

**FILED**

**FEB 20 2020**

**PREPARED BY THE COURT**

**AVIS BISHOP-THOMPSON, J.S.C.**

<p>RAYMOND GONZALEZ, a New Jersey resident,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>WORLD MISSION SOCIETY, CHURCH OF GOD, A NJ NONPROFIT CORPORATION,</p> <p style="text-align: right;">Defendant.</p>
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

Docket No. BER-L-1025-18

Civil Action

**ORDER**

**THIS MATTER** having been opened to the Court by defendant World Mission Society, Church of God, A NJ Nonprofit Corporation, by and through their counsel Nissenbaum Law Group, LLC (Steven L. Procaccini, Esq. appearing); upon notice to plaintiff Raymond Gonzalez by and through his counsel Peter L. Skolnik, Esq.; for an Order pursuant to Rule 4:46 seeking a permanent injunction; and the Court having considered the parties submission; and having heard oral argument; and for good cause shown,

**IT IS on this 20<sup>th</sup> day of February, 2020 ORDERED:**

1. WMSNJ's motion seeking a permanent injunction is GRANTED in part and DENIED in part.


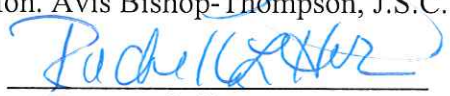
2. Defendant WMSNJ's motion to permanently enjoined plaintiff Raymond Gonzalez from disseminating the personal and religious concerns of the membership of WMSNJ is GRANTED in part and DENIED in part as identified in Appendix A of the February 12, 2020 Order.

3. Plaintiff Raymond Gonzalez is permanently enjoined from disseminating documents determined to be protected on the basis of the attorney-client privilege as identified in Appendix A of this Court's February 12, 2020 Order.

4. Plaintiff Raymond Gonzalez is permanently enjoined from disseminating documents determined to be protected on the basis of the attorney-work product doctrine as identified in Appendix A of this Court's February 12, 2020 Order. Plaintiff Raymond Gonzalez is permanently enjoined from disseminating the e-mail addresses, phone numbers, and home addresses of the members of WMSNJ.

**IT IS FURTHER ORDERED** that a copy of this Order shall deemed to be serve upon all counsel of record upon entry and upload to eCourts.

**OPPOSED**

  
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Hon. Avis Bishop-Thompson, J.S.C.  
  
\_\_\_\_\_  
Hon. Rachele Lea Harz, J.S.C.

**ORAL ARGUMENT HELD**  
For reasons set forth on the record.

**RIDER ATTACHED**

***PREPARED BY THE COURT***

Raymond Gonzalez,	:	<b>SUPERIOR COURT OF NEW JERSEY</b>
	:	<b>LAW DIVISION: BERGEN COUNTY</b>
Plaintiff,	:	<b>DOCKET NO.: BER-L-1025-18</b>
	:	
vs.	:	CIVIL ACTION
	:	
World Mission Society, Church of	:	
God A NJ Nonprofit Corporation,	:	
	:	<b>DECISION</b>
Defendant.	:	
	:	
	:	

I. Introduction

Presently, before this Court is defendant World Mission Society, Church of God’s, (WMSNJ) motion for a permanent injunction prohibiting plaintiff Raymond Gonzalez from disseminating the personal and sensitive information of church members based on cleric-penitent privilege and documents based on attorney-client privilege and work-product doctrine.<sup>1</sup>

Gonzalez seeks dismissal of WMSNJ’s counterclaim for injunctive relief on the basis that the asserted privileges and doctrines do not apply and WMSNJ seeks new relief: to enjoin the dissemination of personal information of church members, which was not originally requested in WMSNJ’s initial counterclaim.

As aptly addressed in this Court’s decision dated May 13, 2019, various legal doctrines were addressed in deciding the validity of the nondisclosure agreement. Inextricably interwoven in the May 13, 2019 Decision and the instant motion are concepts and/or doctrines of privilege, relevance, church autonomy doctrine and confidentiality. From the outset, the aforementioned

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<sup>1</sup> WMSNJ also filed a summary judgment motion seeking dismissal of Gonzalez ‘s breach of fiduciary claim against Pastor Lee. At oral argument on October 11, 2019, Gonzalez agreed to voluntary dismiss the claim. The Order was entered on October 11, 2019 and an amended Order was entered on October 29, 2019.

concepts and/or privileges have been invoked by WMSNJ to prevent the documents from disclosure. Despite the recommendations of the special discovery master, (SDM) WMSNJ continues to espouse the concepts and/or doctrines in pursuit of nondisclosure.<sup>2</sup> This Court has rejected WMSNJ's position as the arbiter of the gatekeeper of documents on the basis of relevance, privilege and church autonomy doctrine as set forth in the comprehensive February 12, 2020 Decision.<sup>3</sup>

## II. Factual Background and Procedural History

In May 2005, Gonzalez joined WMSNJ. While a member of WMSNJ, Gonzalez served in the role as a Deacon. The scope of Gonzalez's role as a Deacon remains imprecise. The record is devoid as to the exact role and position of a Deacon within WMSNJ's ecclesiastical hierarchy. Both parties acknowledge that as a Deacon and a friend, members confided in Gonzalez.

Gonzalez was also a member of WMSNJ's "litigation control group" ("LCG").<sup>4</sup> During the pendency of Colón I and Colón II, Gonzalez participated in facilitating these lawsuits on behalf of WMSNJ.<sup>5</sup> The record developed during discovery shows that Gonzalez, along with other WMSNJ members, communicated with various attorneys in seeking legal representation for WMSNJ and also sought legal advice concerning potential litigation against various individuals, including Colón. Gonzalez also participated in the legal strategy. The record developed which

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<sup>2</sup> On May 13, 2019, the Court entered appointing Joseph Castiglia, Esq. to Serve as Special Discovery Master and defining the scope of review of the universe of documents.

<sup>3</sup> The Order entered on February 12, 2020 identifies the few documents determined to be protected from disclosure pursuant to the attorney-client privilege and work product doctrine which also impact the instant motion.

<sup>4</sup> The members of the LCG remain unclear as they have not been identified in any responses to discovery.

<sup>5</sup> World Mission Society Church of God, A New Jersey Non-Profit Corporation v. Colón, No. 2011-17163, filed on December 6, 2011 in Virginia ("Colón I"); World Mission Society Church of God and Mark Ortiz v. Michele Colón and Tyler Newton, No. BER-L-5274-12, filed on July 11, 2012 in Bergen County New Jersey ("Colón II"); Colón v. World Mission Society Church of God, A New Jersey Non-Profit Corporation, No. BER-L-3007-13 aff'd in part and rev'd in part, A-5008-14T4, filed on April 19, 2013 in Bergen County, New Jersey ("Colón III"); Colón v. World Mission Society Church of God, A New Jersey Non-Profit Corporation, No. BER-L-6490-16, filed on August 26, 2016 in Bergen County, New Jersey ("Colón IV").

has been analyzed by both the SDM and this Court revealed that not all of the communication between the “LCG” are protected by the attorney-client privilege or attorney work product doctrine.<sup>6</sup>

Gonzalez was also a member of the WMSNJ technical team (IT Team). Gonzalez substantially participated in and personally purchased the parts to build WMSNJ’s network, installed the hardware and programmed the software protocol for WMSNJ’s email. Gonzalez designed the ZionUSA email account, the general email account for all WMSNJ members. González also created a backup file on a flash drive of documents giving rise to the appointment of the Special Discovery Master for which WMSNJ seeks the permanent injunction.

On December 22, 2017, Gonzalez, then self-represented, filed a Summons and Complaint in the Chancery Division of the Superior Court of New Jersey, Bergen County seeking a Declaratory Judgment (DJ action) to declare the nondisclosure agreement (NDA) as void.<sup>7</sup> The Complaint alleged that NDA was overbroad and vague, the result of undue influence, duress, breach of fiduciary duty by Pastor Dong Il Lee (Pastor Lee) to Gonzalez, equitable fraud, contract of adhesion, procedural unconscionability, substantive unconscionability, lack of mental competency, lack of consideration, waiver, and the Church Autonomy Doctrine.

On January 17, 2018, WMSNJ filed a pre-answer motion to transfer the DJ action to the Law Division and consolidate Gonzalez’s matter with the related case in Colón IV, arguing that Plaintiff was attempting to avoid producing the documents compelled by the September 19, 2017 Order of the Hon. Charles Powers in Colón IV. On February 6, 2018, the Hon. Menelaos W. Toskos, J.S.C., granted WMSNJ’s motion to transfer but denied consolidation of the DJ action

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<sup>6</sup> The Order entered on February 12, 2020 identifies the few documents determined to be protected from disclosure pursuant to the attorney-client privilege and work product doctrine

<sup>7</sup> Raymond Gonzalez v. World Mission Society, Church of God, A NJ Non-Profit Corporation, No. BER-C-326-17, filed on December 22, 2017 in Bergen County, New Jersey (“Gonzalez”).

with Colón IV. On April 13, 2018, Judge Powers denied WMSNJ's motion to consolidate Colón IV with Gonzalez finding the Gonzalez matter has "only an attenuated relation to" Colón IV "at this point," granting WMSNJ twenty days to file an Answer in Gonzalez.

On May 4, 2018, WMSNJ answered the Complaint, denying the allegations, asserting numerous affirmative defenses and counterclaims alleging breach of contract, breach of fiduciary duty to WMSNJ, conversion, and seeking injunctive relief. WMSNJ argued that Plaintiff filed the DJ action to avoid complying with September 29, 2017 Order.

On June 8, 2018, Gonzalez filed a motion permitting him to communicate with his attorney. The motion was granted in part, limiting communications to the circumstances surrounding Gonzalez's execution of the NDA, its provisions, and its enforceability, but also prohibited communications regarding "privileged information learned as a member of World Mission's litigation control group." Judge Powers declined to appoint an independent expert to determine which information was privileged and/or barred by the Church Autonomy Doctrine that Gonzalez learned while a member of the LCG. On July 10, 2018, Plaintiff answered WMSNJ's counterclaims.

On May 13, 2019, an Order was entered granting Gonzalez's motion for declaratory judgment and held the NDA between Gonzalez and WMSNJ invalid, unenforceable and void.

On May 16, 2019, an Order was entered dismissing with prejudice WMSNJ's conversion counterclaim without fees and costs with prejudice.

On June 25, 2019, an order was entered dismissing with prejudice WMSNJ's motion to dismiss the breach of contract counterclaim without fees and costs.

Oral argument was heard on October 11, 2019. An Order was entered on October 11, 2019 reflecting the voluntary dismissal of the Gonzalez's breach of fiduciary duty claim.

On October 21, 2019, the parties consented to the withdrawal of the demand for a jury trial and proceed by bench trial.

On October 29, 2019, the October 11, 2019 Order was amended voluntarily dismissing Gonzalez's breach of fiduciary duty claim.

On February 12, 2020, an Order was entered determining that the vast majority of the documents produced by WMSNJ were not precluded from disclosure based upon attorney-client privilege, attorney work product doctrine or Church Autonomy doctrine.

### III Analysis

#### A. Permanent Injunction

WMSNJ asserts that there is no genuine issue of material facts as to why a permanent injunctive relief should be granted. WMSNJ further asserts that the undisputed facts warrant the issuance of permanent injunctive relief enjoining Gonzalez from disseminating attorney-client and work product documents in Gonzalez's possession, and the personal information, i.e., e-mail addresses, phone numbers, home addresses, personal concerns, and religious concerns of WMSNJ membership based upon the cleric-penitent privilege. WMSNJ avers that (1) Gonzalez must protect WMSNJ members as a matter of law; (2) WMSNJ members would suffer irreparable harm without the injunction; and (3) the balance of hardship and public policy favor injunctive relief. At the same time, WMSNJ acknowledges that the return of the original documents and all copies of documents in Gonzalez's possession is no longer possible because the documents have already been disseminated to other parties.

In contrast, Gonzalez asserts that WMSNJ seeks new relief which was not requested in its counterclaim. Specifically, WMSNJ requests this Court to enjoin any dissemination of the "personal information including e-mail addresses, phone numbers, home addresses, personal

concerns and religious concerns of WMSNJ membership”. Gonzales argues that WMSNJ’s position is meritless.

A party seeking permanent injunctive relief must demonstrate that “the applicant’s legal right to such relief has been established and that the injunction is necessary to prevent a continuing irreparable injury.” Verna v. Links at Valleybrook Neighborhood Association, Inc., 371 N.J. Super.77, 89 (App. Div. 2004). However, an injunction must be no more extensive than is reasonably required to protect the interest of the party in whose favor it is granted. Ibid.

This Court shall consider the following factors in determining the issuance of a permanent injunction:

1. The character of the interest to be protected.
2. The relative adequacy of the injunction to the plaintiff as compared with other remedies.
3. The unreasonable delay in bringing suit.
4. Any related misconduct by defendant
5. The comparison of hardship to defendant if relief is denied, and hardship to plaintiff if relief is granted.
6. The interest of others, including the public.
7. The practicality of framing the order or judgment.

Sheppard v. Township of Frankford, 261 N.J. Super. 5 (App. Div. 1992);  
Paternoster v. Shuster, 296 N.J. Super. 544, 556 (App. Div. 1997).

To the extent the factors are present, it is this Court’s obligation to weigh and balance each factor in a qualitative rather than quantitative manner. Sheppard, 261 N.J. Super. at 10. As such, judicial consideration of these factors “necessarily require[s] an individualized balancing rights’ and ‘a sensitive evaluation of the entire situation.” Ibid.

This Court rejects WMSNJ’s assertion regarding the need to prevent disclosure and future disclosure of information based upon the attorney-client privileged, attorney work product doctrine and the cleric-penitent privilege.



### Attorney-Client Privilege

The parameters of the attorney-client privilege are codified in N.J.S.A. § 2A:84A-20 and N.J.R.E. 504. Both the statute and rule provide, in relevant part, that “communications between [a] lawyer and his client in the court of that relationship and in professional confidence are privileged, and a client has a privilege (a) to refuse to disclose any such information, and (b) to prevent his lawyer from disclosing it....” N.J.S.A. 2A:84A-20; N.J.R.E. 504.

The record developed has established that the blanket assertion of attorney-client privilege by WMSNJ is not supported by the documents. The vast majority of documents disseminated by Gonzalez are not protected from disclosure. Not all documents or records retained by WMSNJ gain the protection under the attorney-client protection simply because the documents were sent to the attorney or because any member of the LCG created and circulated the document to other members of the LCG. Payton v. N.J. Turnpike Auth., 148 N.J. 524, 550-51 (1997).

However, notes prepared by WMSNJ at their attorney’s direction and in anticipation of filing a lawsuit are protected by the attorney-client privilege. Hannan v. St. Joseph’s Hosp. & Med. Ctr., 318 N.J. Super. 22, 27-28 (App. Div. 1999). In this case, much of the documentation was created by Tara Whelan, a member of the LCG and circulated to the other members of the group. There are only a few documents which clearly state that one or more members of the group prepared the document in furtherance of consultation with an attorney or communication with an attorney retained by WMSNJ. Accordingly, the attorney-client privilege does not apply to the documents which were not communications with or prepared at the direction of an attorney. As identified in Appendix A of the February 12, 2020 Order there are only a minority of documents that are protected from disclosure.

Attorney-Work Product

The work product rule is governed by Rule 4:10-2 (c). It is unequivocal that this rule is applicable when litigation has begun. See Laporta v. Gloucester Cnty. Bd. of Chosen Freeholders, 340 N.J. Super. 254, 259-60 (App. Div. 2001). Hannan, 318 N.J. Super. at 28-29. Likewise, a document prepared at the direction of an attorney before litigation has commenced may be protected by the work product doctrine if its use for litigation was the dominant purpose of preparing the document and if the attorney's belief that litigation would ensue was objectively reasonable. Miller v. J. B. Hunt Transp., 339 N.J. Super. 144, 149-150 (App. Div. 2001).

Similarly, the record developed as set forth in Appendix A of the February 12, 2020 Order does not reveal that a majority of the documents were created at the direction of WMSNJ's attorney or in anticipation of litigation. Therefore, those documents are not protected from disclosure pursuant to the work product doctrine.

Cleric-Penitent Privilege

Similar to the attorney-client privilege, the cleric-penitent privilege is codified in N.J.S.A. 2A:84A-23 and N.J.R.E. 511. The statute and rule provide that any communication made in confidence to a cleric in the cleric's professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which the cleric belongs or of the religion which the cleric professes, shall be privileged. Ibid. The statute and evidence rule provide:

Privileged communications shall include confessions and other communications made in confidence between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counseling role.

As used in this section, "cleric" means a priest, rabbi, minister or other person or practitioner authorized to perform similar functions of any religion.

The privilege accorded to communications under this rule shall belong to

both the cleric and the person or persons making the communication and shall be subject to waiver only under the following circumstances:

- (1) Both the person or persons making the communication and the cleric consent to the waiver of the privilege; or
- (2) The privileged communication pertains to a future criminal act, in which case, the cleric alone may, but is not required to, waive the privilege.

[N.J.S.A. 2A:84A-23 and N.J.R.E. 511]

Guided by the statute and rule, the elements must be satisfied for the privilege to apply. A person's communication must be made: (1) in confidence; (2) to a cleric; and (3) to the cleric in his or her professional character or role as a spiritual advisor. State v. Carey, 331 N.J. Super. 236, 241 (App. Div. 2000).

The WMSNJ attempts to assert the cleric-penitent privilege, but WMSNJ is not the holder of the privilege. Therefore, WMSNJ has no standing to claim that the personal and religious concerns of the WMSNJ membership are protected from disclosure.

Assuming that WMSNJ could assert the privilege, WMSNJ's claim fails as a matter of law. Gonzalez's certification sets the tone as to whether the communication was made in confidence. Gonzalez certifies that members told him "sensitive information" that they knew would be shared with Pastor Lee and other church leaders. Gonzalez also certifies that he was required to report those communication to Pastor Lee about "members' situations". In addition, the members knew the "sensitive information" would be shared with others, the privilege evaporates. IT remains unclear whether Gonzalez received the claimed "sensitive information" was provided to him before becoming a deacon and during his time as a deacon with WMSNJ.

WMSNJ argues that the Gonzalez falls within the definition of a cleric as "...[the]other person or practitioner authorized to perform similar function of any religion". Ibid. The record is barren of any certification providing a description of the duties of a deacon within WMSNJ. Other

than Gonzalez recruiting new members for WMSNJ, this Court is unaware of any other spiritual duties performed by Gonzalez.

Also, all communications made to Gonzalez are not protected under the cleric-penitent privilege. It is questionable that communications made to Gonzalez after he became a deacon are protected. While both Gonzalez and WMSNJ acknowledge that “sensitive information” was disclosed to Gonzalez, Gonzalez certifies that WMSNJ did not have confessionals similar to the Catholic Church. Additionally, on many occasions, members would talk with Gonzalez as a friend and not a leader. WMSNJ has not provided any certifications from the members objecting to the disclosure of the “sensitive information”. Giving all inference to Gonzalez as the non-moving party, there is uncontested evidence that Gonzalez’s dual role as a friend and deacon was tipped more toward that of a friend. Moreover, the communications with members were made to Gonzalez as a friend which would be shared with third parties; and therefore, are not privileged.

In determining whether the privilege applies, the court must objectively view the communications made by the members to Gonzalez. An objective reasonableness standard that allows for consideration of all the facts lends itself to the varied exchanges between clerics and penitents. State v. J.G., 201 N.J. 369, 384 (2008). This Court was not provided with certifications of any WMSNJ members establishing their expectation regarding the communications involving “sensitive information” or “personal or religious concerns” between the members and Gonzalez. In accordance with this standard and the record developed during discovery, this Court finds by a preponderance of the evidence that the communication between Gonzalez and members are not privileged.

This Court is cognizant that the cleric-penitent privilege is “rooted in the imperative need for confidence and trust.” See Trammel v. United States, 445 U.S. 40, 51 (1980). Moreover, the

privilege “recognizes the human need to disclose to a spiritual counsel, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return. Ibid.

WMSNJ also argues that Gonzalez owes a duty to WMSNJ members; and therefore, the WMSNJ membership must be protected. WMSNJ’s position is not supported by law or the record. There is no support in the record that Gonzalez owed a duty to the WMSNJ membership. As more amply discussed in this Court’s May 13, 2019 Decision, Gonzalez was an agent for WMSNJ and recruited new members. In doing so, a benefit flowed to WMSNJ and not to Gonzalez. The record is devoid of any facts which suggest that any benefit flowed to WMSNJ members from Gonzalez. As discussed above, much of the information that WMSNJ seeks from further dissemination is neither confidential nor privileged. WMSNJ asserts in a broad sweeping allegation that the information is either privileged or private, personal information. Other than the e-mail address, home addresses and phone numbers which are subject to non-disclosure as personal identifiers, there is no other information which Gonzalez is duty bound to protect.

Similarly, this Court finds that WMSNJ and the membership will not suffer any irreparable harm. WMSNJ’s asserts that Gonzalez has “already shown that he has no concern for the public dissemination of the confidential information that is the focus of this injunction.” Again, WMSNJ makes a broad assertion regarding how and why Gonzalez disseminated the information suggesting that the net result was an extreme violation of the members’ confidences. Gonzalez’s dissemination of the information was limited to litigation. Moreover, given the May 13, 2019 Decision determining that the NDA was void and unenforceable, Gonzalez is free to disclose information and documentation that does not fall under the protection of the attorney-work product doctrine, attorney-client or cleric-penitent privileges. Thus, WMSNJ has not demonstrated any

irreparable harm to the WMSNJ or the members.

Finally, when balancing the hardships and public policy regarding the issuance of a permanent injunction, this Court finds that WMSNJ will not face hardship with the dissemination of the documents which have been determined to be outside of the attorney-work product, attorney-client and cleric-penitent privileges. WMSNJ's amorphous assertions of "confidential information" and "personal/religious concerns" are belied by this Court's review of the documents. It is obvious that the documents, on its face, are not what WMSNJ say they are. Consequently, the issuance of a permanent injunction would not be a hardship and, more importantly, contravenes public policy.

### III. Conclusion

For the aforementioned reasons, WMSNJ's motion seeking a permanent injunction is GRANTED in part and DENIED in part.


- Defendant WMSNJ's motion to permanently enjoined plaintiff Raymond Gonzalez from disseminating the personal and religious concerns of the membership of WMSNJ is GRANTED in part and DENIED in part as identified in Appendix A of the February 12, 2020 Order.

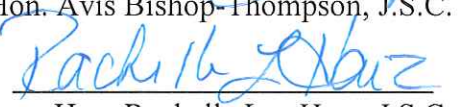
- Plaintiff Raymond Gonzalez is permanently enjoined from disseminating documents determined to be protected on the basis of the attorney-client privilege as identified in Appendix A of this Court's February 12, 2020 Order.

- Plaintiff Raymond Gonzalez is permanently enjoined from disseminating documents determined to be protected on the basis of the attorney-work product doctrine as identified in Appendix A of this Court's February 12, 2020 Order.

- Plaintiff Raymond Gonzalez is permanently enjoined from disseminating the e-mail addresses, phone numbers, home addresses of the members of WMSNJ.

February 20, 2020

  
Hon. Avis Bishop-Thompson, J.S.C.

  
Hon. Rachelle Lea Harz, J.S.C.