

## **Frye, David**

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**From:** Hollis Hanover <hhanover@kc.rr.com>  
**Sent:** Monday, April 14, 2014 5:58 PM  
**To:** Sarah Brown; gregg@andersonadvocates.com Meyers; Spencer Brown; Frye, David; Rebecca Randles; Mimi Doherty; Tammy Dochniak; Haden, Jon; erin@andersonadvocates.com; Mueller, Christina; Cohara, Mara  
**Subject:** Modified Final Award  
**Attachments:** Modified Final Award.pdf

Defendants did not oppose plaintiffs' request for modification of the award and the request was granted. Defendants did not request a modification. Attached is the Modified Final Award containing the changes suggested by plaintiffs and including the change necessitated by defendants' payment of the arbitrator's bill.

Hollis Hanover  
[Hollis@Hanover-ADR.com](mailto:Hollis@Hanover-ADR.com)  
Telephone (816) 942-2204  
Cell (816) 223-2987

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

<b>JAMES G. (CASEY) WALSH, III, ET AL,</b>	)	
	)	
<b>Plaintiffs</b>	)	<b>Case No. 1116-CV29191</b>
	)	<b>Division 8</b>
<b>vs</b>	)	
	)	
<b>THE DIOCESE OF KANSAS CITY-ST.</b>	)	
<b>JOSEPH AND BISHOP ROBERT FINN</b>	)	
	)	
<b>Defendants</b>	)	

**MODIFIED FINAL AWARD IN ARBITRATION**

In making this award I rely on the whole record before me and have made findings of fact for each fact referenced in the award, whether or not record citations are given or whether or not each fact is noted as a finding of fact. Conclusions made in the award are based on the record as a whole and inferences drawn therefrom. I consider this matter to be a dispute involving a contract freely entered into by the parties, and hence no freedom of religion issues are raised.

**I. This Action**

This action arises out of a settlement which occurred in August of 2008 between 47 tort claimants plaintiffs and The Diocese of Kansas City - St. Joseph and Bishop Robert Finn. Other defendants were present in the settlement proceedings, but are not included here. The settlement included three primary documents: (1) the Memorandum of Understanding (“MOU”) between all claimants and the Diocese. The MOU includes Exhibit A which delineates the non-monetary

commitments made by the Diocese, (2) the individual Settlement Agreement and Arbitration Agreements and (3) the individual Mutual Settlement Agreements and General Release. The Circuit Court, Judge Peggy Stevens McGraw, ordered on June 6, 2012 that the parties were to arbitrate disputes concerning the provisions of Exhibit A of the MOU.

Through intense and cooperative effort the parties have endeavored and largely succeeded in limiting, or agreeing to present in concise fashion, the issues among them. The lawyers, while doggedly vigorous in their advocacy have kept in mind the purpose of arbitration to provide efficient and early resolution of disputes and, given complicating external factors, have generally accomplished that purpose.

II. This controversy

The parties disagree concerning whether some of the provisions of Exhibit A have been violated and, if so, whether those breaches create in plaintiffs the right to prove and receive damages arising from any breach. Defendants also argued before Judge McGraw that the arbitration clauses in the documents applied only to the monetary portion of the settlement, but Judge McGraw ruled that the arbitration provision covered “any dispute regarding the contract or any related matters” so that ruling is the law of the case as far as this arbitration is concerned. Whether the arbitration provisions do not apply to some of plaintiffs allegations of breach are deemed previously ruled and said ruling is binding on this arbitration.

The record in this arbitration makes clear that, although plaintiffs were dissatisfied with the manner in which the Diocese complied with various of the agreements in Exhibit A, the precipitating events which prompted this current controversy and consequent arbitration were those involving Fr. Shawn Ratigan’s taking of pornographic pictures of Diocesan children and the attendant cover-up which culminated in the criminal conviction of Bishop Finn.

III. The Intent of the Contracting Parties

When sexual abuse of children cases were settled against the Diocese in 2008, the Diocese and the then 47 plaintiffs decided, for purposes of the settlement, to join forces and approach the concept of settlement with an all-or-none commitment, that is, all cases would be settled or none would be. The Diocese agreed with and required that process. Hence, when the settlement was concluded, the proportionate shares of the lump sum settlement of ten million dollars for all cases was distributed among the plaintiffs by arbitration done with the consent and concurrence of all parties. This arbiter met individually with each plaintiff, together with plaintiff's counsel and a clerical representative of the diocese, and heard each plaintiff's experience, after which each plaintiff's share of the lump sum monetary settlement was determined.

The plaintiffs shared equally as recipients of the Diocesan promises in the MOU and specifically the promises of Exhibit A. In consideration of receipt of the money and of the promises in Exhibit A, plaintiffs gave up their right to proceed to trial and seek to recover money damages in amounts to be decided by a court or jury. Testimony in this arbitration was compelling that there would have been no settlement without the promises of Exhibit A because the experiences of these plaintiffs made primary their goal that the Diocese would not conceal or fail to report sexual abuse of children, conduct which the plaintiffs contended occurred in their own lives. It is clear that the intent of the contracting parties was that henceforth the Diocese would put the welfare and safety of the children ahead of secrecy and of concern for the well being of the clergy. Showing that the Diocese shared this intent is the statement of Bishop Finn dated August 20, 2008 concerning the settlement (Plaintiffs' exhibit 1-4):

"We have agreed ... to adhere to a number of non-monetary stipulations that should assure our community, our congregation and these families that the diocese will continue in its exercise of vigilance and in its devotion to training and education so that we may be confident that there will never, ever be a repeat of the behaviors, the offenses, or the claims that have been associated with this matter." [my underlining]

It seems from the record that these good intentions on the part of the Diocese, sincere as they may have been at the time of the contracting, were not to be effected. Based on its behavior as revealed in this record, it is my opinion and finding that the Diocese, with its leadership and higher level personnel and their unavoidable biases and ingrained priorities, was and is constitutionally incapable of placing the preservation and protection of the clergy culture in a subordinate position to any other consideration, including the timely reporting to law enforcement of a priest involved in the use of diocesan children as pornography models.

#### IV. Matters at Issue

Plaintiffs complain that the Diocese has on one or more occasions violated the provisions of Exhibit A, and specifically paragraphs 1, 2, 3, 10, 14, 15 and 18 thereof. Plaintiffs also complained of breaches of paragraphs 5, 8, 9 and 16, but those issues were resolved through voluntary abandonment by plaintiffs (8, 16) or negotiated cure by Diocese (5, 9). Through stipulations, the Diocese has agreed not to dispute a finding of breach as to paragraphs 14 and 18, but I perceive a need for more than a cursory treatment of those paragraphs.

Findings with respect to the paragraphs in contention follow.

#### Exhibit A, Paragraph 1

Paragraph 1 of Exhibit A concerns Diocesan acknowledgement of wrongdoing as follows:

1. Through a press statement to the secular media and through publication in The Catholic Key, the Diocese will continue to publicly acknowledge the wrongfulness of sexual abuse by the perpetrators, and will acknowledge that its own response to reports of sexual abuse has, in the past, been wrong.

By referencing “a press statement...” and “the perpetrators” paragraph one refers to the litigation which prompted the 2008 settlement. Plaintiffs have pointed out many instances since the execution of the settlement documents where the Diocese has been untruthful regarding priest sexual misconduct, but those events do not violate the terms of this paragraph. Paragraph 1 was not breached.

Exhibit A, Paragraph 2

Paragraph 2 of Exhibit A concerns the provision of counseling to victims of sexual abuse as follows:

2. The Diocese will continue its long-standing offer to provide counseling to all victims of sexual abuse and their immediate family members, at the expense of the Diocese. The plaintiffs collectively shall appoint an individual of their choice to act as an intermediary between plaintiffs and the Diocese in order to facilitate the provision of independent therapy for any plaintiff for a maximum of twenty four (24) sessions.

In an almost continual process from the time of execution of the settlement, the Diocese has made unilateral and sometimes arbitrary changes in the procedures by which this paragraph would be effected. Examples include the required vetting of counselors, the arbitrary limit on fees and the bypassing of the intermediary system established by the paragraph. In so doing the Diocese breached Paragraph 2.

Exhibit A, Paragraph 3

Paragraph 3 of Exhibit A concerns the provision of references for credibly accused priests and others as follows:

3. The Diocese will not provide a reference or recommendation for purposes of prospective employment with respect to any priest, nun, deacon, lay employee or volunteer of the Diocese who has been credibly accused of sexual abuse. If the Diocese receives a request for such a reference or recommendation, the Diocese will respond that it will not provide such a reference or recommendation, except in the case where a lawsuit alleging sexual abuse has been filed, in which case the Diocese will inform the prospective employer of that fact.

Fr. Ratigan had been “accused” (a term I find equivalent to “reported”) by Principal Hess, Ken Kes, Deacon Lewis and Julie Creech and perhaps others. In the context of the Catholic Church, no higher recommendation of suitability can be imagined than the suggestion of a Bishop, who shares his title with that of Pope Francis, concerning the placement of a priest. Bishop Finn concealed the extent of Fr. Ratigan’s perfidy and hence provided an implied recommendation to the Sisters of St. Francis that Fr. Ratigan should be employed to provide and receive compensation for priestly services to them and the children who from time to time came to their center. The “restrictions” placed on Fr. Ratigan by Bishop Finn lead me to conclude and find that Bishop Finn believed Fr. Ratigan to be a pornographer specializing in diocesan children as models. His belief was well justified, but he concealed it from the Sisters. In so doing, Bishop Finn, and through him the Diocese, violated paragraph 3.

Plaintiffs point out that Bishop Finn also concealed his beliefs about Fr. Ratigan from the Vincentian Parish Mission Center, where he sent Fr. Ratigan to live, and from the parishioners of St. Patrick’s and the Diocese generally, but those concealments do not fit the prohibitions of paragraph 3.

#### Exhibit A, Paragraph 10

Paragraph 10 has to do with the Diocese implementing Victims’ Advocacy Programs as follows:

10. The diocese will continue to offer and implement a Victims' Advocacy Program consistent with Virtus guidelines, in order to maintain safe, strong communities for children and vulnerable adults.

As of the dates of the hearing, the Victim Advocacy Program of the Diocese is entirely admirable and substantially in conformance with paragraph 10. It is staffed by competent employees and contractors and I find no breach of the specific terms of this paragraph. In the context of this paragraph I perceive the duty to "implement" means simply to adopt it. An argument has been made that "implement" also implies "follow" and the argument has merit. I choose the more restrictive definition. The problem here is not necessarily the terms of the various programs for the protection of children from priestly predations. Elsewhere in this award I find that the higher level administration of the Diocese is completely unreliable insofar as the enforcement of the current program (and the admirable prior program) where that enforcement conflicts with the protection of guilty clergy. There is no breach of Paragraph 10.

Exhibit A, Paragraphs 14 and 18

Paragraphs 14 and 18 of Exhibit A have to do with the Diocese's agreements about reporting child sexual abuse. They are as follows:

14. The Diocese will continue to follow mandatory state reporting requirements and Virtus guidelines in reporting the suspected sexual abuse of minors to law enforcement and child protection authorities. At the request of the victim or other party reporting childhood sexual abuse to the Diocese, the Diocese will report such abuse to law enforcement and child protection authorities regardless of the age of the victim at the time the report is made.

18. The diocese has enacted policies concerning sexual assault, misconduct and harassment including procedural steps that will be followed once reports are made and to

whom reports are to be made. The diocese agrees to provide copies of those policies to counsel for claimants.

Paragraph 14 has two parts: the first sentence requires the Diocese to follow the law regarding reporting as set out in RSMo 210.115, et seq. The second sentence requires the Diocese to report an incident to law enforcement if requested by the victim or other party. [my underlining]

In May, 2010, Fr. Shawn Ratigan was pastor of St. Patrick's Parish and Julie Hess was principal of the school there. Ms Hess identified what she called "boundary issues" involving Fr. Ratigan. Fr. Ratigan's professed belief in the benefit of his touching and hugging school children, internet social site interaction between Fr. Ratigan and young children, Fr. Ratigan's taking hundreds of photographs of the children, the plethora of stuffed animals in his home, and the discovery of a pair of child's panties in a planter in his backyard were included as examples. Ms Hess did not call the police, but rather reported the matter to Monsignor Murphy, Vicar General of the Diocese. The record is silent as to whether by this time anyone looked at any of the "hundreds of photographs" Fr. Ratigan had taken of the children.

Msgr. Murphy reported to Bishop Finn, who is vague on just what was reported, and Bishop Finn told Fr. Ratigan "we have to take this seriously".

There was a memo to Fr. Ratigan's file about The Attached Concerns, referring to the Hess matters. The memo was written in October, 2010. The record is silent concerning whether or if by October 2010 anyone had seen or asked to see any of the "hundreds of photographs" mentioned in May by Principal Hess.

In December, 2010, an IT person named Ken Kes responded to complaints by Fr. Ratigan that his computer was sluggish. During his examination of the computer, Mr. Kes apparently became the first person in any way connected with the Diocese to see the "hundreds of photographs"

referenced by Principal Hess. Mr. Kes was rattled to the core by the contents of the computer, which included, among others, a photo of a little girl's naked vagina. Mr. Kes reported that photo and showed it to a deacon at St. Patrick's. The deacon, Michael Lewis, called Msgr. Murphy and took the laptop to the office of the Diocese, where it was turned over to Msgr. Murphy and another IT person named Julie Creech. No one called the police and turned over the evidence.

The timing on these next two events is a little unclear: Julie Creech examined the computer and found "hundreds of photographs" characterized as "up-skirt" photographs or photographs focused on little girls' crotches. Among the photographs examined by Ms Creech on December 16, were a series of photos with a small girl child's panties being sequentially moved to the side until her naked vagina appeared. Ms Creech also determined from examining the file labels that the vast majority of the pictures were taken by camera rather than downloaded from the internet. Here's the second event: Msgr. Murphy called a police officer, Rick Smith, who was also a member of the Diocese Independent Review Board, for an opinion. Msgr. Murphy asked Mr. Smith whether "a single photograph of a naked child in a non-sexual pose constituted child pornography". Mr. Smith's opinion that Msgr. Murphy's hypothesis did not constitute pornography, is irrelevant. Mr. Smith was simply not told the truth. The reason for this obfuscation was to aid in the cover-up which was in process. Defendants contended that Ms Creech's examination of the computer occurred subsequent to Msgr Murphy's call to Mr. Smith. Plaintiffs contended that Msgr Murphy knew there were multiple pictures when he called to report one picture. I do not believe the order to be significant.

Ms Creech advised Msgr. Murphy to call the police, presumably to turn over the images and computer, but after a three day or so interim, Msgr. Murphy called the Diocese lawyer and turned over the images and computer to him. The lawyer is said by witnesses connected with the Diocese to have advised the Diocese that the hundreds of crotch pictures of little girls including naked vagina shots and clitoral focused shots were not pornography. So far the following people had provided opinions about the pornographic nature of the pictures: Rick Smith, a Diocese

lawyer, Bishop Finn. The assertions in evidence are that neither Rick Smith nor Bishop Finn had looked at the pictures and it is unclear what the Diocesan lawyer saw. The laptop, flash drive and hard copies of some pictures were in the custody of the lawyer as of December 20, 2010. Also contacted, after his suicide attempt/gesture was Fr. Ratigan who was asked whether he had had sexual contact with any of the children he used for his pornography. Fr. Ratigan denied it. Fr. Ratigan was also asked if any of the photos on his computer depicted sexual acts, and Fr. Ratigan denied that any such images existed.

I find it curious that no one referenced RSMo. Section 565.253 which describes the class D felony involving taking surreptitious pictures of the undergarments, among other things, of non consenting subjects.

No effort was made by any employee or agent of the Diocese to determine the identity of the children depicted in the hundreds of photographs. Having learned of the nature of the contents of Fr. Ratigan's computer, Msgr. Murphy did not contact Smith to correct the "one picture" hypothetical Murphy had previously proposed to Smith. Members of the executive staff (Bishop Finn, Becky Summers, Paula Moss and Msgr. Brad Offutt) contended that they were under the impression that Msgr. Murphy had actually shown the Ratigan computer images to Smith. No one, by December 2010, had made an official report to the police, no police file was open, no police investigation was in progress, no one had spoken to a police officer except, apparently, Msgr. Murphy who had contacted Smith for an opinion on a hypothetical photograph and not to report a crime.

Although the matters of involving police participation and of identifying the children who had been unwittingly used as models for child pornography were not being actively pursued, the welfare of Fr. Ratigan was being attended to. Bishop Finn retained a psychiatrist of his choice, one Rick Fitzgibbons in Pennsylvania, who opined that "in our preliminary opinion" the school principal (Hess) may have orchestrated false accusations against Fr. Ratigan. Bishop Finn contended that based on Dr. Fitzgibbons and, presumably, on his (Bishop Finn's) complete

ignorance of the actual contents of the computer, that Fr. Ratigan was not a threat to children. Based on the opinion of the hand-picked Pennsylvania psychiatrist, Fr. Ratigan was returned to ministry, celebrating Mass for the Sisters at the Franciscan Prayer Center and for the youth and student groups who attend the Center from time to time.

Fr. Ratigan was sent to the Sisters with a caution from Bishop Finn that Fr. Ratigan should, among other restrictions: “5) ... avoid all contact with children, 6) not use any computer without oversight, 7) use a camera only in limited circumstances.” Exhibit 3-5. The Bishop imposed these restrictions on Fr. Ratigan because he believed him to be a child pornographer. No other inference makes sense.

Thereafter Summers emailed Msgr. Murphy advising him that Fr. Ratigan was communicating with children on Fr. Ratigan’s Facebook page. Summers’ concern was expressed thus: “I can read his Facebook page, reporters can too”. Msgr. Murphy left Fr. Ratigan a voicemail asking him to stop Facebooking.

Fr. Ratigan’s own opinion of the nature and character of his behavior was expressed in the first sentence of his February 7, 2011 letter to Bishop Finn in which he wrote, “I am going to give you a brief summary of how I got to where I am with my addiction to pornography..”. Having confessed to an addiction to pornography and having been found to have been a prolific creator of child pornography, Fr. Ratigan was then instructed on future behavior which included avoiding contact with children, limited use of a computer and limited use of a camera. The police were not called, the restrictions were not distributed to the Catholic community at large nor was any monitoring instituted to assure that Fr. Ratigan complied with the restrictions.

He didn’t. In March, 2011, Msgr. Murphy was informed by Deacon Lewis that Fr. Ratigan had been in active communication with St. Patrick’s parish families, had attended a Snake Saturday parade, had attended a birthday party for a 6th grade girl and explained his absence from St. Patricks by saying the principal was “out to get him”. Msgr. Murphy informed Bishop Finn of

these concerns and Bishop Finn communicated them to Dr. Fitzgibbons in an email which also said, concerning the attendance at children's functions, "this is clearly an area of vulnerability for Fr. S." A week later Msgr Offutt sent an email to Bishop Finn commenting on the behavior of Fr. Ratigan and including the phrase, "something needs to be done to limit diocesan liability and protect children." My review of the record, perhaps flawed, is that this email, dated April 8, 2011, is the first time the safety of diocesan children is mentioned, albeit as secondary to diocesan liability. In early May, 2011, Msgr. Murphy notified Bishop Finn that one of the priests at the Vincentian house where Fr. Ratigan was living was concerned that Fr. Ratigan was using the guest computer at the residence. Bishop Finn told Msgr. Murphy that if the Vincentians were concerned about the computer they should have it examined.

On May 11, 2011, nearly one year after Ms Hess had first alerted the Diocese to Fr. Ratigan's suspicious behavior, and while Bishop Finn was out of town, Msgr. Murphy contacted Mr. Smith and for the first time told him of the "hundreds of photographs" of little girls. Mr. Smith immediately asked for the laptop to be taken into custody, but was informed that the laptop was in the custody of the diocesan lawyer. The next day Mr. Smith arranged for the evidence to be turned over to the police. However the computer itself was unavailable. It seems that, through means and events not chronicled in the record, the laptop left the possession of the lawyer and went to the Diocese where it was turned over to Ratigan's family who destroyed it and all the evidence it contained.

When Bishop Finn learned of Msgr. Murphy's actions in reporting Fr. Ratigan to the police he was upset. Bishop Finn told Msgr. Murphy that Msgr. Murphy should have followed their attorney's advice. What that advice was cannot be known, presumably because of attorney-client privilege. After Fr. Ratigan's arrest Ms Creech contacted Bishop Finn about it and Bishop Finn "was a little frustrated" because the priest wouldn't get the help he needs in prison. In commenting to the priests of the Diocese concerning why Fr. Ratigan was not removed earlier, Bishop Finn said he , "wanted to save Fr. Ratigan's priesthood".

In his Grand Jury testimony, Bishop Finn said that the issue of mandated reporting to the Children's Division never came up in any conversation. In any event, no mandated reporter connected with the Diocese contacted or reported concerns to the Children's Division. Fr. Ratigan was arrested on May 18, 2011. In August of 2012 he pleaded guilty to charges related to child pornography, and in September 2013 he was sentenced to 50 years in Federal Prison. During his criminal proceedings he was represented by well respected and competent criminal defense attorneys whose legal analysis of the evidence, along with the analyses of the involved staff of the Federal District Attorney's office and that of Federal District Judge Gary Fenner apparently differed from that of the Diocese.

The Diocese had policies and procedures which required reporting sexual misconduct involving minors first to the police, next to the so-called Hot Line (Division of Family Services), and then to the Diocese. Paragraph 18 says that such procedures "shall be followed". Nothing about the policies and procedures suggests that waiting a year to make the report is satisfactory. The first two requirements were not followed.

In the matters referenced above and in other matters revealed in the record, the Diocese breached paragraphs 14 and 18 of Exhibit A.

#### Exhibit A, Paragraph 15

Paragraph 15 of Exhibit A has to do with training concerning prevention of sexual abuse of children as follows:

15. The Diocese will continue to require its priests, administrators, teachers, staff, coaches, volunteers and students to complete the Virtus "Protecting God's Children" training, or similar training performed and/or developed by outside consultants, for the prevention of sexual abuse and harassment.

The Diocese agreed to train its “staff” regarding the prevention of sexual abuse and harassment. The Diocese decided not to train its staff but rather to train employees who fit their interpretation of a definition in another document, The Charter for the Protection of Children and Young Peoples, adopted by USCCB. The Diocese contends that only staff who may have contact with children need be trained. That is not what this paragraph 15 says. Julie Creech, the computer technician who reviewed all the pictures on Ratigan’s laptop and who determined that the pictures were almost all taken rather than downloaded, was not trained. The failure of the Diocese to train Julie Creech and its entire staff in accordance with its voluntarily assumed contractual duty is a breach of Paragraph 15.

#### V. Confidentiality

In an interim award concerning liability alone I reminded the parties of the confidentiality provisions of RSMO 435.014. The “setting up or conducting” of the arbitration is over. My previous remarks concerning confidentiality should not be taken as a direction on my part. Matters of confidentiality no longer are, if ever they were, subject to any ruling by me.

#### Conclusions

Defendants breached the conditions of paragraphs 2, 3, 14, 15 and 18. No breach was found as to paragraphs 1 and 10. I believe the plaintiffs are entitled to damages for the breach and essential nullification of contractual terms for which the plaintiffs gave valuable consideration.

## DAMAGES

Issues relating to the damages sought by plaintiffs are primarily related to Exhibit A, Paragraph 2 (Counseling), Exhibit A, Paragraphs 3, 14, 15, 18 (failure to report Fr. Ratigan and recommending Fr. Ratigan for employment), attorneys fees and interest. Another issue which arose during the damages portion of the hearing was the payment of the arbitrator. I will address these matters in the following:

### 1. Counseling (Exhibit A, Paragraph 2)

Plaintiffs' suggested calculation of damages for breach of the counseling provision seems to accelerate defendant Diocese's responsibility and seeks payment for 24 counseling sessions for each plaintiff, crediting Diocese payments it has made for sessions incurred and billed. In that fashion plaintiffs have calculated that Diocese owes \$545,250.00. I believe the Diocese owes for counseling sessions actually attended by plaintiffs and unpaid by the Diocese. The only calculation I have for my view of the counseling damages has been provided by defendants, and consultation of the spreadsheet provided by plaintiffs fails to provide an opportunity to infer a different version of those amounts. I award counseling damages of **\$5,820.00**. As revealed in Exhibit 7 to defendants' final brief, that amount consists of \$4,860.00 awarded to John Doe PR for furnished and unpaid counseling visits by his daughters and payment to be made to Larry Nieters, Ph.D. of \$640.00 for counseling of plaintiff John Doe CT and \$320.00 for counseling of plaintiff John Doe WD.

### 2. General Contractual Damages (Exhibit A, Paragraphs 3,14, 15, 18)

These paragraphs have in common that they were intended to prevent further harm by Diocesan reaction (and lack thereof) to discovered child sexual abusers. The initial question concerns whether or not damages, as a remedy, lies for breach of these paragraphs.

Can these plaintiffs be awarded money damages for the breach above described? I believe they can. Defendants have argued both strenuously and cogently that there can be no award of damages where the apparent impact of the breach was emotional. Early in this procedure I was convinced that defendants were right, but a closer examination of their cited cases causes me to believe otherwise. I have seen no citations to cases where the intent of the contracting parties was to prevent known emotional damage to one of the parties.

Except for the provisions concerning the furnishing of counseling, the whole purpose of this contract was prevention of emotional damage. The goods in which this transaction deals are heartbreak, loss of self esteem, broken marriages, loss of trust and diminished religious succor. The intent of the parties was to avoid, to the extent adherence to these terms can effect it, emotional damage to “our community, our congregation and these families”. The quote is from Bishop Finn’s public statement of August 20, 2008 concerning this contract and quoted more lengthily above. “These families” can only describe the plaintiffs here and their families.

I have heard evidence that these victims suffered terribly from the abandonment with which they believed their beloved Church treated them. Where they expected protection they received desertion, where the assertion of authority on their behalf was required, they received betrayal. To these plaintiffs, the thought that other children would suffer betrayal as they had was a painful prospect which, for the potential victims of the future and, more appropriately to this discussion, for the peace of mind of the contracting plaintiffs, was the whole point of the non monetary terms. The plaintiffs and the defendants agreed to contractual terms directly designed, at least in part, to prevent plaintiffs from experiencing emotional distress. These plaintiffs certainly testified to this interpretation and, by his statement in August, so did Bishop Finn.

When it came to light that the Diocese had once again sacrificed the welfare of children so that it could “save the priesthood” of a criminal, in this case a pornographer, damage was inflicted on these plaintiffs in the precise form that the contractual terms were intended to prevent.

Plaintiffs have not sought to declare the contract void and to collect what, in my opinion, would be a far larger award. They have instead opted to seek damages for these noted breaches and to maintain the contract in force for the protection of children in the future. I here honor their preference and join in their hope that I am dead wrong in my opinion that this Diocese as presently constituted will not mend its ways.

Plaintiffs have briefed the damages issue on several theories and I do not limit this award to the emotional component I have referenced above. I have not allocated these damages to individual plaintiffs. One reason for this is that these plaintiffs have been treated by the Diocese as an indivisible group throughout this settlement process, insisting that all or none would settle and that but one non monetary contract for all plaintiffs would be executed. The other reason is that these plaintiffs are so similarly situated that assignment of separate and differing damage amounts would be more arbitrary than awarding, as I do here, equal division of the damages in this category among the participating plaintiffs.

Damages for the breaches of these contract terms for all plaintiffs total **\$650,000.00**.

### 3. Attorney Fees

Plaintiffs are the “prevailing parties” here. This arbitration was primarily about the breach of the mentioned terms through the nondisclosure of Fr. Ratigan’s abusive behavior. Other issues raised by plaintiffs were unlikely to have prompted this rather expensive process (claimed attorney fees of more than one million dollars) so that I believe plaintiffs’ prevailing on these nondisclosure related issues renders them “prevailing parties” as that term is used in fee shifting parlance. However, defendants did prevail on some issues and I felt that some of this process was over-lawyered. I have reduced plaintiffs’ fee request of \$629,753.88 by amounts reflecting the matters in the previous sentence and award net attorney fees, including expenses, to plaintiffs in the amount **\$450,000.00**. Any attorneys fees to which defendants may have been entitled are subsumed in the reduction of plaintiffs attorney fee award.

4. Payment of Arbitrator's Fee.

The referring Circuit Court, Judge McGraw, held that the arbitration provision applied to all contract disputes. The only mention of the arbitrator's fee in the document assigns that responsibility to defendants. I also note Section 435.395 RSMo. I impose on defendants the arbitrator's fee totaling \$31,725.00 which amount defendants have paid.

5. Interest

No separate amount in interest is awarded plaintiffs by this award. If the court confirms the award and enters judgment hereon, my comments about interest are not intended to interfere with rules or statutes regarding interest on such judgments.

6. Personal Liability of Bishop Finn

Plaintiffs stipulated on the record and defendants accepted the stipulation that Bishop Finn had no liability which would expose his personal assets to execution. I also accept that agreement.

March 23, 2014

Modified April 11, 2014

Hollis Hanover

Arbitrator