

Springfield Diocese to turn over documents in insurance case

The Catholic Observer (Springfield, MA)

April 13, 2007, pg. 5.

By Father Bill Pomerleau, Observer staff

SPRINGFIELD – Having lost legal battles on two levels of the state court system, the Diocese of Springfield will soon turn over internal correspondence about the laicization of priests, and documentation of religious counseling connected to sexual abuse, to its insurance companies.

“We plan no further appeals, and are preparing to turn over the documents in question in the next few days,” diocesan attorney Edward McDonough Jr. told *The Catholic Observer* April 10.

The diocesan decision came in the wake of a March 20 ruling by State Appeals Court Judge Fernande Duffly, who upheld a Jan. 3 ruling by Hampden Superior Court Judge John A. Agostini.

In a ruling that pleased neither side in the long-running dispute, Judge Agostini said that copies of correspondence between the diocese and its lawyers were subject to attorney-client privilege. Therefore these correspondences are ordinarily unavailable to the pre-trial discovery stage of the diocese’s lawsuit requesting its insurers to reimburse it for payments made to abuse claimants.

Judge Duffly agreed, ruling that since the insurers had refused to negotiate a settlement with the diocese, they had violated their contracts with the church. Once that occurred, the diocese was in turn under no obligation to share its attorney records with the uncooperative insurers, she wrote.

But the Appeals Court judge was less sympathetic to the diocesan argument that materials sent to the Vatican to pursue the laicization of certain priests was subject to penitent-priest or free exercise of religion privileges.

Diocesan attorneys had argued that laicization documents were analogous to documents sought in a 1994 case, *Ryan v. Ryan*, where a party tried to use the proceedings of a church marriage tribunal to pursue a civil court case.

Judge Duffly’s rejection of that argument surprised McDonough. “They’re both about how the church internally annuls a sacrament,” he told the *Observer*.

Historically, the state and federal constitutions have been interpreted to prohibit the courts from interfering in the internal disciplinary procedures of hierarchical churches. State law also protects certain kinds of spiritual advisors from revealing communications with penitents and those seeking spiritual guidance.

Rejecting the diocese’s citation of a 2004 case involving the Jesuit’s supervision of a priest, Judge Duffly accused the diocese of arguing that any disclosure of internal documents on the treatment of priests violated the First Amendment guarantee of freedom of religion.

Since the insurance carriers have also decided not to appeal Judge Duffly’s ruling on the attorney-client documents to the Massachusetts Supreme Judicial Court, the case now returns to Hampden Superior Court.

Judge Agostini has previously ruled that he will review a limited number of other documents privately to determine if they are subject to legal privilege. Once this review is completed, all remaining documents will be available to all parties in the case, and their attorneys.

While they would not be filed in the courthouse as public documents until they are ruled admissible in court, a party in the discovery process would be legally free to share them with outside parties, such as the media.

In January, the diocese provided counseling records of church employees accused of sexual misconduct and of those who reported abuse to its insurers. It also offered to hand over any

remaining documents it had in its possession, provided a court would prohibit their disclosure to third parties before a trial.

But both Judge Agostini and Judge Duffly have refused to order a confidentiality agreement.

In previous hearings, the insurance carriers revived an old theory that the late Springfield Bishop Christopher J. Weldon, who retired in 1977, once destroyed church abuse records, and that former Springfield Bishop Thomas L. Dupre concealed evidence in misconduct matters.

But at an October 2004 press conference announcing that Bishop Dupre would not be prosecuted for his own conduct due to the expiration of the criminal statute of limitations, Hampden County District Attorney William Bennett said he found no evidence that “(Bishop) Dupre personally destroyed or illegally concealed evidence of sexual misconduct by other church officials.”

Bennett, who conducted a months-long grand jury investigation of the diocese in 2004, has had access to all misconduct-related documents held by the diocese.

The insurance companies also indicated in court that they want to review counseling records to determine the legitimacy of misconduct claims brought against the diocese.

The diocese used its own funds and sold property to reach an approximately \$7.7 million settlement in 2004 with claimants represented by Greenfield attorney John Stobierski. It has delayed making a settlement with an additional 30 individuals represented by Stobierski and other attorneys until it knows how much insurance money will be available to settle more claims. Stobierski called on the diocese to reach an out-of-court settlement with its insurers.

“The victims have been caught up in this litigation grinder between the insurance companies and the diocese,” said Stobierski.

Diocesan spokesman Mark Dupont echoed Stobierski’s call for a settlement, but denied the church was the source of the current legal impasse.

“As he (Stobierski) well knows, two years before the diocese was compelled to sue its insurers, the diocese called on its insurers to engage in these same settlement discussions, to no avail,” Dupont said.