

Doe 50,

Plaintiff,

vs.

Diocese of St. Cloud and
Father James Thoennes,

Defendant.

COURT FILE NO.
73-CV-15-276

ORDER TO COMPEL AND
PROTECTIVE ORDER

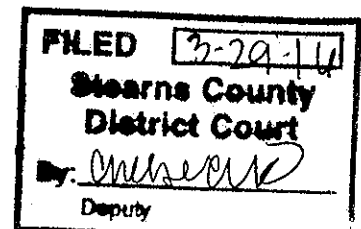
The above-entitled matter came on for hearing before the Honorable Kris H. Davick-Halfen, Judge of District Court, on March 28, 2016.

Attorney Jeffrey R. Anderson, Attorney Joshua Peck, and Attorney Michael Bryant appeared on behalf of Plaintiff Doe 50. Attorney Thomas Weiser and Attorney Tom Janson appeared on behalf of Defendant Diocese of St. Cloud. Attorney Robert Wenner appeared on behalf of Jane Marrin.

NOW, having duly considered the arguments and memoranda of counsel, the documents and proceedings herein, together with the applicable law, this Court makes as its:

ORDER

1. **THAT**, Plaintiff's Motion to Compel is **GRANTED**.
2. **THAT**, Defendant Diocese of St. Cloud shall produce to Plaintiff any and all files and documents related to any priest or agent who works or has worked in the Diocese of St. Cloud at any time who has been accused of sexual abuse of a minor, and/or sexual misconduct with a minor at any time.
3. **THAT**, Defendant Diocese of St. Cloud shall produce to Plaintiff any and all documents in its possession that relate or refer to the sexual abuse of minors and sexual misconduct.



4. THAT, Defendant Diocese of St. Cloud shall produce to Plaintiff the documents referred to in paragraphs (2) and (3) within.
5. THAT, by noon on Monday, April 25, 2016, Defendant Diocese of St. Cloud shall respond to Plaintiff's other requests for production of documents, and interrogatories that were served on June 30, 2015.
6. THAT, Defendant's motion for a protective order is **GRANTED**. Pursuant to Rule 26.03 of the Minnesota Rules of Civil Procedure, the Court finds that a Protective Order is necessary to protect the parties and others from annoyance, embarrassment, oppression, or undue burden or expense. Defendant has made the necessary showing of good cause for the issuance of a Protective Order.
7. THAT, the Protective Order contained herein applies to all materials or information produced or disclosed during the course of discovery in the above-captioned case, all information derived from discovery materials, and copies, excerpts, or summaries of discovery materials, including, without limitation, documents, answers to requests for admission, answers to interrogatories, and deposition testimony or transcripts. As used in the Protective Order, these terms have the following meanings:
 - a. "Attorneys" means counsel of record;
 - b. "Confidential" documents are documents or data defined as "confidential" pursuant to paragraph 8;
 - c. "Documents" are all discovery materials produced by the parties in this case pursuant to the Minnesota Rules of Civil Procedure, and includes depositions;
 - d. "Outside vendors" means messenger, copy, coding and other clerical-services vendors not employed by a party or its Attorneys; and

e. "Affidavit of Non-Disclosure" means an executed document in the form attached as Exhibit A.

8. **THAT**, the following types of information shall be considered "confidential" in the instant litigation:

- a. Names of the alleged victims of sexual abuse;
- b. Medical or psychological information;
- c. Personal financial information or bank account information;
- d. Social Security numbers;
- e. Names and addresses of defendant's members, contributors, or donors; and
- f. Personnel files, including so-called "priest files."

With the exception of items 8(c), 8(d) and 8(e), information cannot be considered "confidential" if it is already public. In addition, records of internal decisions by defendants that were not specifically contained in a personal file or "priest file" prior to the date of this Order are not "confidential."

9. **THAT**, produced documents identified by a party as "confidential" pursuant to this Order shall be marked as "confidential" by a stamp or should be identified as "confidential" by other means. All extracts and summaries of documents designated "confidential" shall be treated as protected in accordance with the provisions of this Order.

10. **THAT**, a party may designate a document, or a portion of a document, "confidential" if it contains confidential information. A party may designate as "confidential" only those documents that it in good faith contends to constitute or contain "confidential" information.

11. **THAT**, a document that is not designated as "confidential" in its entirety may be released to the public so long as any confidential information is redacted prior to release.

12. **THAT**, all documents, or parts of documents, designated as “confidential,” along with the information contained in the documents, shall be used solely for the purpose of this action, and no person receiving such documents shall, directly or indirectly, use, transfer, disclose, or communicate in any way the documents or their contents to any other person other than those specified in paragraph 13. Any other use is prohibited.
13. **THAT**, subject to paragraphs 11 and 12, access to any “confidential” document or document containing “confidential” information shall be limited to:
 - a. The court and its staff;
 - b. The parties to this case;
 - c. Attorneys for the parties, employees of their law firms, and their Outside Vendors;
 - d. Persons shown on the face of the document to have authored or received it;
 - e. Court reporters retained to transcribe testimony;
 - f. Outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained by a party or a party’s attorneys to furnish technical or expert services, or to provide assistance as mock jurors or focus group members or the like, or to give testimony about this action.
14. **THAT**, third parties producing documents in the course of this action may also designate documents as “confidential,” subject to the same protections and constraints as the parties to the action. A copy of this Protective Order shall be served along with any subpoena served on such third parties. All documents produced by third parties shall be treated as “confidential” for a period of fourteen days from the date of their production. During the

fourteen-day period, any party may designate such documents a “confidential” pursuant to the terms of this Protective Order.

15. **THAT**, each person appropriately designated pursuant to paragraph 13(f) to receive “confidential” information shall execute an Affidavit of Non-Disclosure in the form attached as Exhibit A.
16. **THAT**, all portions of depositions taken in this action that contain “confidential” information may be designated “confidential” and thereby obtain the protections accorded to other “confidential” documents. Confidentiality designations for depositions shall be made either on the record or by written notice to the other party within fourteen days of receipt of the transcript. Unless otherwise agreed, depositions shall be treated as “confidential” during the fourteen-day period following receipt of the transcript. The deposition of any witness during which it is anticipated that “confidential” information will be elicited shall be taken only in the presence of the persons who are qualified to have access to such information.
17. **THAT**, any party who inadvertently fails to identify documents as “confidential” shall have fourteen days from the discovery of its oversight to correct its failure and designate the document or portion thereof as “confidential.” Such failure shall be corrected by providing written notice of the error and substituted copies of the inadvertently produced documents. Any party receiving inadvertently unmarked documents shall make reasonable efforts to retrieve such documents from any persons not entitled to receive them and, upon receipt of the unmarked documents, shall return or destroy the improperly-designated documents.
18. **THAT**, “confidential” documents file with the Court must be filed as “confidential” pursuant to Minn. Gen. R. Prac. 11.06. When a document contains both “confidential” and non-

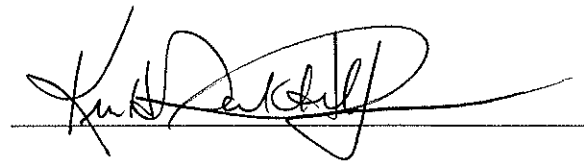
confidential information, it may be appropriate to file a redacted but public version of the document. Prior to disclosure of materials or information designated “confidential” at trial or at a hearing, the parties may seek further protections against public disclosure from the Court.

19. **THAT**, any party may request a change in the designation of any information designated “confidential.” Any such document shall be treated as “confidential” until the change is approved by opposing counsel. If the requested change in designation is not agreed to, the party seeking the change may move the Court for appropriate relief, providing notice to any third party whose designation of produced documents as “confidential” in the action may be affected. The party asserting that the material is “confidential” shall have the burden of proving that the information in question is within the scope of protection afforded by Minn. R. Civ. P. 26.03.
20. **THAT**, the need to limit public access to documents designated as “confidential” may end when the case is resolved. Any party may apply to dissolve this Protective Order or limit the number of “confidential” documents once the case is resolved. Absent such an application an Order, within thirty days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as “confidential,” and all copies of such documents, and shall destroy extracts and/or data taken from such documents. Each party shall provide a certification as to such return or destruction within the thirty-day period. Attorneys shall be entitled to retain, however, a set of all documents filed with the court and all correspondence generated in connection with the action.

21. **THAT**, any party may apply to the Court for a modification of this Protective Order, and nothing in this Protective Order shall be construed to prevent a party from seeking such further provisions enhancing or limiting confidentiality as may be appropriate.
22. **THAT**, no action taken in accordance with this Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of evidence.
23. **THAT**, the obligations imposed by this Protective Order shall survive the termination of this action.
24. **THAT**, the attached **MEMORANDUM** is hereby incorporated into and made part hereof as if fully set forth herein.

Dated this 29th day of March, 2016.

BY THE COURT:



Kris H. Davick-Halfen
Judge of District Court

JUDGMENT

I hereby certify that the foregoing Order/Conclusions of Law constitutes that Judgment of the Court.

Dated: 3-29-16
George Lock, Court Administrator

By: Chelsea Deputy

EXHIBIT A

AFFIDAVIT OF NON-DISCLOSURE

In re: *Doe 50 v. Diocese of St. Cloud and Father James Thoenes*. Stearns County Court File Number 73-CV-15-276.

I have read and I understand the terms of the Protective Order dated _____ and filed in Stearns County Court File Number 73-CV-15-276, which is pending in Stearns County District Court. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the court.

I shall not divulge any documents, or copies of documents, designated "confidential" obtained pursuant to such Protective Order, or the contents of such documents to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than thirty days after final termination of this action, I shall return to the attorney from whom I have received them, any documents, or portions of documents, in my possession designated "confidential," an all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the Stearns County District Court for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Name of Affiant

Address

Subscribed and sworn to before me

this _____ day of _____.

Notary Public

MEMORANDUM

“Absent a protective order . . . nothing precludes a party from voluntarily disclosing discovery documents, sometimes known as ‘discovery sharing.’” State ex rel. Humphrey v. Philip Morris Inc., 606 N.W.2d 676, 686 (Minn. App. 2000) (citing Richard J. Vangelisti, *Proposed Amendment to Federal Rule of Civil Procedure 26(c) Concerning Protective Orders: A Critical Analysis of What It Means and How It Operates*, 48 Baylor L.Rev. 163, 177 (1996) (discussing discovery sharing)). “To prevent public disclosure of matters produced in discovery, the party or person from whom discovery is sought may move for a protective order under Minn. R. Civ. P. 26.03.” State ex rel. Humphrey v. Philip Morris Inc., 606 N.W.2d at 686.

“Rule 26.03 of the Minnesota Rules of Civil Procedure gives the trial court broad discretion to fashion protective orders and to order discovery only on specified terms and conditions.” Erickson v. MacArthur, 414 N.W.2d 406, 409 (Minn. 1987). Specifically, this rule provides that,

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the discovery not be had;
- (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (e) that discovery be conducted with no one present except persons designated by the court;
- (f) that a deposition, after being sealed, be opened only by order of the court;
- (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Minn. R. Civ. P. 26.03.

Good cause exists for a protective order that will allow the parties to designate as confidential certain types of information that are granted protection by law and court rules, such as names of the alleged victims of sexual abuse, medical and psychological records, personal financial information, social security numbers, and private personnel information. Documents or information designated “confidential” could be used only within litigation, not for any non-litigation purposes, and if filed with the Court, would have to be filed under seal.

KHOH

State of Minnesota
Stearns County

District Court
Seventh Judicial District

Court File Number: **73-CV-15-276**

Case Type: Personal Injury

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

Notice of:

<input checked="" type="checkbox"/>	Filing of Order
<input checked="" type="checkbox"/>	Entry of Judgment
<input type="checkbox"/>	Docketing of Judgment

50 Doe vs The Diocese of St. Cloud, Father James Thoennes

You are hereby notified that the following occurred regarding the above-entitled matter:

<input checked="" type="checkbox"/>	An Order was filed on March 29, 2016.
<input checked="" type="checkbox"/>	Judgment was entered on March 29, 2016.
<input type="checkbox"/>	You are notified that judgment was docketed on at in the amount of \$. Costs and interest will accrue on this amount from the date of entry until the judgment is satisfied in full.

Dated: March 29, 2016

Court Administrator
Stearns County District Court
725 Courthouse Square Room 134
St. Cloud MN 56303
320-656-3620

cc: THOMAS B WIESER
ROBERT H WENNER

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