

**PHOENIX**

# Lawsuit accuses former Phoenix Bishop Thomas O'Brien of abusing boy more than 35 years ago

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*Corrections & clarifications: The timing of Bishop Thomas O'Brien's resignation was incorrect in an earlier version of the story.*

The former bishop of the Roman Catholic Diocese of Phoenix, who stepped aside in 2003 after acknowledging he had protected suspected pedophile priests, faces personal accusations of child sexual abuse in a lawsuit filed in Maricopa County Superior Court.

The lawsuit names Bishop Emeritus Thomas O'Brien, the Diocese of Phoenix and three Catholic churches, alleging the plaintiff was the victim of childhood sexual abuse, sexual battery, negligence and fraud.

Filed in September 2016, it accuses O'Brien, now 81, of sexually abusing the plaintiff from 1977 through 1982, when the plaintiff was a boy.

Attempts to reach O'Brien for comment were unsuccessful. A caretaker who answered his door said that he was busy, and phone calls were not returned.

The diocese released a statement from spokesman Robert DeFrancesco.

"Bishop O'Brien was never assigned to any of the parishes or schools identified in the lawsuit," it said. "Bishop O'Brien categorically denies the allegations."

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The diocese did not comment further because of the pending litigation, but said it contacted the Maricopa County Attorney's Office in September 2016 when notified of the allegations.

A spokeswoman for the County Attorney's Office confirmed that it was contacted by the diocese.

## **Suit arose from repressed memories**

The allegations arise from what court documents describe as repressed memories that resurfaced two years ago while an Arizona man was attending his son's baptism.

The abuse is alleged to have begun in 1977 when the plaintiff, identified in court documents as "Joseph W.," was in the second grade.

"The abuse often took place before or during church services attended by Joseph W. and his family," the lawsuit states, "and under the guise of Bishop O'Brien showing Joseph W. how to assist with some aspect of the ceremony."

In 2002, the Maricopa County Attorney's Office initiated a grand jury investigation into sexual abuse by Catholic priests at the Phoenix Diocese. O'Brien was the bishop in charge of the diocese at the time.

By 2003, O'Brien admitted to sheltering at least 50 priests accused of sexual abuse, often shuffling them around to different parishes across the state.

At the time, an agreement reached between the diocese and then-County Attorney Rick Romley said "no credible evidence has been received that would establish Thomas J. O'Brien personally engaged in criminal sexual misconduct."

"However, the investigation developed evidence that Thomas J. O'Brien failed to protect the victims of criminal sexual misconduct of others associated with the Roman Catholic Diocese of Phoenix," the agreement said.

## **New allegations surface**

The lawsuit was filed in Superior Court by attorney Carlo Mercaldo, working with California-based attorney Tim Hale, who has represented victims of child sexual abuse in California.

The plaintiff attended St. Thomas Aquinas Catholic School and Parish and St. Vincent de Paul Catholic School and Parish, both in the Phoenix area, in second through fifth grades, the lawsuit says.

In one of the earliest incidents of abuse, Joseph W. alleges, O'Brien kissed him on the lips. At the time, O'Brien was vicar general in the diocese. He became bishop in 1981.

The lawsuit alleges the plaintiff was forced to perform oral sex on O'Brien and that O'Brien did the same to the boy while he was swinging a container of incense.

O'Brien is alleged to have repeated "I am not a sinner" after one of the encounters, and told Joseph W. to do penance, the lawsuit says. Joseph W. recalled grabbing a rosary and doing penance in the pews of a largely empty church.

According to the lawsuit, Joseph W. repressed those memories for nearly 38 years.

The resurfacing of the memories "rendered plaintiff of an unsound mind resulting in both the inability to manage his daily affairs, and to understand his legal rights and liabilities," the lawsuit said.

Hale has a history of litigating similar kinds of cases involving clergy abuse as well as alleged abuses by the Boy Scouts of America.

"We're just getting started," Hale said.

The case has been assigned to Superior Court Judge David Udall. Hale and Mercaldo are awaiting a ruling on diocese attorneys' motions to dismiss six of the 14 claims in the lawsuit.

The diocese has not asked to dismiss the allegations focused on O'Brien's personal conduct.

"At the motion to dismiss stage, you can only move to dismiss claims that haven't been well enough articulated," said defense attorney John Kelly. "We don't get to the merits of the allegations until later."

"Our position is that this did not happen, that it's a false allegation and the evidence will bear that out," Kelly said.

Told Wednesday of the allegations, Romley said, "It has been nearly 15 years since we conducted the investigation and at this point in time I do not remember that there were any allegations that Bishop O'Brien had sexually assaulted any children."

## **Not your normal lawsuit**

In addition to the complaints against O'Brien, the lawsuit attempts to have the diocese declared a "public nuisance" because of the new allegations and past instances of known

cover-ups of sexual abuse.

Along with O'Brien, the lawsuit named 60 other priests, deacons and religious leaders who had been credibly accused, investigated or found guilty of sexual abuse and who worked for or visited church properties within the Phoenix diocese.

Hale alleges the church did not identify all these suspected abusers in "community notification statements" that were mandated by the agreement with the county attorney.

In their motions to dismiss multiple allegations in the lawsuit, attorneys for the church contend that some of the accusations are too broad and sweeping. Declaring the diocese a public nuisance would be akin to "creating a new law," Kelly said in the church's response.

"We want to keep it broad to force it to be changed," Hale explained in an interview. "If not changed, at least it will help identify the perpetrators."

## **A troubled past**

O'Brien has largely been out of the public eye for several years, but he is no stranger to controversy.

Allegations of sexual abuse by Catholic priests have been reported across the world over the past two decades.

O'Brien's 2003 statement on the subject, released with the agreement with the county attorney, said, "I acknowledge that I allowed Roman Catholic priests under my supervision to work with minors after becoming aware of allegations of sexual misconduct."

The agreement stated that if any allegations of criminal sexual misconduct against O'Brien were to surface, the agreement would not give him immunity.

"If information is forthcoming of personal, direct involvement of Thomas J. O'Brien in any act of criminal sexual misconduct, then charges shall not be precluded," the agreement stated.

That agreement brought major changes within the church, including a victim assistance panel, victim assistance fund and training on sexual misconduct issues for all diocesan staff and volunteers.

Weeks after the agreement was signed, O'Brien again made headlines.

On June 14, 2003, Jim Reed was crossing the street near 19th and Glendale avenues in Phoenix when he was struck by a vehicle that left the scene. Reed would later die of his injuries.

A witness followed the vehicle involved in the hit-and-run, took down the license plate and reported it to police. The car belonged to O'Brien. The collision happened three miles from his home.

O'Brien did not contact police, even after a fellow priest informed him that detectives were looking for him and his vehicle. Two days after the hit-and-run, O'Brien made phone calls about replacing his damaged windshield before police confronted him.

Soon after his arrest, O'Brien resigned as bishop.

O'Brien was found guilty of leaving the scene of a fatal accident and was sentenced to four years' probation and 1,000 hours of community service. He had to surrender his driver's license for five years.