

FILED
POLK COUNTY IOWA
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CLERK DISTRICT COURT

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOHN S. CHAMBERS,
Plaintiff,

Law No. CL95535

Vs.

REV. LEONARD A. KENKEL &
THE DIOCESE OF DES MOINES,
Defendants.

PETITION AT LAW

COMES NOW the Plaintiff, John S. Chambers, by his undersigned Counsel and pursuant to the Iowa Rules of Civil Procedure, and for his Petition at Law to the Court the following in the above-referenced cause of action:

COMMON ALLEGATIONS

1. The Plaintiff, John S. Chambers, is a resident of Polk County, Iowa and at all times material herein was a resident of Polk County, Iowa.
2. The Plaintiff was a baptized and confirmed Catholic and a member of the Saint Augustine Parish of the Diocese of Des Moines; he attended high school at Dowling High School, which is located in Polk County, Iowa.
3. The Defendant the Diocese of Des Moines is an Iowa corporation duly organized under the laws of the State of Iowa.
4. The Defendant Rev. Leonard A. Kenkel (hereinafter referred to as "Kenkel") is an ordained Roman Catholic priest; at all times material herein, he was a science teacher at Dowling High School under the authority, supervision, employ, and control of the Diocese of Des Moines.
5. As a priest and teacher, the Defendant Kenkel was a person of great influence and persuasion as a holy man and authority figure; the Plaintiff, therefore, had great

admiration, trust, reverence, and respect for the Roman Catholic Church and all of its agents.

6. At all times material herein, the Defendant Kenkel was under the supervision, employment, and control of the Defendant the Diocese of Des Moines.

7. During the 1967-'68 school year, when the Plaintiff was in his sophomore Biology class at Dowling High School, he Defendant Kenkel, while using his position of authority, trust, reverence, and control as a Roman Catholic priest and teacher, engaged in repeated, harmful, and illegal conduct with the Plaintiff while the Plaintiff was fifteen years old.

8. The Defendant Kenkel committed these acts on the Plaintiff when the Plaintiff was a minor:

a. Engaged in improper, illegal, and immoral sexual contacts, including, but not limited to, kneading and fondling the Plaintiff's buttocks.

b. Showing his penis to the Plaintiff while talking about receiving the body of Christ.

9. The above-referenced improper and harmful sexual contact occurred on the property of Dowling High School in Des Moines, Iowa.

10. During the time that the Defendant Kenkel was molesting the Plaintiff, the Defendant the Diocese of Des Moines knew, or should have known, of the improper sexual abuse which the Defendant Kenkel perpetrated; the Defendant the Diocese of Des Moines intentionally or negligently failed to take any action against the Defendant Kenkel, including, but not limited to, investigating his actions, defrocking him, reporting him to law enforcement, warning others about him, disciplining him, maintaining records

of his acts, and taking all reasonable steps to insure that such acts, while under the Church's authority, control, and employ, would not occur again.

11. The Defendant Kenkel's abuse of the Plaintiff and the denial of the same by the Defendant the Diocese of Des Moines caused the Plaintiff to develop various ineffective psychological coping mechanisms and symptoms, including shame, guilt, self-blame, depression, repression, and disassociation; therefore, the Plaintiff was unable to discover both the injury and the causal relationship between the injury and the abuse perpetrated against him by the Defendants until he underwent a complete inpatient mental health evaluation at the Mayo Clinic in February of 2004.

COUNT I

ASSAULT AND BATTERY AGAINST THE DEFENDANT KENKEL

1. The Plaintiff hereby incorporates by reference Paragraphs One through Eleven of the Common Allegations of this Petition as though fully set forth word for word herein.

2. During the 1967-'68 school year, the Defendant Kenkel engaged in wrongful sexual conduct and contact upon the person of the Plaintiff.

3. The Plaintiff did not consent to the acts of assault and battery which the Defendant Kenkel committed against him.

4. As a result of the above-described conduct, the Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of the emotional distress, embarrassment, loss of self-esteem, loss of the enjoyment of everyday life; the Plaintiff was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment of life, has and will continue to incur

expenses for medical and psychological treatment, therapy, and counseling, and has incurred and will continue to incur loss of income and loss of earning capacity.

5. The acts of assault and battery which the Defendant Kenkel committed are a proximate cause of the injuries suffered by the Plaintiff.

6. The Defendant Kenkel acted willfully and recklessly and with intentional and willful disregard for the rights of the Plaintiff; the Plaintiff is therefore entitled to punitive damages.

WHEREFORE, the Plaintiff demands judgment against the Defendant Kenkel for assault and battery in an amount that will fully and fully compensate him for his injuries and damages, and for punitive damages in an amount sufficient to deter others and punish the Defendant Kenkel, and for any other relief which the Court deems appropriate under the circumstances.

COUNT II

CHILDHOOD SEXUAL ABUSE AGAINST THE DEFENDANT KENKEL IN

VIOLATION OF IOWA CODE SECTION 709.1(3)

1. The Plaintiff hereby incorporates by reference Paragraphs One through Eleven of the Common Allegations of this Petition as though fully set forth word for word herein.

2. During the 1967-'68 school year, the Defendant Kenkel engaged in unlawful sexual abuse against the person of the Plaintiff in violation of Iowa Code Section 709.1(3).

3. As a result of the above-described conduct, the Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of

the emotional distress, embarrassment, loss of self-esteem, loss of the enjoyment of everyday life; the Plaintiff was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment of life, has and will continue to incur expenses for medical and psychological treatment, therapy, and counseling, and has incurred and will continue to incur loss of income and loss of earning capacity.

4. The acts of sexual abuse which the Defendant Kenkel committed are a proximate cause of the injuries suffered by the Plaintiff.

5. WHEREFORE, the Plaintiff demands judgment against the Defendant Kenkel for sexual abuse pursuant to Iowa Code Section 709.1(3) in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages in an amount sufficient to deter others and punish the Defendant Kenkel, and for any other relief which the Court deems appropriate under the circumstances.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

AGAINST ALL DEFENDANTS

1. The Plaintiff hereby incorporates by reference Paragraphs One through Eleven of the Common Allegations of this Petition as though fully set forth word for word herein.

2. During the 1967-'68 school year, the Defendant Kenkel willfully and intentionally engaged in wrongful sexual conduct with the Plaintiff, who was then a minor.

3. The Defendant the Diocese of Des Moines knew or should have known of the Defendant Kenkel's conduct and purposely and intentionally failed to take action against him or to prevent further abuse of the Plaintiff and others.

4. The Defendants' conduct toward the Plaintiff was so outrageous as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community.

5. The Defendants did inflict, and intended to inflict, emotional distress upon the Plaintiff.

6. The outrageous conduct of the Defendants was a proximate cause of the severe emotional distress which the Plaintiff suffered.

7. As a result of the above-described conduct, the Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of the emotional distress, embarrassment, loss of self-esteem, loss of the enjoyment of everyday life; the Plaintiff was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment of life, has and will continue to incur expenses for medical and psychological treatment, therapy, and counseling, and has incurred and will continue to incur loss of income and loss of earning capacity.

8. The Defendants acted willfully, recklessly, and with intentional and willful disregard for the rights of the Plaintiff; the Plaintiff is, therefore, entitled to punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for

punitive damages, in an amount sufficient to deter others and punish the Defendants, and for any other relief which the Court deems appropriate under the circumstances.

COUNT IV

BREACH OF FIDUCIARY DUTY

AGAINST ALL DEFENDANTS

1. The Plaintiff hereby incorporates by reference Paragraphs One through Eleven of the Common Allegations of this Petition as though fully set forth word for word herein.

2. By holding themselves out as qualified Roman Catholic clergy, representatives of the Roman Catholic Church, priests, instructors, counselors, and holy individuals, the Defendants entered into a fiduciary relationship with the Plaintiff.

3. The Defendants breached their fiduciary duty to the Plaintiff by engaging in the intentional, negligent, and unlawful conduct described herein.

4. As a result of the above-described conduct, the Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of the emotional distress, embarrassment, loss of self-esteem, loss of the enjoyment of everyday life; the Plaintiff was and is permanently prevented from performing his normal daily activities and obtaining the full enjoyment of life, has and will continue to incur expenses for medical and psychological treatment, therapy, and counseling, and has incurred and will continue to incur loss of income and loss of earning capacity.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for

punitive damages in an amount sufficient to deter others and punish the Defendants, and for any other relief which the Court deems appropriate under the circumstances.

COUNT V

NEGLIGENT HIRING, SUPERVISING, WARNING, DOCUMENTING,
AND RETAINING AGAINST THE DEFENDANT THE DIOCESE OF DES MOINES

1. The Plaintiff hereby incorporates by reference Paragraphs One through Eleven of the Common Allegations of this Petition as though fully set forth word for word herein.

2. Upon information and believe, the Defendant the Diocese of Des Moines, by and through its agents, servants, and employees, knew or should have known about the Defendant Kenkel's harmful and unlawful conduct.

3. The Defendant the Diocese of Des Moines had a duty to exercise reasonable care in the hiring, supervising, documenting, and retaining the Defendant Kenkel and to use reasonable care to provide adequate warning to the Plaintiff, his family, and others of the Defendant Kenkel's harmful and unlawful conduct.

4. The failure of the Defendant the Diocese of Des Moines to properly hire, supervise, warn third parties, document wrongs, and discharge its employees, include, but are not limited to, the following acts and omissions:

- a. Failure to prevent the Defendant Kenkel from engaging in sexual abuse;
- b. Failure to reprimand or take preventative action against the Defendant Kenkel;

c. Failure to supervise and control the Defendant Kenkel to ensure that sexual abuse did not occur;

d. Failure to document and maintain documents about the Defendant Kenkel's activities;

e. Failure to conduct a proper and thorough investigation into the Defendant Kenkel's improper sexual contacts; and

f. Failure to provide adequate warning to the Plaintiff, his family, and others of the Defendant Kenkel's harmful and unlawful conduct.

5. The failure of the Defendant the Diocese of Des Moines to properly hire, supervise, warn third parties, document wrongs and discharge the Defendant Kenkel manifests a deliberate indifference to the rights of the Plaintiff.

6. The negligent hire, supervising, warning, documenting, and retaining the Defendant Kenkel by the Defendant the Diocese of Des Moines was a proximate cause of the Plaintiff's injuries.

7. As a direct result of the Defendant the Diocese of Des Moines' negligent hire, supervising, warning, documenting, and terminating the Defendant Kenkel, the Plaintiff has suffered, and continues to suffer, severe and permanent emotional distress, physical manifestations of the emotional distress, embarrassment, loss of self-esteem, loss of enjoyment of everyday life, is permanently prevented from performing his normal daily activities and obtaining the full enjoyment of life, will incur expenses for medical and psychological treatment, therapy, and counseling, and has incurred and will continue to incur loss of income and loss of earning capacity.

WHEREFORE, The Plaintiff prays for judgment against the Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages, in an amount sufficient to deter others and punish the Defendants, and for any other relief which the Court deems appropriate under the circumstances.

COUNT VI

RESPONDEAT SUPERIOR AGAINST THE DEFENDANT

THE DIOCESE OF DES MOINES

1. The Plaintiff hereby incorporates by reference Paragraphs One through Eleven of the Common Allegations of this Petition as though fully set forth word for word herein.

2. When the Defendant committed the acts alleged herein, he was a representative, agent, and employee of the Defendant the Diocese of Des Moines and acting within the scope of this representative agency and employment.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in an amount that will fully and fairly compensate him for his injuries and damages, and for punitive damages, in an amount sufficient to deter others and punish the Defendants, and for any other relief which the Court deems appropriate under the circumstances.

PRAYER FOR RELIEF

WHEREFORE the Plaintiff prays for judgment against the Defendants in an amount in excess of the jurisdictional amount that is fair and reasonable to compensate him for the injuries and damages sustained as a result of sexual abuse which was inflicted upon him while he was a minor and for punitive damages in an amount sufficient to deter others and punish the Defendants for their wrongful conduct.

Mary L. McGee

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ATTORNEY FOR PLAINTIFF