

Law and Church

Jessica A. Olson
ADF Member no. 2934
Clergy Training Program; Generalist Study Program

Question 1: List nine (9) laws, or as many as possible if less than nine, concerning clergy that you have found by searching your nearest municipality laws. By municipality, we mean on the village or town level. If there are none, then tell us how you found that out.

The City of Chico Municipal Code does not have any ordinances regarding clergy. However, there are a few (three) ordinances in regards to churches that may affect my congregation.

Law #1

Title 3 REVENUE AND FINANCE

3.32.300 Charitable and nonprofit organizations - Exemptions.

A. Unless otherwise provided in this chapter, the following activities and organizations are exempt from payment of the license tax:

2. The conducting of any entertainment, concert, exhibition, or lecture on scientific, historical, literary, religious, or moral subjects, whenever all the receipts thereof are to be appropriated to any church or school or to any religious or benevolent purpose.¹

Law #2

19.60.070 Height measurement and height limit exceptions.

E. Exceptions to Height Limits. The height limits of these Regulations shall not apply to the following:

4. Public Assembly. The maximum height for places of public assembly, including churches, schools and other allowed public and semi-public structures, may exceed the height allowed in the zoning district, subject to the approval of a use permit, provided the area of assembly is located on the first floor of the structure. For each 1 foot by which the height of the structure exceeds the maximum height, the side and rear yards shall be increased in width and/or depth by an additional foot over the side and rear yards required for the highest structure allowed in the zoning district.²

Law #3

19.70.040 Number of parking spaces required.

Each land use shall provide the minimum number of off-street parking spaces required by this section, except where a greater number of spaces is required as a condition of an entitlement approval.

Churches and other places of worship and mortuaries, Vehicle Spaces Required:

¹ Title 3, Revenue and Finance, Chapter 3.32, Business License Law, Chico Municipal Code. <http://www.chico.ca.us/Municipal_Code/Title_3.pdf>.

² Title 19, Land use and Development Regulations, Chapter 19.60, General Property Development and use Standards, Chico Municipal Code. <http://www.chico.ca.us/Municipal_Code/Title_19.pdf>.

1 space for each 4 fixed seats or 1 space for each 8 feet of benches, or 1 space for every 28 sq.ft.of gross principal assembly area, whichever is greater. Bicycle Spaces Required (Minimum of 1 space), 10% of vehicle spaces for places of worship.³

Question 2: *If there is a body of laws between the municipality laws and the state/provincial laws where you live, list nine (9) laws, or as many as possible if less than nine, concerning clergy, that you have found by searching this area.*

Butte County does not have any municipal codes that cover clergy people. I searched the entire code for the words ‘clergy,’ ‘church,’ and ‘priest.’⁴ I also work for the county and asked Mark in the County Clerk’s office, 7/10/2008, if there were any county codes or laws pertaining to clergy; he said that there are not and referred me to California Family Code Section 400.⁵

Question 3: *List nine (9) laws concerning clergy that you have found by searching your state/provincial laws.*

Law #1

According to California Family Code, Section 400 (below), marriage may be performed by any authorized person of any authorized person of any religious denomination. In speaking to Mark at the County Clerk’s office, I discovered that clergy do not have register with the county to perform ceremonies and that the onus to determine if the celebrant is authorized to perform marriages is on the couple being wed.

CALIFORNIA FAMILY CODE

SECTION 400

400. Marriage may be solemnized by any of the following who is of the age of 18 years or older:

(a) A priest, minister, rabbi, or authorized person of any religious denomination.⁶

Law #2

In many states clergy enjoy broad rights under state privileged communication rulings, specifically, the right to remain silent concerning information known as a result of counseling in spite of the state’s need for that information. Even California allows this privilege to clergy and their penitents but there are certain restrictions. In California, “pastoral counselors conducting marriage counseling do not enjoy this privilege, even though California grants confidentiality privilege to psychotherapists and their patients.”⁷

³ Title 19, Land use and Development Regulations, Chapter 19.70, Parking and Loading Standards, Chico Municipal Code. Accessed 6/10/2008. <http://www.chico.ca.us/Municipal_Code/Title_19.pdf>.

⁴ Source: <http://municipalcodes.lexisnexis.com/codes/butteco/>. Accessed 6/10/2008, searching the word ‘clergy,’ ‘church,’ and ‘priest.’ Site maintained by Butte County, CA.

⁵ California Family Code, Section 400-402. <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=45228420740+0+0+0&WAIAction=retrieve>>.

⁶ Ibid.

⁷ Ronald K Bullis & Cynthia S. Mazur. Legal issues and religious counseling. Westminster John Knox Press: Louisville. pg 4.

Further, in regards to mandated reporting, a clergy person has a duty to report elder or child abuse and neglect if they receive the information through means other than penitential communication. Penitential communication means, ““a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.”^{8,9}

Since ADF does not specifically have a practice of receiving penitential communication from its members, any communication made to a clergy person in confidence might be interpreted to be accessible by the court. Therefore, neither the penitent (member) nor the priest would be protected in a court of law against their private information or communication from being used in a court of law. If ADF did have such a practice its members and clergy would be safe in California from answering subpoenas regarding privileged communications. As it currently stands, an ADF clergy person would be no more protected under the law than a family friend.

CALIFORNIA WELFARE AND INSTITUTIONS CODE
SECTION 15630-15632

15630. (a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, **clergy** member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a **clergy** member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1).

For purposes of this subdivision, "penitential communication" means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a **clergy** member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall be construed to modify or limit a **clergy** member's duty to report known or suspected elder and dependent adult abuse

⁸ California Welfare and Institutions Code, Section 15630-15632. <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=45084512070+0+0+0&WAIAction=retrieve>>.

⁹ California Penal Code, Section 11164-11174.3. <<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=11001-12000&file=11164-11174.3>>.

when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a **clergy** member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.¹⁰

Law #3

CALIFORNIA PENAL CODE

SECTION 11164-11174.3

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(d) (1) A **clergy** member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a **clergy** member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a **clergy** member's duty to report known or suspected child abuse or neglect when the **clergy** member is acting in some other capacity that would otherwise make the **clergy** member a mandated reporter.

(3) (A) On or before January 1, 2004, a **clergy** member or any custodian of records for the **clergy** member may report to an agency specified in Section 11165.9 that the **clergy** member or any custodian of records for the **clergy** member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim

¹⁰ California Welfare and Institutions Code, Section 15630-15632. <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=91595418159+1+0+0&WAISaction=retrieve>>.

of sexual abuse that the **clergy** member or any custodian of records for the **clergy** member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.¹¹

Law #4

CALIFORNIA EVIDENCE CODE SECTION 1030-1034

1032. As used in this article, "penitential communication" means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the **clergy** who, in the course of the discipline or practice of the **clergy** member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret.

1033. Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he or she claims the privilege.

1034. Subject to Section 912, a member of the **clergy**, whether or not a party, has a privilege to refuse to disclose a penitential communication if he or she claims the privilege.¹²

Law #5

CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 15659

15659. (a) Any person who enters into employment on or after January 1, 1995, as a care custodian, **clergy** member, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment, shall sign a statement on a form that shall be provided by the prospective employer, to the effect that he or she has knowledge of Section 15630 and will comply with its provisions. The employer shall provide a copy of Section 15630 to the employee. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 15630. The signed statement shall be retained by the employer.¹³

Law #6

¹¹ California Penal Code, Section 11164-11174.3. <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=3729858774+0+0+0 &WAISaction=retrieve>>.

¹² California Evidence Code, Section 1030-1034. <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=3730599147+0+0+0&WAISaction=retrieve>>.

¹³ California Welfare and Institutions Code, Section 15659. <[http://www.leginfo. a.gov/cgi-bin/waisgate?WAISdocID=3731299521+0+0+0 WAISaction=retrieve](http://www.leginfo.a.gov/cgi-bin/waisgate?WAISdocID=3731299521+0+0+0 WAISaction=retrieve)>.

Another law that may affect clergy people in ADF is the California Health and Safety Code, Section 102135. In this section of the code clergy people are required to report the birth, fetal death, death, or marriage if the information is demanded by the state or local registrar. I can't see this coming up often as most of these events are recorded through the usual channels (i.e. deaths through the county coroner's office and marriages through the county clerk's office).

CALIFORNIA HEALTH AND SAFETY CODE

SECTION 102100-102155

102135. (a) All physicians, informants, funeral directors, **clergy**, or judges and all other persons having knowledge of the facts, shall supply upon the prescribed forms any information that they possess regarding any birth, fetal death, death, or marriage upon demand of the state or local registrar.

(b) All physicians, informants, funeral directors, **clergy**, judges, public employees, or other persons who supply upon prescribed forms information that they possess regarding any birth, fetal death, death, or marriage shall in no case use a derogatory, demeaning, or colloquial racial or ethnic descriptor.¹⁴

Law #7

As a clergy person in California I would be required to certify the marriage on any marriage license. I would do this by filling out the third section of the license and providing my official position, denomination, printed name, signature, and mailing address.

CALIFORNIA HEALTH AND SAFETY CODE

SECTION 103175-103180

103175. (a) The marriage license shall contain as nearly as can be ascertained all of the following and other items as the State Registrar may designate:

(3) The third section shall include the certification of one person performing the ceremony, that shall show his or her official position including the denomination if he or she is a **clergy** or clergyperson, and the printed name, signature, and mailing address of at least one, and no more than two, witnesses to the marriage ceremony. The person performing the marriage ceremony shall also type or print his or her name and mailing address on the marriage license.¹⁵

Law #8

The California Welfare and Institutions Code defines a clergy member as a religious practitioner or similar functionary of a recognized religious denomination or organization.

CALIFORNIA CODES

WELFARE AND INSTITUTIONS CODE

SECTION 15610-15610.65

15610.19. "**Clergy** member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, synagogue, temple, mosque, or

¹⁴ California Health and Safety Code, Section 102100-102155. <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=91625218553+0+0+0&WAIAction=retrieve>>.

¹⁵ California Health and Safety Code, Section 103175-103180. <<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=45582811603+3+0+0&WAIAction=retrieve>>.

recognized religious denomination or organization. "**Clergy member**" does not include unpaid volunteers whose principal occupation or vocation does not involve active or ordained ministry in a church, synagogue, temple, mosque, or recognized religious denomination or organization, and who periodically visit elder or dependent adults on behalf of that church, synagogue, temple, mosque, or recognized religious denomination or organization.¹⁶

Law #9

In the California Welfare and Institutions Code, Section 15634 it states that a clergy person who makes a report of financial abuse of an elder or dependent adult can not be held civilly or criminally liable for the report.¹⁷

CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 15633-15637

15634. (a) No care custodian, **clergy member**, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of abuse of an elder or dependent adult or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, **clergy member**, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report abuse of an elder or dependent adult, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal

¹⁷ California Welfare and Institutions Code, Section 15633-15637. <<http://info.sen.ca.gov/cgi-bin/displaycode?section=wic&group=15001-16000&file=15633-15637>>.

responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, **clergy** member, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present to the State Board of Control a claim for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars (\$50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.¹⁸

Question 4: List nine (9) laws concerning clergy that you have found by searching your national laws.

Law #1 According to the IRS, if I were a Minister receiving pay from my church I would be exempt from FICA. I would also be covered under SECA, if I did not have an approved exemption from the IRS.¹⁹

Law #2 The IRS also says that a paid clergyperson would receive a W-2 but not have Medicare or social security withheld. These would be paid by the clergyperson when they file Form 1040 (Schedule E).²⁰

Law #3 “A church with a parent organization may wish to contact the parent to see if it has a *group ruling*. If the parent holds a group ruling, then the IRS may already recognize the church as tax exempt. Under the group exemption process, the parent organization becomes the holder of a group ruling that identifies other affiliated churches or other affiliated organizations. A church is recognized as tax exempt if it is included in a list provided by the parent organization. The parent is then required to submit an annual group exemption update to the IRS in which it provides additions, deletions, and changes within the group. If the church or other affiliated organization is included on such a list, it does not need to take further action to obtain recognition of tax-exempt status.”²¹

¹⁸ California Welfare and Institutions Code, Section 15633-15637. <<http://info.sen.ca.gov/cgi-bin/displaycode?section=wic&group=15001-16000&file=15633-15637>>.

¹⁹ U. S. Department of the Treasury, Internal Revenue Service. Social Security and Other Information for Members of the Clergy and Religious Workers. IRS Pub. 517. Washington: GPO, 2008. Retrieved 5/10/2008. <<http://www.irs.gov/pub/irs-pdf/p517.pdf>>.

²⁰ U. S. Department of the Treasury, Internal Revenue Service. Members of the Clergy. Retrieved 5/10/2008. <<http://www.irs.gov/businesses/small/article/0,,id=101044,00.html>>.

²¹ U. S. Department of the Treasury, Internal Revenue Service. Tax guide for Churches

Law #4

“Churches and religious organizations, like many other charitable organizations, qualify for exemption from federal income tax under IRC section 501(c)(3) and are generally eligible to receive tax-deductible contributions.”²²

Law #5

“Every tax-exempt organization, including a church, should have an employer identification number (EIN), whether or not the organization has any employees. There are many instances in which an EIN is necessary. For example, a church needs an EIN when it opens a bank account, in order to be listed as a subordinate in a group ruling, or if it files returns with the IRS (e.g., Forms W-2, 1099, 990-T).”²³

Law #6

“All IRC section 501(c)(3) organizations, including churches and religious organizations, must abide by certain rules: their net earnings may not inure to any private shareholder or individual, they must not provide a substantial benefit to private interests, they must not devote a substantial part of their activities to attempting to influence legislation, they must not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office, and the organization’s purposes and activities may not be illegal or violate fundamental public policy.”²⁴

Law #7

“Churches and religious organizations, like all exempt organizations under IRC section 501(c)(3), are prohibited from engaging in activities that result in inurement of the church’s or organization’s income or assets to insiders (i.e., persons having a personal and private interest in the activities of the organization).”²⁵

Law #8

“In general, no organization, including a church, may qualify for IRC section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying).”²⁶

Law #9 Under 45CFR164.510, “Uses and disclosures requiring an opportunity for the individual to agree or to object” Code of Federal Regulations, Title 45, Volume 1, PART 164, Subpart E A covered entity may use or disclose protected health information without the written consent or authorization of the individual as described by Secs. 164.506 and 164.508, respectively, provided that the individual is informed in advance of the use or disclosure and has

And Religious Organizations: Benefits and Responsibilities Under the Federal Tax Law. IRS publication 1828. Washington: GPO, 2008. Pg. 3. Retrieved 5/10/2008. <<http://www.irs.gov/pub/irs-pdf/p1828.pdf>>.

²² Ibid. 3.

²³ Ibid. 3.

²⁴ Ibid. 5.

²⁵ Ibid. 5.

²⁶ Ibid. 5.

the opportunity to agree to or prohibit or restrict the disclosure in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by this section.

Standard: use and disclosure for facility directories.

(1) Permitted uses and disclosure. Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care provider may:

(ii) Disclose for directory purposes such information:

(A) To members of the **clergy**; or²⁷

Law #10

551.16 Marriage ceremony in the institution.

(a) The Warden may approve the use of institution facilities for an inmate's marriage ceremony. If a marriage ceremony poses a threat to the security or good order of the institution, the Warden may disapprove a marriage ceremony in the institution. The Warden may not delegate the authority to approve or to disapprove a marriage ceremony in the institution below the level of Acting Warden.

(b) Expenses for a marriage ceremony in the institution shall be paid by the inmate, the inmate's intended spouse, the inmate's family, or other appropriate source approved by the Warden. The Warden may not permit appropriated funds to be used for the marriage ceremony, except for those inherent in providing the place and supervision for the event. Upon request of the inmate, Bureau of Prisons or community **clergy**, or a justice of the peace may be authorized to assist in a marriage ceremony at the institution.

(1) The marriage ceremony may be performed by Bureau of Prisons or community **clergy**, or by a justice of the peace.²⁸

Law #11

§ 418.64 Condition of participation: Core services.

A hospice must routinely provide substantially all core services directly by hospice employees. These services must be provided in a manner consistent with acceptable standards of practice. These services include nursing services, medical social services, and counseling. The hospice may contract for physician services as specified in paragraph (a) of this section. A hospice may use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances. A hospice may also enter into a written arrangement with another Medicare certified hospice program for the provision of core services to supplement hospice employee/staff to meet the needs of patients. Circumstances under which a hospice may enter into a written arrangement for the provision of core services include: Unanticipated periods of high patient loads, staffing shortages due to illness or other short-term temporary situations that interrupt patient care; and temporary travel of a patient outside of the hospice's service area.

(d) Standard: Counseling services. Counseling services must be available to the patient and family to assist the patient and family in minimizing the stress and problems that arise from the

²⁷ Security and Privacy, 45 CFR, pt. 164.510. (2002). Pp. 707-708. Retrieved 10/10/2007. <http://edocket.access.gpo.gov/cfr_2002/octqtr/45cfr164.510.htm>.

²⁸ Application to Marry, 28 CFR, pt. 551.6. (2001). Pp. 582. Retrieved 10/10/2007. <http://edocket.access.gpo.gov/cfr_2001/julqtr/pdf/28cfr551.15.pdf>.

terminal illness, related conditions, and the dying process. Counseling services must include, but are not limited to, the following:

(3) Spiritual counseling. The hospice must:

(iii) Make all reasonable efforts to facilitate visits by local clergy, pastoral counselors, or other individuals who can support the patient's spiritual needs to the best of its ability.²⁹

Question 5: How do laws of your nation, state, or local area respond to Paganism and Neo-Pagan clergy? Are there laws that prohibit certain functions our clergy usually serve (such as divination, counseling, or conducting marriages or funerals)? Does your country implicitly or explicitly state that Neo-Pagans cannot have clergy, or that they cannot perform certain functions or receive similar rights as those from other religions?

In regards to divination I did discover that the City of Chico has a license tax of \$100 a year for fortune-tellers. Since we do not charge for our services when we practice divination in ritual and since I do not do divination in my ministerial duties other than in ritual, I do not anticipate that this law will affect us.

3.32.320 License tax.

B. Flat Rate.

Clairvoyants, fortune-tellers, astrologers, palmists - \$100.00 per year.

There are no laws that would prohibit an ordained minister from performing a marriage, funeral, or practicing ministry in a hospital, hospice, or prison. However, we may not be paid employees by the state's prison system as clergy, as we do not belong to one of the state's recognized 5 religious faith groups (covered later in greater detail).

There are also no laws that would prevent us from practicing counseling; however, in California, there would be no such thing as privileged communication for a member who sought counseling from an ADF clergy person because ADF does not have an established practice of its clergy being "authorized or accustomed to hear those communications" and because we have no customs or practices to keep such communications secret.

Question 6: Looking at those laws listed in questions 1 - 4 and how they affect you, are there any specific laws that seem out of place, unfair, or unjust? What is the avenue for change to these laws, and do you see change to these particular laws as necessary?

I believe that some of the state laws regarding penitential communication could very well affect me. At the moment I am finishing a master's degree in Psychology with a concentration in Marriage and Family Therapy (MFT). In two years I will also complete my internship and be licensed as an MFT in California. After that my congregants will be protected but until then I may have to refer them to counselors that may not understand their unique religious or sexual practices and may even believe them to be a danger to their children.

In regards to prison ministry, California's current policy is to limit salaried prison chaplains to members of Protestant, Catholic, Jewish, Muslim and Native American faith groups. This policy has recently been challenged by a volunteer wiccan minister who had applied for a

²⁹ Hospice Care, 42 CFR, pt. 418.64. (2008). Retrieved 10/10/2007. <<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?type=simple;c=ecfr;cc=ecfr;sid=6d9403afcd003af138b54a5344150998;region=DIV1;q1=clergy;rgn=div7;view=text;idno=20080605;node=20080605%3A1.0.14>>.

salaried position in the prison system and been denied. To date this case has not been decided but if it is made in the clergyperson's favor the door will be open to clergy people of other faith groups.

Question 7: How do you see these laws affecting how you serve your Grove, ADF, or the community as a whole?

A local Pagan (in Redding) was recently reported for child abuse by her counselor because he believed she practiced satanic rituals with her children. She is a Dianic Wiccan and one of the sweetest, least aggressive people I have ever met. Had she been able to seek counseling from a clergy person who was trained to provide counseling she might not be threatened with losing her children right now.

Question 8: What is the difference between pastoral counseling and other kinds of counseling, and does the law differentiate between these types? What sort of license do you require in your state in order to perform counseling of any type? Does divination fall into this sort of counseling?

In California you are required to hold, at minimum, a Masters degree in Marriage and Family Therapy in order to perform counseling unless you are a clergy person. Generally, the California Evidence Code, Section 1032 defines "penitential communication" as any information made in confidence without the presence of a third party to a clergy person who is authorized or accustomed to hearing such communications and has, under the tenants of his church, a responsibility to keep such communications in confidence.

Divination is not considered counseling, nor should it be. Counseling should be conducted only by those trained to perform it and by those whose church has a tradition or practice of performing such counseling. Otherwise, an untrained clergyperson could be liable for practicing outside the scope of his ecclesiastical endorsement.

If you live near a major military base: "What are the rules regarding outside worship for the branch of the military that runs this base, and what happens if a soldier on that base wants access to a priest who is not in the military or not a military chaplain?"

I contacted Beale Air Force Base which is in Yuba City and provided them with our Protogrove contact information. I have previously been a Designated Faith Group leader for Forts Huachuca and Gordon. The standard procedure is to get a letter from your sponsoring church, in this case ADF, which endorses you as a lay leader or priest. After that, they will maintain your information on file "in case anyone asks for it." If they have need of you they will contact you.

What are the regulations and options for prison ministry in your county and state?

I may work as a volunteer prison minister in my state or county. Since many of the State's prison chaplain job announcements indicate that you have to be a member of the Association of Professional Chaplains (APC) or a similar organization, which require graduate level work at a school accredited by an accrediting body approved by the Council on Higher Education in America (CHEA), to be paid as a prison chaplain I would need to have graduated from an accredited ecclesiastical school. I would also have to be a clergy person of one of five recognized religions. It also appears that to work as a Chaplain at a State Hospital I would need to meet the same criteria.

Since ADF's current clergy training program does not come close to meeting the standards of any CHEA-approved accrediting body, I would not be permitted to be employed by the state government as a prison or hospital chaplain.

In *McCollum v. State of California*, a Wiccan clergyperson who was volunteering as a chaplain for the California prison system questioned California's policy to limit salaried prison chaplains to members of Protestant, Catholic, Jewish, Muslim and Native American faith groups. The court allowed plaintiff to continue with his Establishment Clause claim challenging the Five Faiths policy. It also allowed him to pursue his claims to equal protection and First Amendment retaliation claims relating to denials of access as a volunteer chaplain to Wiccan prisoners.³⁰ However, to date this case has not been fully resolved.

Basically, to be a salaried prison or state hospital chaplain I would have to have graduated from a school, accredited by an accrediting body recognized by CHEA and win a court case against the state of California, challenging the current policy. However, none of these requirements would prevent me from working as a volunteer chaplain.

³⁰ California State Personnel Board Meeting. Summary Minutes. January 8, 2008. <165.235.116.1/WorkArea/downloadasset.aspx?id=3758>.