



Court's declarations at the hearing on the Rule 12 motion in light of judicial admissions in plaintiffs' current petition, the Court will find without compromising any analysis or statements the Court made during that hearing, that the motion should be granted and a Rule 12 order without qualification be signed.

### **Only One Diocese and One Diocesan Corporation**

#### **1.**

Plaintiff, who calls itself The Episcopal Diocese of Fort Worth, judicially admits that it "is a Texas non-profit corporation with its principal office in Fort Worth, Texas, formed on or about February 23, 1983." Plaintiffs' Amended Petition, ¶ 3.

#### **2.**

This Plaintiff further judicially admits that at "the November 2008 meeting of the Convention of the Diocese... a majority of delegates present voted for various resolutions that purported to amend the Diocese's Constitution and Canons to affiliate with the Anglican Province of the Southern Cone." Plaintiffs' Amended Petition, ¶ 46.

#### **3.**

The Plaintiff also judicially admits that this "diocese held a special meeting of its Convention on February 7, 2009," where "a provisional bishop of the Diocese was elected" as well as members of "the standing committee ... and the Trustees of the Diocesan corporation." Plaintiffs' Amended Petition, ¶ 53.

#### **4.**

Thus, the preceding judicial admissions, which are binding on the Court, according to *Kaplan v. Kaplan*, 129 S.W.3d 666, 669 (Tex. App. – Fort Worth, 2004, pet. Denied); *Lee v. Lee*,

43 S.W.3d 636, 641 9Tex. App. –Fort Worth, 2001, no pet.), establish there is only one diocese and one diocesan corporation.

**Two Competing Sets of Officers for Control of  
One Diocese and One Diocesan Corporation**

**5.**

The Court, after an extensive dialogue with Nelson at the September 16 hearing, stated, "I don't think the people that hired you are the Diocese, therefore, I don't think they had authority to hire you to represent the Diocese." September 16 Transcript<sup>1</sup>, p. 26 lines 9-11.

**6.**

Later in the September 16 hearing the Court proclaimed, "That's exactly right" in reply to the statement of Movants' counsel that "the only issue, as the court has accurately said here, is the people who hired these people [Nelson and Wells] are not the Episcopal Diocese of Fort Worth that held its convention in November." September 16 Transcript, p. 30, line 22- p. 31, line 1. This establishes the admission that both convention meetings are the same diocese.

**Representation of People,  
Not Diocese and Diocesan Corporation**

**7.**

The Court accurately declared during the September 16 hearing that "here's my ruling, is that he [referring to Nelson and by implication wells] can represent the people that hired him." September 16 Transcript p. 36, lines 4 and 5.

**8.**

Nelson in his testimony informed the Court that, "After the special convention of February 7, 2009, the newly-elected provisional bishop, Bishop Ted Gulick, retained me, appointed Kathleen Wells as chancellor, to represent the Episcopal Diocese of Fort worth and the

---

<sup>1</sup> See attached.

Corporation for the Episcopal Diocese of Fort worth in filing and pursuing this present lawsuit" and "the trustees, the board of the corporation of the Episcopal Diocese of Fort Worth, met along with the president of that corporation, Bishop Gulick, and ... hired me to pursue this lawsuit." September 16 Transcript, p. 47, lines 7–13, 20–25.

**9.**

Accordingly, there are not two dioceses or two diocesan corporations. There is only one of each. The alleged officers who hired Nelson and Wells claim to be the legally elected officers of these entities. It is only appropriate for Nelson and Wells to represent the people who hired them, not the entities of which they claim to be officers.

**Granting Motion Accomplishes  
Court's Stated Conclusions**

**10.**

Granting the Rule 12 Motion, will not prevent Nelson and Wells from representing the people who hired them. They will have the privilege of representing these people in defending them in response to the third-party petition brought by Intervener the Corporation of the Episcopal Diocese of Fort Worth and the third-party petition that The Episcopal Diocese of Fort Worth seeks leave to file. This will have Nelson and Wells before the Court in precisely the capacity that the Court found they should be during the Rule 12 hearing.

**WHEREFORE, PREMISES CONSIDERED,** Movants pray that the Court set aside the order granting Rule 12 motion signed on September 16, 2009, and sign an order without the interlineation and without the removal of the language "as plaintiffs and the pleadings of The Episcopal Diocese of Fort Worth and The Corporation of The Episcopal Diocese of Fort Worth Are struck from these proceedings."

Respectfully submitted,



J. SHELBY SHARPE

State Bar No. 18123000

SHARPE, TILLMAN & MELTON

6100 Western Place, Suite 1000

Fort Worth, Texas 76107

Telephone: (817) 338-4900

Facsimile: (817) 332-6818

**ATTORNEYS FOR MOVANTS FRANKLIN  
SALAZAR, JO ANN PATTON, WALTER  
VIRDEN, III, ROD BARBER, CHAD BATES,  
AND JACK LEO IKER, AND THE  
EPISCOPAL DIOCESE OF FORT WORTH  
a/k/a/ THE ANGLICAN PROVINCE OF THE  
SOUTHERN CONE'S DIOCESE OF FORT  
WORTH**

REPORTER'S RECORD

VOLUME 1 OF 1

Cause No. 141-237105-09

4	THE EPISCOPAL DIOCESE OF	X	IN THE DISTRICT COURT
	FORT WORTH, THE	X	
5	CORPORATION OF THE	X	
	EPISCOPAL DIOCESE OF	X	
6	FORT WORTH, and THE	X	
	EPISCOPAL CHURCH,	X	

7 Plaintiffs,

8 VS.

9	FRANKLIN SALAZAR, JO ANN	X
10	PATTON, WALTER VIRDEN,	X
	III, ROD BARBER, CHAD	X
11	BATES, JACK LEO IKER,	X
	and THE ANGLICAN	X

12	PROVINCE OF THE SOUTHERN	X	TARRANT COUNTY, TEXAS
	CONE'S "DIOCESE OF FORT	X	
13	WORTH," holding itself	X	
	out as "THE EPISCOPAL	X	
14	DIOCESE OF FORT WORTH,"	X	

15 Defendants/Third-Party  
16 Plaintiff

17 VS.

18	EDWIN F. GULICK, JR.,	X
	MARGARET MIEULI, WALT	X
19	CABE, ANNE T. BASS,	X
	J. FREDERICK BARBER,	X
20	CHRISTOPHER JAMBOR,	X
	DAVID MADISON and	X
21	KATHLEEN WELLS	X

22 Third-Party Defendants X 141ST JUDICIAL DISTRICT

23 Rule 12 Motion

24  
25 COPY

1           BE IT REMEMBERED that on the 16th day of  
2 September, 2009, the following proceedings came on to  
3 be heard in the above-entitled and -numbered cause  
4 before the Honorable John P. Chupp, judge presiding,  
5 held in Fort Worth, Tarrant County, Texas.

6           The proceedings were reported by machine  
7 shorthand.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 THE COURT: Okay. Here's what I  
2 think -- do you want to speak some? Do you have  
3 anything to say?

4 MR. SHARPE: You are doing wonderfully,  
5 Your Honor.

6 THE COURT: Here's what I think the  
7 deal is. And the people on the ninth floor down there  
8 may tell me I'm wrong, and I'm sure they'll get the  
9 chance to, but I don't think the people that hired you  
10 are the Diocese, therefore, I don't think they had the  
11 authority to hire you to represent the Diocese, and  
12 so, I think you can represent -- I think you can  
13 represent the corporation of the Episcopal -- or I  
14 guess the Episcopal Church. I don't -- what's the  
15 corporation of the Episcopal Diocese of Fort Worth?  
16 Is that who holds the property?

17 MR. NELSON: Some of it.

18 THE COURT: Okay. I think those people  
19 are the same people that left the -- that took the  
20 Diocese and left. But the Episcopal Church -- the  
21 thing is, there's no real difference in this, I don't  
22 think. I think your claim has to be -- it has to be  
23 an injunctive request from the Episcopal Church saying  
24 you can't do that. And they say -- then the Episcopal  
25 Church comes in and says, "No, Diocese, you can't do



1 and they're prepared to put on evidence of that, if  
2 you'd like.

3 THE COURT: Well --

4 MS. ANDERSON: -- but there clearly is  
5 a group, that's their name, you know, Bishop Gulick is  
6 their head, and they have hired him to present this  
7 case.

8 THE COURT: Okay. Well, then my order  
9 should be that it's -- Bishop Iker, is that --  
10 you're --

11 MR. SHARPE: This is Canon --

12 THE COURT: Oh, okay. So Bishop -- is  
13 it Iker that's over y'all?

14 MR. SHARPE: Correct.

15 THE COURT: Okay. So the order that I  
16 should really put in this case, unless you have -- I  
17 don't know if y'all have a trademark or copyright that  
18 they're infringing upon if you -- I don't know.

19 MR. SHARPE: There's an issue in the  
20 merits of the case that deals with that, Your Honor.

21 THE COURT: Yes.

22 MR. SHARPE: But the only issue, as the  
23 Court has accurately said here is, the people who  
24 hired these people are not the Episcopal Diocese of  
25 Fort Worth that held its convention in November.

1 THE COURT: That's exactly right.

2 MR. SHARPE: And the only thing there  
3 is they should be -- if they want to call themselves  
4 something else, fine, but not calling by our names,  
5 because our people didn't hire them, and they --

6 THE COURT: Well, what if they started  
7 their own and they called it the Fort Worth --

8 MR. SHARPE: If they do that, Your  
9 Honor --

10 THE COURT: They have.

11 MR. SHARPE: That's --

12 THE COURT: But they have.

13 MR. SHARPE: I mean, they've got a new  
14 Bishop. They went through, and they got a new bishop,  
15 and they did all that.

16 So here's the deal. You don't have the  
17 authority to represent Iker's Fort Worth Diocese.

18 MR. NELSON: Your Honor, I agree, and  
19 I'm not representing them. I'm representing the  
20 Episcopal Diocese of Fort Worth with a provisional  
21 bishop whose name is Gulick.

22 THE COURT: You've got his Diocese?

23 MR. NELSON: Yes.

24 THE COURT: That's who you represent?

25 MR. NELSON: Yes.

1 issue is, are their people duly elected to run the one  
2 and only diocese, or are our people, who have been  
3 elected, the proper --

4 THE COURT: Here's my ruling, is that  
5 he can represent the people that hired him.

6 MR. SHARPE: If they legally -- if they  
7 were legally authorized to do that, that he has to do,  
8 he has to prove they were legally authorized to hire  
9 him in that name.

10 THE COURT: Why does he have to  
11 prove -- why does he have to prove that they were  
12 legally authorized to hire him in that name? I  
13 mean --

14 MR. SHARPE: Okay.

15 THE COURT: -- anybody could --

16 MR. SHARPE: I will give you two cases,  
17 Your Honor --

18 THE COURT: And I don't -- and I don't  
19 need that. I mean --

20 MR. SHARPE: I mean, these are spot on  
21 cases. Let me give you the first case. The first  
22 case has to do with Daughters of the Republic of  
23 Texas. The Daughters of the Republic of Texas in 1907  
24 held a convention in Austin, Texas. At the end of the  
25 convention, it adjourned, and the convention ended.

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION NARRATIVE

3 MR. NELSON: My name is Jonathan  
4 Nelson, I'm a licensed attorney in Texas, and have  
5 been for 34 years. My practice is trial law, and has  
6 been for the past 34 years.

7 After the special convention of  
8 February 7, 2009, the newly-elected provisional  
9 bishop, Bishop Ted Gulick, retained me, appointed  
10 Kathleen Wells as chancellor, to represent the  
11 Episcopal Diocese of Fort Worth and the corporation  
12 for the Episcopal Diocese of Fort Worth, in filing and  
13 pursuing this present lawsuit.

14 Under the canons, Bishop Gulick was and  
15 is the president of the corporation of the Episcopal  
16 Diocese of Fort Worth, one of the plaintiffs in this  
17 case. In his capacity as president, he additionally  
18 hired me to represent the corporation to pursue this  
19 lawsuit.

20 In addition to that, the trustees, the  
21 board of the corporation of the Episcopal Diocese of  
22 Fort Worth, met along with the president of that  
23 corporation, Bishop Gulick, and also formally endorsed  
24 the hiring and, in fact, hired me to pursue this  
25 lawsuit.

**CERTIFICATE OF SERVICE**

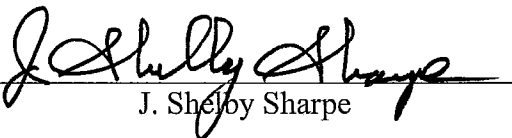
I hereby certify that a true and correct copy of the foregoing MOTION FOR RECONSIDERATION OF RULE 12 ORDER has been served as required by Texas Rules of Civil Procedure, by certified mail, return receipt requested, on Jonathan D.F. Nelson or Kathleen Wells, and by regular mail on all other attorneys of record on this 22<sup>nd</sup> day of September, 2009, as follows:

Jonathan D.F. Nelson  
JONATHAN D.F. NELSON, P.C.  
1400 W. Abrams Street  
Arlington, Texas 76013-1705

Sandra Liser  
NAMAN, HOWELL, SMITH & LEE, L.L.P.  
100 E. 15<sup>th</sup> Street, Suite 320  
Fort Worth, Texas 76102

Kathleen Wells  
P.O. Box 101174  
Fort Worth, Texas 76185-0174

David Booth Beers  
Heather H. Anderson  
GOODWIN PROCTOR, LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20001

  
J. Sheby Sharpe