A Proposal for Church Tribunals: An Alternative To Secular Lawsuits

By Elvin Benton

When the Apostle Paul wrote in his first letter to the Corinthians that "there is utterly a fault among you" (I Cor. 6:7), he was complaining about Christians' settling their differences in secular courts. "Is it so, that there is not a wise man among you? no, not one that shall be able to judge between his brethren?" (v. 5).

Paul's concern and the admonition of Ellen White prompted denominational leaders at the 1975 General Conference session in Vienna to enact a *Church Manual* amendment to provide for imposition of church discipline—censure or disfellowshiping—for members who bring legal action against other church members, the church organization, or a church-oriented institution.

It is not my assignment to discuss whether or not the amendment was providently enacted. In my judgment, however, its adoption imposes on the church body a responsibility to provide the quality and availability of procedure that will make civil litigation unnecessary.

It is the purpose of this paper to set forth the issues involved when an employee of the church (conference organization or church institution) has a nontheological grievance against the denominational employer, and to suggest an orderly structure and process for the acceptable settlement of that grievance without recourse to secular courts. This presentation does not encompass the adjudication of differences between individual church members nor the settlement of any dispute involving religious tenets of the church or its members.

It should be noted that the Corinthians in A.D. 59 were not being tempted to litigate against a General Conference or one of its publishing houses for there were no corporate organizations or institutions to sue. The apostle's counsel was aimed at correcting the Christians' propensity for bringing their pew-mates to court. Any consideration of a process for settling grievances of church employees against the church as employer, then, must be recognized as an *extension* of the reforms that Paul was urging the litigious Corinthians to adopt.

Unlike the first-century Jewish system, modern Christendom does not lay militant claim to the right of settling secular differences among its members. Even conferences and denominational institutions have been known to instigate legal action against church members, demonstrating that if there is adequate redress procedure within the

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church, it is either not widely known or simply ignored. It should not be surprising, then, that church members have occasionally brought lawsuits against the church in one form or another without realizing the gravity of their offense.

I wrote to or interviewed many persons about means of settling intrachurch disputes—present and former denominational administrators, both institutional and organizational; persons who have filed suits against church entities; persons who have been tempted to file such suits; persons who have had frustrating grievances but have not, because of principle, been tempted to sue; persons of both the masculine and feminine persuasions; persons of varied racial and national origins. Almost every person I contacted expressed consciousness of a need for an orderly process of grievance settlement within the church structure. At present, such a process, they said, is absent at worst or rudimentary at best.

An important reason, then, for setting up an intrachurch system of adjudication is to reduce the temptation for employees to seek redress of their grievances in secular courts. It may well be that the degree of reduction of such temptation will be in direct proportion to the degree of the process's fairness as perceived by those employees.

An administrator of a major Adventist hospital wrote me: "An effective grievance procedure must generate confidence in the employee that it will work. This is nearly impossible to accomplish when each succeeding review is by someone in the system who is suspect of upholding the lower echelon manager regardless of how unfair his action might have been."

An Adventist executive of a major manufacturing corporation pinpointed part of the problem: "There is nothing that will aggravate a grievance more than the frustration an employee feels when he believes there is no one who will listen to him." The executive further spelled it out: "An employee at any level in an organization should understand that if he has a problem it can be heard and considered, not only by his immediate supervisor but also by another person or committee with enough authority to act, so

The 1976 Annual Council Action

The articles by Elvin Benton and Darren Michael (page 34) were presented, in somewhat different form, at a conference of selected Adventist attorneys and denominational leaders on April 9, 1976, in Washington, D.C.

In the fall of 1976, the Annual Council adopted a set of "Conciliation Procedures," thus responding to the need indicated at the beginning of Benton's article. Church leaders at the meeting also voted, however, to review these procedures in the fall of 1977. In the light of this action continuing discussion of the settling of grievances among church members remains immediately relevant.

As outlined by Benton in a letter, the salient differences between the Annual Council action and the proposal suggested in his article are as follows:

1. The adopted plan concerns differences not only between members and the church as employer, but also between one member and another. Benton's proposal deals only with the former question.

2. The adopted plan calls for conciliation panels on the local conference and institutional level, as well as on the union conference level, with procedures for appeal if satisfaction does not occur at lower levels.

3 Benton's proposal permits witnesses and perhaps counsel to appear before the panel. The adopted plan appears to preclude both.

4. The Benton proposal excludes church administrators from being chairmen of conciliation panels. The adopted plan specifically requires that the chairman of the union-conference-level panel be "a General Conference representative designated by the General Conference Secretariat on a case-by-case basis."

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that the element of personal bias, if it exists, can be neutralized."

Some denominational entities—particularly institutions — have well-developed grievance procedures that should be studied by conference organizations with a view of possible adoption at the local level. The purpose of the remainder of this paper, however, is primarily to study the appropriate framework of a structure for dealing with problems that local procedures have somehow failed to alleviate—problems that might otherwise boil up into a full-fledged lawsuit.

The establishment of this kind of problem-solving process may well result in a

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"separation of powers" not heretofore prevalent in the church organization. Paul's query about the availability of "a wise man among you . . . that shall be able to judge between his brethren" made no suggestion that such a person be of the clergy or an administrator of the church. When one of the parties to the lack of agreement is a church entity, positions taken by church administrators in their "legislative" or "executive" capacities may be at the very focus of the grievance under consideration. While it is not inherently impossible for such an administrator to attain sufficient objectivity to make a fair decision, such circumstances provide without question less than the ideal matrix for impartiality.

It may be time, then, for the church organization to recognize the pragmatic necessity of relinquishing some of the prerogatives to which it has traditionally laid almost absolute claim.

A specific proposal for framework is not easy to formulate, partly because there seem to be several ways it could be accomplished. Believing that most good projects start from somebody's succinct scheme, I have come up with a composite that I believe will at least start a good discussion.

A surprising consensus emerged from my correspondence and interviews: that the appropriate place for setting up a forum to adjudicate difficult differences is at the union conference level. This forum need not be large: If well chosen, five persons would be enough (witness the volume of important cases being decided by three-judge federal district courts). Because of the diversity of people whose problems the forum would face, it is important that it include both women and men, that it be racially integrated, and that not all its members be on the same side of forty.

While a goal of total objectivity might call for such a forum to exclude those with any connection with the church structure, either as employees or as administrators, it seems legitimate to consider that familiarity with the day-to-day problems at issue could justify their participation. Neither employees nor administrators should constitute a majority of the forum, however.

The chairperson of the forum should be neither an employee nor an administrator of any church entity. While it is not practicable to try to define constitutionally the chairperson's pedigree, he or she must be a person with an earned reputation for fairness and calm judgment. Needed also is a working knowledge of ways to receive and evaluate evidence from all sides. An Adventist attorney might be somewhat more likely than the average church member to possess those qualifications.

Who should choose the people who constitute such a grievance forum? As in the choosing of judges for secular courts, no foolproof or bias-proof formula appears to exist. Of those from whom I sought counsel, a majority would, on balance and with some reluctance, leave the choice either to the union conference executive committee or to the

union conference constituency. Of the two, the union conference committee seems a better choice because it more nearly represents a cross-section of church membership than do the delegates to union conference constituency meetings in recent years. Replacements of forum members who can no longer serve should likewise be the responsibility of the union conference committee.

Such a forum should be a "standing" tribunal with term of office running concurrently with the term of union conference personnel. All employees of local and union conferences and of institutions within the union conferences should have ready access to the name and address of a person appointed by the forum to process applications for hearing their grievances. The forum should have broad discretion to determine which cases it will hear, after taking into consideration whether or not the applicants have exhausted all other reasonable means of effecting settlement of their grievances, and after making appropriate preliminary investigation of the apparent merits of the complaints.

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No hard-and-fast schedule of frequency of hearings should be attempted at first, since it will be impossible accurately to predict the number of grievances that will be filed for adjudication. An initial schedule of three sessions a year would be a reasonable starting point. It is important that no person's complaint be set aside for so long that it becomes moot before it is heard. The advisability of granting to the forum chairperson the authority to make preliminary investigation and to direct temporary "injunctive" relief should be considered.

The forum should have some discretion in determining who, in addition to the applicant bringing a grievance, should be permitted to appear before the forum. A reasonable number of witnesses must be considered. In exceptionally difficult cases, a Seventh-day Adventist counselor of the applicant's choice, possibly a lawyer, might reasonably be expected to facilitate the orderly presentation of evidence. The process must not be expected to conform in every respect to the procedural and evidentiary rules of courts of law. Essential fairness demands, however, that the parties to a disagreement be accorded equal treatment in every proceeding.

A similar division-level forum appears to be needed, to handle appeals from decisions of the union-conference-level forums and to hear complaints arising in organizations or institutions above the union conference level. Hearing of appeals should be at the discretion of the division-level forum.

Decisions of this system of forums must be considered binding. The system will not work to avoid civil litigation unless both the church employer and the employee agree that they will be bound by what the forum decides.

Finality of decision may be a hard pill for both sides to swallow. Church administrators are reluctant to give over to any such "free-standing" entity, not controlled by the church organization, the power to make a final decision affecting the church. Employees, however, believe that if they are to be bound by such a decision, fairness demands that church employers agree to be bound also.

Prevalent current practice (differences "settled" after consideration by and decision of institutional boards or conference executive committees) is by its very nature more palatable to employer than to employee. Employees are reluctant to believe that such boards and committees could be expected to look at problems through unbiased eyes. Some are conditioned by documented experience with unfortunate unfairness. Said

one young conference employee: "Sometimes there's a policy they're upholding and, if not, often an 'unwritten policy': 'It's always been done this way; this is the way good Adventists think.' "

If such a person, young or old, believes he or she can depend on getting a fair hearing and an unbiased decision in a new kind of forum, the church's agreement to be bound by that forum's decision will have paid off. That person's complaint is one that won't be litigated "before the unbelievers."

The system I have suggested could be brought about either by adoption of an enabling provision in the constitutions of union conferences and divisions or, even before that could happen, by action of union conference and division executive committees. The concept, here necessarily tentative in suggestion, deserves serious denominational study and perhaps recommendation of a uniform churchwide system. Only trial and modification will provide the experience needed to perfect a workable design.

When the system gets going, I won't get so many calls like the one earlier this week from a church schoolteacher who was reluctantly threatening to sue his conference for a year's pay. Nobody would take seriously his view of the events that led to his being fired. He didn't sound selfish. He didn't even sound like he wanted a year's pay. But he did want to believe that his hurt was important enough to be heard by some impartial person somewhere with enough clout to be sure he got a fair shake.