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Admitted in: NH, NY

**By Courier**

February 28, 2017

Sharon Richardson, Clerk  
6<sup>th</sup> Circuit- Probate Division- Concord  
163 North Main Street  
Concord, NH 03301  
Attention: Trust Docket

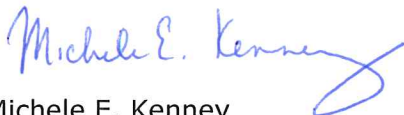
Re: In re Trust under the Will of Mary Baker G. Eddy<sup>1</sup>  
Trust Docket Case No. 317-1910-TU-00001

Dear Ms. Richardson:

On behalf of Second Church of Christ, Scientist, Melbourne, Australia ("Second Church"), I have enclosed for filing in the above-referenced matter an original and two copies of a Response of the Second Church of Christ Scientist Melbourne (Australia) to Objection by the Trustees of the Trusts Under the Will of Mary Baker Eddy, Clauses 6 and 8, to Second Church of Christ, Scientist, Melbourne (Australia), Motion for Leave to File Brief *Amicus Curiae*.

Thank you for your attention to this matter. Please contact me if you have any questions.

Very truly yours,



Michele E. Kenney

MEK/kmd  
Enclosures

cc: James F. Raymond, Esquire  
Thomas J. Donovan, Esquire

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<sup>1</sup> This matter was reassigned to the Trust Docket from the docket of the 6<sup>th</sup> Circuit — Probate Division — Concord, pursuant to Administrative Order 2016-0005-TD (Kelly, J.), dated February 23, 2016.

THE STATE OF NEW HAMPSHIRE  
TRUST DOCKET, 6TH CIRCUIT – PROBATE DIVISION – CONCORD  
TRUST U/W/O MARY BAKER EDDY – CLAUSE 6  
TRUST U/W/O MARY BAKER EDDY – CLAUSE 8  
CASE NO. 317-1910-TU-0001

**RESPONSE OF THE SECOND CHURCH OF CHRIST SCIENTIST,  
MELBOURNE (AUSTRALIA) TO OBJECTION BY THE TRUSTEES OF  
THE TRUSTS UNDER THE WILL OF MARY BAKER EDDY, CLAUSES 6 AND 8,  
TO SECOND CHURCH OF CHRIST SCIENTIST, MELBOURNE (AUSTRALIA),  
MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE***

NOW COMES the Second Church of Christ Scientists, Melbourne (Australia) (“**Second Church**”), through its undersigned counsel, and files this response to the Objection (“**Objection**”) by The Trustees of The Trusts Under The Will of Mary Baker Eddy, Clauses 6 And 8, To Second Church’s Motion For Leave To File Brief Amicus Curiae (“**Motion for Leave**”) respecting the Assented-To Motion of the Trustees seeking approval of amendments to and relief from the dictates of the Court’s Order dated August 23, 2001 (the “**2001 Order**”) and to settle or otherwise resolve the objections (“**Director’s Account Objections**” or “**Director’s Trust Administration Objections**,” as applicable) of the Director of Charitable Trusts (“**Director**”) to the annual probate accounts for the fiscal year ending March 30, 2016 filed on September 30, 2016 (the “**2016 Accounts**”), and in support hereof states as follows:

1. This Court has the equitable jurisdiction to hear from friends of the Court, whether permitted by a specific rule or not. It is not for the Director and certainly not for the Trustees/Directors to dictate to this Court what it may consider in its determination of the Assented-To Motion. *See, e.g.*, 4 Am. Jur. 2d Amicus Curiae § 3 (2016) (“Courts have inherent authority to appoint an *amicus* even in the absence of a rule or statute”) (citing, *inter alia*, *State*

*ex rel. Com'r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734 (Tenn. Ct. App. 2001)); *cf. In re Allaire Estate*, 103 N.H. 318, 320 (1961) (“This court is not averse to wisdom in any form, from any source, and does not hesitate to accept the benefit of briefs by *amicus curiae* in the proper construction of deeds and wills....”).

2. The principal criterion in deciding whether to accept an *amicus* brief is “whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties’ briefs.” 4 Am. Jur. 2d *Amicus Curiae* § 3. *Amicus* participation is considered particularly appropriate where the proceedings before the court lack that element of adversity that assures important interests are adequately represented. *Id.*; *see also In re Allaire Estate*, 103 N.H. at 320 (encouraging the acceptance of *amicus* briefs in otherwise “nonadversary proceedings”).

3. As set forth in the Motion for Leave and the attached proposed *amicus* brief, Second Church comes to this Court and seeks no standing as a party, no relief, no grant, and no judgment directly for Second Church’s benefit. To the contrary, Second Church seeks only to provide its uniquely relevant and important perspective, expertise and considerable work product, to aid the Court in understanding why the embedded conflict of the present “Director-Trustees” must be addressed first—to restore some modicum of independence and responsible administration of the Trusts—before sanctioning any changes in their administration or settlement of accounts sought by them.

4. The “record” of these Trusts before this Court, spanning the 107 year history of these Trusts, is extraordinarily complicated and dense. Second Church has gone to great lengths to review the dockets and related materials and has no expectation that this Court or the Director has the resources to duplicate Second Church’s efforts to investigate the history of the Trusts and

Trustees. Accordingly, Second Church approaches this Court as a friend to present the Court with relevant materials and context for the current issues before the Court: the Assented-To Motion, which, among other things, significantly seeks to eliminate the need to file an annual audit of the Trusts. In the proposed *amicus* brief Second Church points out that through the ages of these Trusts the accounts of the Trusts were audited and the audits and accounts available for inspection. Now, following the Trustees' failure to file audits in contempt of the 2001 Order, the Trustees seek to remove the obligation to file audits despite the long history of filing audits. The Trustees do so with a lack of complete candor to the Court and by failing to recite for the Court's benefit the complete record of the Trusts and the filing of audits, instead relying on internally inconsistent conclusory arguments.

5. The Assented-To Motion and the 2016 Accounts are infected by the same embedded conflict as all other matters presented to this Court since the Directors and Trustees have become one and the same. As Second Church has pointed out, this Court should reject that the Trustees are entitled to a presumption that their actions are independent and a faithful discharge of their fiduciary duties to the Trusts, for each and every action by the Trustees/Directors is poisoned by the Directors' open hostility towards the Trusts and the embedded conflict of the Trustees/Directors.

6. The Trustees/Directors assert that the proposed *amicus* brief is not helpful to the Court in addressing any of the issues raised in the Assented-To Motion. To the contrary, the *amicus* brief brings to this Court's attention to more than 100 years of the Directors' hostility to the Trusts and conduct over the years that resulted in the Directors exercising dominion and control over the Trusts' corpus instead of independent Trustees. In this context, Second Church suggests to the

Court that it await resolution of the embedded conflict issue before considering the Assented-to Motion.

7. The Court is aware that the Director is continuing with an investigation into various “irregularities” identified by the Director in pleadings filed before this Court. The most significant issue is the embedded conflict of the Directors/Trustees.

8. The dockets pertaining to proceedings before this Court relating to various transactions of late reflect the Court instructing the Trustees to provide notice of their various motions. Incredibly, the Trustees provided notice to the Director and Directors and no other party. It should be of no wonder to this Court now why so many applications and motions have been presented without objection once the Director has assented.

9. Such opaqueness by the Trustees directly contradicts the Directors/Trustees’ representations to the members of the Mother Church in their January 1977 publication of “Church in Action,” a copy of which is attached hereto as Exhibit A, and the 1972 Order of this Court directing publication notice of a hearing on the Trustees’ motion to sell to the Mother Church the copyrights owned by the Clause 8 Trust, a copy of which is attached hereto as Exhibit B. Second Church presents these materials to the Court to demonstrate a history of transparency and an attempt by the Court to permit interested parties to receive notice and one would think an opportunity to be heard on very important matters pertaining to the business of these Trusts.

10. Second Church submits similar notice and publication of current matters should be provided and the hearing be open where interested parties may be heard.

WHEREFORE, Second Church of Christ, Scientist, Melbourne, respectfully requests that  
this Honorable Court:

- A. Grant Second Church leave to file the brief *amicus curiae*; and
- B. Grant such other and further relief as justice so requires.

Respectfully submitted,

SECOND CHURCH OF CHRIST,  
SCIENTIST, MELBOURNE,

By its attorneys,

PIERCE ATWOOD LLP

Dated: February 28, 2017

By: Michele E. Kenney  
Michele E. Kenney  
N.H. Bar No. 19333  
One New Hampshire Avenue, Suite 350  
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DLA PIPER LLP (US)

Dated: February 28, 2017

By: Stuart Brown /MEK  
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FOEHL & EYRE, PC

Dated: February 28, 2017

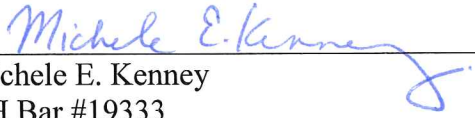
By: Robert B. Eyre /MEK  
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[rob@foellaw.com](mailto:rob@foellaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 28<sup>th</sup> day of February, 2017, forwarded a copy of the foregoing document to the following by electronic mail and first class mail:

James F. Raymond, Esquire  
Upton & Hatfield LLP  
10 Centre Street  
PO Box 1090  
Concord, NH 03302-1090

Thomas J. Donovan  
Director of Charitable Trusts  
Office of the Attorney General  
33 Capitol Street  
Concord, NH 03301-6397

  
\_\_\_\_\_  
Michele E. Kenney  
NH Bar #19333



from divine principle.

*The Church is that institution, which affords proof of its utility and is found elevating the race, rousing the dormant understanding from material beliefs to the apprehension of spiritual ideas and the demonstration of divine Science, thereby casting out devils, or error, and healing the sick.*

—Science and Health with Key to the Scriptures by Mary Baker Eddy (p. 583)

# Church in Action

News and Announcements



## From the Directors:

### How Mrs. Eddy's trust is managed

The November issue gave some information about the publishing of Mrs. Eddy's writings, including reasons for the recent transfer of this activity from the Trustees under the Will of Mary Baker Eddy to The Christian Science Board of Directors. This month we are glad to share some information about how the funds held by the Trustees are administered under the terms of Mrs. Eddy's will for "more effectually promoting and extending" Christian Science.

Summary: The trust is managed for the benefit of the Cause of Christian Science through use of its income for various Christian Science activities around the world. Its accounts, transactions, and policies are monitored by New Hampshire authorities, and the full record of its management is open to public inspection. Its Trustees receive only the customary remuneration authorized

by law and by the New Hampshire probate court supervising the trust.

Use of Income: Income is used for such purposes as grants to branch churches wishing to dedicate their edifices, certain Christian Science lectures sponsored by branch churches, societies, and college organizations, subsidies for lending libraries in Reading Rooms, subsidies for worldwide literature distribution by branch churches and societies, supplying *The Herald of Christian Science* to groups in developing areas, and gift subscriptions to the international edition of *The Christian Science Monitor* for public and school libraries outside North America.

Any change in the general pattern of disbursement of funds is always reviewed by legal counsel, who in turn confers as needed with the judge of the probate court.

Trust Administration: Management of the trust is monitored by the Director of Charitable Trusts and the Merrimack County Probate Court of New Hampshire. The original Trustees, appointed by the court when the will was probated, were the five members of The Christian Science Board of Directors and



Josiah E. Fernald, president of the National State Capital Bank in Concord (now the Concord National Bank), who had often served as Mrs. Eddy's banker. Since Mr. Fernald's passing in 1949, the Trustees, each one subject to court approval on appointment, have been the five Directors. Treasurer to the Trustees has been I. Reed Gourley, who succeeded Mr. Fernald as president of the bank and has continued to serve the trust since his retirement from the bank.

Fees to Trustees: Under New Hampshire law, up to 8 percent of the income of a charitable trust may be paid to the trustees as remuneration for their services in guiding the investment, disbursement, and general administration of the funds of the trust. In this instance, the estate being quite large, 5 percent of the investment income has for many years been deemed by the Trustees and approved by the state authorities as an appropriate fee. This fee, presently about \$30,000 annually, is divided among the five Trustees, so that each one receives approximately \$6,000.

When the copyrights and publishing business were transferred by the Trustees to The Mother Church in 1972 for \$5,000,000 in cash and securities, this did not substantially affect the income of the trust or the fees to the Trustees. In other words, annual income from interest and dividends on the cash and securities was roughly equivalent to the net profits which had been realized from the publishing business. The total worth of the trust was neither

increased nor decreased by the transaction. Over the years, however, the total value of all the assets has been very substantially increased through wise investments.

Audit and Review: As stated above, full record of the administration of the trust is public. Here are details: The Treasurer to the Trustees is responsible for maintaining detailed financial records covering every transaction affecting either principal, income, or disbursement. These records are audited annually by Ernst and Ernst, a leading national firm of auditors. After close of the fiscal year on April 30, a full accounting is rendered to the Trustees, the probate court, and the Director of Charitable Trusts. The latter examines this record to ensure that all statutory requirements as well as the provisions of Mrs. Eddy's will have been complied with.

Annually the court orders publication twice in the Concord newspapers that a public hearing will be held on the annual accounting. On the hearing date the legal agent for the Trustees, former Judge H. Thornton Lorimer, reviews in detail with the probate judge the transactions and affairs of the trust for the fiscal year. When all questions have been considered and answered, the court gives final approval, in writing, thus certifying that the Trustees have discharged their responsibilities to the satisfaction of the court for the period of the accounting. The court proceedings, together with the full accounting, become a public record of the court open to inspection.

Each year's accounting includes an



evaluation of all securities held by the trust, reflecting inventory and market value on the last day of the fiscal year. Whenever there is a change in Trustees, a new appraisal must be filed. Three independent appraisers are appointed by the probate court, and their inventory is filed with the court.

From the above it will be seen that full information on handling of the funds is a matter of public record, and that the administration of these funds is reviewed and approved by responsible authorities in the state of New Hampshire.



## There's no need whatsoever for a church to go downhill

What happens when an active member of a large, thriving church moves to a community where the branch appears to be dying on the vine? If he's anything like the businessman we spoke to recently, he's tempted to look elsewhere, to find a more active branch where he would fit in more comfortably.

Fortunately, however, this man and his wife had to drive right past the dwindling church on their way to the more successful branch in a neighboring community. And this was difficult to do. What bothered them even more was that Christian Science didn't seem to be well represented by the mere handful of members remaining. The couple sought the advice of a more experienced church worker. And the gist of what she said was,

"Go, and take your love."

So they went and joined and offered to do anything that needed to be done. With inspiration and love they resolved to see Church as it really is.

As the new member explained it, "The thinking there at the time was, 'We're too small to do this. We don't have enough members to do that. We can't afford to . . .'" We brought out the necessity to see the completeness of Church. If you think small and act small, you'll be small, we reasoned. We didn't see a big change at first, but we knew Truth was having its leavening effect."

Soon they had another new member. A new family appeared, then they had one Sunday School pupil. Within three years their membership quadrupled, and it's continuing to grow. Wednesday evening testimony meetings are once more active and a joy to attend. The church has added a Children's Room and drastically improved its Reading Room. And it is participating with other branches in providing services at a nearby institution and maintaining a booth each summer at a local fair.

"There's no stopping us now," that first new member declared. "There's love here and joy, and visitors feel it and comment about it. It's the presence of the Christ. It's a thrilling thing. And the people here are blossoming as the church has. It's not that they're doing any monumental works. They're just being themselves, seeing the spiritual idea of Church, and demonstrating it in practical ways."

The whole experience shows there's



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## THE STATE OF NEW HAMPSHIRE

Merrimack, SS.

Court of Probate

Petition by The Trustees Under Clause 8 of  
the Will of Mary Baker Eddy for License to  
Sell "Publishers' Agent" Business and  
Properties.

The petitioners, Arthur P. Wuth, David E. Sleeper, Lenore D. Hanks, DeWitt John, and Otto Bertschi, all of Boston, Massachusetts, Trustees under Clause 8 of the Will of Mary Baker Eddy, late of Concord in said County, have represented in their Petition to this Court dated the first day of May, 1972 that they are the owners of the literary rights in the writings of the late Mary Baker Eddy and of their Publishers' Agent business and of all assets and properties associated therewith, and have prayed the Court for authorization, order and decree to sell the same at private sale to The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, a body corporate under the laws of the Commonwealth of Massachusetts, with principal place of business in Boston, Massachusetts.

Arthur P. Wuth  
David E. Sleeper  
Lenore D. Hanks  
DeWitt John  
Otto Bertschi

## THE STATE OF NEW HAMPSHIRE

Merrimack, SS.

Court of Probate

Order of Notice

It is Ordered as follows: That a hearing on said Petition be held on Tuesday, May 30, 1972, at ten o'clock in the forenoon at the Probate Court Room in Concord, New Hampshire, and that a certified copy of the Petition and this Order of Notice be sent by certified mail, return receipt requested to The Christian Science Board of Directors of The First Church of Christ, Scientist, in Boston, Massachusetts, Christian Science Center, Boston, Massachusetts 02115, and to G. Wells Anderson, Director of Charitable Trusts, Office of the Attorney General, State House, Concord, New Hampshire 03301, at least twelve days before said date of hearing and that the same be published once each week for two successive weeks in the Concord Daily Monitor, a newspaper printed at said Concord, and in the Boston Herald Traveler, a newspaper printed at said Boston, the last date of publication in each newspaper to be at least seven days before said date of hearing.

Dated May 2, A.D. 1972.

By Order of the Court

Leila Y. Bartlett  
MBE CONC 1081

7/10/15  
RECEIVED