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Most of the Abuse Allegations Face Statute of Limitations Barrier

By Jay Tokasz
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A St. Paul, Minn., lawyer who has filed a lawsuit against a Rochester priest and the Roman Catholic Diocese of Rochester will likely add more clients to the suit.

Jeffrey Anderson filed the lawsuit in June on behalf of three men who claim they were sexually abused in the 1970s by the Rev. Robert O'Neill.

O'Neill retired in May and has been living with friends. The diocese forbids him to participate in ministry, wear clerical garb or live in any diocesan housing.

Since the filing in Monroe County Court, Anderson has received several calls from other men claiming abuse by O'Neill.

"We're investigating and evaluating these situations now," he said.

In addition, an Albany lawyer who recently settled an abuse case in the Rochester diocese said he may be filing more lawsuits here.

"Many people have called me inquiring about my services in their potential cases," said John Aretakis, who was still investigating the claims.

In 1997, Aretakis represented an Albany family that received \$997,500 in a confidential settlement with the Roman Catholic Diocese of Albany. The settlement was revealed last month after the U.S. bishops agreed that confidentiality clauses would no longer be part of any settlements with sexual abuse victims.

Aretakis also represents two sisters who say they were abused 30 years ago by the same priest in the Diocese of Rockville Centre. The sisters testified earlier this month before a Suffolk County grand jury, which is investigating whether the diocese covered up abuse cases.

Lawyers, however, will likely face significant obstacles getting their civil cases to trial.

Historically, courts in New York state have strictly interpreted statutes of limitations - the laws establishing time frames by which lawsuits can be brought by a plaintiff.

Many alleged victims are just now coming forward with their stories of abuse from as many as 30 and 40 years ago.

In Anderson's case, all three plaintiffs - Jeffrey Mars and two men identified as John Doe 45 and John Doe 47 - accuse O'Neill of abusing them more than 20 years ago, well beyond the time limits for pursuing such claims.

Paul Yesawich, a lawyer for the Rochester diocese, said the case should be thrown out of court.

"It's our intention to ask the court to dismiss the case because the claims are untimely," he said. "I don't think we're going to get to discovery."

Yesawich and Richard Curtis, who is representing O'Neill, have until Aug. 9 to answer Anderson's complaint. Curtis could not be reached for comment.

A lawyer who has read the complaint but is not connected to the case said that the three plaintiffs have "a huge hurdle" in overcoming the statute of limitations problem.

"There's a 20-year gap in misconduct and I don't see how you get past it," said Paul Martinek, publisher and editor-in-chief of Lawyers Weekly USA, a national newspaper for lawyers. "I don't see this getting to a jury unless you find a judge who's a real maverick trying to create new law."

Anderson lists three causes of action in his lawsuit: sexual abuse by O'Neill, negligence by the diocese and fiduciary fraud by the diocese.

Generally, the statute of limitations for sexual abuse of a minor in a civil case is a year from the alleged victim's 18th birthday. For negligence, it is three years from the time the alleged victim of such negligence turns 18.

And for fraud, the time frame is usually six years from the commission of the fraud or two years from the time of discovering the fraud, whichever is longer.

Anderson acknowledged that he is in for a battle over the statute of limitations.

It is the kind of battle he fights in three-quarters of cases involving sexual abuse and the church, he said.

In his complaint, Anderson argues that the three plaintiffs experienced "delayed discovery" of psychological and emotional distress related to the alleged abuse.

He also asserts that the actions of O'Neill and the diocese prevented his clients from suing sooner. Therefore, he said, they should not be allowed to use the statute of limitations as a defense.

"We think we have some compelling arguments," said John Bansbach, a Rochester lawyer who is co-counsel with Anderson.

In an interview, two of the alleged victims said they did not come forward with their stories sooner because they were embarrassed, ashamed and afraid, each figuring he was the only one involved.

They also said they didn't realize the abuse caused their emotional problems.

The national scandal of sexual abuse in the Catholic church, they said, brought their emotions to the surface.

"It was a very suppressed event," said Jim, who is identified as John Doe 45 in the lawsuit and has requested his last name not be used for this story.

At the prodding of his sister, Jim, who is 41, finally reported the alleged abuse in a phone call to the diocese in summer 2001.

However, Mars, 39, of St. Petersburg, Fla., said that when he called the Rochester diocese in February to report the abuse, he was told that he was the only person who made allegations about O'Neill.

"For 25 years, I forgot what it was like to have a good night's sleep," said Mars. "Part of my life was stolen from me. I don't know what remedy there could be for that."