

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

WILL McRANEY

PLAINTIFF

V.

Civ. A. No. 1:17-cv-00080-GHD-DAS

**THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.**

DEFENDANT

**THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.'S
FIRST AMENDED ANSWER AND DEFENSES**

The North American Mission Board of the Southern Baptist Convention, Inc. ["NAMB"] files its First Amended Answer and Defenses to the Complaint filed by Plaintiff Will McRaney in the Circuit Court of Winston County, Miss. on April 7, 2017.

FIRST DEFENSE

The Complaint fails to state a claim in whole or in part upon which relief may be granted.

SECOND DEFENSE

Without limiting the foregoing defense, the Complaint fails to state a claim upon which relief may be granted under the Religion Clauses of the First Amendment to the United States Constitution, including that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

THIRD DEFENSE

Without limiting the foregoing defenses, the Complaint fails to state a claim upon which relief may be granted under applicable First Amendment doctrines including "ecclesiastical abstention," "church autonomy," and/or the "ministerial exception" long recognized by the

courts of the United States. *E.g.*, *Hosanna-Taylor Evangelical Lutheran Church and School v. E.E.O.C.*, 132 S. Ct. 694 (2012).

FOURTH DEFENSE

The Complaint is barred in whole or in part by the “Separation Agreement And Release” executed by Plaintiff on or about July 7, 2015. [doc 37-1, page ID# 188-196]

FIFTH DEFENSE

Claims to be a Supporting Organization: FALSE, see expert reports and evidence

Without limiting the foregoing defense, at the time of Plaintiff’s execution of the Separation Agreement and Release, NAMB was one of the “supporting organizations” of the Baptist Convention of Maryland/Delaware, Inc. [“BCMD”] Accordingly, by signing the Separation Agreement and Release, Plaintiff released all of his potential claims against NAMB “related to his employment with BCMD or the termination thereof.” Moreover, the Separation Agreement and Release specifies that Plaintiff released “any claim of unjust, wrongful, discriminatory, retaliatory or tortious discharge or other adverse employment action (including any claim of whistleblowing)” as well as any “claims for any tort that Dr. McRaney may allege, including...any claim of intentional tort (including libel, slander, assault, battery, and intentional infliction of emotional distress.”

SIXTH DEFENSE

Without limiting the foregoing defense, by filing this suit, Plaintiff has breached the Covenant Not To Sue contained in paragraph 6 of the Separation Agreement and Agreement. Plaintiff covenanted “not to file or participate in any civil action, law suit, claim, grievance, complaint or charge with any court or federal or local agency, concerning or relating to any claim or matter released in this Agreement, other than an action to challenge this Agreement’s compliance with the Older Workers Benefit Protection Act (OWBPA).”

SEVENTH DEFENSE

Without waiving or limiting any other defenses asserted herein, NAMB refers the Court to par. 15 of the Separation Agreement And Release, which provides:

This Agreement shall be construed and governed in accordance with the laws of the State of Maryland. All suits, proceedings and other actions relating to, arising out of or in connection with this Agreement shall be brought exclusively in the Circuit Court for Howard County, or, as applicable, in the federal courts of the State of Maryland. Each party hereby consents to the personal jurisdiction of such courts, agrees that venue shall properly lie in each of such courts.

NAMB reserves its rights under the foregoing paragraph and files this Answer and Defenses without waiver thereof.

EIGHTH DEFENSE

Plaintiff's claims and various "Counts" asserted in the Complaint are barred in whole or in part by applicable state and/or federal statute(s) of limitation.

NINTH DEFENSE

All alleged acts and omissions on the part of NAMB which may have related to or had an effect upon Plaintiff's employment with BCMD were within NAMB's rights and were justified under the SPA and/or other pertinent policies, practices and/or agreement(s) between BCMD and NAMB.

TENTH DEFENSE

NAMB denies that it tortiously interfered with Plaintiff's employment with BCMD. Nevertheless, NAMB had the legal "right to interfere" to protect its own economic and other interests. **NAMB claims the legal right to interfere**

ELEVENTH DEFENSE

NAMB denies that it published any defamatory statement regarding Plaintiff. Nevertheless, any statements which NAMB may have published regarding Plaintiff were true.

TWELFTH DEFENSE

NAMB denies that it published any defamatory statement regarding Plaintiff. Nevertheless, NAMB is protected by an absolute privilege with regard to any statements it may have published regarding Plaintiff. **Claim of "absolute privilege" to defame with lies in print or writing**

THIRTEENTH DEFENSE

NAMB denies that it published any defamatory statement regarding Plaintiff. Nevertheless, NAMB is protected by a qualified privilege with regard to any statements it may have published regarding Plaintiff. **Claim of "qualified privilege" to defame with lies in print or writing**

FOURTEENTH DEFENSE

Plaintiff's claims for defamation are barred in whole or in part by virtue of his self-publication and/or re-publication of the statements about which he complains.

FIFTEENTH DEFENSE

Plaintiff was a "public figure" within the meaning of the law of defamation and therefore bears the burden of proof imposed upon public figures. **Claim that McRaney was a public/famous figure**

SIXTEENTH DEFENSE

NAMB denies that it tortiously interfered with Plaintiff's alleged business or contractual relationships. Nevertheless, NAMB is protected by an absolute privilege and/or a qualified privilege with respect to all decisions it made and/or actions it took which may have related to or had an effect upon Plaintiff's employment with BCMD. **Claim of "absolute privilege" to interfere with McRaney's employment by BCMD**

SEVENTEENTH DEFENSE

NAMB denies that it tortiously interfered with Plaintiff's alleged business or contractual relationships. Nevertheless, the subject "contracts" referenced in the Complaint would not have been performed by the parties thereto, irrespective of NAMB's alleged wrongful interference.

EIGHTEENTH DEFENSE

Claimed McRaney violated SPA, but evidence and depositions of NAMB leaders reveal no evidence of violations by McRaney

Plaintiff's purported claims against NAMB are barred by virtue of Plaintiff's own misconduct, his breaches of duties owed to BCMD, and his willful violations of the SPA and/or other pertinent policies, practices and agreements between BCMD and NAMB.

This lie was spread by NAMB, Christopherson could not identify one line of SPA McRaney violated when asked, NAMB numerous violations

NINETEENTH DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and estoppel and/or other equitable grounds.

TWENTIETH DEFENSE

NAMB denies that Plaintiff suffered any damages as a proximate result of any breach of duty owed by NAMB. Nevertheless, Plaintiff failed to mitigate his alleged damages herein.

TWENTY-FIRST DEFENSE

With regard to Plaintiff's claims for punitive damages, Defendant invokes its rights to Due Process and Equal Protection under the Fourteenth Amendment of the United States Constitution as articulated in pertinent decisions of the United States Supreme Court as well as the limitations and protections prescribed under applicable state law.

TWENTY-SECOND DEFENSE

Plaintiff's Complaint fails to comply with Miss. R. Civ. P. 8 and F.R.C.P. 8, both of which provide that "Each allegation must be simple, concise and direct."

And now, having presented the above defenses, but subject to and without waiver thereof, Defendant NAMB responds to the numbered paragraphs of the Complaint, as follows:

- I. NAMB admits on information and belief that Plaintiff is a resident of the State of Florida. All remaining allegations denied.
- II. Admitted.

III. Denied.

IV. First sentence admitted. Second sentence denied for lack of sufficient knowledge and belief, as NAMB was not Plaintiff's employer.

V. NAMB admits that BCMD is comprised of a number of separate, autonomous churches, is one of 42 separate state conventions that work in cooperation with the Southern Baptist Convention, and is a self-governing body with its own board, budget, and member churches. All remaining allegations denied.

VI. Admitted.

[Note: the Complaint omits par. VII]

VIII. NAMB admits that NAMB and BCMD have been parties to one or more agreements, including but not limited to the SPA, a copy of which is attached hereto as Ex. A. Plaintiff has purported to summarize or characterize the terms of these agreements, however, the SPA and any other pertinent agreements speak for themselves in their entirety. All remaining allegations denied.

IX. Denied, except NAMB admits that it entered into the SPA with BCMD attached hereto as Ex. A.

X. Denied. NAMB would show that in his position as Executive Director of BCMD, Plaintiff caused BCMD to violate the terms of the Strategic Partnership Agreement and otherwise hindered and interfered with BCMD's performance of its obligations thereunder. NAMB offered BCMD the opportunity to adopt a new funding model but did not demand that BCMD accept it. All remaining allegations denied.

XI. Denied. NAMB specifically denies that its representatives refused to meet with Plaintiff. To the contrary, pertinent correspondence shows that NAMB offered in good faith to

meet with Plaintiff on numerous occasions. NAMB specifically denies that Dr. Ezell made any false or libelous accusation against Plaintiff or that Dr. Ezell tried to interfere with Plaintiff's relationship with BCMD. All remaining allegations denied.

X. [Note: This paragraph is misnumbered, as this is the second par. X] NAMB admits that Plaintiff, on behalf of BCMD, declined to accept a new cooperating agreement offered by NAMB. All remaining allegations denied.

XI. [Note: This paragraph is misnumbered, as this is the second par. XI] NAMB admits that it notified BCMD on December 2, 2014 of its intent to terminate the SPA effective one (1) year from the date of the notice. NAMB was entitled to issue such notice under the SPA given the facts and circumstances as they existed at the time. Those facts included Plaintiff's causing BCMD to violate the agreement and his efforts to hinder and interfere with the SPA. All remaining allegations denied.

XII. NAMB admits on information and belief that Plaintiff's employment with BCMD terminated on or about June 8, 2015. Contrary to his allegation that "Plaintiff McRaney was terminated from his employment," NAMB is informed and believes that Plaintiff voluntarily resigned his employment pursuant to the above-referenced Separation Agreement And Release. All remaining allegations denied.

XIII. Denied.

XIV. Denied.

XV. The allegations of par. XV of the Complaint, which are incorporated in Count IV, were dismissed by the Court's Order entered 1/19/18 [doc. 18]. Therefore, Defendant's obligation to answer this paragraph has been rendered moot. Regardless, the allegations of this paragraph are Denied.

XVI. NAMB admits that an appropriate photo taken with Plaintiff's consent was situated in the reception area at NAMB's offices in Alpharetta during some period of time. All remaining allegations denied.

COUNT I

NAMB incorporates its foregoing defenses and responses to pars. I through XVI.

XVII. Denied.

COUNT II

Denied.

COUNT III

Denied.

COUNT IV

Denied.

COUNT V

Denied.

COUNT VI

Denied.

Furthermore, NAMB denies that Plaintiff is entitled to the relief sought in the paragraph starting with the words "WHEREFORE, PREMISES CONSIDERED," and denies that Plaintiff is entitled to any relief whatsoever in this action. All allegations in the Complaint not specifically and expressly admitted are hereby denied.

NAMB respectfully asks this Court to dismiss Plaintiff's Complaint with prejudice. NAMB requests such other and further relief to which it may be entitled, including but not limited to its reasonable attorney's fees and expenses.

THIS the 2nd day of November, 2018.

Respectfully submitted,

THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.

By: s/ Joshua J. Wiener
JOSHUA J. WIENER, MB #7185

OF COUNSEL:

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing “The North American Mission Board of the Southern Baptist Convention, Inc.’s First Amended Answer and Defenses” with the Clerk of the Court using the using the Court’s ECF system, which sent notification of such filing to all counsel.

This the 2nd day of November, 2018.

s/ Joshua J. Wiener

JOSHUA J. WIENER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

WILL McRANEY

PLAINTIFF

V.

No. 1:17-cv-080-GHD-DAS

THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.

DEFENDANT

THE NORTH AMERICAN MISSION BOARD'S RESPONSE TO
THE BAPTIST CONVENTION OF MARYLAND/ DELAWARE INC.'S
MOTION TO QUASH *SUBPOENA DUCES TECUM*

NAMB joins in BCMD's Motion to Quash [doc 37] in seeking dismissal of Counts I and II of the Complaint based on: A) the Religion Clauses in the First Amendment to the United States Constitution, and/or B) the "Separation Agreement And Release" [doc 37-1, page ID# 188-196] executed by Plaintiff and the Baptist Convention of Maryland/Delaware, Inc. ["BCMD"] in July 2015. NAMB also seeks dismissal of Count VI to the extent it claims punitive damages related to Counts I and II and intentional infliction of emotional distress.

In the event this Court determines that the First Amendment and/or Separation Agreement And Release do not call for dismissal of Counts I and II, then NAMB has no choice but to oppose BCMD's Motion to Quash and ask the Court to order BCMD to comply fully with the subpoena *duces tecum*, so that NAMB can fairly and effectively defend this litigation.

NAMB is filing herewith a Memorandum in support of this Response, which is incorporated by reference herein.

This the 2nd day of November, 2018.

Respectfully submitted,

THE NORTH AMERICAN MISSION BOARD OF THE
SOUTHERN BAPTIST CONVENTION, INC.

By: s/ Joshua J. Wiener
JOSHUA J. WIENER, MB #7185

OF COUNSEL:

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

WILL McRANEY

PLAINTIFF

V.

No. 1:17-cv-080-GHD-DAS

**THE NORTH AMERICAN MISSION BOARD
OF THE SOUTHERN BAPTIST CONVENTION, INC.**

DEFENDANT

**MEMORANDUM IN SUPPORT OF
THE NORTH AMERICAN MISSION BOARD'S RESPONSE TO
THE BAPTIST CONVENTION OF MARYLAND/ DELAWARE INC.'S
MOTION TO QUASH *SUBPOENA DUCES TECUM***

I. Introduction – Course of Proceedings to Date

In adjudicating BCMD's Motion to Quash, the Court should consider the course of proceedings to date and the context in which NAMB served the subject subpoena *duces tecum* on BCMD.

Plaintiff Will McRaney, whose employment as BCMD's Executive Director ended in June 2015, filed this suit in Mississippi state court on April 7, 2017, alleging that NAMB tortiously interfered with his contractual employment relationship with BCMD, and that NAMB defamed him, causing his termination. NAMB removed the suit to federal court on May 18, 2017, based on diversity jurisdiction.

After filing its Answer [doc. 3], NAMB filed a Motion To Dismiss [doc.8] contending that the Complaint fails to state a claim upon which relief may be granted by virtue of the Religion Clauses of the First Amendment to the United States Constitution and judicial doctrines which have been described over the years as "ecclesiastical abstention," "church autonomy," and the "ministerial exception." This Court denied the Motion except as to Count IV, which involved the alleged post-termination "Florida Pastor's Conference speaking engagement." The

Court's ruling can be fairly synthesized as follows: 1) Because NAMB was not Plaintiff's employer, the ministerial exception does not apply to his claims against NAMB; 2) The Court could not rule "at this juncture" that resolving these claims will require the Court to decide matters of religious doctrine or internal governance of the church.

NAMB filed a Motion For Certification of Interlocutory Appeal [doc. 20]. The Court denied this Motion as well. [doc. 22]

In accordance with the Court's ruling, this case moved forward. Counsel conducted the required Attorney Conference that precedes the Case Management Conference. A Case Management Conference was conducted by U.S. District Judge David Sanders on September 5, 2018, marking the start of the discovery period.¹ On September 11, 2018, NAMB issued the subject subpoena *duces tecum* to Plaintiff's former employer, BCMD [doc 30], asking for production of various categories of pertinent documents and information.

II. BCMD's Motion to Quash

BCMD responded to service of NAMB's subpoena *duces tecum* by filing a Motion to Quash the subpoena in its entirety. [doc 37] It contends that production of the documents subpoenaed by NAMB will infringe on its rights as a religious organization under the First Amendment Religion Clauses.

BCMD has also produced a "Separation Agreement and Release" [the "Separation Agreement"] [doc 37-1, page ID# 188-196] executed by Plaintiff and BCMD in July 2015, by which Plaintiff released the very claims which he asserts in this action against NAMB. BCMD asks the Court to dismiss this suit on both grounds.²

¹ The Case Management Order was entered 9/17/18 [doc 31].

² Par. 15 of the Separation Agreement contains a forum selection clause: "All suits, proceedings and other actions relating to, arising out of or in connection with this Agreement shall be brought exclusively in the Circuit Court for Howard County, or as applicable, in the federal courts in the State of Maryland." Because

NAMB will respond to each of BCMD's grounds in turn.

III. First Amendment Religion Clauses

This Court denied NAMB's Motion to Dismiss, as well as its Motion for Certification of Interlocutory Appeal, in which NAMB asserted that this suit is barred by the First Amendment Religion Clauses under the "ecclesiastical abstention" and/or "ministerial exception" doctrines. NAMB heard the Court loud and clear, and respectfully, that this case was to move forward into discovery. Faced with defending allegations that it tortiously interfered with Plaintiff's employment with BCMD and caused his termination, NAMB did what any defendant would do in this situation – serve a subpoena *duces tecum* on the Plaintiff's former employer requesting documents about Plaintiff's job performance, the circumstances surrounding the termination of his employment, and similar documents that are directly relevant to Plaintiff's claims and central to NAMB's defense.

Although this Court denied NAMB's Motion to Dismiss, it also referred to the particular "juncture" of the case at the time, *i.e.*, a pre-discovery Rule 12 Motion to Dismiss. NAMB respectfully contends that the case is now at a different juncture. BCMD has expressly asked the Court to dismiss this case in order to protect its rights under the First Amendment. The Plaintiff's employer is now invoking the ministerial exception. Further, BCMD, has persuasively shown through its Motion To Quash that this suit poses an unconstitutional intrusion into BCMD's "choice of minister" and its internal governance and policy.

BCMD was served with a subpoena issued from this Court, in a suit already pending before this Court, NAMB agrees that the forum selection clause does not apply to this issue and that BCMD appropriately filed its Motion to Quash in this Court. And it is clearly in the interest of judicial economy for this Court to resolve these issues and avoid a second, parallel suit in Maryland.

With respect for the Court's earlier rulings, NAMB asks this Court to find that the case has now reached a juncture that mandates dismissal under the First Amendment of Counts I (wrongful interference) and II (defamation) of the Complaint. Both counts center on events that allegedly transpired during Plaintiff's employment, and the termination of his employment. In this respect, NAMB fully joins in BCMD's Motion to Quash.

This does not, however, end the discussion on this point. That is because, if this Court finds that BCMD and NAMB have made an insufficient showing that the First Amendment mandates dismissal, then the Court should also deny BCMD's Motion to Quash and protect NAMB's ability to defend itself. NAMB cannot do so without having the opportunity to discover the documents and facts that are central to those claims. As with other defendants accused of interfering with the contractual relationship between two other parties, if this case proceeds on Counts I and II, NAMB will seek to prove through BCMD's file documents and the testimony of its people that BCMD made its own decision to terminate Plaintiff based on his poor job performance, and that NAMB's alleged "interference" was not the cause. *See, e.g., Fitzpatrick v. Catholic Bishop of Chicago*, 916 F.2d 1254, 1255 (7th Cir. 1990)(tortious interference claim successfully defended based largely on affidavits from the contracting organization confirming it terminated its business relationship with the plaintiff for reasons unrelated to the defendant's alleged interference); *Gruppo Essenziero Italiano, S.p.A. v. Aromi D'Italia, Inc.*, No. CIV. CCB-08-65, 2011 WL 3207555, at *1 (D. Md. July 27, 2011)(summary judgment granted dismissing tortious interference claim based on deposition testimony of the customer explaining why it terminated its business dealings with the plaintiff, and that the defendant's alleged interference was not the cause). Indeed, BCMD itself has asserted in its filings that "Plaintiff's hiring, tenure, and eventual termination were all conducted in accordance

with BCMD's internal practices and management of its religious organization." [Doc. 38, PageID# 203].

Accordingly, in the event the Court rejects BCMD's invocation of its First Amendment rights, as well as the dispositive nature of the Separation Agreement And Release (see below), then NAMB has no choice but to oppose BCMD's Motion and to seek production of the requested documents and information pursuant to the subpoena *duces tecum*.

IV. The Separation Agreement

Plaintiff's Complaint refers to Plaintiff signing a "severance agreement" with BCMD (see par. XII). Plaintiff did not, however, attach the referenced "severance agreement" to the Complaint or otherwise produce it, and Plaintiff has yet to file his Initial Disclosures or respond to Defendant's written discovery requests. The actual "Separation Agreement And Release" was produced when BCMD attached it to its Motion To Quash [doc 37-1, page ID# 188-196].

Now that the signed "Separation Agreement And Release" is before the Court, NAMB expressly joins in the portion of BCMD's Motion to Quash which is based upon and seeks to enforce the Agreement. NAMB also expects to file shortly a Motion for Partial Summary Judgment based on the Separation Agreement. NAMB will ask the Court to dismiss Count I (wrongful interference with Plaintiff/BCMD contract); Count II (defamation which resulted in Plaintiff's termination by BCMD); and Count VI, to the extent it seeks punitive damages based on the released claims.³

³ NAMB's Motion does not seek dismissal of Count III and Count V, both of which involve events that allegedly took place after Plaintiff's termination by BCMD. BCMD was not involved in these alleged post-termination events, and NAMB does not believe or contend that BCMD has any documents or testimony pertinent to these events.

CONCLUSION

NAMB joins in BCMD's Motion to Quash to the extent it seeks dismissal of Counts I and II of the Complaint⁴ based on the First Amendment Religion Clauses in the United States Constitution and/or the "Separation Agreement and Release" executed by Plaintiff.

In the event this Court determines that the First Amendment and Separation Agreement do not call for dismissal of either or both Counts I and II, then NAMB has no choice but to oppose BCMD's Motion to Quash and ask the Court to order BCMD to comply fully with the subpoena *duces tecum*, so that NAMB can fairly and effectively defend this litigation.

This the 2nd day of November, 2018.

Respectfully submitted,

THE NORTH AMERICAN MISSION BOARD OF THE
SOUTHERN BAPTIST CONVENTION, INC.

By: s/ Joshua J. Wiener
JOSHUA J. WIENER, MB #7185

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⁴ NAMB also seeks dismissal of Count VI to the extent it claims punitive damages related to Counts I and II and intentional infliction of emotional distress.

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing “The North American Mission Board’s Memorandum in Support of Response to Baptist Convention of Maryland/Delaware Inc.’s Motion to Quash Subpoena *Duces Tecum*” with the Clerk of the Court using the Court’s ECF system, which sent notification of such filing to all counsel of record.

This the 2nd day of November, 2018.

s/ Joshua J. Wiener

JOSHUA J. WIENER