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KING COUNTY  
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SUPERIOR COURT FOR THE STATE OF WASHINGTON  
COUNTY OF KING

DONALD L. BARNETT,

Plaintiff,

v.

JACK A. HICKS, JACK H. DuBOIS,  
and E. SCOTT HARTLEY,  
individually and as the Board  
of Directors of COMMUNITY  
CHAPEL AND BIBLE TRAINING  
CENTER and COMMUNITY CHAPEL AND  
BIBLE TRAINING CENTER,

Defendants.

NO. 88-2-04148-2

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter, having come on regularly upon an Order of Reference to Private Arbitration dated January 23, 1991, and the undersigned having heard the witnesses' testimony, examined the Exhibits, heard arguments of Counsel and having delivered an Oral Memorandum of Opinion on February 6, 1991, now makes and enters the following written Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Defendant Community Chapel and Bible Training Center ("Community Chapel" or "Church") was organized and incorporated in 1967 by Plaintiff Donald Lee Barnett ("Pastor Barnett"), Lyle L. Bullinger, Everett Scott Hartley Jr. and Keith Eugene Gunn, as more particularly appears from Exhibit 1, the 1967 Articles of Incorporation.

ROHAN, GOLDFARB & SHAPIRO, P.S.

212 Watermark Tower  
1109 First Avenue  
Seattle, Washington 98101  
(206) 467-0393

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 1

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1           2. Community Chapel is a non-profit corporation and  
2 religious organization. According to its Articles of  
3 Incorporation ("Articles") and its Articles of Faith and Bylaws  
4 ("Bylaws"), it was founded to promote certain Christian  
5 principles. Community Chapel is a congregational, not a  
6 hierarchal, church.

7           3. From the beginning, and continuing through 1987, the  
8 Articles and Bylaws provided that the Original Pastor, Donald Lee  
9 Barnett, would have certain power and control over the corporate  
10 body; that he hold office as Original Pastor; President of the  
11 Corporation; ex officio member of the Board of Directors (Board  
12 of Senior Elders) for as long as he lived, and that he could not  
13 be removed from such offices.

14           4. Virtually no significant action could be taken by any  
15 Board, Officer, or official of the corporation without the  
16 concurrence and approval of Donald Lee Barnett.

17           5. Numerous provisions of the Articles and Bylaws of the  
18 Corporation, set out guarantees that Donald Lee Barnett could not  
19 be removed and that he had the power to prevent any action being  
20 taken or any changes being made to the corporate structure,  
21 except with his concurrence and approval. (Exhibits 1 through  
22 10).

23           6. The Bylaws in existence as of March 3, 1988 (Exhibit  
24 10) reflect the position of Pastor Barnett as the original pastor  
25 in at least the following ways:  
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1 a. Page 3, Section II, Article 4: Pastor Barnett  
2 holds the offices of chairman of the board of senior elders,  
3 president of the corporation, pastor of the corporation church,  
4 president of Community Chapel Bible College, chief executive  
5 officer of Community Chapel Christian School, and chief executive  
6 officer of Community Chapel Communications.

7 b. Page 4, Section IV, Article 2(b): "The original  
8 chairman of the board of senior elders is Donald Lee Barnett who  
9 cannot be removed from office while living."

10 c. Page 5, Article 3: "Additional members of the  
11 board of senior elders may be appointed by the board of senior  
12 elders from among the elders of the corporation church by the  
13 affirmative vote of the pastor and at least all other board of  
14 senior elders, save one."

15 d. Page 5, Article 5 provides for removal of members  
16 of the board of senior elders, with the proviso that, "the  
17 original pastor shall not be subject to removal from the position  
18 of chairman of the board of senior elders."

19 e. Page 6, Article 6, Paragraph I: The powers of the  
20 board of senior elders include "exercising jurisdiction in any  
21 additional matter which the board of senior elders feels  
22 responsible subject to the concurrence of the original chairman  
23 of the board of senior elders if he is still presiding."

24 f. Page 6, Article 7: "The article applies only if  
25 the pastor of the corporation church and the chairman of the  
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1 board of senior elders are one and the same person: The board of  
2 senior elders shall not meet to discuss problems or make  
3 decisions without the presence or permission of the chairman and  
4 a minimum of all members of the board of senior elders save one,  
5 except to consider the chairman's salary . . . This regulation  
6 shall apply even if the chairman is on extended leave. In such  
7 cases, action without him can only be made if reasonable effort  
8 to contact him fails and if it is judged to be an emergency by  
9 all present. Even so, the board shall not make any decisions  
10 contrary to what it believes the chairman's decision would be, if  
11 the case is such as to require his concurrence. . . ."

12 g. Page 7, Article 11: "The board of senior elders  
13 shall have no power to infringe upon the pastoral rights and  
14 authority listed in these bylaws."

15 h. Page 7, Section IV, Article 2: "The original  
16 president of the corporation is Donald Lee Barnett, who cannot be  
17 removed from office while living."

18 i. Page 7, Section V, Article 3: "The board of  
19 senior elders shall have the power to overturn decisions made by  
20 the president of the corporation, except the original president  
21 of the corporation, regarding his decisions about interpretation  
22 of these bylaws and areas not covered by these bylaws."

23 j. Page 7, Section V, Article 5: "Removal of the  
24 president of the corporation: except for the original president  
25 of the corporation, the president of the corporation may be  
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1 removed from office by a two-thirds (2/3) majority vote of the  
2 board of senior elders."

3 k. Page 13, Section IX, Article 1: "A minimum of  
4 three-fourths (3/4) majority affirmative vote of the board of  
5 senior elders and the original pastor's concurrence, if still  
6 presiding, is necessary to amend the bylaws stated in this  
7 document."

8 l. Page 14, Article 2: "In case of any disagreement  
9 of interpretation of these rules (in the event an agreement  
10 cannot be reached), a decision of the board of senior elders  
11 takes precedence over the division heads and/or the deacon board.  
12 If the disagreement cannot be reconciled by a two-thirds (2/3)  
13 majority vote of the board of senior elders, the pastor shall  
14 decide the issue."

15 m. Page 16, Section I, Article 1, Paragraph A: The  
16 original pastor is Donald Lee Barnett. "The pastor shall be  
17 recognized as the spiritual overseer of the church, ordained and  
18 appointed by God for the ministry and to shepherd the flock of  
19 Community Chapel and Bible Training Center. In this capacity, he  
20 shall be the chief elder and chairman of the board of senior  
21 elders."

22 n. Page 17, Paragraph B(2): "The original pastor,  
23 having established the original church by the direction of God  
24 and with support of the congregation, shall have oversight of the  
25 same until the pastor agrees to change. . . ." Future pastors  
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1 may be removed by a two-thirds (2/3) majority vote of the board  
2 of senior elders and a simple majority vote of the congregation."

3 o. Page 30, Section VII, Article 1, Paragraph A(4):  
4 "The ordination of the pastor shall be in effect until he is  
5 removed from the position of pastor (with the exception of the  
6 original pastor, who cannot be removed from office while living),  
7 until he resigns, or until this church no longer exists."

8 7. The foregoing provisions are hereinafter referred to as  
9 the "Protective Provisions."

10 8. The Board of Senior Elders, also known as the Board of  
11 Directors, were charged with the management of the affairs of the  
12 corporation (Exhibit 3, page 2) and their powers and duties were  
13 as prescribed by the Bylaws (Exhibit 3, page 3).

14 9. The Bylaws, in effect during the year 1987 through  
15 March 4, 1988, are as set out in Exhibit 10:

16 a. Division I, Sec. II, Art. One, provides in part: "The  
17 total Corporation (Community Chapel and Bible Center) shall be  
18 controlled by a Board of Directors hereinafter called "The Board  
19 of Senior Elders."

20 b. Division I, Sec. III, provides in part: "This  
21 corporation shall have no members. All decision-making authority  
22 for this corporation shall be vested in the Board of Senior  
23 Elders (Board of Directors) and the Board of Deacons as defined  
24 in these Bylaws." Division I, Sec. IV., Art. One, provides in  
25 part: "The Board of Senior Elders shall consist of not less than  
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1 three members, which shall govern Community Chapel and Bible  
2 Training Center in all areas, as defined in these Bylaws, except  
3 in areas reserved for the Pastor of the Corporation Church alone,  
4 and in accordance with the following rules:"

5 c. Division I, Section N, Art. Six, provides in part:  
6 "The Board of Senior Elders shall direct the Corporation in such  
7 matters as:

8 (D) Settling disputes within the Corporation that  
9 cannot be handled by delegated authority.

10 (I) Exercising jurisdiction in any additional  
11 matters for which the Board of Senior Elders feels  
12 responsible (subject to the concurrence of the original  
13 Chairman of the Board of Senior Elders if he is still  
14 presiding)."

15 10. Community Chapel had several different corporate  
16 offices as of 1987. The Board of Senior Elders was composed of  
17 three members, E. Scott Hartley, Jack Hicks and Jack DuBois. In  
18 addition to these members, Pastor Barnett was an ex-officio  
19 member and Chairman of the Board, in accordance with the Bylaws.  
20 Operating under the Board of Senior Elders was the Board of  
21 Elders, composed of 14 individuals. The powers of the Board of  
22 Elders are set forth in Div. III, Sec. II, Article 1 of the  
23 Bylaws and include, with the pastor's concurrence, teaching Bible  
24 classes, preaching, baptizing, performing marriages, counselling,  
25 and "perform other functions or ministries for which there is  
26 need."

11. Community Chapel flourished from its beginning of some  
37 congregants to over 3,500; it established satellite churches

1 within and beyond the State of Washington; it bought property and  
2 constructed large church and Bible Training buildings.

3 12. Community Chapel was located on two separate but  
4 adjacent parcels of land, the East and West Campuses. The East  
5 Campus is the church's original location and consists of a 600  
6 seat chapel, administrative offices, religious bookstore and gift  
7 shop, Bible College classrooms and library, printing shop,  
8 recording studio, and parking lot.

9 13. The West Campus was purchased and custom built to suit  
10 Community Chapel's needs in 1980. The West Campus has a 2,000  
11 seat chapel, and Education Building for its K-12 school, a large  
12 gymnasium, a large parking lot, and an apartment building to  
13 house Bible College students.

14 14. The church parsonage was located approximately one mile  
15 from Community Chapel's East and West Campuses. The parsonage  
16 had been designed by Pastor Barnett and built primarily through  
17 labor donated by Community Chapel parishioners. It was both  
18 Pastor Barnett's home and pastoral office. Pastor Barnett did  
19 not have an office at Community Chapel's East and West Campuses,  
20 but did have a direct telephone link to the campuses.

21 15. Community Chapel's growth and prosperity continued  
22 until the year 1987 when a number of unsettling events occurred:

23 a. Rumors and complaints from women to the Elders  
24 involving Donald Barnett's sexual misconduct developed.  
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1           b.    At least two lawsuits were filed by women claiming to  
2 have been victims of Donald Barnett's sexual activities. In  
3 1986, three former female parishioners and members of their  
4 families filed a lawsuit in King County Superior Court against  
5 Pastor Barnett and Community Chapel. This lawsuit alleged, among  
6 other things, that several years earlier Pastor Barnett had used  
7 his position as pastor and counsellor to induce these three women  
8 to have sexual relationships with him. The suit alleged that  
9 Community Chapel was liable for Pastor Barnett's actions based on  
10 respondeat superior. This lawsuit was settled by Pastor Barnett  
11 and Community Chapel after March, 1988.

12           c.    The insurance carrier for the church canceled its  
13 coverage. Community Chapel's then-insurance carrier defended  
14 these two lawsuits and provided separate counsel for Pastor  
15 Barnett and Community Chapel. The insurance cancellation  
16 affected all of Community Chapel's insurance coverage, including  
17 coverage for fire and premises liability. As a result of that  
18 cancellation, Community Chapel was not insured for any  
19 allegations similar to those in the foregoing lawsuits and was  
20 not insured for loss to Community Chapel's property from fire or  
21 for accidents occurring on its property to parishioners or other  
22 visitors. Community Chapel attempted but was unable to procure  
23 insurance for any risk, including fire and premises liability.

24           d.    Pastor Barnett's wife separated from him, causing him  
25 much distress and anguish.

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e. Attendance at church services dropped from 3,500 to 2,800, approximately.

f. Income to the church dropped requiring cutbacks in personnel and staff. In the fall of 1987, Community Chapel laid off several of its approximately 200 employees and took other steps to cut operating expenses.

g. At least one church leader approached the Pastor to express concern and dismay at his conduct, to which the Pastor turned a deaf ear.

h. Unsavory publicity came to public attention, reflecting upon Pastor Barnett and the church.

16. On December 24, Jerry Zwack, who had been cut by Hicks from his employment at the church's counselling center and Bible College, and who was felt by Pastor Barnett to harbor some ill feelings toward him growing out of these terminations, delivered to the homes of the Senior Elders, two counsellors, and several members of the Board of Elders, a letter critical of Donald Barnett and his conduct. Zwack had been a full-time employee of Community Chapel as a counsellor in its Counselling Center and as a Bible teacher in its Bible College. Zwack remained as a parishioner of Community Chapel.

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1           18. Donald Barnett became aware of this letter and called  
2 the recipients of the letter (or at least some of them) and asked  
3 the recipients to send the letters to Donald Barnett, unopened  
4 and unread. Several of these recipients, including MacKenzie,  
5 had already read the letter by the time Pastor Barnett called.  
6 There is no evidence that any of the recipients complied with  
7 Pastor Barnett's request. Pastor Barnett also received and read  
8 a copy of this letter on the date it was delivered to the other  
9 recipients, or shortly thereafter.

10           19. Pastor Barnett believed that the grievances included  
11 the claim that Zwack's release from Bible College class and  
12 removal from the Counselling Center were due to actions by the  
13 Pastor.

14           20. A group of the three Senior Elders, Elders and  
15 counsellors met to decide what action they should take in  
16 response to the Zwack letter, whether or not hearings should be  
17 held, and if hearings were held, the procedures to be followed.

18           21. Included in the group was David Motherwell, Pastor  
19 Barnett's counselor, who was nominated to the group by the Pastor  
20 to assure that Pastor Barnett's position on the grievances be  
21 brought before the group. In addition to the Senior Elders,  
22 Board of Elders, and Motherwell, two other counsellors who were  
23 neither members of the Senior Elders nor the Board of Elders were  
24 added, bringing the group to 16 members. This group of 16 was  
25 referred to interchangeably as the "Elders" or the "Eldership,"  
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1 and will be referred to herein as the "Eldership" to distinguish  
2 it from the Board of Elders. The hearings that were later held  
3 by the Eldership were referred to as the "Elders' Hearings" or  
4 the "Eldership Hearings," and will be referred to herein by the  
5 latter title.

6 22. Motherwell was a full-time, paid counsellor at  
7 Community Chapel. He was chosen by Pastor Barnett as his  
8 personal counsellor in approximately August, 1987, and continued  
9 in that role until March 4, 1988. In August, 1987, Pastor  
10 Barnett appointed Motherwell as Director of Counselling.

11 23. There is no provision in the Articles and Bylaws to  
12 deal with grievances against the Original Pastor, nor do they  
13 provide for any procedures to be followed for hearings,  
14 disciplining or removal of the Original Pastor. There is a  
15 procedure for removing subsequent pastors.

16 24. The Eldership had some concern whether Donald Barnett  
17 would submit to a hearing or that he might exercise his pastoral  
18 authority to prevent it, interrupt it, or refuse to recognize the  
19 outcome of a hearing.

20 25. Many of the Eldership were aware of the Articles and  
21 Bylaws of Community Chapel, were aware of their Protective  
22 Provisions, and that the pastor was above the church division of  
23 Community Chapel, controlled the church division of Community  
24 Chapel, and had crucial control over the other divisions of  
25 Community Chapel.

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1           26. Some of the Eldership were concerned that such a  
2 hearing might bear the appearance of a white wash when the  
3 Eldership attempted to judge the conduct of the Pastor, they  
4 concluded it was important to prevent Pastor Barnett from  
5 exercising any control over the proposed Eldership Hearings and  
6 to protect Pastor Barnett from any claim of conflict of interest.  
7 The Eldership also wanted to outline what was to be done as part  
8 of these Hearings.

9           27. Some of the Eldership felt that the grievances raised  
10 by Zwack were groundless and Pastor Barnett could easily explain  
11 the facts satisfactorily, either because they had great faith and  
12 trust in Pastor Barnett or they suspected Zwack's motives and  
13 reasons. Others felt that the issues raised by Zwack were very  
14 serious.

15           28. The Eldership organized, with Elder Russell MacKenzie  
16 as moderator.

17           29. To meet some of the concerns of the group, MacKenzie  
18 prepared the Agreement, dated January 25, 1988. Because no one  
19 could be sure what information the hearings might adduce, the  
20 Agreement was made intentionally broad to cover a wide range of  
21 circumstances. The draft Agreement was presented to Pastor  
22 Barnett by his counselor, David Motherwell. Barnett was  
23 reluctant to sign it, but Motherwell persuaded him to sign, with  
24 the handwritten addition placed on it by Pastor Barnett.  
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212 Watermark Tower  
1109 First Avenue  
Seattle, Washington 98101  
(206) 467-0393

1           30.    Motherwell pointed out to Barnett that if he did not  
2 sign the Agreement and participate in a hearing, Zwack might  
3 publicize his grievances by taking them before the congregation,  
4 and/or disclosing them to newspaper reporters.

5           31.    This concern led Pastor Barnett and the other  
6 recipients of Zwack's letter to believe there was great  
7 importance to resolve Zwack's charges.

8           32.    The January 25, 1988 Agreement is Exhibit 15, and by  
9 this reference made a part hereof as completely as if set out in  
10 full, and should be read by any reviewer.

11           33.    Based on the events leading up to January, 1988, the  
12 condition of Community Chapel at that time, and conversations  
13 Pastor Barnett had with Motherwell, in signing this Agreement  
14 Pastor Barnett had to have known that his conduct was going to be  
15 scrutinized by the Eldership as part of their Hearings, and that  
16 if something was found reprehensible, the Eldership would have  
17 the power to do something about it. When he signed Exhibit 15  
18 Pastor Barnett understood that the Eldership Hearings were not  
19 just a fact finding hearing. By agreeing to the terms of Exhibit  
20 15, Pastor Barnett acknowledged the Eldership's authority to  
21 discipline him.

22           34.    Moderator MacKenzie also prepared Guidelines to be  
23 followed at the hearing. The Guidelines are Exhibit 23 and  
24 should be read by any reviewer.

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1           35.    Motherwell provided Pastor Barnett with a copy of the  
2 Guidelines before commencement of the hearing. They discussed  
3 these Guidelines and Pastor Barnett agreed with them. At the  
4 start of the hearings, MacKenzie furnished a copy to each member  
5 of the Eldership and to Jerry Zwack and Donald Barnett.

6           36.    Community Chapel had no existing procedure for dealing  
7 with issues such as those raised by the Zwack letter of December  
8 23, 1987. The January 25, 1988 Agreement, the Guidelines, and  
9 the undertaking of the Eldership to hold the hearings constituted  
10 the procedures developed under these circumstances for  
11 determining and resolving the issues raised in the Zwack letter.  
12 Pastor Barnett and all others concerned treated this as a binding  
13 procedure and agreed to and participated in it.

14           37.    Pastor Barnett and the Eldership understood that  
15 paragraph 7 of the Guidelines referring to "witnesses" was to  
16 include individuals such as Zwack, Motherwell, Peterson, and  
17 Hartley whose knowledge of Pastor Barnett's activities was  
18 primarily based on information from female parishioners who told  
19 them what Pastor Barnett had done and said to them. One of the  
20 reasons Pastor Barnett asked that Motherwell serve on the  
21 Eldership was so that he could give information when both Pastor  
22 Barnett and Zwack were not present.

23           38.    The plan devised for the Eldership hearings and review  
24 sessions was altogether reasonable, proper, fair, and protective  
25 of all.  
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39. Hearings began on January 25, 1988, and usually lasted four to five hours in the afternoon, five days per week.

40. First, Zwack addressed the group, followed by Pastor Barnett. Then Zwack answered the remarks followed by Pastor Barnett. Zwack spoke for about 9 hours; Pastor Barnett between 20 and 30 hours. Both Zwack and Pastor Barnett then were given a further opportunity to respond to each other.

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45. Pastor Barnett was permitted abundant time to present his case to the Eldership and no request of his for additional time to present information was denied by the Eldership. Pastor Barnett and Zwack were each present during the other's statements.

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50. Pastor Barnett asked the Eldership to answer eight questions relating to their authority to conduct the Hearings.

These questions were:

1. Who made you a judge over me?
2. Does Scripture give you that right?
3. Do the bylaws give you that right?
4. Did I give you that right?
5. What is the reason that I am being brought to trial?

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- 6. What is the reason that I should be tried and not you? What is different in your case?
- 7. What are the specific grievances against me?
- 8. What will this lawsuit do to your respect for me?

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52. Pastor Barnett's remarks were taped at his meeting with the Senior Elders and played to the meeting of the Eldership that afternoon. It was the belief of the Eldership that Pastor Barnett had violated the January 25 Agreement by attempting to use his pastoral authority to control the hearings, interfere with their final authority over the meetings, and to stop those meetings.

53. The Eldership meetings continued without further statements from Pastor Barnett or Zwack.

54. Neither Jerry Zwack nor Donald Barnett were present to hear, answer, or deny the information given during the exclusive eldership review sessions.

55. Zwack and Pastor Barnett were on notice that the named Elders and others had personal information concerning facts set out in the grievances (See Exhibit 22, Zwack's December 23, 1987

1 letter) and that they would report about these matters in the  
2 absence of Zwack and Pastor Barnett. Neither Zwack nor Pastor  
3 Barnett objected to this procedure.

4 56. No witnesses were proposed by Pastor Barnett or Zwack.

5 57. The Eldership did not violate Guideline No. 9. Pastor  
6 Barnett consented to this procedure whereby further information  
7 was disclosed in the Eldership review sessions at which he was  
8 not present.

9 58. The guidelines did not prevent taking temporary notes.  
10 Once Pastor Barnett filed this action, the Eldership was  
11 justified in preserving their temporary notes until this action  
12 finally ends.

13 59. On February 10, 1988, the three Senior Elders, without  
14 the presence of or notice to Pastor Barnett, met and placed the  
15 Pastor on Special Status as an individual and collective act.  
16 See Exhibit 24.

17 60. Special Status was a form of probation with conditions  
18 placed on the person and his/her activities.

19 61. One of the uses of special status was as the first step  
20 in disfellowshipping, which banishes a person from the church.

21 62. The special status procedures and guidelines used by  
22 Community Chapel and in effect during February and March, 1988  
23 are set forth in Exhibit 39. It was the custom and practice at  
24 Community Chapel that Elders, Senior Elders, the Pastor, and  
25 counsellors could place an individual on special status.

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ROHAN, GOLDFARB & SHAPIRO, P.S.

212 Watermark Tower  
1109 First Avenue  
Seattle, Washington 98101  
(206) 467-4343

1           63. Before placing Pastor Barnett on special status, the  
2 three Senior Elders discussed this step with Motherwell, who was  
3 both Pastor Barnett's counsellor and the Director of Counselling.  
4 On February 15, 1988, the three Senior Elders delivered to Pastor  
5 Barnett a letter notifying him of his special status. (Exhibit  
6 24)

7           64. Pastor Barnett's special status was designed to protect  
8 women in the church from Pastor Barnett, to assist Pastor  
9 Barnett, and to protect Community Chapel from potential  
10 liability. The primary purpose of Pastor Barnett's special  
11 status was curative.

12           65. The terms of Pastor Barnett's special status, as set  
13 forth in Exhibit 24, were as follows:

- 14           1. Not be alone with any female not your wife in any  
15 non-public place. This includes your home and  
16 covers both your professional and private life.  
17 The only exception to this would be Bonnie  
18 Martin, you secretary, and the volunteer cleaning  
19 girls arranged by Service Ministries (on the  
20 condition they not be close friends of yours),  
21 and then only during the usual weekday time hours  
22 of 9:00 a.m. to 5:00 p.m.
- 23           2. Not take any women not your wife with you on vacations  
24 or trips.
- 25           3. Not counsel any woman alone.
- 26           4. To confine any time spent in the company of women  
not your wife to group situations.

Duration: Indefinite.

66. The terms of Pastor Barnett's special status were  
reasonable under the circumstances.

ROHAN, GOLDFARB & SHAPIRO, P.S.

212 Watermark Tower  
1109 First Avenue  
Seattle, Washington 98101  
(206) 467-8395

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 21

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1           67. The remaining Eldership agreed with the Senior Elders'  
2 decision to place Pastor Barnett on special status and they  
3 themselves voted to ratify the action of the Senior Elders and to  
4 request Pastor Barnett to comply with the conditions of the  
5 special status. Their letter to Pastor Barnett regarding special  
6 status is Exhibit 30. Motherwell was one of the Eldership, and  
7 he had earlier agreed with the Senior Elders' special status. In  
8 accordance with standard procedures when someone was placed on  
9 special status, Pastor Barnett's special status was reported both  
10 to Motherwell, Director of Counselling, and Chris Matthews, a  
11 member of the Eldership who was also the Administrator of the  
12 Counselling Center.

13           68. The decision by the Senior Elders to place Pastor  
14 Barnett on special status and the Eldership's ratification was a  
15 reasonable response to the circumstances disclosed by the  
16 Eldership hearings and review sessions and events following them.

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1 70. Because of Pastor Barnett's defiance, the Eldership  
2 determined that further action was needed to correct Pastor  
3 Barnett's conduct and reduce its potential harm to the  
4 congregation and church.  
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14 73. On February 26, 1988, pursuant to a decision by the  
15 entire Eldership, certain of the Eldership addressed the  
16 congregation at a regular worship service, in Pastor Barnett's  
17 absence, telling the audience that the Senior Elders and  
18 Eldership had placed Pastor Barnett on Special Status, and the  
19 conditions that he be required to comply with, because of the  
20 sexual misconduct to which the Pastor had admitted.

21 74. The details of that misconduct were not disclosed.  
22 They asked the congregation to pray for Pastor Barnett, and  
23 continue to love him and treat him as their pastor. The  
24 Eldership took this step and made these disclosures so that women  
25 in the congregation could protect themselves from Pastor Barnett  
26

1 and to protect Community Chapel from liability. The bylaws state  
2 that Pastor Barnett shall be in charge of all services of the  
3 church, whether or not he is present.

4 75. The disclosures made by the Eldership to the  
5 congregation on February 26, 1988 were limited to what was  
6 reasonably necessary to inform the congregation of the reasons  
7 why Pastor Barnett had been placed on special status and the  
8 conditions attached to that status. This disclosure of facts  
9 developed in the Eldership meeting was contrary to the specific  
10 request of Pastor Barnett to keep confidential such matters.

11 76. Upon his return, Pastor Barnett addressed the  
12 congregation on February 28, 1988, in a lengthy sermon, in which  
13 he stated that he would not follow the terms and conditions of  
14 the special status, and would not accept the authority of the  
15 Eldership. See Exhibit 31, written transcript, and Exhibit 32,  
16 tape recording of the sermon, which is so extended that it defies  
17 characterization.

18 77. The following day, the Pastor met with the Eldership,  
19 demanding that each write a letter recanting the action taken and  
20 confessing their wickedness.

21 78. Disfellowshipping at Community Chapel was expulsion  
22 from the church. A disfellowshipped individual could no longer  
23 attend services at Community Chapel, lost all their corporate and  
24 church positions at Community Chapel, including their job if they  
25 were an employee, and could not fellowship with any parishioners,  
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1 except family members. It cut off all ties with Community Chapel  
2 and those associated with it.

3 79. Disfellowshipping was governed by Division 2, Section  
4 6, Article 2 of the Bylaws. (Exhibit 10) The Bylaws and the  
5 following documents regarding disfellowshipping are part of the  
6 official documents at Community Chapel and were so treated by  
7 Community Chapel: The Special Status Guidelines (Exhibit 39),  
8 the July 30, 1987 memo from Zwack to the Counselling Center staff  
9 (Exhibit 14) and the September 25, 1987 memo from Jack Hicks to  
10 Department Heads (Exhibit 37).

11 80. The Bylaws gave Pastor Barnett the power to concur in  
12 any disfellowshipping, a power he could delegate to his designee.  
13 For some time prior to July 30, 1987, Pastor Barnett delegated  
14 this power to Hicks, at which time Pastor Barnett revoked that  
15 delegation, as set forth in Exhibit 14. As of September 25,  
16 1987, the date of Exhibit 37, Pastor Barnett again delegated this  
17 power to concur in disfellowshippings, this time to Motherwell.  
18 Motherwell retained this power through March 4, 1988.

19 81. It was the custom and practice at Community Chapel that  
20 Senior Elders, Elders, and counsellors had and exercised the  
21 power to disfellowship. Disfellowshipping was not limited to  
22 instances where a counsellor disfellowshipped someone who was  
23 currently their counsellee. While Pastor Barnett or his designee  
24 had the right of concurrence in disfellowshippings, the actual  
25 practice in 1987 and 1988 was that significant numbers of  
26

1 individuals were disfellowshipped without the concurrence of  
2 either Pastor Barnett or his designee, that Pastor Barnett knew  
3 this, and he did not complain of this practice at the time.

4 82. It was also the custom and practice at Community Chapel  
5 that an individual could be disfellowshipped without the  
6 concurrence of Pastor Barnett or his designee under emergency or  
7 aggravated circumstances.

8 83. Any individual attending Community Chapel was subject  
9 to disfellowshipping, including its Senior Elders, Elders, and  
10 pastors. Pastor Barnett was not exempted from disfellowshipping.  
11 Pastor Barnett's own words in his response to Rumor 20 contained  
12 in Balance II magazine, Trial Exhibit 27, state that he was  
13 accountable for his actions, as follows:

14 Rumor 20: The pastor at Community Chapel is  
15 accountable to no one.

16 Reply: Untrue. I am accountable to the bylaws, the  
17 senior elders, fellow elders, even to the  
18 congregation, and, most of all, to God. The  
19 senior elders watch for my ministry. They would  
20 never allow me to err substantially without  
21 requiring repentance and/or correction. I submit  
22 to them as they do to me.

23 Pastor Barnett acknowledged his accountability in his sermons of  
24 February 28, 1988 (Exhibits 31 and 32) and March 6, 1988  
25 (Exhibits 40 and 41).

26 84. On March 3, 1988, the ten Elders of the Eldership (not  
counting the three Senior Elders and the three non-Elders of the  
committee) voted to recommend to the Senior Elders to  
disfellowship Donald Barnett. (Exhibit 33)

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1 85. On March 3, 1988, the 16 members of the Eldership voted  
2 unanimously to disfellowship Donald Barnett. (Exhibit 34) As of  
3 that date, Pastor Barnett no longer held any positions with  
4 Community Chapel. Based on this finding, some of the following  
5 findings may not be necessary.

6 86. In response to calls from Pastor Barnett's secretary,  
7 the three Senior Elders met at the parsonage with Pastor Barnett  
8 early on the morning of March 4, 1988. Pastor Barnett wanted  
9 them to come separately, but they came as a group.

10 87. A dispute arose as to the purpose of the meeting.  
11 Pastor Barnett wanted to discuss a matter having to do with  
12 addressing the congregation. The Senior Elders wanted to discuss  
13 proposed amendments to remove the Protective Provisions from the  
14 Articles.

15 88. One of the Senior Elders handed Pastor Barnett a copy  
16 of proposed amendments to the articles. He disregarded it. When  
17 asked how he would vote on the amendments to the Articles, Pastor  
18 Barnett kept talking about other matters. The three Senior  
19 Elders then voted unanimously to adopt the amendments to the  
20 Articles.

21 89. At that point, Pastor Barnett abruptly terminated the  
22 meeting by telling the Senior Elders to leave his house. They  
23 went to Jack Hicks' office, where they executed documents  
24 relating to amendment of the Articles. Those were immediately  
25 taken by Scott Hartley to Olympia for filing.

26

1           90. Upon Hartley's return that afternoon, the Senior Elders  
2 held a second meeting to resume their business.

3           91. At this afternoon meeting, the board of Senior Elders  
4 voted collectively to disfellowship Donald Barnett and separately  
5 voted to remove him from all offices. (Exhibits 48 and 49)

6           92. In voting on March 4, 1988 to remove Pastor Barnett  
7 from all offices and disfellowshipping him, the Senior Elders  
8 acted in their capacity as a Board of Directors. Pastor  
9 Barnett's presence was required under the Bylaws, but the Senior  
10 Elder's action was nonetheless valid without him because of the  
11 circumstances. Specifically this meeting occurred after Pastor  
12 Barnett had demanded that the Elders individually write a letter  
13 to him and the congregation disavowing their action of placing  
14 him on special status, and the very day when he told the three  
15 Senior Elders to leave the parsonage, after they sought a meeting  
16 with him. Viewed under all these facts and circumstances, the  
17 Senior Elders were not required to give notice of this meeting to  
18 Pastor Barnett.

19           93. The Eldership's March 4, 1988 letter and the Senior  
20 Elders' March 4, 1988 letter informing Pastor Barnett of the  
21 disfellowshippings were delivered to Pastor Barnett on that date.  
22 (Exhibits 34 and 49) Motherwell's only action to disfellowship  
23 Pastor Barnett was as a part of the vote of the 16 members of the  
24 Eldership.

1           94. The Eldership and the Senior Elders reasonably  
2 concluded, in light of the circumstances at the time, that  
3 exceptional or extenuating circumstances existed, justifying  
4 their decision to disfellowship Pastor Barnett without further  
5 notice to him. They also reasonably concluded that these  
6 circumstances created an emergency.

7           95. The emergency was created by Pastor Barnett with his  
8 open defiance of their attempts to control his misconduct. His  
9 availability to discuss their decisions to disfellowship him did  
10 not reduce that emergency.

11           96. Pastor Barnett was warned before the decisions to  
12 disfellowship him that such action might be taken. He admitted  
13 during his February 28, 1988 address that he received such  
14 warnings.

15           97. Pastor Barnett never requested an appeal or  
16 reconsideration of the decisions to disfellowship him. He  
17 regarded his filing of this lawsuit as the equivalent of such an  
18 appeal.

19           98. The congregation at Community Chapel never voted on a  
20 disfellowshipping decision. The decisions to disfellowship  
21 Pastor Barnett were never submitted to the congregation for a  
22 vote.

23           99. The Eldership and the three Senior Elders reasonably  
24 concluded, based on the information adduced at their hearings,  
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1 that Pastor Barnett had materially breached the terms of his  
2 employment contract with Community Chapel.

3 100. Based on the information adduced at their hearings and  
4 Pastor Barnett's defiance of their curative efforts, the  
5 Eldership and the three Senior Elders reasonably believed that  
6 Pastor Barnett had breached his fiduciary duties to Community  
7 Chapel and its congregants, that those breaches were likely to  
8 recur, and that they had just cause to remove and disfellowship  
9 him.

10 101. In deciding to disfellowship Pastor Barnett, the  
11 Eldership and the board of Senior Elders acted in good faith.

12 102. In deciding to remove Pastor Barnett from all corporate  
13 offices, the Senior Elders acted in good faith.

14 103. Under date of April 8, 1988, Amended Articles of Faith  
15 and Bylaws were executed by naming Donald Barnett as the Original  
16 Pastor, President of the Corporation, Chairman and ex-officio  
17 member of the Board of Directors of Community Chapel and Bible  
18 Training School. (Exhibit 11)

19 104. This revision was pursuant to action of the Board of  
20 Directors taken in December 1987. (Exhibit 26)

21 105. The purpose of the revision was solely to sever the  
22 satellite churches, not to reinstate any directors or officers,  
23 including Pastor Barnett. The revision spoke as of December  
24 1987; not April 1988. It was not intended and did not have the  
25 effect of reinstating anyone.



1 should warrant. The Eldership could exercise this power without  
2 the Pastor's presence or concurrence, and notwithstanding other  
3 Protective Provisions of the bylaws.

4 5. The Eldership followed the procedure agreed to and  
5 accepted by Pastor Barnett.

6 6. The Eldership received substantial evidence, reasonably  
7 believed by them to be true, that was sufficient and appropriate  
8 to take action to disfellowship Pastor Barnett.

9 7. The Eldership and Senior Elders had fair and honest  
10 reasons for their actions. They acted in good faith, and not for  
11 arbitrary, capricious, or illegal reasons.

#### 12 Disfellowshipping

13 8. No one at Community Chapel was immune from  
14 disfellowshipping. The Protective Provisions in the Bylaws did  
15 not apply to disfellowshipping and did not preclude Pastor  
16 Barnett from being disfellowshipped.

17 9. Each of the 16 members of the Eldership had authority  
18 to disfellowship.

19 10. The 16 members of the Eldership properly  
20 disfellowshipped Pastor Barnett, removing him from the church.

21 11. The Elders, as distinguished from the Eldership,  
22 recommended to the Senior Elders that they take action to  
23 disfellowship Pastor Barnett.

24 12. The Senior Elders had the authority and power to  
25 disfellowship Pastor Barnett.  
26

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1 sufficient to void the protective provisions of the Articles and  
2 Bylaws.

3 19. Those material breaches found by the Senior Elders and  
4 Eldership gave them the authority to act, including to remove  
5 Barnett without his consent, presence, or permission.

6 20. Pastor Barnett's employment contract with Community  
7 Chapel did not preclude his removal for just cause, including  
8 breach of fiduciary duty.

9 Breach of Fiduciary Duty

10 21. A corporation has an inherent right to remove a  
11 corporate officer who breaches fiduciary duties to that  
12 corporation. This right may be exercised without regard to any  
13 employment contract and despite the absence of any procedures  
14 providing for such removal.

15 22. An employment contract precluding removal despite a  
16 breach of fiduciary duty would violate public policy.

17 23. The Senior Elders were authorized, as Community  
18 Chapel's governing board, to exercise this inherent right on  
19 behalf of the corporation. The members of the Eldership were  
20 also authorized by the January 25, 1988 Agreement to exercise  
21 that right.

22 24. Pastor Barnett owed a fiduciary duty to Community  
23 Chapel not to use his position for personal purposes inimical to  
24 the interests of the corporation.

1           25. Given his special position and the considerable powers  
2 he enjoyed, Pastor Barnett had a fiduciary duty to respect the  
3 trust and confidence placed in him by Community Chapel  
4 congregants, and to avoid using his position and powers to  
5 exploit congregants for his personal advantage.

6           26. The Eldership reasonably concluded that Pastor Barnett  
7 flagrantly breached these fiduciary duties by using his position  
8 and powers to take repeated sexual advantage of women congregants  
9 and to intimidate them into silence.

10           27. Due to his breach of fiduciary duty, Pastor Barnett was  
11 not entitled to invoke the Protective Provisions in the Articles  
12 and Bylaws to prevent his removal.

13           28. By disfellowshipping Pastor Barnett, the Eldership  
14 properly exercised its inherent authority to remove Pastor  
15 Barnett for his breach of fiduciary duty.

16           29. By disfellowshipping Pastor Barnett and separately  
17 voting to remove him from all offices, the Senior Elders properly  
18 exercised their inherent authority to remove Pastor Barnett for  
19 his breach of fiduciary duty.

20           30. These decisions by the Eldership and Senior Elders were  
21 supported by substantial evidence reasonably believed by them to  
22 be true, and were taken in good faith and not for arbitrary or  
23 capricious reasons.

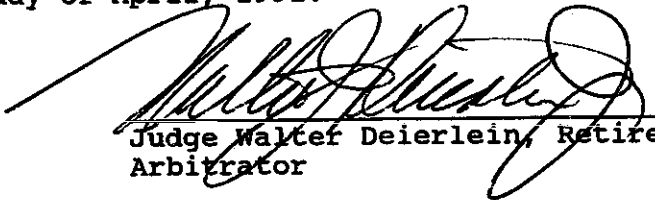
April 1988 Amendments

31. The April 1988 amendments to the Bylaws did not  
reinstate Pastor Barnett.

Successor Senior Elders

32. Pastor Barnett is not entitled in this action to  
challenge the authority of the present Senior Elders to hold  
office or their authority or standing to maintain this action on  
behalf of all defendants.

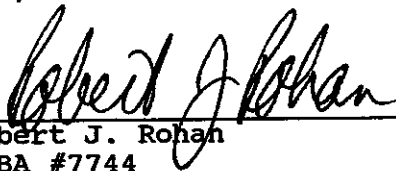
DATED this 12 day of April, 1991.

  
Judge Walter Deierlein, Retired  
Arbitrator

Presented by:

ROHAN, GOLDFARB & SHAPIRO, P.S.


By

  
Robert J. Rohan  
WSBA #7744

Copy Received; Notice of  
Presentaation Waived;  
~~Approved as to Form~~

EDWARDS, SIEH, WIGGINS & HATHAWAY

By

  
Charles Wiggins  
WSBA #6948  
Attorneys for Plaintiff

ROHAN, GOLDFARB & SHAPIRO, P.S.

212 Watermark Tower  
1109 First Avenue  
Seattle, Washington 98101  
(206) 467-0393

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 36

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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW - 37

ROHAN, GOLDFARB & SHAPIRO, P.S.

212 Watermark Tower  
1109 First Avenue  
Seattle, Washington 98101  
(206) 467-0393