

# TIPS ON REDUCING LEGAL RISK

By Richard R. Hammar

Churches are more impacted than ever by legal concerns—and this trend will intensify in the future. Why? Largely, for two reasons. First, the dramatic increase in litigation will continue unabated. According to the most recent statistics released by the National Center for State Courts, over 93 million new cases were filed in state courts in 1991. These included nearly 20 million civil lawsuits, and this number is expected to double over the next 6 years.

This study proves that our society is drowning in litigation. If civil lawsuits double in the next 6 years, that will represent 40 million new civil lawsuits each year. Church leaders must recognize that this ominous trend will directly impact churches and other religious institutions. Litigation involving churches will reflect the general trends in society at large and can be expected to increase significantly.

Second, as all levels of government (local, state, and federal) become more regulatory, there will be more and more "points of intersection" between government regulation and the autonomy of the local church.

The good news is that churches need not be passive targets for aggressive attorneys. Churches can take simple, meaningful steps to reduce their risk of legal liability and litigation significantly. The following will review some of the major legal risks churches face and some simple recommendations on reducing risk.

## CHILD ABUSE

The problem of child abuse on church premises and during church activities continues to plague churches. In fact, this is by far the most significant legal risk facing churches today due to the potential for astronomical jury verdicts coupled with liability insurance policies that either eliminate or greatly reduce coverage for this risk. Most churches face a huge uninsured risk, many of them unwittingly.

Fortunately, more churches are beginning to take this risk seriously. Many incidents have been avoided through preventive action. Such action includes (1) a process of screening and interviewing all applicants for youth work (whether paid or volunteer), (2) contacting references (including prior churches or other organizations in which the applicant has worked with minors) to obtain an evaluation of the individual's

suitability for working with minors, and (3) not using youth workers who have been members of the church for a minimum period of time (such as 6 months).

If your church has implemented a screening program, it is essential that you maintain a continuing commitment to it. Resist complacency. If you have not implemented a screening program, do so at once. You are not just protecting your church from a lawsuit and negative publicity but, far more importantly, protecting your children.

## PASTORAL COUNSELING

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Many churches have been sued as a result of the sexual misconduct of ministers during counseling activities. Sadly, many of these allegations are true. However, some are false, but it is very difficult for ministers to "prove their innocence," since it is "my word against theirs." A church can significantly reduce its risk of such incidents and of false allegations in a number of ways.

1. Adopt a rule forbidding any counseling by male pastors with unaccompanied females without a third person's being present. The third person can be the pastor's spouse or another staff member.
2. Require the pastor to engage in opposite-sex counseling only by telephone.
3. A less-effective approach is to prohibit off-premises counseling without a third person present, and to restrict counseling on church premises. Such restrictions could include a requirement that opposite-sex counseling occur only during office hours, be limited to not more than 45 minutes, and a maximum of four sessions with the same person. Of course, some exceptions would be in order for any of these approaches (for example, when the counselee is a relative or above a certain age).

## NEGLIGENT SUPERVISION

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Churches can be sued if they fail to exercise due care in the supervision of their activities. The basic rule to follow here is always to have a sufficient number of trained adults present during any activity. For example, do not conduct a youth activity involving swimming or mountain climbing without an adequate number of qualified adults.

Another common problem in many churches is releasing children from Sunday school or children's church before the end of the adult service. A church can be

responsible for any injuries that occur to a child who is released before the return of the parent or guardian.

## CHILD ABUSE REPORTING

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Child abuse is of epidemic proportion in our country. Ministers often learn of incidents of abuse in the course of counseling or from reports they receive from nursery or youth workers. It is essential for ministers to understand clearly their responsibilities under state law to report known or reasonably suspected incidents of abuse. In many states, ministers are "mandatory reporters," meaning they can be criminally liable for failing to report. A number of courts have rejected the defense made by some pastors that they failed to report abuse because they wanted to deal with the problem "within the church" as a matter of discipline. A few states excuse ministers from reporting abuse if they learned of it in the course of a privileged communication. Be sure to check your state law often, for this one area of law changes often.

Through education and preventive maintenance churches can significantly reduce their risk of being sued. You do not have to wait passively to be sued and view litigation as inevitable. Yes, the level of litigation in this country is staggering, but you don't have to be a victim. By being apprised of the risks that face you and implementing preventive practices, you can significantly reduce your risk of being sued.



Richard Hammar, J.D., LL.M., CPA, and legal counsel to The General Council of the Assemblies of God, has produced many legal guides for churches, including [Pastor, Church & Law](#), application forms, and the resource kit "[Reducing the Risk of Child Sexual Abuse in Your Church](#)." He also operates web sites, including [ChurchLawToday.com](#) and [ReducingTheRisk.com](#), that contain helpful information for church leaders

**Key point.** Richard Hammar has produced a resource kit devoted to reducing the risk of child sexual abuse in the church. The kit includes a 24-minute video tape, audio tape, and two books. It may be obtained by contacting *Church Law & Tax Report* at 1-704-841-8066.

**Tip.** One way to stay comprehensively informed on legal developments and their impact on your church is through the innovative Information Support Program from *Church Law & Tax Report*. This program provides an array of products designed to alert churches to legal risks and suggest ways to respond to those risks. Never has the need for education and preventive law been greater. You can sign up for this program by contacting the *Church Law & Tax Report* phone number listed above