

# CALIFORNIA

## EMPLOYMENT LAW LETTER

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### MINISTERIAL EXCEPTION

## Religious dean blessed by favorable ruling on contract claim

by Jaime Touchstone  
Futterman Dupree Dodd Croley Maier LLP

*A seminary fired its dean for insubordination. The dean sued, and the trial court granted summary judgment (dismissal without a trial) on grounds that the lawsuit was barred by the religion clauses of the U.S. and California Constitutions. The California Court of Appeal reversed in part, finding that while the ministerial exception precluded the dean's tort (or wrongful injury) claims, she could proceed with her contract claim, which required no ecclesiastical inquiry.*

### **Terminated dean sues Christian university**

Simpson University is a California religious corporation associated with the evangelical Christian and Missionary Alliance (C&MA). The university prepares missionaries, pastors, and other vocational church workers for service. It owns and operates the A.W. Tozer Theological Seminary, which offers religious courses and educates clergy.

In 2010, Sarah Sumner became Tozer's dean. She reported to Simpson's provost, who reported to the university president. While technically an administrative faculty member, Sumner taught courses, enjoyed clergy tax status, and received a housing allowance.

In June 2011, Simpson fired Sumner for insubordination and "disregard for authority." She made a formal grievance and was reinstated.

Subsequently, the provost accused her of violating the protocols of her reinstatement and demanded that she sign a list of stipulations and be placed on probation. Sumner ignored the directive, and the university again terminated her for insubordination.

Sumner sued, alleging claims for breach of contract, defamation, invasion of privacy, and intentional infliction of emotional distress. The trial court granted Simpson's request for summary judgment because (1) it is a religious organization and (2) judicial review of Sumner's employment-related dispute was precluded by the ministerial exception. The trial court reasoned that the dean's breach of contract and tort claims were intertwined with the university's decision to terminate her and therefore were matters of protected religious governance. The dean appealed, and the court of appeal affirmed in part and reversed in part.

### ***Constitution protects religious groups from court interference***

The First Amendment dictates that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The ministerial exception is constitutionally compelled and designed to prevent legal interference in the employment relationship between a religious institution and its ministers. The exception prohibits ministers from filing employment discrimination suits—but not necessarily breach of contract claims. To assert the ministerial exception as a defense to a contract claim, (1) the employer must be a religious group, (2) the employee must qualify as a minister, and (3) a review of the contract claim must not "excessively entangle" the court in religious matters.

On appeal, Sumner argued the ministerial exception did not apply because Simpson is not a religious organization and she is not a minister. She further argued that even if the ministerial exception applied, it shouldn't preclude her contract and tort claims against the university. The court of appeal concluded that while the controversy did fall within the ambit of the ministerial exception, the fired dean could pursue her contract claim.

### ***Simpson University is a religious employer***

When determining whether an employer qualifies as a religious group for ministerial exception purposes, courts will consider various factors, including whether the organization:

- Is for-profit;
- Produces a secular product;
- Is affiliated with or supported or managed by a religious entity;
- Is governed by a religious purpose;
- Holds itself out as sectarian;

- Engages in regular worship;
- Includes religious instruction in its curriculum; and
- Is composed of a co-religionist membership.

Private religious schools generally are considered religious organizations for ministerial exception purposes.

On appeal, Sumner conceded that Simpson is incorporated as a California nonprofit religious corporation but argued that it is only loosely associated with the C&MA and is becoming more secular. The court of appeal disagreed.

Simpson is formally affiliated with the C&MA in connection with its Christian ministry activities. The university bylaws state that it is "a Christ-centered learning community" committed to the alliance's worldwide work and higher education policies. The university hires only individuals who profess a belief in Jesus Christ as their personal savior and are active members of a Christian church. Employees must participate in university-sponsored Christian services, refrain from behavior that detracts from biblical standards, and fulfill ministry functions. The university is a religious group.

### ***Sumner qualifies as a minister***

The ministerial exception applies to ministers and nonordained employees who are functionally equivalent to ministers. The U.S. Supreme Court has refused to adopt a rigid test. Even though Sumner was not a minister, as dean of a theological seminary, she possessed minister-like qualifications, including a commitment to Christ-centered theological faith and higher education, C&MA licensure and personnel relationships, and a PhD in theology.

Sumner taught courses on biblical and theological studies and considered religion in managing curriculum, faculty, and the spiritual development of her seminary students. She openly touted her strengths as evangelism, leadership, teaching, and pastoring. Her employment contract treated her as a self-employed clergy member for tax and housing purposes.

Furthermore, even if many of Sumner's duties were administrative in nature, she was the leader of a seminary designed to educate and train pastors seeking ordination and was therefore expected to demonstrate religious values. Under all the above circumstances, she qualified as a minister.

### ***Tort claims barred, but not necessarily contract claim***

Because Sumner's alleged tort claims against Simpson arose out of her termination, they were precluded by the ministerial exception. But the same could not be said about her breach of contract claim. Churches may be held liable under valid contracts so long as the

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interpretation of the agreement doesn't require courts to interfere in a religious controversy.

Simpson fired Sumner not for religious reasons but rather for insubordination arising out of her purported failure to follow various protocols. The dean alleged, however, she never received any written protocols and therefore couldn't have been insubordinate for failing to follow them. She also argued that the university deprived her of grievance and appeal rights granted by her employment contract and the faculty handbook and failed to honor its agreement to reimburse her for certain out-of-pocket expenses.

Consideration of those issues does not require an analysis of Sumner's religious qualifications or leadership. Simpson voluntarily contracted with the dean, and the courts can analyze their contractual relationship without violating the university's religious autonomy or becoming excessively entangled in ecclesiastical matters. *Sumner v. Simpson University et al.* (California Court of Appeal, 3rd Appellate District, 9/25/18).

### ***Bottom line***

Religious institutions often get a "pass" from the courts when it comes to sectarian matters. As the old phrase goes, however, "a contract is a contract." Simpson University learned the hard way that an employer cannot automatically escape contractual employment obligations by identifying as or associating with a church.

*Jaime Touchstone can be reached at Futterman Dupree  
Dodd Croley Maier LLP in San Francisco, [jtouchstone@fdm.com](mailto:jtouchstone@fdm.com). ❀*