matters of discipline, faith, internal organization or ecclesiastical rule, custom or law."[57] Furthermore, and importantly, the Supreme Court opined that a civil court's inquiry into whether church law or regulation has been complied with "must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church adjudicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the

[56] *Id*. at 708-09 (emphasis added) (citations omitted) (quoting *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc*, 396 U.S. 367 (1970)(Brennan, J., concurring))).
[57] *Serbian Eastern Orthodox Diocese*, 426 U.S. at 713.

proper subject of civil court inquiry…[58] The Supreme Court further asserted that there is no "dispute that questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern …"[59] Thus, in short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decision as binding upon them.[60] Church members give their "implied consent" to be "subject only to such appeals as the organism itself provides for."[61]

Courts, however, have distinguished between intrachurch disputes and disputes between churches and third parties. For instance, in *General Council on Fin. & Admin. v. California Superior Court*, Justice Rehnquist observed, in rejecting the argument that the Free Exercise Clause barred the Court's exercise of jurisdiction in a civil dispute involving a third party:

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[58] *Id*.
[59] *Id*. at 717.
[60] *Id*. at 724-25.
[61] *Id*. at 711.

> In my view, applicant plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the ultimate decision regarding, the structure and actual operation of a hierarchical church and its constituent units in an action such as this. There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes…[62] But this Court has never suggested that those constraints similarly apply outside the context of such intraorganization disputes….[*Serbian Eastern Orthodox Diocese* and other related cases] are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. *Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged*.[63]

It should be noted, however, that Justice Rehnquist's conclusion that the Free Exercise Clause did not bar the Court's exercise of jurisdiction in a civil dispute between churches and third parties was expressly limited to "purely secular disputes between third parties … [and religious organizations] … in which fraud, breach of contract, and statutory violations are alleged. These circumstances are not present here. In addition, it should be noted that the Supreme Court has also recognized that not all entanglements have the effect of advancing or inhibiting religion.[64] In *Agostini v. Felton*, the court stated that interaction between the church and

[62] *See Serbian Eastern Orthodox Diocese*
[63] *General Council on Finance & Administration of United Methodist Church v. Superior Court of California*, 439 U.S. 1355, 1372-73 (Rehnquist, Circuit Justice 1978) (emphasis added).
[64] *Agostini v. Felton*, 521 U.S. 203, 233 (1997).

state is inevitable and that some level of involvement between the two is tolerated.[65] Entanglement must be "excessive" before it runs afoul of the Establishment Clause.[66]

A court thus must determine whether the dispute "is an ecclesiastical one about 'discipline, faith, internal organization, or ecclesiastical rule, custom or law,' or whether it is a case in which [it] should hold religious organizations liable in civil courts for 'purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization.'"[67]

B. Consideration Of Collins' Claims Of Negligent Infliction Of Emotional Distress And Negligence Against Scott Church, Bishop Williams, And A.M.E. Zion Church Is Barred By The First Amendment

In applying these First Amendment principles to Collins' claims against the Church Defendants, we must examine whether the determination of her claims necessarily implicates an excessive entanglement with religion. If the court is required to interpret church law, policies, or practices, the First Amendment prohibits such an inquiry. While it is true that the pleading caption in the instant case does identify a dispute between church officials

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[65] *Id*.
[66] *Id*.
[67] *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 331 (4th Cir. 1997)(quoting *Serbian Eastern Orthodox Diocese*, 426 U.S. at 713; and *General Council on Finance*, 439 U.S. at 1373).

and a third party, a closer inquiry reveals that the nature of the dispute in this instance, i.e., negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress would implicate a secular examination into "intra-church" policies, practices, process and procedure; an action proscribed by our Constitution. Succinctly stated, Collins complains about both the manner and the outcome of the investigatory and disciplinary procedures that were started because of Collins' complaint about Reverend Burton. Therefore, it seems to the Court that its adjudication of these claims would necessarily involve an inquiry into the propriety of the decisions of church authorities on matters of discipline, internal organization, ecclesiastical rule, custom, and law.[68] It would inherently entail inquiry into these areas; and, as stated by the U.S. Supreme Court in *Serbian Eastern Orthodox Diocese*, "this is exactly the inquiry that the First Amendment prohibits."[69] The purpose of the deference rule is to

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[68] *Podolinski v. Episcopal Diocese of Pittsburgh*, 23 Pa. D. & C. 4th 385, 411 (Armstrong C.P. 1995)

[69] The court in the instant matter recognized that the pleadings do not establish whether the decisions are decisions of the "highest ecclesiastical tribunal", which is what the U.S. Supreme Court said must be given deference in *Serbian Eastern Orthodox Diocese*. Whether the instant case involves decisions of the highest tribunal or of some intermediate tribunal is logically of no import. *See Young v. Northern Ill. Conference of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994). The court distinguishes the case at bar and *Young* from *Poesnecker v. Ricchio*, 631 A.2d 1097 (Pa. Commw. 1993). In *Poesnecker*, the Commonwealth Court arguably placed great weight on the "highest ecclesiastical tribunal" requirement. However, a close reading of the case reveals that the contestants were "church" authorities of equal stature or rank within their religious body. In *Poesnecker*, there was simply no decision of a higher church authority to which the

require a civil court to defer to the decisions of the church in resolving internal disputes. Such intrusion into the internal affairs of the church would amount to excessive government entanglement of religion by the state and, therefore, such a claim is barred by the First Amendment.

As a statement of the church's policy and procedures regarding sexual misconduct, *The Book of Discipline* poses a serious risk of religious entanglement for a court attempting to discern its limits.[70] In *Allen v. Board of Incorporators*, the court stated that courts are virtually unanimous in concluding that disputes concerning the employment or status of pastors, or the interpretation and application of ecclesiastical rules of polity and procedure like that contained in the *Book of Discipline*, constitutionally cannot be the subject of civil court review.[71] The court held that it lacked jurisdiction over the action since a number of plaintiffs' claims invoked the A.M.E. Church's *Book of Discipline* which would require the court to

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courts could defer, and a literal reading of the written organic laws of the body was capable of providing the basis for a resolution of the dispute.

[70] *See Odenthal v. Minn. Conference of Seventh-Day Adventists*, 649 N.W.2d 426, 436 (Minn. 2002).

[71] *Allen*, 1992 WL 390755, at *2 (citing *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986)(dismissal of Methodist minister's common law claims challenging forced retirement under church disciplinary rules), cert. denied, 479 U.S. 885 (1986); *Rayburn v. General Conf. of Seventh-Day Adventists*, 772 F.2d 1164 (4th Cir. 1985)(ruling Religion Clauses required dismissal of race and sex discrimination claims of plaintiff denied pastoral position), cert. denied, 478 U.S. 1020 (1986); *Hafner v. Lutheran Church-Missouri Synod*, 616 F.Supp. 735 (N.D. Ind. 1985)(dismissal for lack of subject matter jurisdiction pastor's suit for alleged denial of benefits allegedly provided under terms of church constitution).

interpret and apply what is fundamentally an ecclesiastical document. The court noted that such an inquiry was constitutionally impermissible, as set forth by the Supreme Court in *Serbian Eastern Orthodox Diocese*.[72] Similarly, in *Belin v. West*, the appellee relied on the rules in *The Book of Discipline* in his complaint and at trial as establishing his reasonable reliance on a bishop's alleged promise of employment.[73] In the court's decision, it noted that the A.M.E. Church was a hierarchical religious organization that had its own judicial structure.[74] It also noted that *The Book of Discipline* contained the law, statutes, historical statements, and guidelines for behavior for all positions in the church.[75] It contained the rules regarding the settlement of disputes between church members, set out the method for having these disputes decided, and provided for appeal to the Judicial Council which is the highest judicatory body of the A.M.E. Church.[76] The court in that case found that the trial court lacked jurisdiction because it was impossible to decide the promissory estoppel claim without inquiring into A.M.E. Church doctrine and polity and drawing conclusions as to what those

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[72] 426 U.S. at 713; see also *United Methodist Church, Baltimore Annual Conference v. White*, 571 A.2d 790, 794 (D.C. 1990)("secular evaluation of the procedures that ecclesiastical law requires the church to follow is precisely the type of inquiry the First Amendment prohibits").
[73] *Belin v. West*, 864 S.W.2d 838, 841 (Ark. 1993).
[74] *Id*.
[75] *Id*.
[76] *Id*. at 841-42.

doctrines provided.[77] Additionally, in *United Methodist Church, Baltimore Annual Conference v. White*, a reverend filed suit claiming that the church had failed to comply with its own regulations as set forth in the *Discipline*.[78] The court found that the *Discipline* of the United Methodist Church ("UMC") was a religious document which the court could not construe without usurping the rights of the UMC to construe its own law.[79] The court held that if the court were to review the merits of the claims it would necessarily become entangled in matters of a highly religious nature and issues at the core of internal church discipline, faith and church organization.[80]

Like *Allen*, *Belin*, and *United Methodist Church, Baltimore Annual Conference*, Collins' claims invoke the A.M.E. Zion Church's *Book of Discipline*, which contains more than simply internal procedures concerning sexual misconduct. *The Book of Discipline* is subjective[81] and at times

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[77] *Id*. at 842.
[78] *United Methodist Church, Baltimore Annual Conference*, 571 A.2d at 794.
[79] *Id*. (citing *Knuth v. Lutheran Church Missouri Synod*, 643 F.Supp.444, 448 (D.Kan. 1986).
[80] *Id*. at 794-95 (citing *Kaufmann v. Sheehan*, 707 F.2d 355, 358 (8th Cir. 1983).
[81] *See The Book of Discipline*, Policies and Procedures Concerning Sexual Misconduct, 2000 (stating that if the alleged offender is proved to be guilty of the charges brought by the alleged victim, he/she will be dealt with in accordance with Paragraphs 280-317 of the *Book of Discipline of the African Methodist Episcopal Zion Church*. The Bishop will meet with the offender, who also may be accompanied by another person, if so desired. The Bishop will discuss with the offender *the actions the Bishop intends to take*. *If appropriate*, the Bishop will refer the offender for therapy by persons professionally qualified in treatment of Sexual Misconduct. (emphasis added)).

inextricably intertwined with the Church's religious tenants. Inquiry into Collins' claims would therefore require our interpretation and application of what is fundamentally an ecclesiastical document[82] and would require an inquiry into the internal policies and practices of the church, a determination beyond the court's scope of review. The Church Defendants would be compelled to defend as reasonable its formal internal processing and handling of Collins' claims. Every step the church took to respond and react to the claims would be reviewed to determine whether it was reasonable. Such an inquiry into whether the church exercised reasonable care would involve, by necessity, discovery and examination by litigation of the church's disciplinary procedures and subsequent responses.

In addition, the consideration of Collins' claim that Bishop Williams did not take any action against Burton after the investigative committee had determined that he violated *The Book of Discipline* is barred by the First Amendment for the above stated reasons. It is not within this Court's power to decide what procedures the church should have used or what the church should have done after Burton was found guilty of violating *The Book of Discipline*. If the Court were to inquire into this, it would in effect be

[82] *United Methodist Church, Baltimore Annual Conference*, 571 A.2d at 794(citing *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1358-59 (D.C. Cir. 1990)(holding "the Book of Discipline [of the Methodist Church] is inherently an ecclesiastical matter").

limiting the church's ability to supervise and decide what to do when an individual had violated *The Book of Discipline*. Any award of damages would have a chilling effect, leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the First Amendment. Moreover, when the issue of one's fitness to serve a church organization as minister is brought before the courts, the First Amendment is implicated and the courts must then make a careful determination of whether the issues brought before it are ecclesiastical or secular in nature. After examining case law presenting both sides of the question the Court concludes that the reasoning of those courts holding that the First Amendment bars a claim for negligent hiring, retention, and supervision is more compelling in the present case. Courts have found that the "assessment of an individual's qualifications to be a minister, and the appointment and retention of ministers, are ecclesiastical matters entitled to constitutional protection against judicial or other state interference"[83] and that the selection and deployment of clergy is about as central to the life and purpose of a group of affiliated churches as anything we can imagine.[84] Courts have held that the First Amendment is implicated because

[83] *See Alberts v. Devine*, 479 N.E.2d 113 (Mass. 1985).
[84] *Ehrens v. The Lutheran Church-Missouri Synod*, 269 F.Supp.2d 328, 333 (S.D.N.Y. 2003), *aff'd*, 385 F.3d 232 (2d Cir. 2004)

mainstream denominations differ greatly in their rules and policies for "calling" and removing clergy and often their decision is guided by religious doctrine and/or practice. Thus, some courts have established that any inquiry into the decision of who should be permitted to become or remain a priest necessarily would involve prohibited excessive entanglement with religion. Based upon these decisions, the Court finds that it would be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently retained Reverend Burton.[85]

Accordingly, the Court finds that adjudication of Collins' claims would ultimately involve an examination of the church tribunal's decision-

[85] *Id*. (The court agreed that it was prevented by the First Amendment from determining, after the fact, that the ecclesiastical authorities of the Lutheran Church negligently supervised or retained a clergyman. The Court noted that New York courts have ruled that "any attempt to define the duty of care owed by a member of the clergy to a parishioner fosters excessive entanglement with religion." *Langford v. Roman Catholic Diocese*, 705 N.Y.S.2d 661, 662 (2d Dep't 2000). The court in *Ehrens* held that the same was true with regard to the duty of care in determining the continued eligibility of a priest to serve as a pastor. The court referenced the holding in *Schmidt v. Bishop*, where a plaintiff's claims against the church defendants were dismissed as a matter of law because: Any inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement … which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor of a Presbyterian Church is not analogous to a common law employee. He may not demit his charge nor be removed by the session, without the consent of the presbytery, functioning essentially as an ecclesiastical court. The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation. Church governance is founded in scripture, modified by reformers over almost two millennia [sic]. 269 F.Supp.2d at 332.).

making process.[86] It would require the church to justify not only its entire disciplinary process, but also its ultimate decisions and actions. The internal governance of the church would be on trial, thereby, requiring this court to interpret the rules of the A.M.E. Zion Church. This situation, would involve a gross substantive and procedural entanglement with the church's core functions, its polity, and its autonomy. Collins should have stated her causes of action by reference to neutral standards and not by reference to *The Book of Discipline*. Thus, it is for these reasons that the Church Defendants' Motion for Summary Judgment is granted with respect to the negligent infliction of emotional distress and negligence claims.

C. The Church Defendants' Motion For Summary Judgment Should Be Granted With Respect To The Intentional Infliction of Emotional Distress Claim

In determining whether or not the First Amendment bars Collins' cause of action against the Church Defendants for intentional infliction of emotional distress, it is necessary first to look closely at the complaint and discern the conduct which allegedly gave rise to the tort. In so doing, the alleged tortious conduct consists of the following:

[86] *Davis Lee Pharmacy, Inc. v. Manhattan Central Capital Corp*., 327 F.Supp.2d 159, 165 (E.D.N.Y. 2004).

1) Bishop Williams was aware of the extreme and outrageous conduct of Reverend Burton but failed to take any action against him;[87] 2) Bishop Williams did not appoint an investigative committee until September 2003;[88] and 3) Bishop Williams did not take any action against Reverend Burton even after the investigative and trial committee had determined that Reverend Burton was guilty of violating *The Book of Discipline*. Having found that this Court is jurisdictionally barred from hearing the negligence and negligent infliction of emotional distress claims, we hold the same reasoning applies, to the claim of intentional infliction of emotional distress. This claim also involves the internal disciplinary procedures utilized by Bishop Williams. Accordingly, the Court will invoke the deference rule with regard to the intentional infliction of emotional distress cause of action. Permitting an inquiry into the disciplinary and investigatory procedures is barred.[89]

Moreover, even if not barred by the First Amendment, taking Collins' allegations as true, the Court is nonetheless convinced that she has failed to state a cause of action. The elements of the tort of intentional infliction of

[87] Compl. at ¶¶ 104, 105.
[88] *Id*. at ¶ 107.
[89] *Podolinski*, 23 Pa. D. & C. 4th at 413.

emotional distress appear in *Restatement (Second) of Torts* §46 (1965) as follows:

> (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

The Court must first determine whether Defendants' conduct was so extreme and outrageous as to permit recovery.[90] The Court may look to the *Restatement (Second) of Torts* §46 comment d (1965) for guidance in determining if extreme and outrageous conduct has been established.[91] There, it is provided:

> *Extreme and outrageous conduct*. The cases thus far decided have found liability only where the defendant's conduct has been extreme and outrageous. It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim Outrageous!

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[90] *Mattern v. Hudson*, 532 A.2d 85, 86 (Del. Super. Ct. 1987); *Ham v. Brandywine Chrysler-Plymouth, Inc*., 1985 WL 189010, at *2 (Del. Super.); *Restatement (Second) Torts* §46 comment h (1965).
[91] *Mattern*, 532 A.2d at 86.

In the Complaint, Collins has failed to allege that Bishop Williams' conduct was extreme and outrageous as those terms are defined above. She has merely stated that Bishop Williams was aware of the extreme and outrageous conduct of Reverend Burton and failed to take any action against him. Allegations of extreme and outrageous conduct are required in order to plead a claim for intentional infliction of emotional distress.[92] Therefore, Collins has not plead facts sufficient to establish her claim for intentional infliction of emotional distress.

For the foregoing reasons, the Church Defendants' Motion for Summary Judgment is hereby **GRANTED** with respect to the claim of intentional infliction of emotional distress.

IT IS SO ORDERED.

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Judge Calvin L. Scott, Jr.

[92] *Atamian v. Nemours Health Clinic*, 2001 WL 1474819, at *2 (Del. Super.)(citing *Goldsborough v. 397 Properties, L.L.C.*, Del. Super., No. 98C-09-001, 2000 WL 3310878, Vaughn, J., at *3 (2000).