

THE EPISCOPAL CHURCH, et al.	§	IN THE DISTRICT
	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
	§	
FRANKLIN SALAZAR, et al.,	§	141ST JUDICIAL DISTRICT

**DEFENDANTS’ RESPONSE TO LOCAL EPISCOPAL PARTIES’
AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants (as defined in the Defendants’ Motion for Partial Summary Judgment filed on December 23, 2010) file this Response to the Amended Motion for Partial Summary Judgment filed on December 21, 2010 by the Plaintiff Local TEC Parties (“Local TEC”).

I. The “admissions” show the Diocese is the hierarchical authority	2
A. The admissions are by Plaintiffs’ counsel	2
B. The admissions contradict nothing Defendants assert here.....	4
C. The elements of judicial admission or estoppel are missing.....	5
II. Neutral-principles states do not defer	6
III. The identity question <i>doesn’t</i> answer the property question under neutral principles	6
IV. Plaintiffs cannot win under neutral principles	6
V. A summary response to the duplicative arguments.....	9
VI. The illusions behind the Plaintiffs’ “facts”	12

FILED
 TARRANT COUNTY
 2011 JAN - 7 AM 11:09
 THOMAS A. WILDER
 DISTRICT CLERK

I. The “admissions” show the Diocese is the hierarchical authority

The only argument in this motion that is not in TEC’s motion is an assertion that Defendants are bound by previous admissions that TEC is hierarchical. This argument takes a lot of nerve, as it is based on documents drafted by Plaintiffs’ counsel back when he was counsel for the Defendants.

The Court should strike this evidence due to the serious ethical breach involved. An attorney should not be able to use his own work against his former clients (part A below). In any event, the argument is another red herring, as the “admissions” all state that TEC is hierarchical at the *diocese* level, which is exactly what the Defendants maintain here (part B). Finally, the motion is frivolous because obvious elements of judicial admission, judicial estoppel, and quasi-estoppel are missing (part C).

A. The admissions are by Plaintiffs’ counsel

This is an unsavory attempt by an attorney to use words he drafted for a client against that very same client and in favor of a new one.

Plaintiffs’ counsel Jonathan Nelson represented the Corporation, the Diocese, Bishop Iker, and their representatives in the *Holy Apostles* litigation.¹ As he stated in his closing letter to Bishop Iker, “It has been a privilege and a pleasure to represent both you and the church in this matter.”² He drafted the pleadings in that case, and wrote a memo advising Bishop Iker and other affiants what they needed say.³ As the Second Court of Appeals unequivocally found, he no longer

¹ See Plaintiffs’ Appendix, Nelson Affidavit ¶ 2 (A978); Defendants’ Supplemental Appendix, Second Affidavit of Canon Charles A. Hough, III (“2d Hough Affidavit”) ¶¶ (4)-(7).

² 2d Hough Affidavit Ex. 4

³ See *id.* Ex. 1-5.

represents the Diocese or Corporation.⁴ Having been paid to draft documents for them,⁵ he now attempts to use his own words against those he used to represent.

Texas Disciplinary Rule 1.05(b)(3) provides that “a lawyer shall not knowingly: ...[u]se confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.”⁶ “Confidential information” is not limited to privileged information, but includes “*all information* relating to a client or furnished by the client.”⁷ And “generally known” requires actual knowledge of the facts in question.⁸ The Diocese and Corporation object to such a blatant misuse of the information they paid Mr. Nelson to prepare, and ask the Court to strike it from the record.⁹

If there is to be any estoppel in this case, surely it should be directed **against** Mr. Nelson rather than **by** him. In the *Holy Apostles* case, Mr. Nelson drafted:

- a memo advising his clients that TEC was a “confederation of dioceses” — not a separate hierarchy ruling over them;¹⁰
- a memo that “the diocese is an hierarchical church” — not that TEC is an hierarchical church;¹¹
- a petition pleading these same things,¹²
- a motion for summary judgment asserting these same things,¹³

⁴ *In re Salazar*, 315 S.W.3d 279, 287 (Tex. App.—Fort Worth 2010, orig. proceeding).

⁵ See 2d Hough Affidavit Ex. 5.

⁶ Tex. Disciplinary R. Prof'l Conduct 1.05(b)(3).

⁷ *Id.* at 1.05(a) (“Confidential information includes both privileged information and unprivileged client information.... Unprivileged client information means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.”).

⁸ *Id.* at Terminology (“‘Knowingly,’ ‘Known,’ or ‘Knows’ denotes actual knowledge of the fact in question.”).

⁹ See Defendants’ Objections to Plaintiffs’ Summary Judgment Motions and Evidence ¶ 7.

¹⁰ 2d Hough Affidavit Ex. 2.

¹¹ *Id.*

¹² *Id.* Ex. 1; see also Plaintiffs’ Appendix, Nelson Affidavit Ex. 1 (A985-86).

¹³ 2d Hough Affidavit Ex. 3; Plaintiffs’ Appendix, Nelson Affidavit Ex. 1 (A1003-04).

- a pleading and motion for summary judgment asserting that the courts should defer to the Diocese on a property question¹⁴ — and in which TEC was not even a party; and
- a pleading that the Corporation owns legal title and the parish owns beneficial title to Diocese property¹⁵ — with no mention of TEC owning anything.

This kind of lawyering gives the profession a bad name. The Court should sustain the objection to this evidence.¹⁶

B. The admissions contradict nothing Defendants assert here

Local TEC lists statements in text, bullets, and footnotes allegedly showing that Defendants have previously admitted that TEC is hierarchical. The argument is long on quantity because it is short on quality.¹⁷ For example:

- the Diocese’s statement “dissociating ourselves” from TEC in no way supports the strange claim that it “acknowledges the hierarchical structure” of TEC;
- Bishop Iker’s statement that “[t]he Diocese is an hierarchical church” doesn’t say that *TEC* is hierarchical; it means exactly what it says: the Diocese is the ecclesiastical authority;
- statements that bishops, parishes, and others affiliated with TEC must follow its Constitution and Canons do not acknowledge any hierarchical authority beyond what those documents actually say; and
- an ordination oath promising “to conform to the Doctrine, Discipline, and Worship of the Episcopal Church” does not say anything about granting authority to TEC to take away all the affiant’s property.

None of these statements show that the Diocese ever thought TEC was the ultimate authority on property ownership. It is undisputed that the Diocese claimed just the opposite in its very first Constitution.¹⁸ These “admissions” show

¹⁴ 2d Hough Affidavit Ex. 1 & 3; Plaintiffs’ Appendix, Nelson Affidavit Ex. 1 (A992, 1008).

¹⁵ 2d Hough Affidavit Ex. 1; Plaintiffs’ Appendix, Nelson Affidavit Ex. 1 (A983).

¹⁶ See *Southtex 66 Pipeline Co., Ltd. v. Spoor*, 238 S.W.3d 538, 544 (Tex. App.—Houston [14th Dist.] 2007, pet. denied).

¹⁷ Defendants’ Response to TEC MSJ at 9-12.

¹⁸ *Id.* at 9.

only that the Diocese is hierarchical *at the diocese level*, which is consistent with the name “Episcopal” and TEC’s own Constitution and Canons.¹⁹

Local TEC argues that because TEC is hierarchical at *some level*, it must be completely hierarchical *all the way to the top*. But there is no law that says churches must be 100% hierarchical or 100% congregational; such a law would surely violate the First Amendment’s Free Exercise clause. Texas courts recognize that “[t]he terms hierarchical and congregational are poles on a continuum along which church organizations fall.”²⁰ Legally and historically, TEC is hierarchical from the diocese down, but not from the diocese up.²¹ That is all these so-called admissions say, and they are as true today as they were before.

C. The elements of judicial admission or estoppel are missing

Local TEC scrambles Texas law of judicial admissions, judicial estoppel, and quasi-estoppel. For very basic reasons, none of them apply here.

Judicial admissions must be made in the same proceeding, not in an earlier one.²² Because all of the statements listed in Local TEC’s motion were made in previous proceedings, they are not judicial admissions.

Quasi-estoppel can be invoked only by a party to the previous proceedings.²³ None of the Local TEC Plaintiffs was a party in the earlier proceedings, so it does not apply here either.

Judicial estoppel applies to contradictory statements in previous proceedings, but they must be under oath.²⁴ All but two of the alleged

¹⁹ *Id.* at 7-8.

²⁰ *Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 551 (Tex. App.—Austin 1991, writ denied).

²¹ See Defendants’ Response to TEC MSJ at 6-9.

²² See *Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 6 (Tex. 2008) (“Contradictory positions taken in the same proceeding may raise issues of judicial admission but do not invoke the doctrine of judicial estoppel.”).

²³ *Swilley v. McCain*, 374 S.W.2d 871, 875 (Tex. 1964) (“Ordinary equitable or quasi-estoppel may preclude a party from asserting a right inconsistent with his unsworn allegations or admissions in a former action, but such estoppel arises only in favor of the parties to the first suit and those in privity with them.”).

²⁴ *Miller v. Gann*, 842 S.W.3d 641, 641 (Tex. 1992) (“The applicability of judicial estoppel is not limited to oral testimony, but applies with equal force to any sworn statement—whether oral or written—made in the

“admissions” were not under oath, so judicial estoppel does not apply. And it doesn’t apply to the remaining two because they do not represent positions contrary to the ones asserted by Defendants here: (1) Bishop Iker’s affidavit in the *Holy Apostles* litigation asserts that “The Diocese is an hierarchical church” and lists matters showing that ecclesiastical authority resides at the diocese level;²⁵ and (2) Canon Boyd’s affidavit in the same case proves up the Diocese’s Constitution & Canons and asserts that *parishes* are governed by the Constitution & Canons of TEC.²⁶

If the Court relies on Local TEC’s legal research, it will make several serious errors.

II. Neutral-principles states do not defer

Under neutral principles, courts do not decide property disputes by deferring to a hierarchical church. *Jones v. Wolf*, the U.S. Supreme Court case authorizing neutral principles, involved precisely such a dispute: “This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization.”²⁷ By allowing Georgia to apply neutral principles to that dispute, the Court placed it beyond

course of a judicial proceeding.”); *Swilley*, 374 S.W.2d at 875-76 (“Judicial estoppel, which may be invoked by strangers to the record in the former proceeding, rests upon statements made under oath in the course of such action.”).

²⁵ See Iker Affidavit (Plaintiffs’ Appendix, Nelson Affidavit Ex. 2A, (A1012-13)).

“The Diocese is an hierarchical church, meaning: 1) each parish consists of members ... who are in communion with the Bishop and the parish being in union with the diocesan convention; 2) each parish exists by virtue of its creation by the Bishop and the diocesan convention; 3) each parish is subject to the jurisdiction of the Bishop and the constitution of the diocese; 4) the government of the parish is subject to review and control of the Bishop and diocesan institutions in various important particulars, including the use of real property ...; 5) legal title to such real property is reposed in the Diocesan Corporation rather than in the parish; and 6) priests and deacons serving in the parish either are ordained pursuant to approval of diocesan bodies and the Bishop or ... may become canonically resident and serve in the Diocese as a priest or deacon only with the consent of the Bishop.”

²⁶ See Plaintiffs’ Appendix, Nelson Affidavit Ex. 2A (A1036-37).

²⁷ 443 U.S. 595, 597 (1979).

question that neutral principles apply to hierarchical churches just like they do to all others.

The Local TEC motion makes the startling claim that Texas has not adopted the neutral-principles approach.²⁸ Then what exactly did the Fort Worth Court of Appeals mean in 1999 (and again in 2006) when it wrote: “Neutral principles of law must be applied to decide such matters....”?²⁹ The motion cites a 1986 Dallas deference case,³⁰ but by 2002 the Dallas court had realized that Texas law now follows the neutral-principles approach.³¹

III. The identity question *doesn't* answer the property question under neutral principles

If it were always true that “the identity question answers the property question,” neutral principles would not exist.

Texas courts generally have no jurisdiction to decide the proper officers of an association, but there is an exception.³² *Jones v. Maples* (a writ-refused case with the authority of the Texas Supreme Court³³) holds that Texas courts can decide the proper officers “incident to the question of proper custody of money and property”:

In *Gaines v. Farmer*, the Supreme Court held that the trial court had no jurisdiction to determine an election contest involving officers of the Association. In *Knights, etc., v. Reid*, it was held that the Court

²⁸ Local TEC MSJ at 45 (“Deference is controlling Texas law.”).

²⁹ *Dean v. Alford*, 994 S.W.2d 392, 395 (Tex. App.—Fort Worth 1999, no pet.); accord, see *Smith v. N. Tex. Dist. Council of Assemblies of God & House of Grace*, No. 2-05-425-CV, 2006 WL 3438077, at *2 (Tex. App.—Fort Worth Nov. 30, 2006, no pet.) (“Neutral principles of law must be applied to decide such matters”).

³⁰ See *Schismatic & Purported Casa Linda Presbyterian Church in Am. v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 704-05 (Tex. App.—Dallas 1986, writ ref’d n.r.e.).

³¹ See *Cherry Valley Church*, No. 05-00-01798-CV, 2002 WL 10545 *3 n.1 (Tex. App.—Dallas Jan. 4, 2002, no pet.) (not designated for publication) (“Ordinarily, we would construe the articles of incorporation of a Texas non-profit corporation according to the body of neutral legal principles that governs Texas corporations generally.”).

³² See Defendants MSJ at 3-5.

³³ *Hyundai Motor Co. v. Vasquez*, 189 S.W.3d 743, 754 n.52 (Tex. 2006).

could determine who were really the officers of an Association as incident to the question of proper custody of money and property of the Association. There is no conflict between these decisions upon that point.³⁴

This distinction is neither new nor unique to Texas. The United States Supreme Court noted in 1872 that “we have no power to revise or question ordinary acts of church discipline, or of excision from membership. We have only to do with rights of property.”³⁵ The federal Eighth Circuit stated the same point in 1995: “The involvement of ecclesiastical authorities does not deny us jurisdiction to resolve the underlying property issues.”³⁶

The Local TEC motion would wipe out this distinction, insisting that “the identity question answers the property question.” If that were true, there would *never be* any property questions — churches could simply claim the right to decide who was the person or entity named on a property deed. Churches alone can decide who should preach; but if that answered all property questions, then neutral principles would no longer exist. Under neutral principles, a church’s decision on religious and doctrinal questions does not change what its deeds, constitution, or articles of incorporation say about property.

Nor is the identity of a corporation’s officers a doctrinal question. The Texas Non-Profit Corporation Act and a corporation’s articles and by-laws govern the election, term of office, and removal of its officers.³⁷ If a church’s decision about who can preach answers who are the corporate directors, then the corporation is nothing but a sham (as are its documents and the Non-Profit Act).

What Local TEC is proposing is not deference but denial. The neutral-principles approach does not allow a church’s decisions on doctrinal questions to

³⁴ 184 S.W.2d 844, 848 (Tex. App.—Eastland 1944, writ ref’d).

³⁵ *Bouldin v. Alexander*, 82 U.S. 131, 139 (1872).

³⁶ *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522, 525 (8th Cir. 1995).

³⁷ See Tex. Rev. Civ. Stat. Art. 1396–2.15, -2.16, & -10.02(A); Defendants’ MSJ at 12-15.

deny the neutral facts contained in its rules and charters. Regarding title to property, churches are governed by Texas law, not exempt from it.

IV. Plaintiffs cannot win under neutral principles

The Local TEC motion briefly claims they can still win under neutral principles. First, they say the so-called Dennis Canon imposes a trust on all Episcopalian property in the world. As shown in the Defendants' motions, no such trust exists under Texas law because: (1) the trust declaration is from a purported beneficiary rather than the owner; (2) the trust involves realty but does not meet the statute of frauds; (3) the trust was repudiated when the Diocese qualified its accession in 1982; and (4) the trust was repudiated again in 1989 to make doubly sure.

Second, the motion twists three provisions of the Diocese's Constitution completely out of shape. The Constitution's provision that the Corporation would hold property "for the use of the Church in this Diocese" cannot refer to TEC without rendering other parts of the Constitution circular.³⁸ The Constitution's provision that property "may only be conveyed or encumbered with the approval of the Board of Trustees and in accordance with the Constitution and Canons of the Episcopal Diocese of Fort Worth" once again ensures local control, not control by TEC. And the Diocese's Canon limiting building use to purposes "authorized or approved by this Church" cannot mean approval by anyone outside the Diocese, as TEC's own Constitution provides that outsiders cannot authorize any episcopal acts in Fort Worth except by invitation of the local Bishop.³⁹

Third, the motion oddly cites the 1982 probate court judgment that divided the Dallas Diocese. That judgment says only that "[w]ith respect to the Diocese of Fort Worth, title to the following assets and property shall be vested by this

³⁸ See Defendants' Response to TEC MSJ at 17.

³⁹ See Defendants' MSJ at 17.

declaratory judgment in Corporation of the Episcopal diocese of Fort Worth ...”⁴⁰ That settles title in the Defendants, not the Plaintiffs. But stacking inference on inference, the motion asserts that because the Corporation was duly organized under the Diocese’s Constitution, and because the Diocese’s Constitution contains an accession to TEC’s Constitution, and because the later contains the Dennis Canon, then ... what? This is nothing more than a restatement of the invalid trust argument refuted above.

But the worst twisting is administered to Texas statutes. The motion cites the Business Organization Code for the claim that Texas statutes “confirm” that a nonprofit’s property is held “in trust for any convention, conference or association ... which controls it.”⁴¹ What both the Code and the statute that actually applies say is that a nonprofit corporation “*may* acquire” property in trust for any such “convention, conference, or association.”⁴² Then the motion claims that the Code “recognizes that religious corporations are subordinate to, and hold property in trust for, the religious organizations that formed them,” when the Code actually says that such corporations “*may* be affiliated with, elected, and controlled by an incorporated or unincorporated convention.”⁴³ This kind of alchemy — turning statutory options into mandates — suggests that the Local TEC assumes no one will ever check its citations.

V. A summary response to the duplicative arguments

In a footnote, the Local TEC motion incorporates all of TEC’s motion for summary judgment,⁴⁴ and then goes on to repeat much of it. Rather than repeating the same responses to these points, Defendants hereby incorporate the

⁴⁰ Plaintiffs’ Appendix, Nelson Affidavit Ex. 7 (A1144).

⁴¹ See Local TEC MSJ at 48 (citing Tex. Bus. Orgs. Code § 2.102).

⁴² See Tex. Rev. Civ. Stat. Art. 1396–2.02(A)(16) (emphasis added); Tex. Bus. Orgs. Code § 2.102.

⁴³ See. 1396-2.14(B); Tex. Bus. Orgs. Code § 22.207.

⁴⁴ Local TEC MSJ at 3, n.8.

responses made to each of them in the their Motion for Summary Judgment and their Response to TEC's Motion for Summary Judgment.⁴⁵ To summarize these responses to each argument:

- *TEC is atop the hierarchy.* Hierarchy does not matter under neutral principles. But if it did, the bishop and diocese would be the ultimate authority on property issues, as shown by the church's name ("Episcopal" means "bishop"), TEC's own Constitution and Canons (which say the bishop is the "Ecclesiastical Authority," and prohibit even a presiding bishop from acting in a diocese except by invitation of the local bishop).⁴⁶ These facts cannot be avoided by arguments about TEC's three tiers,⁴⁷ or the Diocese's clearly qualified accession.⁴⁸
- *every court has found TEC hierarchical.* Yes, with the *diocese* as the ultimate authority on property, not TEC. Historically, TEC has not been a party in Episcopal property disputes, indicating that no one (apparently not even TEC) regards it as having any interest in those cases.⁴⁹
- *Texas courts have deferred to hierarchical churches for 100 years.* Maybe 100 years ago they did, but not today. Today, "courts do have jurisdiction to review matters involving civil, contract, or property rights even though they stem from a church controversy. Neutral principles of law must be applied to decide such matters"⁵⁰
- *all diocese property is held in express trust for TEC.* This alleged trust is invalid because it: (1) was declared by a purported beneficiary rather than the owner; (2) involves realty but does not meet the statute of frauds; (3) was expressly renounced by the Diocese's qualified accession; and (4) to make doubly sure, was expressly renounced again in 1989 (well before Bishop Iker came to Fort Worth).⁵¹

⁴⁵ See Tex. R. Civ. P. 58.

⁴⁶ See Defendants' Response to TEC MSJ at 6-9.

⁴⁷ See *id.* at 12; Defendants' MSJ at 9-10.

⁴⁸ See Defendants' Response to TEC MSJ at 12.

⁴⁹ See *id.* at 12-14 (citing cases).

⁵⁰ *Dean v. Alford*, 994 S.W.2d 392, 395 (Tex. App. – Fort Worth 1999, no pet.); see Defendants MSJ at 5-6; Defendants' Response to TEC MSJ at 2-5.

⁵¹ See Defendants' MSJ at 7-12.

- *the Presiding Bishop declared that Bishop Iker had voluntarily ceased to be Bishop.* This requires a written renunciation and request for removal directed to the presiding bishop, of which there is none in the record.⁵²
- *the Presiding Bishop called a special meeting.* Only the local Bishop and Standing Committee can do that.⁵³
- *the special convention declared various offices vacant.* There is no provision for replacement of a bishop or the Corporation’s trustees in this manner; it violates the TEC Constitution, the Diocese Constitution, the Corporation’s articles and by-laws, and the Texas Non-Profit Corporation Act.⁵⁴
- *the Corporation’s amended articles of incorporation are ultra vires.* Texas courts do not generally intervene in such disputes.⁵⁵ But if they must to resolve a property dispute: (1) the Local TEC parties have no standing to bring an *ultra vires* claim; (2) the amendments cannot be substantively *ultra vires*; (3) the articles were validly amended; and (4) the amendments make no difference in this case.⁵⁶ The Corporation is not a sham corporation whose corporate veil can be pierced to remove directors or change its articles without bothering with corporate formalities.
- *the Defendants are using the Diocese’s service marks.* The Diocese is entitled to use its own property. As neither the Local TEC Plaintiffs nor their counsel represent the Diocese, they have no standing to complain.⁵⁷

VI. The illusions behind the Plaintiffs’ “facts”

Like the TEC motion, the Local TEC motion includes “undisputed facts” that are not just unsupported by the record, but are misleading either by accident or design. For example:

- the motion claims that the disputed property here is “property that The Episcopal Church has acquired for its mission since 1838.”⁵⁸ The selection

⁵² See Defendants’ Response to TEC MSJ at 11.

⁵³ See Defendants’ MSJ at 17.

⁵⁴ See Defendants’ MSJ at 12-18.

⁵⁵ See *Combs v. Tex. State Teachers Ass’n*, 533 S.W.2d 911, 912 (Tex. Civ. App.—Austin 1976, writ ref’d n.r.e.) (declining jurisdiction of whether association’s rules prohibited reconsideration of recently defeated amendment to its constitution).

⁵⁶ See Defendants MSJ at 19-23.

⁵⁷ See *id.* at 22-24.

⁵⁸ Local TEC MSJ at 2.

of the word “acquired” is misleading, as the property here (and everywhere else in TEC) was paid for by local parishes, not TEC.⁵⁹ Indeed the first effort by TEC to “acquire” any of this property is this lawsuit.

- the motion says that in the *Holy Apostles* litigation Canon Hough “confirmed the Diocese's view that the rules of The Episcopal Church, including the Church's property rules [i.e., the Dennis Canon], are applicable to the Diocese.”⁶⁰ Completely false. The short affidavit quotes the canon, but says absolutely nothing else.
- the motion says that one “cannot use secular statutes to undermine deference to hierarchical churches.”⁶¹ But in the cited case, the question was whether a corporation’s *by-laws* had to yield to the Texas Non-Profit Corporation Act.⁶² Under neutral principles, courts must follow a church’s corporate by-laws, not defer to a church trying to ignore those by-laws.

It is hard to detail all of the motion’s exaggerated claims because of its exaggerated length. But as these and other examples show,⁶³ the Court must take great care with the “facts” in the Local TEC motion, as many of them have no evidentiary support in the record. That should be the test here, as it will be on appeal.

Conclusion

For the reasons set forth above, the Local TEC Amended Motion for Partial Summary Judgment should be denied, and the Defendants’ Motion for Partial Summary Judgment be granted.

⁵⁹ See Defendants’ Appendix, Affidavit of Canon Charles A. Hough, III (“1st Hough Affidavit”) ¶ 21.

⁶⁰ Local TEC MSJ at 62.

⁶¹ *Id.* at 37-38.

⁶² See *Green v. Westgate Apostolic Church*, 808 S.W.2d 547, 551 (Tex. App.—Austin 1991, writ denied).

⁶³ See Response to TEC MSJ at 10-12.

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

Scott A. Brister
State Bar No. 00000024
ANDREWS KURTH LLP
111 Congress, Suite 1700
Austin, Texas 78701
(512) 320-9200
(512) 320-9292 (fax)

R. David Weaver
State Bar No. 21010875
THE WEAVER LAW FIRM, P.C.
1521 North Cooper St., Suite 710
Arlington, Texas 76011
(817) 460-5900
(817) 460-5908 (fax)

ATTORNEYS FOR DEFENDANTS THE
EPISCOPAL DIOCESE OF FORT
WORTH, ET AL.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2011, a true and correct copy of the foregoing Defendants' Response to Local Episcopal Parties' Amended Motion for Summary Judgment was forwarded to all counsel of record via certified mail return receipt requested.



Scott A. Brister