



administrative board or agency, or to any public officer, a confession or admission made to him or her in his or her professional character or as a spiritual advisor in the course of the discipline enjoined by the rules or practices of such religious body or of the religion which he or she professes, nor be compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor. (Source: P.A. 82-280.)

4. The information sought is information received by a clergyman or practitioner of a religious denomination by way of a confession or admission made to the spiritual advisor in the course of their discipline. The Jehovah's Witnesses faith handles allegations of gross sin (e.g., alleged child abuse) differently than say the Catholic Church model with which most lawyers and judges are familiar. Here is an explanation of the confession process in the Jehovah's Witnesses faith relevant to the Illinois clergy-penitent privilege (735 ILCS 5/8-803).

5. The Investigative Stage. If an allegation of a gross sin such as child abuse arises, two Elders will confront the accused with the allegation. If he confesses, then the matter moves on.

6. The Judicial Committee/Ecclesiastical Process. Once there is a confession of the gross sin, a "Judicial Committee" of three Elders – usually the two who were involved in the investigation and one other – meet with the accused to re-establish his confession and then determine whether he is repentant. This is an entirely internal, ecclesiastical process.

7. If the Elders believe the law may require a report of the confessed sin to authorities, the Elders will contact the Legal Department to learn their legal obligations under Illinois law. This consultation with the Legal Department and possible call to authorities will

occur before the Judicial Committee/Ecclesiastical Process described above commences.

8. The Judicial Committee/Ecclesiastical Process is not an “open meeting.” It is an ecclesiastical procedure that adheres to Bible Scriptures that govern how such ecclesiastical investigations and disciplinary determinations are to be conducted. The fact that two Elders are present for the first confession, and that three Elders are present for the second one, should not impact applicability of the clergy-penitent privilege (735 ILCS 5/8-803). A more detailed explanation of the confession process is contained in the Affidavit of Marco Antonio Ortiz, a duly ordained minister and secretary of the Spanish Congregation of Jehovah’s Witnesses in Crystal Lake, Illinois, attached hereto as Exhibit B.

9. The Second District Court of Appeals has made it clear that the clergy-penitent privilege belongs both to the person making the statement and the clergyman. In People v. Burnidge, 664 N.E.2d 656, 279 Ill.App.3d 127 (Ill. App. 1996) a jury convicted Burnidge of two counts of aggravated criminal sexual abuse. Two subpoenaed witnesses, the Reverend Carleton Payne, pastor of St. Matthew's Lutheran Church, and Todd Martin, a deacon at the church, brought a motion to exercise the clergy privilege requesting that they not be compelled to violate their oaths as clergyman by being required to testify about conversations they had had with the defendant. Rev. Payne testified that he learned of the incident involving the defendant and victim and he spoke with the defendant about it. Rev. Payne stated that he attended a joint meeting with the defendant, the victim, and the victim's parents and the defendant admitted that he

apologized to the victim at the meeting with the victim's parents. Thereafter, Payne referred the defendant to Rev. Golisch for counseling.

The trial court granted the motion of the two pastors to be excused from testifying against the defendant about conversations they had had with him. On appeal the defendant argued the State improperly compelled Rev. Golisch to file a report with the DCFS in violation of the clergy privilege (735 ILCS 5/8-803 (West 1994) to which the State responded the clergy privilege did not apply in this case. The Second District Court of Appeals ruled:

"Section 8-803 of the Code allows the privilege to be raised when disclosure by the minister is " 'enjoined by the rules or practices of such religious body or of the religion which he or she professes.' " *People v. Bole*, 223 Ill.App.3d 247, 262, 165 Ill.Dec. 739, 585 N.E.2d 135 (1991); 735 ILCS 5/8-803 (West 1994). The clergyman cannot be " 'compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor.' " *Bole*, 223 Ill.App.3d at 262, 165 Ill.Dec. 739, 585 N.E.2d 135; 735 ILCS 5/8-803 (West 1994). The privilege belongs both to the person making the statement and the clergyman. See *Bole*, 223 Ill.App.3d at 262-63, 165 Ill.Dec. 739, 585 N.E.2d 135; *People v. Diercks*, 88 Ill.App.3d 1073, 1077, 44 Ill.Dec. 191, 411 N.E.2d 97 (1980) (when the clergyman does not object to testifying the burden is on the person asserting the privilege to show that disclosure is enjoined by the rules or practices of the relevant religion).

Applying the above-mentioned principles to the instant case, we find that the defendant's conversations with Rev. Golisch were privileged." [*People v. Burnidge*, 664 N.E.2d 656, 659; 279 Ill.App.3d 127 (Ill. App. 1996)]. [ A courtesy copy of *Burnidge*, *supra*, is attached hereto as Exhibit C].<sup>1</sup>

10. *People vs. Burnidge*, *supra*, was referenced in another Second District Court of Appeals *People v. Thodos*, 2014 IL App (2d) 121001, 18 N.E.3d 577, 385 Ill.Dec. 316 (Ill. App. 2014). Though not a sex abuse case, *Thodos*, *supra*, reaffirmed:

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<sup>1</sup> *People v. Burnidge*, affirmed on appeal to the Illinois Supreme Court, 178 Ill. 2d 429; 687 N.E.2d 813; 1997 Ill. LEXIS 408; 227 Ill. Dec. 331.

"Before evidence is excluded as privileged, the party asserting the privilege must establish all of the privilege's constituent elements. People v. Diercks, 88 Ill.App.3d 1073 1077, 44 Ill.Dec. 191, 411 N.E.2d 97 (1980). Section 8-803 of the Code allows the clergy-penitent privilege to be raised when disclosure by the clergyman is "enjoined by the rules or practices of such religious body or of the religion which he or she professes." 735 ILCS 5/8-803 (West 2012) ; see People v. Burnidge, 279 Ill.App.3d 127, 131, 216 Ill.Dec. 19, 664 N.E.2d 656 (1996) ; People v. Bole, 223 Ill.App.3d 247, 262, 165 Ill.Dec. 739, 585 N.E.2d 135 (1991). The clergyman cannot be "compelled to divulge any information which has been obtained by him or her in such professional character or as such spiritual advisor." 735 ILCS 5/8-803 (West 2012) ; see Burnidge, 279 Ill.App.3d at 131, 216 Ill.Dec. 19, 664 N.E.2d 656 ; Bole, 223 Ill.App.3d at 262, 165 Ill.Dec. 739, 585 N.E.2d 135. The privilege belongs both to the person making the statement and to the clergyman. Burnidge, 279 Ill.App.3d at 131, 216 Ill.Dec. 19, 664 N.E.2d 656 ; Bole, 223 Ill.App.3d at 262-63, 165 Ill.Dec. 739, 585 N.E.2d 135. When the clergyman does not object to testifying, the burden shifts to the person asserting the privilege to show that disclosure is enjoined by the rules or practices of the relevant religion. Diercks, 88 Ill.App.3d at 1077, 44 Ill.Dec. 191, 411 N.E.2d 97." [People v. Thomas, 2014 IL App (2d) 121001, 18 N.E.3d 577, 597, 385 Ill.Dec. 316, 336 (Ill. App. 2014)]. [ A courtesy copy of Thodos, *supra*, is attached hereto as Exhibit D].

11. It is also persuasive that the organization that oversees mandatory reporting and confidentiality issues, the Illinois' Department of Children and Family Services, recognizes that despite clergy being mandatory reporters under 325 ILCS 5/4, a

member of the clergy may claim privilege under Section 8-803 of the Code of Civil Procedure.<sup>2</sup>

12. Other commentators of the Illinois' requirements under 325 ILCS 5/4 for a member of the clergy to report and their ability to claim privilege under Section 8-803 of the Code of Civil Procedure have reached the same conclusion.<sup>3</sup>

WHEREFORE, the Respondent prays for an Order from this Court granting this Motion to Quash Item #9 of the Subpoena Duces Tecum, or alternatively viewing the

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<sup>2</sup> DCFS Manual August of 2019 entitled: Manual for Mandated Reporters, Children's Justice Task Force, August 2019 Revised Edition. The Manual references clergy being a mandatory reporter under 325 ILCS 5/4, but the Manual also states a member of the clergy may claim privilege under Section 8-803 of the Code of Civil Procedure. Specifically:

"Privileged communication between professional and client is not grounds for failure to report. Willful failure to report suspected incidents of child abuse or neglect is a misdemeanor (first violation) or a class 4 felony (second or subsequent violation). Further, professionals may be subject to penalties by their regulatory boards for willful failure to report. **A member of the clergy may claim privilege under Section 8-803 of the Code of Civil Procedure.**" [Manual for Mandated Reporters, Page 5.] [Emphasis added].

Furthermore, a form document in the same Manual provides:

ACKNOWLEDGEMENT OF MANDATED REPORTER STATUS (CLERGY)

I, \_\_\_\_\_, understand that as a member of the clergy (Name) I am a mandated reporter under the Abused and Neglected Child Reporting Act [325 ILCS 5/4]. This means that I am required to report or cause a report to be made to the child abuse and neglect Hotline number at 1-800- 25-ABUSE (1-800-252-2873) whenever I have reasonable cause to believe that a child known to me in my professional or official capacity may be a sexually abused child. ("Reasonable cause to believe means" that the concerned person, acting as a reasonable man or woman, believes that the described facts exist.) I understand that there is no charge when calling the Hotline number and that the Hotline operates 24-hours per day, 7 days per week, 365 days per year. I understand that in an effort to help mandated reporters understand their critical role in protecting children by recognizing and reporting child abuse/neglect, DCFS administers an online training course entitled Recognizing and Reporting Child Abuse: Training for Mandated Reporters, available 24 hours a day, seven days a week. **I further understand that I shall not be compelled to disclose a confession or admission made to me in my professional character or as a spiritual advisor if I am a member of the clergy of a religious denomination that is accredited by the religious body to which I belong.** I affirm that I have read this statement and have knowledge and understanding of the reporting requirements, which apply to me under the Abused and Neglected Child Reporting Act." [Manual for Mandated Reporters, Page 45.] [Emphasis added]. [Excerpt of page 5 and 45 attached hereto as Exhibit E].

<sup>3</sup> Although not a scholarly piece, the Illinois State Bar Association newsletter from March 2004, Volume 14, Number 3 addressing Illinois clergy as mandated reporters stated:

"Although Illinois specifically identifies clergy as mandated reporters, it also allows them to claim that the communication is privileged under the Illinois Code of Civil Procedure. **Claiming the privilege effectively protects them from having to disclose to any administrative body or agency a confession or admission of child abuse obtained through a confession or counseling session.**" [Emphasis added]. [Excerpt of page 1 and 4 attached hereto as Exhibit F].

documents *in camera* and waiting to hear testimony about the Jehovah Witness confessional and spiritual process before disclosing these documents and such other relief as this Court deems just and appropriate.

Respectfully Submitted,

By: *Philip A. Prossnitz*  
/Philip A. Prossnitz, ARDC # 6185116  
/Philip A. Prossnitz

CERTIFICATE OF SERVICE BY EMAIL

I Philip A. Prossnitz, an attorney, hereby verify that I served this Defendant Penkava's Motions to Quash by emailing a copy to Ashur Youash, A.S.A., at [AYYouash@mchenrycountyil.gov](mailto:AYYouash@mchenrycountyil.gov) and Mr. Terry Ekl at [tekl@eklwilliams.com](mailto:tekl@eklwilliams.com) on and before 9:00 PM on August 11, 2021.

Law Office of Philip A. Prossnitz

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