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Diocese Moves to Dismiss Abuse Suit

By Doug Mandelaro
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The Roman Catholic Diocese of Rochester has asked a judge to dismiss a lawsuit brought by eight men who allege they were abused as children by the Rev. Robert O'Neill.

In court papers, attorneys for the diocese argue the statute of limitations for suing over the alleged abuse - which occurred on various dates between 1977 and 1986 - has long expired.

"The principal thrust is to ask the court to dismiss it because it is untimely," said Paul J. Yesawich III, the lawyer representing the diocese.

State Supreme Court Justice Robert Lunn will now have to decide whether to continue or dismiss the case after a hearing.

In the lawsuit, the eight men - most of whom are listed as "John Doe," allege they were sexually abused by O'Neill when they were boys. Both the diocese and O'Neill are named as defendants.

The suit further claims the diocese attempted to conceal the abuse. The abuse, the lawsuit claims, caused the defendants "to suffer great pain of mind and body, shock, emotional distress . . . loss of self-esteem, disgrace, humiliation and loss of enjoyment of life."

Local lawyer John M. Bansbach, who is representing the eight men, says he will argue that the diocese had a responsibility to disclose O'Neill's activities long ago, so that each of the victims would realize they were not alone and that the abuse was widespread; that would have made coming forward easier for the victims.

In effect, Bansbach maintains, the plaintiffs now have an additional period of time to pursue action because they did not fully learn of O'Neill's history until spring of this year, when Bishop Matthew Clark took action against him.

O'Neill is now retired; the diocese removed his priestly faculties in May. Six other local priests also have been disciplined in other abuse allegations.

In court, the attorneys also will battle over the role and responsibility of the diocese.

Bansbach argues that the diocese, as "shepherd and leader of the Roman Catholic Church," created a situation of dependency and power over the boys and had a fiduciary responsibility to disclose information to them, as well as to protect them.

In his papers, Yesawich counters that to prove such a fiduciary relationship would be to ask the court to probe the very core of religious belief and doctrine, which he maintains would be a violation of the U.S. Constitution.

Mark Furnish, one of the men suing, was angry at the diocese's legal response, which he said was another example of protecting the church instead of the victims of clergy.

"Is my pain not real?" said Furnish, now an Albany lawyer, adding that his panic attacks over the

abuse "have no statute of limitations."

Furnish said he has followed the pending action of American bishops, meeting this week in Washington, D.C., to promulgate a new national policy on clergy abuse. As in the motion to dismiss by the local diocese, law and policy are getting in the way of helping victims and weeding out molesters, he said.

"Isn't it time," Furnish asked of the church, "to step up and do the right thing instead of hiding behind the law?"

Told of Furnish's concerns, Michael Tedesco, a spokesman for Clark, said the diocese "has been pretty consistent in terms of the victims and our desire to promote the healing they need and deserve . . . that goes back long before the current crisis."

Tedesco said most recently the diocese had formed a support group for any victim interested, and continued to encourage people who were victimized to come forward.

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