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Legal Challenges to Police and Fire Chaplain Programs

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❖ Introduction

This article addresses legal issues arising from the appointment of police or fire chaplains who provide counseling services to members of the general public, and to the agency's employees who seek such services. It does not focus on chaplains who perform services that are limited to an agency's employees, retirees and their families.

One policy, from a suburban IL police department, starts off with the following "chaplain's creed:"

"Believing that God is the answer to man's dilemma, the Chaplain stands ready to bear witness to the forgiving love and redeeming power of God to all people confronted with crisis. He should always seek to be responsive to God's leadership. He should pray that God will guide his words, thoughts, and actions, as his life is made a channel of God's love." (1)

Ask an attorney, who might be hired to defend a legal challenge to a "secular" chaplaincy program, whether this or a similar creed, if written into policy or

training documents, would help or hurt the agency in winning their case? The answer is apparent and could overshadow the benefits the program offers.

Another interesting program is a state police agency that designates chaplains among its own sworn personnel, for the purpose of attending funerals or memorial services, visiting sick members and “spiritual consultation concerning personal situations.” (2)

What was once an informal program has become a professional specialty, with credentialing authorities such as the [International Conference of Police Chaplains](#).

A recent law review article noted that:

“There is an important and valid role for clergy and faith-based assistance as part of the broad spectrum of governmental disaster relief. In the everyday tragedies, however, any governmental facilitation of religious counsel must be a true accommodation based on a victim’s request and not the automatic result of a 911 call.” 35 Hastings Const. L.Q. 505

Police and fire service chaplaincy programs typically address both. Some are inclusive and have clergy of all major faiths. Others, because of the volunteer nature of the program, might be staffed exclusively by a single parish or church.

As support programs have been implemented in more agencies, an organized opposition to faith-based chaplaincy programs has sometimes surfaced. Litigation is demoralizing and expensive, even if the program is lawful.

The Establishment Clause of the First Amendment has been interpreted to require that when clergy partner with government’s first responders, it must be non-religious in character and the chaplains must be selected using secular criteria.

Volunteers provide assistance in the case of homicides, suicides, family disturbances, vehicular deaths, sexual assaults, and other personal tragedies. Not all intervention programs have a religious connection. [Trauma Intervention Program Inc.](#), for example, operates in more than 250 cities. Citizen volunteers respond to traumatic incidents at the request of police, fire and hospital personnel to support those who are emotionally traumatized.

The Justice Department’s Office of Victims of Crime has supported faith-based chaplaincies, such as the [Seattle Police program](#), which also involves lay volunteers and non mainstream religions, including Scientologists, Christian Scientists and Seventh Day Adventist clergy. (3)

Some agencies provide a standard police uniform while others specify a special uniform. Generally, chaplains are not allowed to carry firearms while on duty, even if they are certified reserve officers. (4) One sheriff's dept. prohibits chaplains from engaging in "political campaigning, fundraising, or electioneering activities." (5)

❖ **Training requirements**

All programs should have a training requirement.

1. Training increases the likelihood that chaplains will act in a secular and professional manner.
2. Training promotes uniformity of program services.
3. Mandatory training increases the chances that a faith-based program will prevail, if challenged in litigation.

A number of agencies require chaplains to complete a 35-hour, 12-part core course curricula.

1. Stress management
2. Death notifications
3. Post traumatic stress syndrome
4. Burnout for officers and chaplains
5. Legal liability and confidentiality
6. Ethics
7. Responding to crisis situations
8. Law enforcement family
9. Substance abuse
10. Suicide
11. Officer injury or death
12. Sensitivity and diversity

❖ **The Charlotte legal challenge**

The Society of Separationists (6) challenged the formation of a chaplain program in the Charlotte, NC, Police Dept. The city created the position as the result of an agreement with Providence Baptist Church. It provided that the Church would

furnish the City with the services of a minister to serve as a full-time police chaplain.

In addition to offering counseling to police employees, the chaplain was appointed to assist police officers and/or medical or rescue personnel in emergencies, disasters or other crisis situations.

The city contended that the arrangement had a secular purpose and a predominantly secular effect. The plaintiffs insisted the agreement gave a preferred position to the participating church and to Baptists and Protestants in general, which resulted in “excessive entanglement” with a specific denomination.

The agreement provided that the police chaplain should not engage in religious instruction nor conduct any service of religious worship while wearing the uniform of his office or while acting in his capacity as police chaplain.

However, the chaplain could provide religious guidance to any police officer or other person he is counseling when he is specifically requested to do so by the officer or other person being counseled. The City agreed to pay half of the chaplain’s salary, furnish his equipment, an office, his uniforms, and transportation.

A federal judge noted that the agreement here had “several obvious, direct, and constitutionally impermissible” effects.

1. It provided for a publicly funded position that must, under the terms of the agreement, be filled by a “minister.”
2. It was the only chaplain position the city funded or agreed to.
3. The city’s financing provided “expressly religious benefits to some, but not all, of the police department’s employees.”

He found that the challenged arrangement was “inconsistent” with the “fundamental rule of neutrality” and created or threatened an “excessive entanglement.”

However, he also wrote that:

1. The City may spend money to provide its police officers with the purely secular services described in the agreement.

2. There is nothing unconstitutional in hiring a clergyman to perform those services, “so long as the clergyman is selected as the result of a religiously neutral process rather than, as here, pursuant to a contract with a specific church that restricts eligibility to ministers.”
3. A public employee, hired as a counselor through some neutral selection process, is not constitutionally required to refrain from discussing “spiritual,” or “moral” matters in the course of his counseling duties.
4. There is nothing unconstitutional *per se* in a church’s donating money or property to a governmental entity or in the passage of money from a government to a church for some purpose that does not threaten to assist religion or to entangle government excessively in religious affairs.

In conclusion, he wrote:

“The City contends it wanted to provide a secular counseling service to its employees. But instead of soliciting applications from qualified counselors without respect to religious belief or clerical status the City chose to sign a contract with a particular church to provide it a ‘minister’ to serve as a full-time, publicly funded police ‘chaplain.’ Having entered into an arrangement favoring religion over nonreligion and one religion over others, the City must have felt obliged to blunt the effect of its action by writing into the contract an essentially unenforceable disclaimer that the ordained minister who serves as the full-time chaplain, is not to offer unsolicited ‘religious’ guidance while he privately counsels fellow human beings about moral and emotional problems in times of great stress.”

[Voswinkel v. Charlotte](#), #C-80-012, 495 F. Supp. 588, 1980 U.S. Dist. Lexis 12911(W.D.N.C. 1980).

❖ **Pierce County litigation**

The Washington State Supreme Court was faced with this question:

“... whether a counseling program secular in purpose and on its face, but occasionally involving some consensual religious activity by unpaid volunteers, is a prohibited appropriation of public funds or property or establishes a state religion.”

Taxpayers challenged the Pierce County Sheriff’s Dept. program to use volunteer chaplains as counselors. But no funds were appropriated to pay the volunteers.

The sheriff openly requested bids from the general public to run the chaplaincy program. The request for bid proposals made no mention of religion, religious work, or religious qualifications. It sought “the services of a volunteer organization with at least ten members qualified and available to serve the crisis intervention needs of the law enforcement personnel of Pierce County, their families, and the citizens of this county who are the victims of crime.”

All served on a volunteer basis, with exception of reimbursement for mileage, insurance coverage, loaned radios and office space for an appointed director to coordinate responses and programs.

Chaplains provide 24-hour death notification and crisis intervention counseling for victims of major crime.

The justices distinguished the Charlotte case:

“The chaplains here were neutrally chosen through a bidding process open to all without regard to religious affiliation and the chaplains actually volunteering come from all denominations. * * *

“Thus, we conclude that the use of volunteer chaplains by the Pierce County Sheriff’s Department complies with the First Amendment of the United States Constitution. This chaplaincy program (1) has a valid secular purpose; (2) does not primarily effect the advancement of religion; and (3) does not result in excessive entanglement.”

A dissenting opinion said that the record “plainly shows these police chaplains engage in some amount of religious worship, exercise and proselytizing. It is also clear that public funds and property are used to support the facially secular chaplaincy program through which this religious worship occurs.” [Malyon v. Pierce County](#), #63664-8, 131 Wn.2d 779, 935 P.2d 1272 (Wash. 1997).

❖ Precautions

A chaplaincy program may be valuable and provide purely secular services to the community, but could be successfully challenged in litigation if it is not carefully established. A few suggestions: (7)

1. Do not compensate volunteer counselors from public revenues.
2. Do not directly fund support services for a chaplaincy program. Instead, fund an “Office of Support Services” for victim, resident and employee

consultation services. Both chaplains and lay volunteers should be eligible for support (office, uniforms, and equipment).

3. It is not unlawful if all volunteer counselors are chaplains, but do not insist that volunteer counselors be affiliated with, or approved by, a religious organization. Restricting appointments to ordained clergy does not further a valid business purpose.
4. Evaluate a counselor's credentials based on education, training, experience and suitability for the job. Do not require certification by a chaplaincy association.
5. In the agency's policies and procedures manual, do not mention religion, spiritual guidance, God or prayer -- especially the "chaplain's creed."
6. volunteers also should receive uniforms and counselor badges. Avoid religiously affiliated collar insignia (cross, six-point star, crescent, etc.). Use a generic symbol such as a shield, wreath, etc.



Secular collar insignia

7. Do not allow religious headwear or liturgical vestments to be worn while in uniform. (8)
8. It is wise to participate in a sharing arrangement of chaplains from faiths outside of America's mainstream religions, e.g., Buddhism, Confucianism, Islamism (Shi'a and Sunni), Rastafarianism, Shintoism, Sikhism, Taoism, Zoroastrianism, etc. Not only might this be helpful to a crime victim who professes that religion, but it undermines a plaintiff's claim the program is biased.

❖ Specimen policies

- [Charles County, MD Sheriff](#)
- [Cincinnati, OH Police](#)
- [Derby, KS Police](#)
- [La Crosse, WI Police](#)
- [Lakeland, FL Police](#)
- [Myrtle Beach, SC Police](#)

- [Orlando, FL Police](#)

Specimen policies are not intended as models.

❖ Training manuals

[Placer County Law Enforcement Chaplaincy's Training Manual](#)

❖ Notes

1. Schaumburg, Illinois, Police Dept. Policies and Procedures Manual, No. 29-90, Police Chaplain (11/15/1994; rev. 04/29/2002). Schaumburg chaplains are to respond to all major disasters such as bombings, building collapses, explosions, multiple fire alarms, unusual industrial accidents, and similar situations.
2. Virginia State Police General Order #80, Chaplaincy Program.
3. The President's Task Force on Victims of Crime (1982) noted that an individual officer cannot be expected to meet each victim's needs personally and immediately, but he can serve as the essential link between the victim and the services that are available. "Some departments have cooperated with local churches or other volunteer groups who are available on call for counseling, death notification, and victim referral. In some departments, the police chaplain has been the motivating force behind this cooperation." Also see, "[Faith-Based Responses to Crime Victims DVD](#)," DoJ Office for Victims of Crime, NCJ 216616 (2008), NCJ 216616, Grant No. OJP-2002-BF-014/GS-35F-8062H.
4. Baltimore City Police, General Order Q-18.
5. Charles County, Maryland, Sheriff's Office. Their chaplains also "provide assistance and comfort at all major disasters in the County: bombings, building collapses, explosions, airplane crashes, multiple-alarms of fire, unusual industrial accidents and other disasters."
6. The Society of Separationists was founded in Texas in 1963 by Madalyn Murray O'Hair, (1919-1995), an atheist who promoted the separation of church and state. She brought one of two lawsuits that resulted in a ban on public school prayers in the Supreme Court decisions in [Murray v. Curlett](#) and [Abington Twp. School Dist. v. Schempp](#), 374 U.S. 203 (1963).
7. Suggestions are those of the Employment Law Editor, and the AELE Board of Directors was not consulted over the contents of this article.

8. See [Grooming and Appearance Rules for Public Safety Workers, Part Two](#), AELE Monthly Law Journal (Feb. 2007).

❖ **References**

[East Lansing Police Chaplain's Program](#), NCJRS Doc. No. 186050 (2000), Award Number: 98-FS-VX-0001.

Government-Sponsored Chaplains and Crisis: Walking the Fine Line in Disaster Response and Daily Life, by Mary Jean Dolan, 35 Hastings Constitutional Law Quarterly 505 (Spring, 2008). ([abstract](#))

❖ **Websites**

Healthcare Chaplains Ministry Association
<http://www.hmachaplains.org/>

International Conference of Police Chaplains
<http://www.icpc4cops.org/>

American Correctional Chaplains Association
<http://www.correctionalchaplains.org/>

International Prison Chaplains' Association Worldwide
<http://www.ipcaworldwide.org/>

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