

STATE OF MINNESOTA

DISTRICT COURT

Aug 17 2015 3:56 PM 

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

File No. 69DU-CV-13-2995

Doe 28,

Plaintiff,

vs.

**ORDER**

Diocese of Duluth,

Defendant.

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The above-entitled matter came before the Hon. Shaun R. Floerke upon the Plaintiff's Motion to Compel Discovery. Plaintiff was represented by his attorneys, Michael Finnegan and Joshua Peck. Defendant was represented by its attorneys, Susan Gaertner and Joy Anderson.

The Court having reviewed the file, having considered the arguments of counsel, and having reviewed pertinent legal authorities now makes its:

**ORDER**

**IT IS HEREBY ORDERED** that:

1. Plaintiff's motion for an Order compelling discovery is granted in part and denied in part.
2. Defendant shall provide all documents relating to, or referring to, the Diocese of Duluth's awareness or knowledge of alleged child sexual abuse by anyone employed by, or arguably under the supervision or control of the Diocese of Duluth, in the years 1956 to 1974.
3. Defendant shall provide documents relating to or referring to allegations of child sexual abuse by anyone employed by, or arguably under the supervision or control of the Diocese of Duluth, regardless of the date of the documents' creation, if the documents reference possible incidents or

occurrences of child sexual abuse which occurred in the time period of 1956 to 1974.

4. The attached Memorandum is incorporated herein.



Floerke, Shaun  
Aug 17 2015 1:40 PM

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Hon. Shaun R. Floerke  
Judge of District Court

## MEMORANDUM

Subject to the proportionality limits of the burden or expense of proposed discovery compared with its likely benefit, parties to civil litigation may obtain discovery regarding any matter relevant to a claim or defense of the parties. Minn. R. Civ. P. 26.02(b). The information sought in discovery need not be admissible at trial if it appears reasonably calculated to lead to the discovery of admissible evidence. *Id.*

Following the Defendant's motion to dismiss, the remaining claims asserted by Plaintiff are for negligence, negligent supervision, and negligent retention. The parties agree that all documents relating specifically to Father Robert Klein have been provided to Plaintiff. This discovery dispute arises from Plaintiff's request for documents related to other priests accused of sexual contact with minors from 1956 to the present.

A claim for negligence requires the plaintiff to prove (1) the defendant had a duty of care toward the plaintiff; (2) the defendant breached its duty; (3) the defendant's breach was a proximate cause of (4) the plaintiff's injury. *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). Negligent retention imposes liability on an employer for exposing members of the public to a potentially dangerous individual when, during the course of employment, the employer becomes aware or should have become aware of problems that indicate the employee's unfitness, and the employer fails to take further action such as investigation, discharge, or reassignment. *Yunker v. Honeywell*, 496 N.W.2d 419, 422, 424 (Minn. Ct. App. 1983). Negligent supervision requires proof that an employee's conduct was foreseeable and the employer failed to exercise ordinary care when supervising the employee. *Oslin v. State*, 543 N.W.2d 408, 415 (Minn. Ct. App. 1996).

Plaintiff argues that Defendant's pattern and practice of concealing offenders (other than Father Klein) and Defendant's actions regarding other allegations of abuse will assist Plaintiff in establishing whether Defendant should have known about the danger that Father Klein posed to children prior to Plaintiff's abuse. Defendant argues that Plaintiff's request for documents is overly broad, unduly burdensome, and irrelevant to the remaining claims because the requests are unrelated to Father Klein.

This Court finds that the recent history, culture, and practices of the Diocese of Duluth surrounding the time period of Plaintiff's alleged abuse is relevant to Plaintiff's negligence claims and potentially to punitive damages claims. Information regarding accusations made against other priests, any investigations completed, any information gathered regarding the circumstances surrounding the other incidents of alleged abuse, and any actions taken in response to alleged incidents of abuse is relevant to what the Defendant knew or should have known prior to 1972-74 that would place a reasonable employer on notice of the potential for abuse by Father Klein.

However, information regarding the Diocese's response to allegations about other clergy members made after the time of Plaintiff's alleged abuse have no relevance to Plaintiff's claims. Information regarding an allegation made against a different priest in 1965 may (or may not) show a consistent practice within the Diocese in its actions to address the allegation that make it more or less likely that the Diocese was negligent in its actions when confronted with similar allegations against Father Klein. However, this Court cannot see how the response or actions of the Diocese regarding an allegation against a different priest made in 1980 would be relevant to how the Diocese responded to reports of abuse in 1972-1974. Therefore, Plaintiff's request for information regarding

allegations made against other clergy after 1974 is denied.

It is also apparent, based on documents submitted in support of his motion to compel, that the Diocese may be in possession of documents created well after the time period of 1956-1974 that relate to actions taken (or not taken) in response to abuse allegations originally brought to the attention of Diocesan officials in the time period leading up to, and including, the time of Plaintiff's alleged abuse by Father Klein. These documents would be similarly relevant as those actually created in 1956-1974, and therefore must be provided to Plaintiff.

S.R.F.

State of Minnesota  
St. Louis County

District Court  
Sixth District

Court File Number: **69DU-CV-13-2995**

Case Type: Personal Injury

### Notice of Filing of Order

JEFFREY R ANDERSON  
366 JACKSON STREET  
SUITE - 100  
SAINT PAUL MN 55101

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#### **Doe 28 vs Diocese of Duluth**

You are notified that an order was filed on August 17, 2015.

Dated: August 19, 2015

Amy Turnquist  
Court Administrator  
St. Louis County District Court  
100 North 5th Avenue West  
Duluth Minnesota 55802-1285  
218-726-2460

cc: SUSAN E GAERTNER

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.