

DISTRICT COURT, EL PASO COUNTY,
COLORADO
Court Address: 270 S. Tejon (80903)
P.O. Box 2980
Colorado Springs, CO 80901
Phone Number: (719) 448-7577

Plaintiff and Counterclaim Defendant:
GRACE CHURCH & ST. STEPHEN'S, a
Colorado nonprofit corporation,

v.

Defendant and Counterclaimant:
THE BISHOP AND DIOCESE OF
COLORADO, a Colorado nonprofit
corporation,

and

Third Party Counterclaimants:
THE DIOCESE OF COLORADO IN THE
EPISCOPAL CHURCH; GRACE AND ST.
STEPHEN'S EPISCOPAL CHURCH; and
GRACE CHURCH AND ST. STEPHEN'S, a
Colorado religious society and corporation,

v.

Counterclaim Defendants:
REV. DONALD ARMSTRONG III;
CHARLES C. BROWN; DARELEEN
SCHAFFER; JON WROBLEWSKI; MARGE
GOSS; CRAIG WHITNEY; ROBERT C.
BALINK; CHAD FRIESE; MICHAEL
BARBER; KEITH STAMPHER; JASON
HUNTLEY; EMILY KLINE; RIP
HOLLISTER; JACK GLORIOD; EDWIN J.
MONTGOMERY, JR.; KEVIN DIBBLE;
SUSAN SPENCER; and ALAN CRIPPEN II

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Defendant/Counterclaimant The Episcopal
Church:

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Case No. 2007-CV-1971

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**THE EPISCOPAL CHURCH'S ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT, AND COUNTERCLAIMS**

Defendant the Episcopal Church (the "Episcopal Church" or "Church"), hereby answers the amended complaint of plaintiff "Grace Church & St. Stephen's" and states its counterclaims as follows:

ANSWER

The Episcopal Church answers the like-numbered paragraphs of the amended complaint as follows:

1. The Episcopal Church admits that Grace Church and St. Stephen's is a Colorado religious society and corporation, and denies the remaining allegations of paragraph 1.
2. The Episcopal Church admits that the Bishop and Diocese of Colorado is a corporation under Colorado law, and denies the remaining allegations of paragraph 2.
3. The Episcopal Church admits that it is an unincorporated association with its principal place of business in New York, New York, and denies the remaining allegations of paragraph 3.

4. The Episcopal Church admits that the Third Party Counterclaimants are represented by counsel for the Diocese, and denies the remaining allegations of paragraph 4.

5. The allegations of paragraph 5 are not directed to the Episcopal Church, and therefore the Episcopal Church is not required to admit or deny them. If a response is required, then the Episcopal Church denies the allegations of paragraph 5.

6. The Episcopal Church admits that this Court has venue over this action, and denies the remaining allegations of paragraph 6.

7. The Episcopal Church denies the allegations of paragraph 7.

8. The Episcopal Church denies the allegations of paragraph 8.

9. The Episcopal Church denies the allegations of paragraph 9.

10. The Episcopal Church denies the allegations of paragraph 10.

11. The Episcopal Church denies the allegations of paragraph 11.

12. The Episcopal Church denies the allegations of paragraph 12.

13. The Episcopal Church incorporates its answers to all of the other paragraphs in the amended complaint.

14. The Episcopal Church denies the allegations of paragraph 14.

15. The Episcopal Church denies the allegations of paragraph 15.

16. The Episcopal Church denies the allegations of paragraph 16.

17. The Episcopal Church incorporates its answers to all of the other paragraphs in the amended complaint.

18. The Episcopal Church denies the allegations of paragraph 18.

19. The Episcopal Church denies the allegations of paragraph 19.

20. The Episcopal Church denies the allegations of paragraph 20.

21. The Episcopal Church incorporates its answers to all of the other paragraphs in the amended complaint.

22. The Episcopal Church denies the allegations of paragraph 22.

23. Paragraph 23 merely states the relief that plaintiff seeks, and therefore the Episcopal Church is not required to admit or deny the statements in that paragraph. If a response is required, then the Episcopal Church denies the allegations of paragraph 23.

24. The amended complaint does not include a paragraph 24.

25. The Episcopal Church incorporates its answers to all of the other paragraphs in the amended complaint.

26. The Episcopal Church denies the allegations of paragraph 26.

27. Paragraph 27 merely states the relief that plaintiff seeks, and therefore the Episcopal Church is not required to admit or deny the statements in that paragraph. If a response is required, then the Episcopal Church denies the allegations of paragraph 27.

28. Paragraph 28 merely states the relief that plaintiff seeks, and therefore the Episcopal Church is not required to admit or deny the statements in that paragraph. If a response is required, then the Episcopal Church denies the allegations of paragraph 28.

COUNTERCLAIMS

For its counterclaims against plaintiff and claims against the counterclaim defendants, the Episcopal Church states as follows:

COUNT I

Parties

1. The Episcopal Church is a hierarchical religious denomination comprised of 111 dioceses and their constituent congregations located in the United States and other countries. It is an unincorporated association with its principal place of business in New York, New York.

2. Defendant/Counterclaimant the Diocese of Colorado is one of the Episcopal Church's 111 dioceses, and exercises jurisdiction over the Episcopal Church's members and congregations in the state of Colorado.

3. Grace Church and St. Stephen's is a "parish" of the Episcopal Church and the Diocese of Colorado. To facilitate the conduct of its temporal affairs, Grace Church and St. Stephen's has also formed a Colorado religious society and corporation.

4. Counterclaim defendant Donald Armstrong III is the former rector of Grace Church and St. Stephen's. He, along with the other individual counterclaim defendants, is continuing to exercise control over the parish's real and personal property.

5. Counterclaim defendants Charles C. Brown, Dareleen Schaffer, Jon Wroblewski, Marge Goss, Craig Whitney, Robert C. Balink, Chad Friese, Michael Barber, Keith Stampher, Jason Huntley, Emily Kline, Rip Hollister, Jack Gloriod, Edwin J. Montgomery, Jr., Kevin Dibble, Susan Spencer, and Alan Crippen II are former members of the Vestry of Grace Church and St. Stephen's. They, along with counterclaim defendant Armstrong, are continuing to exercise control over the parish's real and personal property.

The Church's Hierarchical Structure

6. Each Episcopal congregation is a constituent part of the diocese in which it is physically located. Most of those congregations are "parishes." Other congregations that do not

meet all of the qualifications for parishes, which are generally newly-forming congregations, are known as “missions.”

7. Under the rules of the Episcopal Church, the voting membership of each parish elects the lay members of its governing body, known as its “vestry.” The priest in charge of the parish, known as its “rector,” is elected by the vestry and is a member of the vestry.

8. Each parish, either by its membership or its vestry, also elects representatives to the governing body of its diocese, which is generally called an “Annual Convention” or “Annual Council.” Each diocese, in turn, sends bishops, other ordained clergy, and lay representatives elected by the Annual Convention or Council as voting members to the triennial meeting of the governing body of the Episcopal Church, which is called the “General Convention.”

9. The Episcopal Church’s General Convention has adopted and from time to time amends a Constitution and Canons that govern all Episcopal dioceses, parishes, and missions. Dioceses, through their Annual Conventions or Councils, similarly have adopted and from time to time amend Constitutions and Canons that govern their parishes and missions. All Episcopal parishes, vestries, and rectors exercise their authority pursuant to and subject to the Constitutions and Canons of both the national Church and the diocese in which each is located.

10. Each diocese of the Episcopal Church is under the authority of a diocesan bishop, who serves as the “ecclesiastical authority” and “chief executive officer” in charge of both ecclesiastical and temporal issues within that diocese.

11. The Episcopal Church’s Canons govern both temporal and spiritual matters and contain a number of provisions that specifically relate both to the formation and governance of individual parishes and to the use and control of parish property.

12. Episcopal Church Canon II.6.2, adopted in 1868, provides:

“It shall not be lawful for any Vestry, Trustees, or other body authorized by laws of any state or Territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.”

13. Episcopal Church Canon II.6.1, adopted in 1871, requires that consecrated parish property be “secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with this Church and subject to its Constitution and Canons.”

14. Episcopal Church Canon I.7.3, adopted in 1940, provides:

“No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part....”

15. Similarly, Diocesan Canon 14.4 states:

“No parish shall alienate or encumber any real property or incur any indebtedness secured by such real property except with the written consent of the Ecclesiastical Authority and the Diocesan Standing Committee.”

16. Episcopal Church Canon III.9.5(1), adopted in 1904, provides that “[f]or the purposes of the office and for the full and free discharge of all functions and duties pertaining thereto,” it is “the Rector [who] shall at all times be entitled to the use and control of the Church and Parish buildings together with all appurtenances and furniture, and access to all records and registers maintained by or on behalf of the Congregation.” The Rector’s authority must be carried out “subject to the Rubrics of the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop.”

17. Affirming the Episcopal Church’s historic policy regarding parish property, as reflected in the numerous earlier canons set forth above, Episcopal Church Canon I.7.4, adopted in 1979, provides:

“All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.”

18. Episcopal Church Canon I.17.8 requires that all persons accepting any office with the Church, including members of parish vestries, shall “well and faithfully perform the duties of [their] office in accordance with the constitution and canons of this church and of the Diocese in which the office is being exercised.”

19. Episcopal Church Canon I.13 delegates the authority to recognize new parishes to the dioceses, and provides:

“The ascertainment and defining of the boundaries of existing Parishes or Parochial Cures, as well as the establishment of a new Parish or Congregation, and the formation of a new Parish within the limits of any other Parish, is left to the action of the several Diocesan Conventions.”

20. Diocesan Canon 14.1 states in part:

“Every parish in this diocese shall be organized from a mission. Every parish in this diocese shall be incorporated under the laws of the State of Colorado as a non-profit corporation. The articles of incorporation of each parish shall accede to the *Constitution and Canons* for the Government of the Episcopal Church and to these canons and the constitution of this diocese and shall be approved by the Ecclesiastical Authority and by the chancellor or a vice-chancellor.”

21. Diocesan Canon 14.2 states in part:

“Every parish in this diocese shall comply with the laws of the State of Colorado relating to non-profit corporations. No parish shall amend its articles of incorporation without the prior written consent of the Ecclesiastical Authority and of the chancellor or a vice-chancellor of this diocese.”

22. Diocesan Canon 14.3 states in part:

“Every parish in this diocese shall be governed by a vestry which shall act as the board of directors of the non-profit corporation. The rector of the parish shall be an officer thereof. The members of such corporation shall be the communicants in good standing of the parish. Each vestry shall consist of the rector of the parish, two wardens, and no

fewer than three and no more than fifteen members who are adult communicants in good standing of the parish. ... Each vestry shall elect a treasurer and a clerk from the communicants in good standing of the parish.”

23. Diocesan Canon 14.7 (#1) states:

“In the event a parish ceases to accede to the *Constitution and Canons* for the Government of the Episcopal Church or to these canons and the constitution of this diocese, the Ecclesiastical Authority, with the advice and consent of the Regional Missioners and the Diocesan Standing Committee, may dissolve the parish. Upon such dissolution, the Ecclesiastical Authority may elect to reorganize the dissolved body as a diocesan mission. Title to all real and personal property of the dissolved parish shall revert automatically and immediately to the Bishop and Diocese of Colorado upon such dissolution.”

24. The Constitution, Canons, and discipline of the Episcopal Church and the Diocese do not permit any parish to unilaterally withdraw from the Diocese or the Episcopal Church, by majority vote of their leadership or members or through any other means.

The Establishment of Grace Church and St. Stephen’s

25. In 1873, “Grace Church Mission” was established by the Missionary Diocese of Colorado, and later that year petitioned the Missionary Diocese to become, and was accepted as, an Episcopal parish.

26. In 1887, representatives from Grace Church, at the Annual Convention of the Missionary Diocese of Colorado, voted to petition for the establishment of the Diocese of Colorado. That same year, the Missionary Diocese petitioned the General Convention of the Episcopal Church to establish the Missionary Diocese as the Diocese of Colorado. The General Convention approved the petition, and the Diocese of Colorado was created effective January 1, 1890.

27. In 1893, several parishioners of Grace Church formed a separate congregation, St. Stephen’s, which was similarly granted parish status.

28. In 1923, with the consent of the Diocese, the congregation of Grace Church and the congregation of St. Stephen's united and chose the name Grace Church and St. Stephen's.

29. The 1923 Affidavit of Incorporation of Grace Church and St. Stephen's stated that the corporation "does hereby expressly accede to all the provisions of the constitution and canons adopted by the General Convention of the protestant Episcopal Church in the United States of America, and to all of the provisions of the constitution and canons of the Diocese of Colorado." The Affidavit also stated that Grace Church and St. Stephen's was incorporated "to administer the temporalities of the Protestant Episcopal Church in the United States of America in the parish and to carry on and conduct religious, educational and benevolent institutions and works."

30. In 1929, the property held by Grace Church and St. Stephen's was consecrated by an Episcopal Bishop, and the Rector, Wardens, and Vestry of Grace Church and St. Stephen's executed an Instrument of Donation in which they agreed to "relinquish all claim to any right of disposing of the said building, without due consent given by the Ecclesiastical Authority of the Diocese, according to the Canons of the said Diocese, or allowing the use of it in any way inconsistent with the terms and true meaning of this Instrument of Donation, and with the Form of Consecration hereby requested of the Bishop."

31. Until the present dispute arose, Grace Church and St. Stephen's operated as a parish of the Episcopal Church and the Episcopal Diocese of Colorado, in accordance with the Constitution and Canons of the Episcopal Church and the Diocese.

The Current Dispute

32. On December 27, 2006, Bishop O'Neill temporarily inhibited the Rev. Donald Armstrong, then the Rector of Grace Church and St. Stephen's, prohibiting him from, among

other things, holding himself out as an Episcopal priest or entering the grounds of Grace Church and St. Stephen's.

33. On March 26, 2007, nine of ten members of the vestry of Grace Church and St. Stephen's voted to "leave the Episcopal Church" and affiliate with another religious denomination.

34. On March 28, 2007, over 100 members of Grace Church and St. Stephen's met with Bishop O'Neill to organize the members of the congregation who remained loyal to the Episcopal Church. During that meeting, Bishop O'Neill recognized that Robert McJimsey was the sole remaining Vestry member of Grace Church and St. Stephen's.

35. On April 11, 2007, acting pursuant to the Bylaws of Grace Church and St. Stephen's, Mr. McJimsey, as the lone remaining Vestry member, appointed five individuals to fill vacant positions on the Vestry. Bishop O'Neill and the Standing Committee of the Diocese of Colorado recognize the McJimsey Vestry as Grace Church and St. Stephen's proper Vestry.

36. On or about October 31, 2007, following an ecclesiastical trial, Bishop O'Neill deposed Father Armstrong from his ministry as an Episcopal priest.

37. Bishop O'Neill also appointed the Rev. Michael O'Donnell to serve as priest-in-charge of Grace Church and St. Stephen's.

38. Notwithstanding the foregoing, the counterclaim defendants remain in possession and control of the real and personal property of Grace Church and St. Stephen's, and have refused to relinquish it to the leaders and representatives of Grace Church and St. Stephen's recognized by the Episcopal Church and the Diocese of Colorado.

39. Therefore, an actual controversy exists between the Episcopal Church and those who purport to represent Grace Church and St. Stephen's as to the interests of the Church in the

real and personal property held by Grace Church and St. Stephen's and the identity of Grace Church and St. Stephen's true leadership and members. The Episcopal Church contends that the property held by Grace Church and St. Stephen's is held and may be used only for the mission of the Episcopal Church, and that the rightful leaders and members of the continuing parish and parish corporation are those individual Episcopalians recognized by the Diocese and the Episcopal Church. The counterclaim defendants disagree, assert the right to retain parish property for their own use in association with another denomination, and contend that they remain entitled to lead and represent Grace Church and St. Stephen's even after leaving the Episcopal Church. A declaratory judgment is necessary and appropriate to set forth and determine the parties' rights.

40. As a result of the continued use, control, and diversion of the real and personal property held by Grace Church and St. Stephen's for purposes other than for the mission of the Episcopal Church and in derogation of the Episcopal Church's and the Diocese's Constitutions and Canons, the Episcopal Church has suffered and will suffer irreparable injury.

WHEREFORE, the Episcopal Church prays that the Court:

(a) declare that plaintiff and the counterclaim defendants may not divert, alienate, or use the real or personal property of Grace Church and St. Stephen's except for the Episcopal Church's mission, as provided by and in accordance with the Constitutions and Canons of the Episcopal Church and the Diocese;

(b) declare that all real and personal property of Grace Church and St. Stephen's is held in trust for the Episcopal Church and the Diocese;

(c) declare that the leadership and members of Grace Church and St. Stephen's are those individuals recognized by the Episcopal Church and the Diocese of Colorado;

(d) issue a preliminary and a permanent injunction ordering plaintiff and the counterclaim defendants to stop diverting, alienating, or using the real or personal property of Grace Church and St. Stephen's except for the Episcopal Church's mission, as provided by the Constitutions and Canons of the Episcopal Church and the Diocese of Colorado, and to relinquish control of the real and personal property held by Grace Church and St. Stephen's to the McJimsey Vestry; and

(e) award such further relief as may be necessary and proper.

Respectfully submitted this 28th day of March, 2008.


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** Document was filed electronically. See C.R.C.P. 121, §1-26. Original document in file.*

CERTIFICATE OF SERVICE

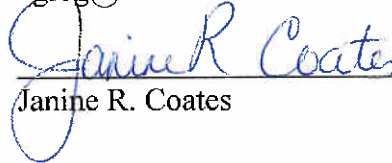
I certify that on this 28th day of March, 2008, a true and correct copy of the foregoing **THE EPISCOPAL CHURCH'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT, AND COUNTERCLAIMS** was served, via LexisNexis file and serve as follows:

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