

Resolving Disputes

Introduction

As the new school year begins, you will be making numerous decisions that affect the staff, the students, and the parents of your school ministry. Some of these decisions will relate to "differences of opinion" that you will be asked to resolve. What happens when these "differences of opinion" rise to the level of full-blown disputes that cannot be resolved in a series of meetings with the school administrator or the pastor?

One passage of Scripture that offers some guidance on this issue is I Corinthians 6:5-7, where Paul writes as follows:

“5 - Is it so, that there is not a wise man among you? no, not one that shall be able to judge between his brethren?

6 - But brother goeth to law with brother, and that before the unbelievers.

7 - Now therefore there is utterly a fault among you, because ye go to law one with another.”

This passage raises some interesting theological questions. For example, is it wrong to defend yourself in court if you have been sued by another Christian? Or, does this passage prohibit Christians from suing unbelievers? Regardless of how you answer these questions, this passage does seem to indicate that Christians should avoid the secular court system when possible.

Of course, our hope is that your ministry will never face the reality of being hauled into court. Nevertheless, no ministry is "lawsuit-proof." For this reason, we should consider what actions can be taken to decrease the possibilities of a lawsuit.

In this Legal Report, we will offer some suggestions to follow if your ministry is threatened with litigation. We also will discuss an important alternative to litigation that may assist your ministry in avoiding a lawsuit before it is filed.

Discussion

Timmy Thumper is big for his age. At six feet, two inches tall, he towers over the other boys in his sixth grade class.

One day during recess, Timmy starts playing an overly aggressive brand of soccer. While attempting to steal the ball at midfield, Timmy runs over Willie Weeklin and Willie breaks his arm. Willie's parents are upset with the school, and they claim that Willie was injured because of a lack of supervision during the recess period. Although Principal Peacemaker does everything in his power to satisfy the Weeklins, they threaten to sue the school.

What happens next?

Question # 1: What should we do if someone threatens us with a lawsuit?

Please realize that many people who threaten to sue never follow through on their threat. Nevertheless, any threat of a lawsuit should be taken seriously. Here are some things to keep in mind if you are threatened with a suit:

- Investigate the incident thoroughly. This includes interviewing the victim, the accused, the staff members involved, and other witnesses.
- Document your investigation. If you are sued, you need a record of your investigation. Your memory may not be reliable three or four years down the road when the case finally goes to court.
- Meet with the parents and make every effort to resolve the matter in a Biblical fashion. In connection with this process, ask the parents what they want the school to do. Of course, you cannot agree in advance to take whatever action the parents suggest, but every possibility should be explored. Some pastors and administrators skip this important question in the dispute resolution process.
- Contact your insurance company and inform them of the incident. Do not take the risk that the insurance company may refuse to defend you in a lawsuit because you did not provide "timely notice" of the incident.
- If possible, consult with a local attorney who may be able to offer additional guidance concerning the laws in your state that govern the incident.
- Throughout the process, continue to let the parents know that you are concerned, and that you are interested in resolving the dispute in a Biblical fashion.
- If all parties agree, refer the matter to a Christian individual or individuals who may be able to act as mediators or conciliators in resolving the dispute.

Question # 2: Is there anything we can put in writing that would prohibit a parent or teacher from suing the school?

This is an interesting question, and the answer may vary from state to state. Nevertheless, some schools do include a provision in both their teacher contracts and in their enrollment applications which is intended to require parents and teachers to pursue arbitration, mediation, or Christian conciliation instead of litigation.

This type of provision, which can be found in many secular business contracts, states that an individual who has a dispute with the school must resolve the dispute through an alternative dispute resolution process rather than through the court system. This language is often referred to as an "arbitration" or "mediation" provision. In essence,

this language is intended to prohibit an individual from filing a lawsuit in connection with a dispute.

A sample arbitration/mediation/conciliation provision reads as follows:

If a dispute arises out of or relates to any of the services being provided by First Christian School or any of its faculty or staff members, and if the dispute cannot be settled through direct discussions, then the parties agree to endeavor first to settle the dispute in an amicable manner by submitting the dispute to one or more individuals who will attempt to resolve the dispute through Christian conciliation. If Christian conciliation is unsuccessful, then the parties may agree to submit any unresolved controversy or claim arising out of or relating to the services being provided by First Christian School or any of its faculty or staff members to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to the services being provided by First Christian School or any of its faculty or staff members may be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

Please note that the language of this provision is voluntary. In other words, if Christian conciliation is unsuccessful, then the parties "may" submit the dispute to mediation. In addition, if mediation is unsuccessful, then the parties "may" take the next step and submit the dispute to arbitration.

Of course, this language is just a sample, and you may want to modify the language to fit your particular ministry. For example, you may want to state that any arbitrators or mediators who hear the dispute must be professing Christians, and they must be approved by the parties in the dispute. In addition, you may want to state that any costs involved in the process will be shared by the parties.

Please understand that the suggestion of submitting a dispute to arbitration or mediation is not meant to take the place of resolving disputes through any process established by the local church. Indeed, if your ministry deals with school disputes through the local church, then you may not want to use arbitration or mediation. On the other hand, if your school handles these matters on its own, then Christian conciliation, mediation, or arbitration may be a good alternative to litigation.

Please note that, in addition to including this language in your enrollment applications, you may want to include this type of provision in your employment contracts. You can modify the language quoted above to apply to employment contracts. Moreover, while the courts in some states may be hesitant to enforce an arbitration/mediation clause in disputes between parents and a school, these same courts may be more likely to enforce such a provision in the employer/employee relationship.

Question #3: What is the difference among these various dispute resolution mechanisms?

In order to understand the dispute resolution process, it is necessary to understand the differences between arbitration, mediation, and Christian conciliation.

a. Christian Conciliation

Christian conciliation attempts to use the principles found in Matthew 18 to resolve a dispute. This process should be Scripture-based, and it should be conducted by Christian attorneys or Christian leaders trained in resolving disputes. This is the least formal of the three dispute resolution mechanisms mentioned in this Legal Report, and the conciliator usually has no authority to decide in favor of one party or the other. Of course, the parties can give the conciliator this authority, but such authority may prove to be an obstacle to reaching the true goal of conciliation, i.e., restoring brethren to a Biblical relationship with one another.

A group formerly known as Christian Conciliation Services (now known as Peacemaker Ministries) is headquartered in Billings, Montana. This group specializes in Christian conciliation, and they have 200 independent conciliators across the country. Peacemaker Ministries also has a new office in Birmingham, Alabama to serve the Southeast. If you are interested in learning more about this group and the services they provide, you can reach them at (406) 256-1583, or on the Internet at www.peacemakerministries.org.

b. Mediation

Mediation is similar to Christian conciliation in that a neutral individual assists the parties in reaching an agreement with respect to a dispute. During mediation, the parties are usually in separate rooms, and the mediator goes back and forth between the rooms sharing information and offering suggestions.

The main difference between mediation and Christian conciliation is that secular mediation is often governed by the Commercial Mediation Rules of the American Arbitration Association. Therefore, while the specific procedures governing Christian conciliation will be established by the individual conciliator, the procedures governing a formal, secular mediation will, in all likelihood, be governed by the mediation rules established by the American Arbitration Association.

c. Arbitration

Arbitration is the most formal way to resolve a dispute, short of litigation. During arbitration, an arbitrator(s) will hear the dispute, consider the evidence, and render a decision.

Even though certain rules are followed, arbitration is less formal and less complex than a court proceeding, and the arbitration process as a whole is more flexible than litigation. For example, the rules of evidence generally do not apply to an arbitration proceeding; and unlike litigation, the parties can schedule the hearing at a time that is

convenient to everyone involved. Nevertheless, an arbitrator makes a decision much like a judge, and the arbitrator's decision is binding upon the parties unless they have agreed otherwise. In most cases, an arbitrator's award is not subject to appeal.

Conclusion

The financial and emotional drain of litigation can ruin a ministry. The vast majority of people have no idea how expensive it can be to litigate until it is too late. Moreover, litigation can put a significant strain on personal relationships, and the stress of litigation can spill over into many other areas of life.

We probably all know a ministry that has suffered through a lawsuit. Even if the ministry has done "nothing wrong," the expense and emotional burden of the litigation process alone can impact the effectiveness of the ministry. No wonder Paul exhorted the early Christians to avoid the secular court system.