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Motion to Exclude Testimony of Ernie Sanders

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1-31-00

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALAN J. DAVIS, Special Administrator
of the Estate of
SAMUEL H. SHEPPARD

Plaintiff

vs.

STATE OF OHIO

Defendant

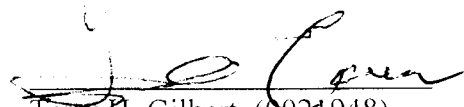
Judge Ronald Suster

Case No. 312322

MOTION TO EXCLUDE
TESTIMONY OF
ERNIE SANDERS

Plaintiff hereby moves this Court for an Order striking Ernie Sanders as a potential witness and to preclude the Defendant State of Ohio, from offering any testimony of him. The reasons and authorities for granting this motion are set forth fully in the attached brief in support, which is hereby incorporated by reference.

Respectfully submitted,



Terry H. Gilbert (0021948)

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1370 Ontario Street

Cleveland, OH 44113

(216) 241-1430

Attorneys for Plaintiff

Brief In Support

I. Background

In its most recent witness list, the State has proffered Ernie Sanders as a potential witness. Mr. Sanders is a pastor who attended Richard Eberling, now deceased, and Jack Fisher, and accepted confession from them during their incarceration at Orient Correctional Institution.

In pretrial deposition, conducted on January 13, 2000, Mr. Sanders indicated that his only relationship with Messrs. Eberling and Sanders was created by his ministering to them. The State is aware of this, and now seeks to offer Mr. Sanders' testimony at trial, in violation of the clergy-penitent privilege.

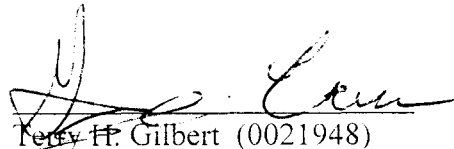
II. Law and Argument

It is axiomatic that clergy-penitent communications are statutorily privileged and protected from disclosure. *See* R.C. §2317.02(C). The clergy-penitent privilege, like the attorney-client privilege, survives the death of the client. *Swindler & Berlin v. U.S.*, 524 U.S. 399, 118 S.Ct. 2081 (1998); *Taylor v. Sheldon*, 172 Ohio St. 118, 173 N.E.2d 892 (1961). Further, the attorney-client privilege encompasses not only a confession within the traditional sense, but also conversations "made in the understood pursuance of that church discipline which gives rise to the confessional relation." *In re Soeder*, 36 Ohio Op. 2d 404, 421, 7 Ohio App. 2d 271, 220 N.E.2d 547 (1966). This privilege cannot be waived, unless by the express consent of the client. R.C. 2317.02(C).

III. Conclusion

For the reasons set forth above, this Court should enter an Order striking Mr. Sanders as a potential witness and the State should be precluded from violating the clergy-penitent privilege by offering any testimony of Mr. Sanders learned during or relating to his religious relationship with Messrs. Eberling or Fisher.

Respectfully submitted,



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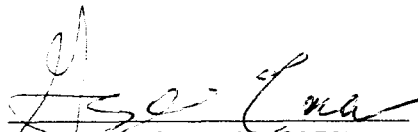
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Attorneys for Plaintiff

Certificate of Service

The undersigned certifies that the foregoing Motion to Exclude Testimony of Ernie Sanders has been served on William Mason, Prosecuting Attorney, Justice Center, 9th Floor, 1200 Ontario Street, Cleveland, Ohio 44113 on this 31st day of January, 2000.


George H. Carr (0069372)
Attorney for Plaintiff