

JUN 07 2023 10:25 am
A. Walker, Deputy

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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 JOHN JB DOE, a single man,
12
13 Plaintiff,

14 v.

15 THE ROMAN CATHOLIC CHURCH OF THE
16 DIOCESE OF PHOENIX, a corporation sole;
17 SAINT JOHN VIANNEY ROMAN CATHOLIC
18 PARISH a/k/a ST. JOHN VIANNEY ROMAN
19 CATHOLIC PARISH GOODYEAR a/k/a ST.
20 JOHN VIANNEY CATHOLIC PARISH a/k/a
21 ST. JOHN VIANNEY CATHOLIC CHURCH,
22 an Arizona Corporation; PRIESTS OF THE
23 CONGREGATION OF HOLY CROSS a/k/a
24 CONGREGATION OF HOLY CROSS UNITED
25 STATES PROVINCE OF PRIESTS AND
26 BROTHERS a/k/a CONGREGATION OF
27 HOLY CROSS, UNITED STATES PROVINCE,
28 INC. a/k/a THE CONGREGATION OF HOLY
CROSS A/K/A PROVINCE OF THE PRIESTS
OF HOLY CROSS OF INDIANA a/k/a
PRIESTS OF HOLY CROSS, INDIANA
PROVINCE, INC., an Indiana Corporation;
JOHN DOE 1-100; JANE DOE 1-100; and
BLACK & WHITE Corporations 1-100,
Defendants.

Case No.: CV2020-016745

**JOINT STATEMENT
REGARDING DISCOVERY
DISPUTE, Ariz. R. Civ. P.
26(d)(2)**

(Tort – Negligence – Non-Motor
Vehicle)

~~NOT YET FILED WITH CLERK
OF THE COURT¹~~

¹ Defendant Holy Cross Province believes this Joint Statement and the attached document should be filed under seal. Defendant Holy Cross Province intends to request that the court seal this Joint Statement and the document at issue on or before May 26, 2023.

1 Pursuant to Rule 26(d)(2), Ariz. R. Civ. P., the parties submit the following Joint
2 Statement regarding a discovery dispute between Plaintiff and Defendants Holy Cross.
3 The dispute arises out of the Defendant Holy Cross' designating a two-page document
4 as confidential.

5 **I. PLAINTIFF'S POSITION**

6 On April 14, 2023, this Court entered a Protective Order allowing the parties to
7 designate documents and information "confidential." In the protective order, this Court
8 found "there is a presumptive right of public access to materials produced in discovery.
9 Ariz. Rev. Stat. sec. 39-121; *Phoenix Newspaper Inc. v. Superior Ct. of Maricopa*
10 *County*, 140 Ariz. 30, 34-35, 60 P.2d 166, 170-71 (App. 1993)." Under the Protective
11 Order and Arizona law, "the party seeking confidentiality bears the burden of proving
12 good cause for confidentiality by making a specific factual demonstration of harm or
13 prejudice arising from the disclosure of specific document, record or piece of
14 information. Ariz. R. Civ. P. 26(c)(4)(A); *Center for Auto Safety v. Goodyear Tire &*
15 *Rubber Co.*, 247 Ariz. 567 20 (App. 2019)."

16 This Court specifically addressed information regarding sexual misconduct with
17 minors and allegations of misconduct. This Court found "the following information is
18 not confidential: the year and location of the alleged abuse; whether the sexual abuse
19 involved one or more children (0 to 12 years old) or teens (13 through 17 years old); and
20 the position of any alleged perpetrator (e.g. priest, volunteer youth leader, clerical
21 employee, etc.)." See *Protective Order 2.2(c)*.

22 Defendant Holy Cross produced a two-page document bates labeled HC1000 –
23 HC1001. The document memorializes two phone calls made in 1987. The Holy Cross
24 Father documented that in March and April 1987 a woman called to report that in 1980
25 or 1981 Fr. Paul LeBrun had sexual contact or engaged in sexual conduct with her two
26 sons who were around the age of 12. The sexual contact or sexual conduct occurred in
27 South Bend, Indiana and in Colorado.

28 The memorandum does not identify the mother or her children nor does it

1 document any other personal identifying information regarding the alleged victims or
2 their family. The memorandum simply documents the year and location of the abuse;
3 that two children were involved; and that Fr. Paul LeBrun engaged in the abuse.

4 Bishop Thomas O'Brien appointed Fr. Paul LeBrun, CSC to work as Youth
5 Minister at St. John Vianney parish in Avondale, Arizona. The work assignment was to
6 begin on August 18, 1986. Fr. Paul LeBrun began sexually abusing Plaintiff soon after
7 his arrival in Arizona.

8 On November 17, 2005, Fr. Paul LeBrun was convicted of six (6) counts of child
9 sexual abuse including sexual abuse committed against Plaintiff. Although the document
10 memorializes a phone call, the caller was later interviewed by Fr. Robert Epping, CSC.
11 The caller and her son later testified in the criminal trial of Fr. Paul F. LeBrun. *See State*
12 *v. Paul F. LeBrun*, CR2003-014370-001DT, ME 10/31/2005.

13 On January 13, 2006, this Court sentenced Fr. Paul LeBrun to 111 years prison.
14 *State v. Paul F. LeBrun*, CR2003-014370-001DT, ME 01/13/2006. Attached as Exhibit
15 1 is a copy of the two-page document.

16 **II. DEFENDANT DIOCESES' POSITION**

17 The Diocese Defendants take no position regarding the confidentiality designation
18 of the document at issue in this Joint Statement.

19 **III. DEFENDANT HOLY CROSS' POSITION**

20 The undated memo, signed by the two then-leaders of the Defendant Province, Fr.
21 Richard Warner (deceased) and Fr. Paul Marceau (deceased), documents the results of
22 a confidential internal investigation by the Holy Cross into one anonymous misconduct
23 concern. The document speaks for itself, but it must be noted that Plaintiff has not
24 accurately reported its contents or even minimally addressed the context in which it was
25 prepared or the confidentiality that was attached to the memorandum at the time and
26 since. Specifically, an anonymous caller contacted Fr. Donald Guertin (deceased), who
27 was at that time a counselor in a family health clinic in South Bend, Indiana, on March
28 31, 1987 and subsequently on April 5, 1987. As stated in the memo, "Father Guertin

1 [reported] there were significant differences between what the woman related in her first
2 telephone call in March and the second one in April, **after her son changed almost**
3 **every aspect of his story.**” (emphasis added).

4 The document is properly treated as confidential and should remain confidential
5 for several separate and distinct reasons.

6 First, this memo is an internal Holy Cross document prepared and “intended for
7 or restricted to the use of a particular person or group or class of persons: not freely
8 available to the public.” It is therefore a “private” document entitled to protection from
9 public disclosure. *Scottsdale USD v. KPNX Broadcasting Co.*, 191 Ariz. 297 (1998).

10 Second, Holy Cross did not neglect the report because it was anonymous, but
11 looked into the issue as much as possible. Rather than confirm misconduct by LeBrun, in
12 a follow-up conversation recited in the memo, the anonymous caller indicated that her
13 sons “drew back from many of the accusations ... except that [LeBrun] did drink on
14 occasion.” The memo further recites the process of the Holy Cross confidential
15 investigation into this complaint to determine whether LeBrun should continue to serve
16 in assignment, required medical or legal intervention, or otherwise was fit for ministry,
17 including that there were no concerns expressed by other priests in the community or
18 about any improper behavior. Those concerns are an “internal affair” of the Holy Cross,
19 as referenced in Section D of this Court’s March 14, 2023, Protective Order. As noted
20 therein, the Holy Cross has “a confidentiality interest in such information that is
21 substantial at least and perhaps in some instances compelling.” Protective Order at 4:1-
22 2.

23 Finally, the Court recognized that the reasons keeping such documents
24 confidential may need to be weighed against a non-party’s need for access of the
25 information. The memorandum, authored by deceased clergy, based upon conversations
26 with deceased clergy about conversations with a parishioner who later disavowed all of
27 the sexual allegations against Fr. LeBrun, is not ripe for disclosure to the world. The
28 clergy involved in the communications are all now deceased. Paul LeBrun is in prison,

1 and will be likely be in custody until his death. Public disclosure of this memo does
2 nothing to advance or reveal “any possible risk to the public health, safety or financial
3 welfare arising from sexual misconduct with minors or the manner in which the
4 institutions involved addressed such misconduct.” Protective Order at 4:9-11. It should
5 remain confidential.

6 **DATED** this 16th day of May, 2023.

7
8 **MONTOYA, LUCERO & PASTOR, P.A.**

HOLLOWAY ODEGARD & KELLY, PC

9 By: /s/Robert E. Pastor
10 Robert E. Pastor
11 Attorneys for Plaintiff

By: /s/Peter Kelly II
Peter Kelly, II
Attorneys for Deft Holy Cros

12 The original / copies of the foregoing
13 Mailed / delivered this 16th day of May, 2023:

14 Mr. John C. Kelly 15 Coppersmith Brockelman, PLC 2800 N. Central Avenue, Suite 1200 16 Phoenix, Arizona 85004 <i>Attorneys for Diocese of Phoenix & 17 St. Marks</i>	Lewis Roca Rothgerber Christie LLP Mr. Nicholas Bauman 201 E. Washington Street, Suite 1200 Phoenix, AZ 85004 <i>Attorneys for Diocese of Phoenix & St. Marks</i>
18 Mr. Peter C. Kelly, II 19 Holloway, Odegard & Kelly, PC 3020 E. Camelback Road, Suite 201 20 Phoenix, Arizona 85016 <i>Attorneys for Defendant 21 Congregation of Holy Cross, US 22 Province, Inc.</i>	

23
24 /s/ C. Wilhelm

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27
28

EXHIBIT 1

CONFIDENTIAL MEMORANDUM FOR THE FILE

Father Donald Guertin contacted Father William Melody and me concerning information he had received from someone he met originally in one of our parishes but more recently through counseling with regard to Father Paul F. LeBrun. The information contained in this memorandum is based on telephone calls Father Guertin received from this woman, whose name he did not reveal to me, on March 31 and April 5, 1987.

The woman's second son is presently in treatment for alcoholism, and apparently something related to treatment triggered recall in her of an incident which took place in 1980 or 1981 when the boy was 12 years of age.

She recalled seeing Paul kneeling at the side of the bed of this boy in the family home with his hands in the boys pants. She said that Paul jumped up when she saw him and said he was checking the boy for a hernia. Her son told her that he had been playing football and thought he had a hernia and that Paul was checking on this for him. The next day, the boy spent the day and night at Moreau Seminary, with her permission. When Paul asked the boy how the hernia was, he said it was fine and went to bed and nothing more happened.

The mother forgot this incident and when she asked her son about it recently he got angry and defensive and told her that Paul was not an issue.

Six weeks ago, when she told her other son about this incident which she had recalled, he reported to her that Paul had done the same thing with many kids, looking for lumps. He named a number to whom the same thing had happened. He told his mother that Paul tried to touch him in Colorado in 1980 or 1981 but when he said "what are you doing, Bud?" that was the end of the incident. The older son also related to her an incident about a local South Bend boy who is in a pornographic picture which was taken in Europe while he was there on a trip with Paul, although he did not accuse Paul of taking the picture. The older boy gave the names of about six people who were touched by Paul. Finally, he reported that Paul had a book with graphic pictures of sexual development which he occasionally showed to them. He mentioned this in the context of a trip which Paul took with some young people to Europe where he had an apartment near a topless beach.


When the mother pressed the son for names and for further details about what had taken place, he drew back from many of the accusations he had made, including those related to the fact that Paul had touched a number of boys in the same way his mother reported him to have touched her second son, and every other aspect of what he had reported earlier. The only statement he was willing to make to her at that time was that Paul did drink on occasion.

When Don asked the woman if she wanted to do anything else or to talk to anyone or if she wanted anyone to do anything about what she had reported she said "not unless there are other people involved."

In fact, there are no other people involved nor are there any incidents which have been reported to me during the course of my years as Provincial. Paul never took a trip to Europe with any students, as the lady had reported. I was not able to ascertain any further information with regard to the story about pornographic pictures, but it was clear even to the woman when she gave the first account that Paul had nothing to do with this.

Father Guertin told me that there were significant differences between what the woman related in her first telephone call in March and the second one in April, after her son changed almost every aspect of his story.

After listening to this story and discussing the matter further with Fathers Guertin, Marceau and Melody, and in view of the fact that there is absolutely no other indication of any kind of inappropriate behavior on the part of Paul LeBrun, we agreed that there was nothing further that should be done.



Richard V. Warner, C.S.C.
Provincial



Paul D. Marceau, C.S.C.
Assistant Provincial