

NORTH CAROLINA  
NEW HANOVER COUNTY

GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 2156

FIFTH AVENUE UNITED  
METHODIST CHURCH OF  
WILMINGTON,

Plaintiff,

v.

THE NORTH CAROLINA  
CONFERENCE, SOUTHEAST  
JURISDICTION, OF THE UNITED  
METHODIST CHURCH, INC. *et al.*,

Defendants.

**DEFENDANTS' MEMORANDUM IN  
SUPPORT OF MOTION FOR  
DISCOVERY STAY**

Pursuant to Rule 26(c) of the North Carolina Rules of Civil Procedure, Defendants submit this brief in support of their motion for a discovery stay pending the Court's decision on the their motion to dismiss.

**BACKGROUND**

As Defendants' Rule 12 brief describes, Plaintiff asks the Court to weigh in on this ecclesiastical dispute between it—a former local church within the United Methodist Church—and the North Carolina Conference, Southeast Jurisdiction, of the United Methodist Church and its officials. Because the First Amendment prohibits this action, Defendants have filed a Rule 12 motion. That motion covers all of the claims in the complaint.

Under these circumstances, as well as the other circumstances described below, a discovery stay is warranted while Defendants' motion to dismiss is pending.

That relief will ensure that the Court's, the parties', and—critically—nonparties' resources are not consumed unless Plaintiff's claims survive the motion.

For the reasons that follow, Defendants respectfully request that the Court stay all discovery, including third-party discovery, pending its decision on the motion to dismiss.

### **GOVERNING STANDARDS**

The Court has broad authority to stay discovery pending a motion to dismiss.

Rule 26(c) authorizes the Court to “make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (i) that the discovery not be had; [and] (ii) that the discovery may be had only on specified terms and conditions, including a designation of the time or place.” N.C. R. Civ. P. 26(c).

In addition, trial courts have broad, inherent authority to issue discovery stays, which derives from the “power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see also Home Indem. Co. v. Hoechst Celanese Corp.*, 128 N.C. App. 113, 117-18, 493 S.E.2d 806, 809-10 (1997).

### **ARGUMENT**

#### **I. The circumstances here warrant a discovery stay.**

##### **A. A discovery stay is appropriate when a threshold motion to dismiss, like this one, is pending.**

North Carolina's trial courts have frequently stayed discovery when threshold motions to dismiss are pending. *See, e.g., BB&T BOLI Plan Trust v. Mass. Mut. Life Ins. Co.*, No. 09 CVS 4007 (N.C. Bus. Ct. Aug. 21, 2015); *SilverDeer, LLC v. Berton*,

No. 11 CVS 3839 (N.C. Bus. Ct. Aug. 11, 2011). North Carolina’s trial courts have even stayed discovery *sua sponte*, on the grounds that the interests of justice would be served by a stay. *See, e.g., Soma Tech. v. Dalamagas*, 2016 N.C. Super. LEXIS 364 (N.C. Super. Ct. Dec. 6, 2016).

The reasons for a stay under these circumstances are sound: “to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources.” *Chavous v. D.C. Fin. Responsibility & Mgmt. Assistance Auth.*, 201 F.R.D. 1, 2 (D.D.C. 2001) (quoting *Coastal States Gas Corp. v. Dep’t of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979)).<sup>1</sup>

Here, the requested stay would serve the same purpose: preventing the waste of time and effort of the parties, and promoting the efficient use of judicial resources.

Defendants have raised fully dispositive, threshold legal issues in their motion to dismiss. If the Court concludes that Defendants are correct on these threshold issues—most notably, that the Court lacks subject matter over the ecclesiastical claims raised in Plaintiff’s complaint—the case will be over. There will be no need for the parties or nonparties to engage in protracted discovery. Likewise, there will be no need for the Court to consider or engage in any discovery-related disputes.<sup>2</sup>

In short, this is a case that involves a dispositive, threshold motion to dismiss. It is exactly the type of case that justifies a discovery stay until that motion is resolved.

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<sup>1</sup> North Carolina’s Rule 26 is based on Federal Rule 26, so cases interpreting the federal rule “are instructive” under the North Carolina Rule. *Willoughby v. Kenneth W. Wilkins, M.D., P.A.*, 65 N.C. App. 626, 641, 310 S.E.2d 90, 99 (1983).

<sup>2</sup> Plaintiff has already filed one motion to compel third-party discovery from Ralph W. Parks.

## **II. A discovery stay would benefit judicial economy.**

Although the above points are ample grounds for a discovery stay, this case also raises special concerns for judicial economy that make a stay appropriate here.

### **A. Discovery in this case would be especially burdensome.**

Shortly after initiating this action, Plaintiff began serving subpoenas. Several of Plaintiff's subpoenas were targeted at pastors of churches within Defendant North Carolina Conference. One of Plaintiff's subpoenas was directed at an employee of the North Carolina Conference. Curiously, though, Plaintiff has not served the Conference itself with any discovery requests.

Plaintiff's subpoenas request extensive information about matters that are purely ecclesiastical. For example, Plaintiff requests "[a]ny and all documents regarding, containing reference to, or related to the Conference's decision to close Fifth Avenue and/or the potential closure of Fifth Avenue." As explained in Defendants' Rule 12 brief, the decision to close Fifth Avenue is not a decision that can be resolved under "neutral principles of law."

In other words, Plaintiff has served subpoenas on individuals associated with the Conference seeking information regarding actions the Court does not have subject matter jurisdiction to review.

Discovery of this kind presents a unique burden for these nonparties. Perhaps understanding that its complaint presents only an ecclesiastical dispute and is likely to be dismissed, Plaintiff has attempted to shift the burden of discovery from Defendants to nonparties. This expedited fishing expedition will require significant

time, effort, and resources, all of which can be conserved if the Court stays discovery pending its decision on Defendants' motion to dismiss.

This time and labor investment may be necessary, of course, if Plaintiff prevails on the threshold issues described above.<sup>3</sup> But to engage in this diversion of resources now, while the Court considers the threshold questions in Defendants' motion, is both premature and unduly burdensome, with nonparties bearing the cost.

**B. A discovery stay would not unduly prejudice Plaintiffs.**

For at least two reasons, a discovery stay would have no prejudicial effect here.

First, Plaintiff's claims do not present any urgent, late-breaking issues of fact that would warrant discovery before a ruling on the motion to dismiss. On the contrary, rather than acting with diligence after the Conference's declaration of exigent circumstances, Plaintiff waited more than three months to bring this action only after the Annual Conference had ruled on the permanent closure of Fifth Avenue. Because that discretionary, purely ecclesiastical process is complete, there is no urgent need for discovery.

Second, the issues raised in Defendants' motion to dismiss, which Defendants believe will dispose of this case, are pure questions of law. Those issues will not involve any factual disputes or factual questions whatsoever. Thus, no party will be prejudiced by the Court's resolution of those issues in the absence of discovery.

For these reasons, the requested relief would have no prejudicial effect here.

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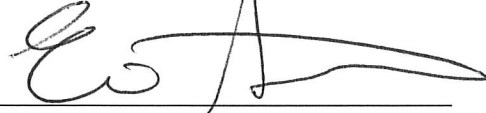
<sup>3</sup> Of course, if Plaintiff prevails at the Rule 12 stage, the information it seeks can be obtained more efficiently and with significantly less burden to nonparties if Plaintiff serves its discovery requests on the North Carolina Conference.

**CONCLUSION**

Defendants respectfully requests that the Court stay discovery while their motion to dismiss is pending.

Respectfully submitted the 5th day of September, 2023.

**POYNER SPRULL LLP**

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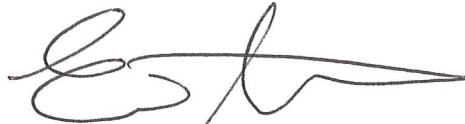
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**CERTIFICATE OF SERVICE**

Pursuant to Rule 5(b)(1)(a), I hereby certify that I have this day served a copy of the foregoing document by e-mail to the following:

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This the 5th day of September, 2023.

A handwritten signature in black ink, appearing to read "Eric P. Stevens", written over a horizontal line.

Eric P. Stevens