

IN THE IOWA DISTRICT COURT IN AND FOR CLINTON COUNTY

JOHN DOE (I-A),)	
)	
Plaintiff,)	Law No. LA 29513
)	
vs.)	
)	PLAINTIFF'S MOTION
FATHER JAMES JANSSEN and)	TO COMPEL AND FOR
DIOCESE OF DAVENPORT,)	SANCTIONS AGAINST
)	DEFENDANT DIOCESE
Defendants.)	OF DAVENPORT
)	
)	
)	

COMES NOW, Plaintiff, John Doe I-A, by and through his attorneys, Betty, Neuman & McMahon, L.L.P., and pursuant to I.R.C.P. 1.517 and moves the Court for an Order compelling and sanctioning the Defendant Diocese of Davenport and states as follows:

1. The continuing pattern of ongoing and unjustified delays by Defendant Diocese of Davenport in responding to legitimate discovery requests in this case is illustrated by the following 14 month sequence of events:

a. May 19, 2003, Doe I-A served Interrogatories, Request for Production and Request for Admissions on Defendant Diocese.

b. June 18, 2003, the Diocese served its unresponsive and objection-filled Responses to Request for Admissions.

c. On September 25, 2003, Doe I-A filed his Motion to Compel against Defendant Diocese. At that time, the Diocese had not produced one

document in response to 79 separate Requests for Production.

d. On September 30, 2003, the Diocese filed a Motion requesting the Court dissolve its Order prohibiting the Diocese from destroying documents related to sex abuse by priests.

e. On October 2, 2003, the Diocese served an evasive and incomplete production of documents. In response to Doe I-A's request for the entire personnel file and complaints related to Defendant Janssen over a period of 50 years, the Diocese produced two pages of his assignments.

f. On October 20, 2003, a three hour hearing was held on Doe I-A's first Motion to Compel against Defendant Diocese.

g. On October 27, 2003, Doe I-A filed a Motion for Sanctions based on the response of the Diocese which misrepresented the existence of information on the Gavin Audit, the destruction of documents and mental health information of Defendant Janssen.

h. On November 25, 2003, Doe I-A filed his Further Statement in Support of Sanctions. The Diocese had filed false, misleading and intentionally incomplete Responses to Requests for Admissions in part because two Requests for Admissions were responded to differently in companion cases.

i. On November 26, 2003, the Court ordered the Diocese of Davenport to comply with those written discovery requests and make a "good faith response" on or before January 16, 2004. This Order overruled the Diocese objections based on: (1) First Amendment; (2) Canon Law; (3) the 50 years of

documents requested were burdensome; (4) remedial measures and (5) the Court ordered all priest files produced unless there was federally protected health information, in which case, they should be submitted for in camera review by the Court. The Court also indicated that any attorney client privilege documentation prepared specifically for trial in these cases could be protected. The Court further ordered that victims' names would not be kept "secret", but would be kept confidential and disclosed only to opposing counsel and their staff.

j. On December 9, 2003, Defendant Diocese filed a Motion for Reconsideration of the Court's November 26, 2003 Order.

k. On December 15, 2003, a hearing was held on the Diocese's Motion for Reconsideration. During this hearing, counsel for the Diocese assured the Court that it could meet the January 16, 2004 deadline in producing documents.

l. On December 22, 2003, the Diocese filed its Application for Interlocutory Appeal. On December 31, 2003, Defendant Diocese filed a request to extend time to fully and completely respond to the discovery beyond the January 16, 2004 deadline.

m. On January 12, 2004, the District Court entered an Order, with the agreement of the Diocese, to extend the deadline to respond fully and completely in good faith to the discovery responses seven days after a Supreme Court denial of the Interlocutory Appeal. On February 9, 2004, the Iowa Supreme Court denied Defendant Diocese Interlocutory Appeal. On March 15, 2004, the Diocese first filed Notice of in camera filing of documents. This notice did not contain any type of

table, chart or log describing the date, author, title or subject matter of the documents. At that time, under Court Order, the only documents that were to be submitted in camera were federally protected health records of the priest.

n. On March 26, 2004, the Court ruled on Defendant Diocese Motion to Reconsider. The Court ordered Defendant Diocese to disclose to the Plaintiff the identities of all persons reporting instances of sex abuse by clerics. If necessary, the Court provided a confidentiality request so that the individuals could keep their name confidential so that only the parties, the parties' counsel and the immediate staff of the parties would know the identity. This was the second substantive Ruling declaring that the Plaintiffs were entitled to the name and identity of witnesses with information about childhood sex abuse in the possession of the Defendant Diocese. The Supreme Court had refused to review the earlier Ruling on Interlocutory Appeal.

o. Incredibly, on April 6, 2004, the Defendant Diocese, still dissatisfied with two hearings before the District Court and a denial of a review at the Supreme Court level, filed a Motion to Enlarge or Amend Rulings.

p. On April 8, 2004, Plaintiff filed his Second Motion to Compel against the Diocese again requesting production of documents and information that had been sought 11 months earlier and still not produced. Bishop Franklin published a report on February 25, 2004 admitting 65 individuals had made allegations of sexual abuse against 20 priests. Although the Diocese has been ordered to provide the identity of the 65 individuals to Plaintiff in the Court's November 26, 2003 Order,

Defendant Diocese, to this day, has still not revealed the identity of these individuals. In addition, the Diocese was ordered, on November 26, 2003, to produce all documents relating to claims of sexual abuse against a priest and the only files produced by the Diocese to date are those involving Janssen, Bass, Wiebler and Geerts. The Diocese has wrongfully withheld, for over six months, the file documentation and information in the other 16 priest files. Under Court Order, the only material to be submitted for in camera review of these documents are health records of the priest that are protected under Federal Statute. In addition, the Plaintiff has sought all documents and information held by Irene Prior Loftus, a victim assistance coordinator, Thomas Crowley, a victim assistance coordinator and Jim Sweeney, the Diocese investigator. Each of these individuals have received the names and identities of people with information regarding sexual abuse by priests of individuals under the age of 18 and have produced documents related to sexual abuse by a priest. However, the Diocese has refused to produce these documents.

q. Incredibly, on April 13, 2004, the Defendant Diocese, contrary to two District Court Orders and a denial of Interlocutory Appeal by the Supreme Court, filed a Resistance to Plaintiff's Motion to Compel and has now taken the position that they are entitled to submit documents previously ordered produced to the Plaintiff to the Court for in camera inspection. The Diocese of Davenport, without Court approval, through Attorney Irene Prior Loftus, solicited individuals to complete a "Total Confidential Request" attempting to keep the names of witnesses with relevant information secret from the Plaintiff. This procedure was in direct violation

of the Court's November 26, 2003 Order and March 26, 2004 Order. In addition, Defendant Diocese continues to take the position that it can burden the Court with large amounts of in camera documents for the Court's review without providing to Plaintiff a list, description or log of such documents. In addition, under Court Rulings, there is no basis for the extensive in camera review the Diocese is using.

r. On April 15, 2004, a hearing was held and a Ruling entered on May 7, 2004. At the hearing, the Diocese agreed, through their agents and counsel, that they will re-review the personnel files (the files that had been reviewed and used to produce a public report by the Bishop back in February, 2004). The Court confirmed the agreement and representation by the Diocese that they will disclose to the Plaintiff all personnel files that are relevant, will sign an Affidavit saying other personnel files have no relevancy and that those that are questionable will be forwarded to the Court. The Court has previously ruled that any priest file containing allegations of sexual abuse of a person under the age of 18 is relevant. The Bishop has publicly reported that there are 20 such priests in the Diocese of Davenport. However, despite Court Orders to produce these documents and the express representation on April 15, 2004 that these documents would be produced, as of the date of this Motion, the Diocese has refused to produce such documents.

2. That despite the refusal of Defendant Diocese to fully and completely comply with Court Ordered discovery requests in good faith, the individual Plaintiff victims in these cases have attempted to cooperate with ongoing depositions. Seven individual Plaintiffs have been deposed by the lawyers for the Diocese. Although the

names and identities of victims known to the Diocese have not been disclosed to the Plaintiffs, the Plaintiffs have deposed Father Janssen and Father Bass. Both of them deny any sexual contacts with anyone under the age of 18. Therefore, the material evidence and witnesses in the hands of the Defendant Diocese is materially prejudicing Plaintiffs' ability to prepare and try their cases. In addition, although the Defendant Diocese admits that at least 15 more abusive priests are known to the Diocese, along with documentation of this abuse, this information has not been made available to the Plaintiffs to prepare their cases. Plaintiffs, in an effort to partially prepare their cases, have deposed Vicar General Monsignor Morrissey and Chancellor Irene Prior Loftus. These depositions were, of course, incomplete because the identities of witnesses and documents have been withheld from the Plaintiffs. Although Plaintiffs' resources are quite limited, it will require the re-deposition of these witnesses when the Diocese finally turns over the relevant documents and information. In addition, Plaintiffs have attempted to twice schedule the deposition of Bishop Franklin, but it has been rescheduled because of conflicts in his schedule. The deposition of Father McAleer has been repeatedly postponed because of health conditions. Other critical and important depositions cannot proceed because the Plaintiffs do not have all relevant material information needed to take such depositions.

3. The testimony of Father Tom Doyle on June 3, 2004, and his attached Affidavit establish a historical policy and practice of secrecy in the Roman Catholic Church in the cover-up of sexual abuse of children by priests. In reviewing the

course of discovery in this case over the last year, it is clear that the legal strategy of the Diocese is also designed to hide and conceal relevant and material information from the Plaintiffs in this case.

4. A good faith, but unsuccessful, effort has been made to resolve this matter without intervention by Court.

5. The importance of this discovery and the production of the documents is magnified by the number of Plaintiffs and other Claimants the Ruling affects. Eighteen individual Plaintiffs have now sued the Davenport Diocese alleging abuse by a priest and fraudulent concealment by the Diocese. In addition, 19 other individuals are seeking mediation as a result of sexual misconduct by priests in the Davenport Diocese. Some of these claims involve priests who have not been identified to the public by the Diocese. It is important to effect justice in the litigated and mediation cases that the Court compel the immediate production of all witness names, identities and documents to the Plaintiffs and restate to the Diocese that the only matters to be submitted for in camera review should be health records of the priests. Further, because this is now the Third Motion to Compel and Third Request for Sanctions sought against the Diocese, the Court should enter sanctions against the Diocese.

6. The Court should be further aware of the stubbornly litigiousness of the Diocese:

a. The day after this Court denied the Diocese's Motions for Summary Judgment in James Wells vs. Diocese of Davenport, et al and John Doe III

vs. Diocese of Davenport, et al, Defendant Diocese filed two similar Motions against Plaintiffs John Doe II and Donald Green.

b. John Doe II filed a companion case in California under the California Statute SB1779 which provided victims a one year window to sue for childhood sexual abuse. John Doe II offered to dismiss the California action, litigate the statute of limitations in Iowa and mediate his case. In response, the Diocese of Davenport removed the case to Federal Court in California, filed a Counterclaim against the victim, John Doe II, and the Archdiocese of Los Angeles has sought to intervene against this Iowa victim in the California action. As a result, the Diocese of Davenport, with the support of the Catholic Bishops of California and one of the largest, most wealthy Archdiocese in the country, is targeting an Iowa victim and seeking dismissal of his case, although now admitting the 40 year history of abuse by Father Janssen.


c. The hypocrisy of this legal strategy is demonstrated by the public pronouncement of the Bishop sent to all Diocese parishioners in February 25, 2004 that...

"The Catholic Church is in the midst of a crisis that must be dealt with compassionately, fairly and honorably...this is a painful and difficult communication, but one that must occur in the interest of transparency and openness...The Diocese of Davenport, with the assistance of its insurers, will also strive to resolve pending litigation and claims fairly and honorably. The Diocese is willing to enter into non-binding mediation for those interested in attempting to privately resolve claims free from time consuming and expensive litigation."

7. Based on the Diocese's refusal to respond to discovery while pursuing a legal strategy to dismiss every case, the Court must compel and sanction compliance with its earlier Rulings.

WHEREFORE, Plaintiff requests the Court enter an Order compelling immediate full and complete discovery responses and for sanctions against the Defendant Diocese of Davenport.

BETTY, NEUMAN & McMAHON, L.L.P.

By  _____

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JOHN DOE I-A

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the United States Mail, postage prepaid, in envelopes addressed to each party at their respective address disclosed on the pleadings as follows:

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On the 19th day of July, 2004.
Sandra Jensen