



CHURCH BYLAWS –

THE IMPORTANCE OF A MEMBERSHIP POLICY

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Today's Church faces many threats to its ability to minister freely. One threat involves lawsuits from church members who are sometimes angry or upset when they have been the subject of church discipline. Individuals have sued their church, alleging claims such as defamation or negligence on the part of the church as a result of a discipline process. How can a church protect itself from such lawsuits, or at the very least, ensure that it will have the best chance for success if a lawsuit is filed?

One way is to make sure the church's by-laws contain a formal membership policy. Courts have held that a church has a constitutional right to administer itself free from governmental control. In 1952, U.S. the Supreme Court recognized that there is "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."¹ Courts have recognized that this freedom bars any claim for recovery by a person who claims injury as a result of the control exercised by the church. Put another way, if a member of the church sues the church for personal injury as a result of a discipline process, courts will generally dismiss that case because it would require the court to exercise secular oversight or control over the church's religious doctrine in governing itself.

But the freedom of churches has limitations. Courts generally recognize that a church only has a right to govern itself and its members. The Oklahoma Supreme Court stated that, "Only those 'who unite themselves' in a religious association impliedly consent to its authority over them and are 'bound to submit to it.'" What this means is that a church does not have a constitutional right to govern non-members. If personal injury occurs as a result of the church's discipline or dealings with a non-member, it will be very difficult, if not impossible, for the church to raise a constitutional defense to any lawsuit.

Every church should have in its by-laws exactly who is considered a member, how one becomes a member, and how that membership is ended. Taking this simple step will give the church a very strong constitutional defense to any lawsuit that may arise in the church's dealings with its members. There is no magic language for such a policy, as long as it specifies the process for becoming a member and defines who in the church is considered a member.

¹ *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

For more information on how to protect your church from unnecessary lawsuits, read [“Seven Things All Churches Should Have in Their By-Laws”](#). If you have specific legal questions, use the [Legal Inquiry Form](#) to share your question with an attorney.