

Only One Diocese and Diocesan Corporation

2.

Judicial admissions in Plaintiffs' amended petition defeat the first argument in Plaintiffs' opposition that there are two dioceses and two diocesan corporations. In paragraphs 2 and 3 of Plaintiffs' amended petition it is alleged that Plaintiff diocese was formed effective January 1, 1983, and plaintiff diocesan corporation was formed on or about February 23, 1983. Additionally, these Plaintiffs judicially admit that the "November 2008 meeting" was a convention of the Plaintiff diocese. Plaintiffs' Amended Petition, ¶ 46. Lastly, Plaintiffs judicially admit that this "diocese [alleged Plaintiff diocese] held a special meeting of its Convention on February 7, 2009" where the people who hired Nelson and Wells were elected. Plaintiffs' Amended Petition, ¶ 53.

3.

Plaintiffs are barred from taking a position that there are two dioceses and two diocesan corporations because this would be contrary to their judicial admissions that are binding upon them, according to the Supreme Court of Texas opinion of *Gevinson v. Manhattan Construction Company of Oklahoma*, 449 S.W.2d 458, 466 (Tex. 1969). In *Gevinson*, the court writes that the "vital feature of a judicial admission is its **conclusiveness on the party making it,**" which also **bars the party himself from disputing it.**" (Emphasis added). 449 S.W.2d 466.

4.

Furthermore, judicial admissions are binding on the Court as well, the Fort Worth Court of Appeals explains in *Kaplan v. Kaplan*, 129 S.W.3d 666, 669 (Tex.App. – Fort Worth, 2004, pet. denied), and *Lee v. Lee*, 43 S.W.3d 636, 641 (Tex.App. – Fort Worth, 2001, no pet.).

Alleged Attack on a Party's Authority

5.

Plaintiffs argue that the proposed order striking the pleadings of Plaintiff The Episcopal Diocese of Fort Worth and Plaintiff The Corporation of The Episcopal Diocese of Fort Worth proves that the Rule 12 motion is an attack on the authority of these two entities. Plaintiffs' Opposition, p. 4.

Rule 12 Defeats Plaintiffs' Attack

6.

Rule 12 has as its sole purpose the requiring of an attorney to show authorization to bring a suit on behalf of the party. An attorney's failure to prove that authority is what requires the court to "strike the pleadings" of the party. This is not an attack on the authority of any party.

Granting Motion is Supported by Judicial Admissions and the Court's Stated Conclusions

7.

As stated in the motion for reconsideration, the granting of the Rule 12 motion will not prevent Nelson and Wells from representing the people who hired them. It does deny them the opportunity to represent the diocese and the diocesan corporation of which there is one each and found by the Court and they are associated with Bishop Jack Leo Iker.

WHEREFORE, PREMISES CONSIDERED, Movants pray that the Court set aside the order granting Rule 12 motion signed on September 16, 2009, and sign an order without the interlineation and without the removal of the language "as plaintiffs and the pleadings of The Episcopal Diocese of Fort Worth and The Corporation of The Episcopal Diocese of Fort Worth as plaintiffs are struck from these proceedings."

Respectfully submitted,



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CERTIFICATE OF SERVICE

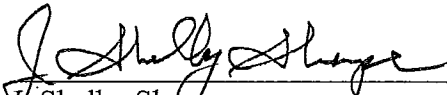
I hereby certify that a true and correct copy of the foregoing REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OF RULE 12 ORDER has been served as required by Texas Rules of Civil Procedure, by facsimile transmission, on all counsel on this 1st day of October, 2009, as follows:

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