

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Doe 1,

File No. 62-CV-13-4075
File No. 62-C9-06-3962

Plaintiff,

v.

Archdiocese of St. Paul and
Minneapolis, Diocese of Winona,
Thomas Adamson,

**ORDER MODIFYING
PROTECTIVE ORDER**

Defendants.

John Doe 76C

Plaintiff

v.

Archdiocese of St. Paul and
Minneapolis, Diocese of Winona,

Defendants.

The above matters came before the undersigned Judge of District Court on December 2, 2013, pursuant to a November 18, 2013, Order of the Court issued in the Doe 1 case. Jeffrey R. Anderson, Esq., Michael G. Finnegan, Esq., and Elin Lindstrom, Esq., appeared for Doe 1 and John Doe 76C. Thomas B. Wieser, Esq., and Jennifer R. Larimore, Esq., appeared for the Archdiocese of St. Paul and Minneapolis (Archdiocese). Thomas R. Braun, Esq., appeared for

the Diocese of Winona (Diocese). Following oral argument, and based upon pre-hearing letter briefs received on November 25, 2013, the Court issued an Order from the bench on the record. The purpose of the instant written order is to memorialize and, if necessary, to clarify that verbal order. Any conflicts should be resolved in favor of this written order, which is as follows:

ORDER

1. The April 17, 2009, Protective Order issued by the Honorable Gregg Johnson of this Court in the John Doe 76C case (File No. 62-C9-06-3962) is modified to require the Archdiocese and Diocese to publicly disclose, without claims of confidentiality protection, by (at least) serving on other parties and filing with the Court the following information regarding 46 so-called John Jay Charter Study priests:¹

- a. Priest's (or former priest) name;
- b. Priest's year of birth and age;
- c. Priest's year of Ordination;
- d. Whether the priest is alive or deceased and year of death if deceased;
- e. Parishes in the Archdiocese or Diocese where the priest served;
- f. Present ministerial status (for example, retired, dismissed from clerical state, etc.);

¹ The identities of these priests had previously been ordered disclosed under seal by Judge Johnson in the John Doe 76C case. The names are found in the Second Supplemental Answers to Plaintiff's Second Set of Interrogatories by the Archdiocese dated April 16, 2009 (33 names) and by the Diocese dated April 20, 2009 (13 names).

- g. Current city and state where the priest resides, or resided at the time of his death.

2. If any information required by Paragraph No. 1 above is not timely filed and served, a detailed explanation as to why any information has been excluded shall be served and filed by close of business on December 17, 2013.

3. The information required under Paragraph No. 1 with respect to John Jay Charter Study priests shall also be provided with respect to priests about whom accusations of sexual abuse of minors was made known to the Archdiocese or Diocese after the compilation of the John Jay Charter Study priest lists in 2004. That information must be served and filed by close of business on January 6, 2014, regardless of any ongoing review by the Archdiocese, Diocese or its agents, to determine whether accusations are properly characterized as substantiated or may be characterized in some other fashion. The obligation of the Archdiocese and Diocese to supplement disclosures made under this paragraph is a continuing one.

4. In all disclosures of information regarding sexual abuse of minors by any party herein, the privacy of victims shall be carefully respected, and their identities not disclosed without their written permission or order of the Court.

5. The rationale for the Court's decision herein is contained in the record of the hearing on December 2, 2013, and in the Memorandum, which is attached hereto.

6. Copies of this Order shall be served on counsel for the parties.

Dated: 12-3-13

BY THE COURT:



Honorable John B. Van de North, Jr.

Judge of the District Court

File No. 62-CV-13-4075

File No. 62-C9-06-396

MEMORANDUMFile No. 62-CV-13-4075
File No. 62-C9-06-3962**PROCEDURAL BACKGROUND AND FACTS**

On August 22, 2013, the Court heard oral argument on Defendants' motions to dismiss Doe 1's public and private nuisance claims. Those motions were taken under advisement on September 12, 2013. In a letter published November 11, 2013, Archbishop John Nienstedt stated that the Archdiocese would disclose the names of some priests who had been identified in the 2004 John Jay Study, with certain conditions. On November 18, the Court reopened the August 22 hearing to discuss the impact of the Archbishop's letter on the pending motions to dismiss and the Archbishop's request for the Court's permission to release the information in the fashion he proposed. The parties submitted letter briefs to the Court on November 25, 2013, and the reconvened hearing proceeded on December 2, 2013.

At the December 2, 2013, hearing, the Archdiocese asked the Court to modify the April 16, 2009, Protective Order issued in the related John Doe 76C case to permit a limited disclosure of information about the John Jay Study priests as well as about other priests accused of child sex abuse since the John Jay Study was completed around 2004. The Diocese did not join in the Archdiocese request and opposes any modification of the Protective Order. Doe 1, through counsel, brought an oral motion during the hearing to revoke the Protective Order and to allow publication of all previously sealed information.

DISCUSSION

A decision to modify a protective order is within the sound discretion of the district court. State ex rel. Humphrey v. Philip Morris, Inc., 606 N.W.2d 676, 687 (Minn. Ct. App. 2000) (citing In re "Agent Orange" Prod. Liab. Litig., 104 F.R.D. 559, 567 (E.D.N.Y. 1985)). The Court fashions and modifies protective orders based on good cause. Erickson v. MacArthur, 414 N.W.2d 406, 409 (Minn. 1987). In determining good cause, the Court balances all relevant circumstances, including: (1) the nature of the protective order; (2) the parties' reliance on the protective order; (3) the ability to gain access to the information in other ways; (4) the need to avoid repetitive discovery; (4) the nature of the material for which protection is sought; (5) the need for continued secrecy; and (6) the public interest involved. Philip Morris, Inc., 606 N.W.2d at 687.

In Philip Morris, the Court of Appeals, applying these factors, concluded that the district court did not abuse its discretion in modifying a protective order, after the case had been completed, to allow for public disclosure of information that was confidentially disclosed during the discovery phase of litigation. Similarly, the Court here has concluded that the April 2009 Protective Order should be modified so as to require public disclosure of information about priests found to have been credibly accused of sexually abusing children between approximately 1950 and the present. In doing so, the Court has considered the factors suggested in Philip Morris, supra, and concludes each supports the modification of the April 17, 2009, Protective Order.

In April 2009 Judge Johnson ordered disclosure, during discovery, of the John Jay Charter Study priest information by the Archdiocese and Diocese. He also sealed the information as confidential, pending further evidentiary review or at trial—neither occurred because the John Doe 76C case was resolved on legal issues relating to then-applicable statutes of limitations. The April 17, 2009, Protective Order was sought by the Archdiocese and Diocese. It was granted by Judge Johnson with concerns for the privacy of victims and for the reputations of potentially wrongfully accused priests. This Court believes it is a stretch for the Archdiocese and Diocese to argue, as they do, that Judge Johnson's Protective Order prohibits the voluntary release of information by them. Nevertheless, to their credit, Archbishop Nienstedt and the Archdiocese stepped forward with a proposal to release some information that is relevant to claims in Doe 1 and likely in other ongoing clergy abuse cases. One purpose of the instant Order is to clarify the ability of the Archdiocese and Diocese to release any information they wish to release on a voluntary basis.

There is a reasonable basis for relaxing the 2009 Protective Order, given well-publicized criminal investigations and convictions regarding priests, including Father Curtis Wehmeyer. More than four years have passed since the April 2009 Protective Order was issued, and the circumstances underlying the original grant of the Protective Order have changed substantially. Information regarding at least 20 of the 33 priests identified in the 2009 disclosures by the Archdiocese is now a matter of public record. There have been other accusations regarding the

sexual abuse of minors by priests not addressed in the 2004 John Jay Charter Study or in the 2009 disclosures ordered by Judge Johnson. The extent to which and when the Archdiocese or Diocese may have known of these accusations is the subject of ongoing investigation and debate. Without stating any opinion as to the admissibility of any evidence for purposes of trial or for dispositive motions, facts about post-2004 sexual abuse accusations and eventually about their handling by the Archdiocese and Diocese would appear to be relevant to Doe 1's (and others) negligence-based claims.

Finally, concerns about victim privacy, acknowledged by all parties, have been expressly addressed in the Court's Order supra. The potential damage to reputations of priests wrongfully accused must be viewed through the prism of heightened concerns for potential victims raised by revelations about offending priests, such as Father Wehmeyer.

JBV/dl