

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

REVEREND ARTHUR S. ZEIGLER,	:	No. 53 MAL 2002
	:	
Petitioner	:	
	:	
v.	:	
	:	
CHURCH OF THE BRETHREN	:	Petition for Allowance of Appeal from the
GENERAL BOARD A/K/A CHURCH OF	:	Order of the Superior Court
THE BRETHREN ANNUAL	:	
CONFERENCE; SOUTHERN DISTRICT	:	
OF PENNSYLVANIA CHURCH OF THE	:	
BRETHREN; KAREN DENTLER;	:	
REVEREND JOSEPH A. DETRICK;	:	
REVEREND LARRY DENTLER;	:	
REVEREND WARREN M. ESHBACH;	:	
JANICE CUSTER; JOSEPH	:	
KOCHANSKY; REVEREND DONALD	:	
MYERS; CAROL VANHORN; CINDY	:	
LEIPHART; LEONARD STONER; AND	:	
BARBARA ROTZ,	:	
	:	
Respondents	:	

ORDER

PER CURIAM

DECIDED: September 25, 2002

AND NOW, this 25th day of September, 2002, the Petition for Allowance of Appeal is **GRANTED**. Defendants, Larry Dentler, Joseph A. Detrick, Warren M. Eshbach, Janice Custer, Joseph Kochansky, Donald Myers, Carol Van Horn, Cindy Leiphart, Leonard Stoner and Barbara Rotz, in their individual capacities, were required to assert their affirmative defense of privilege in responsive pleadings. See Pa.R.C.P. 1030(a). Defendants filed preliminary objections but did not raise ecclesiastical privilege before the trial court. Accordingly, defendants' failure to raise the issue precluded the Superior Court from doing so sua sponte. See MacGregor v. Mediq Inc., 576 A.2d 1123, 1127-28 (Pa. Super. 1990) (improper for court to act as advocate and sua sponte raise defense on behalf

of party). The Superior Court's conclusion regarding ecclesiastical privilege is **vacated**. This matter is **remanded** to the Superior Court to determine whether the trial court erred in sustaining the aforementioned defendants' demurrers. Jurisdiction relinquished.