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Lawyer Rebuts Church Motion

Albany-- Constitutional Issue Raised in Lawsuit against Diocese

By Andrew Tilghman
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A Rensselaer County judge will have to decide whether a lawsuit accusing the Albany Roman Catholic Diocese of manipulative therapy services violates the Constitution's separation of church and state.

Acting state Supreme Court Justice Christian Hummel on Monday received a 58-page response to the church's motion to dismiss the lawsuit filed in December. Hummel is expected to rule in coming weeks on whether the lawsuit proceeds.

The case could lead to disclosure of church records and sworn statements by Bishop Howard Hubbard, one of the defendants.

Church lawyers cite the First Amendment's church-and-state clause, maintaining that this lawsuit raises "the specter of excessive entanglement with religion."

The lawsuit, filed by attorney John Aretakis, claims the church manipulated Curtis Oathout last year to prevent him from hiring an attorney or speaking publicly about his alleged abuse by the Rev. David Bentley.

Specifically, the church's counselor, Sister Anne Bryan Smollin, allegedly committed professional malpractice by failing to take notes of therapy sessions, sharing information about her patient with Hubbard and telling the patient about her own personal life, according to the lawsuit.

The judge will consider a statement from a psychologist who said Smollin "misdiagnosed" Oathout and her actions were "a departure from ethical and prevailing community standards," according to court papers filed Monday.

Oathout said he went to Smollin, at her Counseling for Laity office, seeking psychological treatment, not spiritual direction.

Laws designed to protect religion from government control do not apply in this case, according to Aretakis' response, filed Monday.

"By simply being a nun or a bishop, the defendants Smollin and Hubbard cannot come forward and allege as a matter of law that all of their respective acts or responsibilities in life and the workplace come under the protection of the First Amendment," Aretakis wrote in court papers.

If Hummel permits the case to move forward, he has said a trial could begin later this year.