

DISTRICT COURT, EL PASO COUNTY, COLORADO
270 South Tejon Street
Colorado Springs, CO 80903
(719) 448-7700

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

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

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

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 STAMPER; JASON HUNTLEY; EMILY KLINE; RIP HOLLISTER; JACK GLORIOD; EDWIN J. MONTGOMERY, JR; KEVIN DIBBLE; SUSAN SPENCER; ALAN CRIPPEN II; ST. STEPHEN'S CLASSICAL ACADEMY, a Colorado nonprofit corporation; and GRACE CHURCH & ST. STEPHEN'S, a Colorado unincorporated nonprofit association;

Additional Counterclaim Defendant:
ROBERT J. O'NEILL

Additional Defendant Counterclaimant:
THE EPISCOPAL CHURCH

Attorney for Other Counterclaim Defendants
Bruce M. Wright, #5347
Flynn Wright & Fredman, LLC
111 South Tejon, Suite #202
Colorado Springs, Colorado 80903
Phone: 719-578-8444 / Fax: 719-578-8836
Email: bwright@fwflegal.com

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Case No. 2007CV1971

DIV. COM-5

**GRACE CHURCH AND COUNTERCLAIM DEFENDANTS
STATUS REPORT FOR THE MAY 2, 2008 HEARING**

Grace Church and St. Stephen's, and the Individual Counterclaim Defendants, through their undersigned attorneys, hereby provide this Status Report for the arguments scheduled for May 2, 2008.

I. Pending Motions. We agree with the listing of motions and briefs to be argued on May 2, 2008 in the Diocese's April 25, 2008 Status Report.

II. Argument Regarding "Changing Theories." Somewhat unusual for a "status report", the Diocese's April 25, 2008 Status Report contains four pages of arguments claiming Plaintiff has somehow "changed theories." While this is simply not true, it highlights the fact that the central, and determining, issue for most (if not all) the pending motions is the proper identity of the parties. Prior to the May 2, 2008 hearing, it would be helpful to provide the Court with a brief analysis of this central issue and the Diocese's attempts to confuse it in the four pages of arguments included in their latest "Status Report."

A. **Plaintiff's Position.** Plaintiff has consistently contended it is the 1973 nonprofit corporation. The eighteen individual "Counterclaim Defendants" have consistently contended they are officers, vestry members (i.e., directors) or employees of the 1973 nonprofit corporation.

B. **A Rose Is A Rose By Any Other Name.** The Diocese makes much of the fact that Grace Church has, from time to time, referred to itself as a "parish." It has. It has also referred to itself as a "church," a "congregation," and doubtless several other similar labels over the years. However, these are just names. They all refer to the one legal entity which owns and operates the

Church's property, hires its employees, receives millions of dollars in contributions from its members, administers to the spiritual needs of those thousands of members, withholds income and social security taxes from its employees, files annual reports with the Secretary of State, applies for and obtains real property tax exemptions for its property, certifies its existence and its officers' authority to borrow money and open bank accounts, etc., etc., etc. The fact that Grace Church from time to time refers to itself as a "parish" does not mean there then must be some additional fictional legal entity known as "the parish" any more than the fact that it from time to time refers to itself as the "church" or the "congregation" means there must also be two additional fictional legal entities known as the "church" and the "congregation." There is but one legal entity. The fact that it is referred to in several different ways does not change that.

C. The 1923 Association. The Diocese continues to assert in its "Status Report" that the 1923 Religious Association continues to have some validity. It does not. By filing Articles of Reinstatement for it on October 18, 2007, the Diocese, through Mr. Nussbaum, conclusively admitted it was dissolved prior to that date. Additionally, as noted in a footnote to their February 14, 2008 "Joint Answer", Grace Church does not believe the purported "reinstatement" had any legal effect but that "was an argument for another day." Apparently, the "other day" has now arrived. The reinstatement statute (C.R.S. §7-90-1001) states:

"Any domestic entity as to which a constituent filed document has been filed by, or placed in the records of the Secretary of State ...[may be reinstated.]"
(Emphasis added – note the use of the past tense.)

C.R.S. §7-90-1003(2) further provides:

"If the constituent-filed document referred to in section 7-90-1001 is no longer in the publicly accessible electronic records of the Secretary of State at the time articles of reinstatement are delivered to the Secretary of State, the entity shall cause a true and complete copy of its constituent-filed document to be attached to its articles of reinstatement." (Emphasis added).

Taken together, these two statutes clearly, and on their face, limit reinstatement under C.R.S. §7-90-1001 to dissolved entities which had previously filed their constituent documents with the Secretary of State. It is uncontested the Affidavit of Incorporation for the 1923 Religious Association had never been filed with the Secretary of State until Mr. Nussbaum purported to reinstate it on October 18, 2007. Thus, it was ineligible for reinstatement under C.R.S. §7-90-1001 as a matter of law.

Additional guidance is provided in the Colorado nonprofit corporate statute. C.R.S. §7-30-101.1 provides that a nonprofit corporation which is dissolved “... and the business or affairs of which are continued for nonprofit purposes ...” is eligible for reinstatement under C.R.S. §7-90-1001. There is no such provision allowing reinstatement of a dissolved nonprofit corporation which laid completely dormant for over thirty-four years as did the 1923 Religious Association. Consequently, the 1923 Religious Association ceased to exist upon incorporation of the 1973 corporation, has been legally dissolved for the past thirty-four years, and continues to be legally dissolved since it was ineligible for reinstatement under C.R.S. §7-90-1001.

III. Requested Action. In a nutshell, the central issue is the proper identification and designation of the parties. Once that is done, we believe all the pending motions will more or less neatly fall into place. For all the reasons previously stated, we do not believe there is any legitimate good faith basis for any conclusion other than that the 1973 nonprofit corporation has continuously owned, operated and ministered the Church and its assets for the thousands of its members in the over thirty-four years since it was incorporated.

Respectfully submitted this 1st day of May, 2008.

J. GREGORY WALTA, P.C.

/s/ J. Gregory Walta
Attorney for Grace Church

/s/ Dennis W. Hartley, Esq.
Attorney for Counterclaim Defendant
Rev. Donald Armstrong, III

FLYNN WRIGHT & FREDMAN, LLC

/s/ Bruce M. Wright
Attorney for Remaining
Counterclaim Defendants

CERTIFICATE OF SERVICE

I certify that on May 1, 2008, a true and correct copy of this document was sent via Justice Link to the following:

L. Martin Nussbaum, Esq.
Rothgerber Johnson & Lyons LLP
90 S. Cascade Avenue, #1100
Colorado Springs, CO 80903

Kristin M. Bronson, Esq.
Rothgerber Johnson & Lyons LLP
1200 17th Street, Suite 3000
Denver, CO 80202

Brent E. Rychener, Esq.
Holme Roberts & Owen, LLP
90 South Cascade Avenue, #1300
Colorado Springs, CO 80903

Steven E. Ezell, Esq.
Buell & Ezell, LLP
24 South Weber, #375
Colorado Springs, CO 80903

/s/ Gail Deal
Gail Deal, Legal Assistant

In accordance with C.R.C.P. 121 § 1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.