

Standing
Modification of protective
order
Lifting seal on filed
documents
Privacy rights in personnel
files
Fed. R. Civ. P. 26(c)
11 U.S.C. § 107

Roman Catholic Archbishop of Portland, Case No. 04-37154-elp11

06/24/2009 ELP

Unpublished

Memorandum Opinion on release from protective order of three categories of documents relating to priest abuse claims: documents from priest personnel files that were produced in discovery under the protective order, two documents that were filed under seal in the bankruptcy case, and deposition transcripts and accompanying exhibits. The tort claimants, who had settled claims of child sexual abuse by priests, sought to lift the protective order with regard to these documents; the debtor and various individual accused priests objected.

The opinion first discusses the standing of the tort claimants to seek relief from the protective order. The issue was whether, because the claimants had settled their claims, they had standing to seek relief from the protective order. The court concluded that they did have standing.

The opinion then discusses the legal standard for lifting the stipulated protective order on the documents at issue that were produced during discovery but never filed with the court. Because the stipulated protective order did not contain a court determination of good cause pursuant to Fed. R. Civ. P. 26(c), made applicable to this case by Fed. R. Bankr. P. 9014(c), the party seeking to continue protection must show good cause to continue the protection.

The court also discusses employees' privacy rights in materials in their personnel files.

The court then discusses the legal standard for unsealing documents that were filed under seal. The public right of access to documents filed in bankruptcy cases is codified in 11 U.S.C.

§ 107(a), with limited exceptions set out in subsection (b).

Finally, the opinion discusses briefly the release to the public of transcripts of depositions and accompanying exhibits.

P09-9(37)

Below is an Opinion of the Court.

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ELIZABETH PERRIS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case
)	No. 04-37154-elp11
ROMAN CATHOLIC ARCHBISHOP OF)	
PORTLAND IN OREGON, AND SUCCESSORS,)	
A CORPORATION SOLE, dba the)	MEMORANDUM OPINION
ARCHDIOCESE OF PORTLAND IN OREGON,)	
)	
Debtor.)	

BACKGROUND

During the course of the chapter 11 bankruptcy case of debtor Roman Catholic Archbishop of Portland in Oregon (the Archdiocese), many documents relating to claims of child sexual abuse by priests were produced in discovery. A stipulated protective order (Docket #799) limited the public release of many of the discovery documents. Pursuant to that order, some of those documents were filed with the court under seal. Most of the settlements of claims between the Archdiocese and the tort claimants left for a later date the resolution of what documents should be publicly released if the parties did not agree.

The Archdiocese and many, but not all, of the represented tort

1 claimants agreed to a binding arbitration procedure to resolve what
2 previously non-public documents would be made public.¹ This court wanted
3 that procedure to be completed before resolving the motion filed by
4 certain tort claimants represented by Erin Olson to unseal Docket #4765
5 and 4766. These documents are Olson's memorandum filed in this case in
6 support of punitive damages for the claims estimation process and Olson's
7 declaration in support of that memorandum, to which numerous exhibits are
8 attached. Debtor² opposes the unsealing.

9 Tort claimants represented by Olson also gave notice of their intent
10 to release to the public a number of other documents that the Archdiocese
11 had designated as confidential and produced in discovery under the
12 protective order as well as transcripts of certain depositions and
13 associated exhibits. Debtor and several individual priests move to
14 preserve the confidentiality of those designated documents.

15 Pursuant to the arbitration, a number of documents relating to
16 allegations of child sexual abuse by priests have been posted on a public
17 website, www.archdiocesedocuments.org. The arbitration decision to make
18 those documents public was based on the Archbishop's public statement in
19 April 2007 that he would release relevant and appropriate documents
20 relating to accusations of child sexual abuse against priests. I
21 understand that the documents included in this present dispute have not
22

23
24 ¹ Some of the priests who are the subject of the documents at
25 issue here were not parties to the arbitration agreement. Some of those
26 priests later agreed to be bound by the arbitration decision.

² Hereafter, all references in this memorandum to "debtor" are to
the reorganized debtor.

1 previously been released, with very limited exceptions.

2 Many of the documents at issue before this court involve priests who
3 have already been publicly identified as having been accused of child
4 sexual abuse, including all of the priests who are individually
5 represented in this matter with the exception of one priest. Documents
6 relating to many of the clergy whose records are at issue here have been
7 posted on the public website. Nonetheless, to the extent I order that
8 the protective order be lifted with regard to documents relating to a
9 particular priest, I am neither suggesting nor deciding that those
10 allegations of abuse were meritorious.

11 This dispute involves three categories of documents: (1) documents
12 produced by the Archdiocese in discovery that were designated as
13 confidential pursuant to the January 14, 2005 protective order; (2)
14 documents filed with the court under seal in connection with the claims
15 estimation process; and (3) deposition transcripts and associated
16 exhibits.

17 ANALYSIS

18 1. Standing

19 Some of the parties that oppose lifting the protective order or
20 unsealing filed documents challenge the standing of the movants to seek
21 relief from the protective order that has kept the documents out of the
22 public eye throughout the duration of this case. They assert that,
23 because the claimants have settled their claims against the Archdiocese,
24 and the settlement agreements do not require public disclosure of
25 documents designated as confidential or filed under seal, the claimants
26 no longer have any cognizable interest in documents produced in

1 connection with their settled claims. They also argue that the claimants
2 are attempting to assert the rights of third parties, not to protect
3 their own rights, because the documents they seek to release to the
4 public involve clergy who were not the targets of their individual
5 claims.

6 The standing doctrine involves "both constitutional limitations on
7 federal-court jurisdiction and prudential limitations on its exercise."
8 Warth v. Seldin, 422 U.S. 490, 498 (1975). The constitutional
9 limitations are whether (1) the plaintiff suffered injury; (2) there is
10 sufficient causation between the plaintiff's injury and the conduct set
11 forth in the plaintiff's complaint; and (3) the plaintiff's injury may be
12 redressed by a favorable decision. See Lujan v. Defenders of Wildlife,
13 504 U.S. 555, 560 (1992). Prudential limitations include those
14 "principles by which the judiciary seeks to avoid deciding questions of
15 broad social import where no individual rights would be vindicated and to
16 limit access to the federal courts to those litigants best suited to
17 assert a particular claim." Gladstone Realtors v. Village of Bellwood,
18 441 U.S. 91, 99-100 (1979). One such prudential limitation prohibits a
19 litigant from asserting the rights of a third party. See Powers v. Ohio,
20 499 U.S. 400, 409-410 (1991). Generally, courts cannot entertain the
21 merits of a claim if the plaintiff cannot meet its burden as to this
22 prudential requirement. See Gladstone, 441 U.S. at 99; Warth, 422 U.S.
23 at 498-500.

24 I conclude that the tort claimants who seek to lift the protective
25 order and unseal the documents have standing to do so. They each
26 asserted at least one claim against the Archdiocese for conduct of clergy

1 employed by or under the control of the Archdiocese. Some of them made
2 claims for punitive damages. In order to establish their right to
3 punitive damages, claimants sought to show that the Archdiocese knew of
4 clergy sexual misconduct with minors and failed to address it or prevent
5 further misconduct. This "pattern and practice" evidence was not limited
6 to evidence of how the Archdiocese responded to allegations of child
7 sexual abuse by the particular priest accused by a single claimant. To
8 show the pattern and practice of the Archdiocese's response to such
9 allegations generally, claimants also included evidence about the
10 Archdiocese's response to claims of sexual abuse of minors by other
11 clergy it employed.

12 Also, the tort claimants were parties to the protective order that
13 kept the documents from public disclosure during the pendency of the
14 bankruptcy case, and were subject to the order's provisions. One of
15 those provisions is that a party may seek to remove the "confidential"
16 designation by following a prescribed procedure, which is what they are
17 doing now. Although claimants' settlements of their claims with the
18 Archdiocese did not require disclosure of the documents produced under
19 the confidentiality designation, neither did the settlements require that
20 claimants forbear from seeking release of the documents from the
21 protective order.

22 Finally, in light of the public's common law presumptive right of
23 access to judicial documents, the court has the authority to lift a
24 protective order or seal on documents in its files, even in the absence
25 of a motion.

26 [A] district court can modify a protective order when a third

1 party requests judicial documents after the parties have filed
2 a stipulation of dismissal pursuant to settlement. . . . [W]e
3 see no reason why the absence of a motion of a party to the
4 litigation or some third party requesting that a seal or
protective order be lifted should remove a federal court's
ability to monitor and modify its previous orders in exercise
of its "supervisory power over its own records and files."

5 Gambale v. Deutsche Bank AG, 377 F.3d 133, 141 (2d Cir. 2004) (citations
6 omitted). If the court can sua sponte modify a protective order or lift
7 the seal on filed documents, it can certainly do so on motion of parties
8 who were involved in the judicial process all along and were parties to
9 the protective order, even if they have settled their claims.

10 2. Merits

11 Debtor argues that the documents in dispute should continue to be
12 protected because the Archdiocese has already released a number of
13 documents from its files relating to accusations of child sexual abuse by
14 its clergy. The Archdiocese's prior release of other documents is
15 irrelevant to whether, under the law, the documents produced in discovery
16 under the protective order or the documents filed with the court should
17 remain subject to the protective order.

18 A. Documents from personnel files produced in discovery under
19 protective order

20 All of the documents included in this category are taken from the
21 Archdiocese's clergy personnel files that it produced during discovery.
22 Pursuant to the protective order, the Archdiocese designated these
23 documents "confidential."

24 Documents relating to many of the clergy whose personnel files were
25 produced in discovery have previously been posted on the public website.
26 However, I understand that the particular documents at issue here have

1 not been posted. Debtor opposes the release of clergy personnel files
2 for four groups of clergy. Debtor does not make any argument for
3 continued protection of documents relating to its fifth group of clergy,
4 which it labels "Publicly Disclosed." Thus, I will lift the protective
5 order for documents from the personnel files of Maurice Grammond, Joseph
6 Milkulich, James O'Flynn, Michael Raleigh, and Ronald Warren, subject
7 only to the general relevance and privacy protections discussed below.
8 Anthony Smith, who is also listed as publicly disclosed, is separately
9 represented by counsel and opposes release of documents relating to him.
10 I will address his arguments later in this memorandum.

11 Debtor and various affected clergy and former clergy oppose public
12 release of the remaining discovery documents, citing primarily their
13 privacy interest in the content of their personnel files.³

14 "It is well-established that the fruits of pretrial discovery are,
15 in the absence of a court order to the contrary, presumptively public."
16 San Jose Mercury News, Inc. v. U.S. Dist. Court, 187 F.3d 1096, 1103 (9th
17 Cir. 1999). Thus, ordinarily the public should have access to
18 information produced during discovery and to documents used in
19 litigation. Phillips ex rel. Estates of Byrd v. General Motors Corp.,
20 307 F.3d 1206, 1210 (9th Cir. 2002).

21
22
23 ³ These documents and more were the subject of the arbitration
24 before Judge Hogan. This decision involves the documents that remain in
25 dispute after the arbitration decision that ordered the release of a
26 number of documents. Judge Hogan has stayed the release of documents
relating to allegations against three clergy who are individually
represented in this matter until my resolution of their objections. He
has also stayed release of documents relating to priests who are involved
in pending litigation, until that litigation is completed.

1 The presumption of public access may, however, be overcome where
2 good cause is shown. Id. Fed. R. Civ. P. 26(c), made applicable to this
3 case by Fed. R. Bankr. P. 9014(c), provides that the court, for good
4 cause, may "issue an order to protect a party or person from annoyance,
5 embarrassment, oppression, or undue burden or expense[.]" The party
6 seeking protection has the burden of showing specific prejudice or harm
7 that will result if no protective order is entered. Phillips, 307 F.3d
8 at 1210-11. "Good cause" is shown "when it is specifically demonstrated
9 that disclosure will cause a clearly defined and serious injury. Broad
10 allegations of harm, unsubstantiated by specific examples, however, will
11 not suffice." Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir.
12 1995) (citations omitted).⁴ If the "court finds particularized harm will
13 result from disclosure of information to the public, then it balances the
14 public and private interests to decide whether a protective order is
15 necessary." Phillips, 307 F.3d at 1211.

16 The tort claimants' motion to unseal and opposition to continued
17 protection of the documents⁵ are, essentially, motions to modify the
18 protective order with regard to certain documents that were produced in
19 discovery. The parties dispute who has the burden of proof - whether the
20 various tort claimants have the burden to show that the protection should

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22 ⁴ "The courts have insisted on a particular and specific
23 demonstration of fact, as distinguished from stereotyped and conclusory
24 statements, in order to establish good cause." 8 Charles Alan Wright,
Arthur R. Miller, and Richard L. Marcus, Federal Practice and Procedure
§ 2035 at 484 (1994) (footnotes omitted).

25 ⁵ There are various motions relating to release of the documents.
26 All raise the same issue: should the protection continue for the
documents in dispute.

1 be lifted or whether debtor and/or the opposing clergy have the burden to
2 show that the protection should continue.

3 Because the 2005 protective order preventing disclosure was
4 stipulated to by the parties,⁶ and this court never made a finding that
5 there was good cause for protecting these documents, the burden is on the
6 party seeking to continue the protection. Phillips, 307 F.3d at 1211 &
7 n.1 ("the burden of proof will remain with the party seeking protection
8 when the protective order was a stipulated order and no party had made a
9 'good cause' showing."); Bromgard v. Montana, 2007 WL 2710379 at *6 (D.
10 Mont. 2007).

11 Here, debtor and the opposing clergy must show good cause for
12 continuing the protection of the information from public disclosure.
13 That burden is especially appropriate where, as here, the Archdiocese
14 agreed to produce documents under a protective order that did not require
15 or contain a court finding of good cause, that allowed the Archdiocese to
16 unilaterally designate documents as confidential, and that contained a
17 provision allowing the tort claimants to challenge the designation of
18 documents as confidential. Miles v. Boeing Co., 154 F.R.D. 112, 116
19 (E.D. Pa. 1994) (allowing "information to become presumptively
20 confidential without affording [the other party] an opportunity to
21 disagree with that designation and then to bear the burden of mounting a
22 challenge would run afoul of the basic burden-shifting approach mandated
23 by Rule 26(c)"). The agreed mechanism for challenging the "confidential"
24

25 ⁶ The 2005 protective order does not state that it is stipulated.
26 But it was negotiated among the interested parties and presented to the
court for entry as an agreed order.

1 designation made clear that the mere fact that the Archdiocese designated
2 a document as confidential did not mean that the document would retain
3 that status indefinitely.

4 Opposition to release of the documents comes from two sources: (1)
5 debtor, as successor to the Archdiocese, which produced the documents
6 from its files in connection with this case and under the protection of
7 the protective order; and (2) a number of the individual clergy and
8 former clergy whose files were produced. Although the interests of
9 debtor and the clergy vary somewhat, their arguments largely overlap.

10 a. Personnel files

11 Debtor argues that I should consider each clergy personnel file as a
12 whole rather than consider whether particular items in individual
13 personnel files should be released. It argues that personnel files are
14 confidential and subject to privacy interests of the employees as a
15 matter of constitutional law, common law, and state statute. According
16 to debtor, absent a legitimate litigation reason, personnel files should
17 remain protected.

18 As discussed above, debtor and the objecting clergy have the burden
19 of showing good cause under Fed. R. Civ. P. 26(c) for continuing to keep
20 the documents from disclosure to the public. Thus, there need not be a
21 "legitimate litigation reason" to justify disclosure; there must instead
22 be good cause to prevent disclosure.

23 Debtor seeks to protect all of the documents at issue because they
24 are personnel records. Courts have certainly recognized that employees
25 have privacy interests in information contained in personnel records,
26 although it is not clear whether the source of that privacy interest is

1 constitutional or common law. Regardless of the source of an employee's
2 privacy interest in his or her personnel files, that interest is
3 recognized and given some protection by the law. See, e.g., Detroit
4 Edison Co. v. N.L.R.B., 440 U.S. 301, 318 n.16 (1979) (noting that a
5 person's interest in keeping sensitive information contained in personnel
6 files confidential has been recognized in various federal and state
7 statutes dealing with public employees); Blount v. Wake Elec. Membership
8 Corp., 162 F.R.D. 102, 105-06 (E.D. N. Ca. 1993) (noting personal privacy
9 interest in personnel files, but also recognizing that disclosure could
10 be necessary in litigation where the information was relevant and not
11 otherwise readily obtainable); Miles, 154 F.R.D. at 115.

12 An employee's privacy interest in personnel records has also been
13 given some protection under Oregon statutes, although none of the
14 statutes is applicable here. See, e.g., ORS 652.750 (allowing an
15 employee the right to inspect her own personnel file);⁷ ORS 646A.622
16 (requiring employers to protect information in employee personnel files
17 that could be used to commit identity theft, such as the employee's
18 social security number, driver's license number, and the like); ORS
19 659A.136 (limiting the use of medical examination information obtained by
20 an employer in determining whether the employee has a disability that
21 affects the employee's ability to perform job functions); ORS 192.502(2)
22 (exempting personal information contained in public employees' personnel
23

24 ⁷ Notably, the definition of "personnel records" used in this
25 statute excludes from its scope "records of an individual relating to the
26 conviction, arrest or investigation of conduct constituting a violation
of the criminal laws of this state" ORS 652.750(1)(b). Sexual
abuse of a child is a crime. See ORS chapter 163.

1 files from disclosure under public records disclosure requirements,
2 unless certain requirements are met).

3 It is clear from these authorities that, although there is a level
4 of privacy protection for sensitive personal information contained in
5 personnel records, there is no blanket protection from disclosure of
6 information contained in personnel records, particularly where the
7 information involves allegations of serious wrongdoing that implicates
8 public safety. See n.7, supra. As applied in this case, I conclude that
9 there is good cause to prevent disclosure of private, personal
10 information such as the clergy/employee's address, social security number
11 or other identifying financial information, information about the
12 clergy's family, or other personal information not relevant to any of the
13 abuse litigation. Release of such information could cause the clergy
14 embarrassment, annoyance, or undue burden.

15 Balancing the individual's privacy interest in information contained
16 in personnel files against the public interest in accessibility to
17 information about allegations of priest sexual abuse of minors and the
18 Archdiocese's response to those allegations, debtor has not demonstrated
19 good cause for a blanket protection of the clergy from disclosure of
20 relevant information contained in the personnel files.⁸ This includes
21 information about allegations of abuse or the Archdiocese's knowledge of
22 or reaction to such allegations. It also includes priest records showing
23

24 ⁸ In reaching this conclusion, I recognize and have taken into
25 account the fact that information contained in personnel files relating
26 to allegations of child sexual abuse and the Archdiocese's response to
such allegations, including sending clergy to treatment and receiving
reports of the progress of treatment, is private, sensitive material.

1 where particular accused priests or clergy were assigned and when.⁹

2 I also conclude that, if medical or psychological information was
3 contained in the personnel records and produced, good cause exists to
4 protect it, except to the extent it is relevant to allegations of sexual
5 abuse of minors and is not claimed and found to be privileged. This type
6 of information, although it is highly personal and its release could
7 cause embarrassment, is relevant to how much the Archdiocese knew and
8 when it knew about the allegations of serious misconduct that related to
9 the clergy's fitness to work in certain Archdiocesan ministries. On
10 balance, there is no good cause to protect those relevant documents from
11 disclosure. However, any medical or psychological documents in the
12 personnel files that are not relevant to claims of sexual abuse of minors
13 or of the Archdiocese's response to such allegations should continue to
14 be protected, in light of the employees' privacy interests in the
15 information.

16 For those documents that I am ordering released, counsel must redact
17 private information about the accused clergy, including home addresses,
18 social security numbers, family information, and the like. Counsel must
19 also redact any information that could identify the victim or family
20 member of a victim that could lead to identification of the victim. I
21 have attempted to note the need for redaction on the chart that is
22
23

24
25 ⁹ If the documents at issue here do not show accusations of abuse
26 or responses to accusations, but there is other information indicating
that the priest was accused of child sexual abuse, I will order release
of documents relating to where the priest served and when.

1 attached as Exhibit A.¹⁰ If, however, I have failed to note the need for
2 redaction for a particular document that contains the sort of information
3 outlined above, counsel must assure that the information is nonetheless
4 redacted.

5 I will address below arguments of individual clergy who have
6 appeared and seek to continue the confidentiality of information
7 contained in their own personnel files.

8 b. Debtor's arguments for protection for categories of clergy

9 Debtor argues that protection should continue for documents relating
10 to four categories of clergy: (1) priests against whom only one claim of
11 abuse was made; (2) priests who are currently being sued by future
12 claimants; (3) priests who are represented by counsel and have demanded
13 that the Archdiocese not publish their personnel files; and (4) priests
14 who were never accused of abuse but whose files were produced during
15 discovery in this case.¹¹

16 i. Clergy against whom only one claim of child abuse was
17 made

18 Debtor argues that clergy against whom only one claim of child abuse
19 was made should be protected from disclosure relating to that accusation.
20

21 ¹⁰ Exhibit A will be kept under seal during the 30-day stay I am
22 imposing on release of the documents. If an appeal is filed and a party
23 requests that the exhibit remain under seal pending appeal, I will
24 consider whether to keep all or part of the exhibit sealed pending
25 appeal. If no appeal is filed, I will lift the seal on Exhibit A at the
26 end of the 30 days.

¹¹ The parties have stipulated to release of documents relating to
John Goodrich. At least some of the documents relating to him have
already been released. Those need not be released again.

1 Its argument is primarily that these clergy could be irreparably harmed
2 by publication of false accusations.

3 The question is whether debtor has demonstrated good cause to
4 protect those accused clergy from annoyance, embarrassment, oppression,
5 or undue burden or expense. Fed. R. Civ. P. 26(c). This requires
6 specific demonstration of a clearly defined and serious injury. Glenmede
7 Trust Co., 56 F.3d at 483.

8 Debtor states, without substantiation, that the clergy it lists in
9 this category are clergy for whom the Archdiocese paid a settlement as a
10 result of a single claim alleging child sexual abuse.

11 Although debtor argues that false allegations have been made, and
12 falsely accused clergy should be protected from the "stain of a public
13 accusation of child abuse," Reorganized Debtor's Supplemental Opposition
14 to Olson's Motion and Olson's Demand at 12, it does not provide any
15 evidence that would support a conclusion that these particular clergy
16 were falsely accused, nor that the accusations against them were
17 unsubstantiated.¹² Its argument that clergy who have a single accusation
18 filed against them are likely innocent of the charges because pedophiles
19 are generally serial offenders is offset by the argument made by the tort

21 ¹² Debtor argues that the allegations against the individuals on
22 this list are unsubstantiated. It explains that, "[b]y unsubstantiated,
23 the Archdiocese means that there is only one accuser whose testimony is
24 the sole basis for the allegation; the accused denied the allegations or
25 there is no admission; there are no contemporaneous or later documents
26 disclosing the abuse prior to the legal claim; and there are no witnesses
able to testify to the veracity of the accuser's allegations."
Reorganized Debtor's Supplemental Opposition to Olson's Motion and
Olson's Demand at 13 n.6. None of those circumstances necessarily
indicates that the claims were false.

1 claimants that child sexual abuse is under-reported, so a single
2 allegation could indicate that other unreported abuse had occurred.

3 It is debtor's burden to show that there is good cause to protect
4 these documents, that is, that lifting the protection would produce a
5 clearly defined and serious injury. It has failed to make any
6 individualized showing. Further, even if harm is shown, the court must
7 balance the harm of disclosure against the public interest. Archbishop
8 Vlazny has publicly announced that, as part of the healing process, the
9 Archdiocese would release documents that would shed light on the issue of
10 child sexual abuse by its clergy. The relevant documents relating to the
11 clergy who had a single incident of abuse reported (for which the
12 Archdiocese made a payment on the claim) relate to that issue.

13 Therefore, relevant documents from personnel files relating to the clergy
14 in this category shall be released, subject to the redactions for the
15 type of personal information discussed above.

16 The tort claimants have withdrawn the documents relating to two of
17 the clergy in this category. I will redact their names from the chart
18 that will be attached as Exhibit A to this opinion. I will include their
19 names on an Exhibit B, which I will have entered in the court record
20 under seal. Exhibit B will list the names of any priests for whom I
21 determine documents should continue to be protected because the claimants
22 have withdrawn their request to release documents relating to those
23 priests, there are no relevant documents relating to the particular
24 priest, or good cause has been shown.

25 ii. Clergy who are currently in litigation

26 Debtor argues that the protective order should continue for the

1 files of two clergy, Fr. B and Thomas Laughlin, who are currently being
2 sued for abuse and whose cases are pending before the district court.
3 These clergy are separately represented by counsel. I will discuss their
4 individual arguments below in a separate section.

5 iii. Clergy who are represented and have requested
6 continued protection

7 Various clergy have their own counsel and have appeared to assert
8 their own rights. Debtor does not make any specific arguments for this
9 category of clergy, but merely refers to the briefs filed by counsel for
10 the individuals. I will discuss the arguments of each of those clergy
11 below.

12 iv. Clergy against whom no allegation has been made but
13 files were produced

14 Finally, debtor argues that files were produced in this bankruptcy
15 case for certain clergy who were never accused or who had accusations
16 against them withdrawn. According to debtor, those clergy should not
17 have their personnel files made public because they will then be
18 associated with clergy who have been accused of abuse.

19 I have reviewed the documents the tort claimants seek to release
20 from the protective order for priests in this category. I will not lift
21 the protective order for documents relating to any clergy, including
22 clergy in this category, for whom I can find no indication of allegations
23 of child sexual abuse or of grooming for abuse while the victim was a
24 minor. I do not consider allegations of sexual conduct with adults as
25 relevant to child sexual abuse. Those clergy for whom I found no
26 relevant documents are identified in Exhibit B, which will be filed under

1 seal.

2 v. Order priests

3 Although debtor does not make any specific argument about documents
4 relating to the clergy it lists in Exhibit 4 as "Order Priests," I gather
5 that it opposes release of documents that were produced in this case that
6 relate to clergy who were not Archdiocesan priests nor working in an
7 Archdiocesan ministry at the time of the alleged abuse. Of those listed
8 by debtor, documents relating to only one are still at issue.

9 The documents at issue relating to that priest, JT, show that he was
10 a Jesuit priest assigned to an Archdiocesan ministry. Debtor has not
11 provided any information to substantiate its claim that he was not
12 working in an Archdiocesan ministry at the time the alleged conduct
13 occurred. Debtor has not shown good cause to continue the protection
14 with regard to relevant documents relating to JT.

15 c. Arguments by individual clergy

16 A number of clergy whose files are the subject of this dispute have
17 appeared and made their own arguments against releasing documents from
18 the protective order.

19 i. Fr. B, J, S, T, and W (represented by Cooney)

20 These clergy first argue that they relied on the protective order in
21 providing discovery,¹³ therefore the order can be modified only if there
22 is an extraordinary circumstance or compelling need to do so. As I
23 explained above, this order was stipulated to by the parties, and did not
24

25 ¹³ It is unclear how they relied, in that I understand that all of
26 the documents at issue came from the Archdiocese's files, and these
clergy never produced any documents themselves.

1 contain a judicial determination of good cause for protection. Under
2 those circumstances, protection will continue only if the party opposing
3 disclosure shows good cause.

4 Next, they assert that there is good cause to continue protection
5 because of the confidential nature of their personnel files. Release of
6 these documents, they argue, would constitute an invasion of their
7 privacy.

8 I have already discussed the privacy interests in personnel files,
9 and have taken those privacy interests into account in determining which
10 documents should be released and in ordering redaction of certain private
11 information.

12 Each of the individual priests represented by Mr. Cooney assert that
13 there is good cause to protect against release of their personnel files,
14 because the files contain information that would lead to annoyance,
15 embarrassment, oppression, and/or undue burden or expense if made public.
16 They argue that their interest in keeping personal information private
17 outweighs the public's interest in knowing private details of their
18 lives.

19 a. Fr. B

20 Fr. B is a named defendant in two recent federal district court
21 cases in which the claimants allege that he sexually molested them. In
22 his declaration, he adamantly denies the allegations. He states that he
23 is recovering from surgery for cancer, and that the release of his
24 records would be personally humiliating, oppressive, burdensome, and
25 distressing. He also questions his ability to get a fair trial if his
26 personnel file is released.

1 Fr. B's general statements of potential harm are conclusory, and do
2 not specifically demonstrate that he will suffer a clearly defined and
3 serious injury. See 8 Charles Alan Wright, Arthur R. Miller, and Richard
4 L. Marcus, Federal Practice and Procedure § 2035 (1994) (hereafter Wright
5 and Miller) (conclusory statements are not enough). Fr. B is a publicly
6 named defendant in two lawsuits alleging child sexual abuse. His
7 statements do not demonstrate a clearly defined harm apart from the other
8 publicity surrounding the allegations against him. In light of the fact
9 that he is publicly named in litigation, any harm to him is outweighed by
10 the public interest in access to information about allegations of child
11 sexual abuse and the Archdiocese's response to such allegations.

12 Good cause has not been shown to continue protection of Fr. B's
13 records. However, I will stay my order lifting the protective order for
14 documents with regard to Fr. B until the pending litigation against him
15 is resolved through settlement, dismissal, judgment, or otherwise. This
16 is consistent with the stay of release of documents Judge Hogan provided
17 in his arbitration report, and will prevent any possible interference
18 with the district court trials. The stay will expire with regard to Fr.
19 B's documents when all pending litigation against him is resolved.

20 b. Fr. J

21 Fr. J's declaration similarly contains only conclusory claims of
22 harm. He does not describe any clearly defined serious injury that would
23 occur from the release of these particular documents. Documents relating
24 to Fr. J have already been posted on the website,
25 www.archdiocesedocuments.org. Although I recognize Fr. J's privacy
26 interest in sensitive information in his personnel file, Fr. J's name is

1 already in the public arena in connection with these abuse cases, and the
2 public interest will be served by disclosing both the allegations of
3 sexual misconduct with minors and any Archdiocese response to the claims.

4 As for documents that I earlier ruled were confidential, those
5 records were not produced during discovery and are not at issue here.

6 c. Fr. S

7 Fr. S denies allegations of abuse that have been made against him.
8 He has, nonetheless, already been publicly named as an abuser. He was a
9 defendant in three cases alleging abuse, two of which he lost after
10 trial. Although he says that he fears for his safety if the protective
11 order is lifted, based on perceived telephone threats, Fr. S's identity
12 is already public, and he has already been involved in three public
13 trials alleging abuse. The three pages that will be released from
14 protection do not contain information that is likely to provoke further
15 threats. No information about Fr. S's whereabouts will be disclosed.

16 d. Fr. T

17 Documents relating to Fr. T have been posted on the public website.
18 Fr. T has not demonstrated a specific, identifiable injury from the
19 release of the three pages of documents at issue here that would outweigh
20 the public interest in the release. He has not demonstrated good cause
21 to continue the protection of relevant documents from his personnel
22 files.

23 e. Fr. W

24 Fr. W states that he is 90 years old, currently living in an
25 assisted living home. He says that the court dismissed the single claim
26 of sexual abuse brought against him, which he has always denied. He does

1 not explain the basis for the dismissal. He also states that he was not
2 at the school when and where some of the alleged abuse occurred. He
3 states that releasing his personnel file will cause him embarrassment,
4 annoyance, and/or undue burden.

5 To my knowledge, Fr. W has never been publicly identified as an
6 accused abuser. The documents the tort claimants seek to release from
7 the discovery documents relating to Fr. W include a short discussion of a
8 single claim of child sexual abuse, which Fr. W says was dismissed.
9 Naming him publicly for the first time would likely cause him
10 embarrassment, annoyance, or undue burden and, in light of the scant
11 information about the claim of abuse, his interest in protection
12 outweighs the public interest in disclosure. I will continue the
13 protection on relevant documents relating to him.

14 ii. Defendant Smith and Fr. MM (represented by Smith)

15 Defendant Smith argues, among other things, that documents from his
16 personnel records should remain protected based on the confidentiality
17 agreement that was part of the settlement of abuse allegations against
18 him.

19 Smith does not explain how an agreement that did not include the
20 tort claimants seeking to lift the protective order here should bind
21 them. Further, documents naming Smith were posted on the public website
22 in June 2007. Given the previous release of information, I conclude that
23 Smith has not shown that release of these documents relating to him would
24 result in a clearly defined and serious injury.

25 Fr. MM argues that releasing his personnel records would violate his
26 right to privacy and statutory protection of health records. He also

1 claims physician-patient and psychotherapist-patient privilege.

2 Fr. MM submitted a declaration, which had originally been filed in
3 connection with a different request for public disclosure. He asserts
4 that he has never been sued, convicted, or found liable for sexual abuse.
5 He states that the documents at issue contain highly private information,
6 the release of which likely would result in social stigma. He worries
7 for his safety. Releasing documents relating to him, he argues, would
8 unfairly associate him with priests who have been convicted or found
9 liable.

10 These generalized concerns about embarrassment and harassment are
11 not sufficient to meet Fr. MM's burden to show a clearly defined and
12 serious injury that would support a finding of good cause for protection
13 that would outweigh the public interest in disclosure. Fr. MM was named
14 in a document that is on the public docket in this case (Docket #2406) as
15 an accused priest for whom the Archdiocese paid a settlement.
16 Information about him is included in the portion of the deposition of Fr.
17 Lienert that is posted on the public website. Fr. MM has not
18 demonstrated good cause to continue the protection for relevant,
19 unprivileged documents.

20 He has, however, established the some of the discovery documents are
21 subject to the psychotherapist-patient or physician-patient privileges.
22 The privileges protect from disclosure confidential communications made
23 for the purposes of diagnosis or treatment, and include communications to
24 those who are participating in the diagnosis or treatment. OEC 504,
25 504-1. In earlier rulings in this case, I have concluded that
26 communications between a treatment center or therapist and the

1 Archdiocese as the referring employer are communications with those
2 participating in the diagnosis or treatment, so long as the
3 communications relate to continuing treatment and not to employment
4 matters. That means that communications that relate to personnel issues,
5 including return to ministry and placement of the priest, are not
6 privileged, but reports about the priest's treatment progress or matters
7 that the treatment facility or therapist learned through therapy are
8 privileged. This is a broader view of the privilege than the tort
9 claimants' view, in that I include as privileged those communications
10 about Fr. MM with the Archdiocese that relate to his treatment.

11 I have applied this standard in reviewing the documents relating to
12 Fr. MM. I have taken into consideration the supplemental declaration
13 filed by Fr. MM on June 10, 2009, and conclude that the document that is
14 the subject of that declaration is not privileged. My decisions about
15 documents relating to Fr. MM that are reflected on Exhibit A resulted
16 from application of the legal standard to all of the documents that Fr.
17 MM claims are privileged.

18 iii. Fr. Bucher (represented by Whittemore)

19 Fr. Bucher argues that he did not consent to production of documents
20 relating to him in this bankruptcy case. He also argues that the
21 Archdiocese, through the Archbishop, is not his agent, so any agreement
22 the Archbishop made to release documents to the public does not bind him.

23 I am not lifting the protective order for any documents because the
24 Archdiocese agreed to release them. To the extent that I am lifting the
25 protective order, it is because the person seeking protection has not
26 established good cause, as required by Fed. R. Civ. P. 26(c).

1 Fr. Bucher has not met his burden to show good cause. The fact that
2 he was accused of abuse is not a secret; he is the named party in the
3 leading Oregon Supreme Court case dealing with vicarious liability for
4 child sexual abuse. Documents relating to Fr. Bucher are posted on the
5 public website. Fr. Bucher's failure to consent to production of
6 documents from his personnel file maintained by the Archdiocese and his
7 desire to enjoy the peace he thought he had obtained through settlement
8 of the claims against him does not demonstrate a clearly defined and
9 specific injury.

10 iv. Fr. M and Fr. D (represented by Merchant)

11 These priests first argue that the protective order should remain in
12 place as to documents relating to them because they have never had any
13 claims of misconduct filed against them. The tort claimants acknowledge
14 that no claims were filed against Fr. D or Fr. M in the bankruptcy case.
15 However, the documents counsel seeks to release show that there were
16 credible allegations of abuse made. In the case of Fr. M, the
17 allegations were brought to the attention of the district attorney, who
18 did not prosecute because of the statute of limitations, not because the
19 allegations lacked credibility. In the case of Fr. D, he admitted the
20 conduct to the Archbishop. Saying they had no "claims" brought against
21 them is technically correct in the bankruptcy sense, but is misleading
22 because they both had credible allegations of sexual misconduct with
23 minors brought against them.

24 They also argue that releasing the documents relating to them will
25 ruin their lives by implicating them in a scandal "in which they are not
26 involved." Again, the documents themselves show that there were credible

1 allegations that they were in fact involved. Fr. M was named in an
2 Oregonian article that is posted on the public website for documents
3 relating to priest sexual abuse and allegations against him were included
4 in the posted portion of Fr. Lienert's deposition. Fr. D's name is
5 included in the exhibit list for the excerpts of the deposition of
6 Archbishop Levada that is on the public website, which shows that the
7 exhibit was withdrawn. The documents at issue show that Fr. D admitted
8 the allegation of abuse.

9 Fr. M's and Fr. D's desire to be protected from scandal does not
10 demonstrate a clearly defined and serious injury outweighing the public
11 interest necessary to establish good cause.¹⁴

12 v. Mr. H and Thomas Laughlin (represented by O'Kasey)

13 Mr. H and Thomas Laughlin oppose release of documents relating to
14 them, asserting their privacy interest in their personnel files. As I
15 have said with regard to other clergy and former clergy, I recognize the
16 privacy interest in personal information contained in personnel files,
17 but also recognize that those privacy rights are not absolute,
18 particularly with regard to allegations of sexual misconduct with minors.

19 Contrary to these clergy's arguments, the tort claimants are not
20 seeking release of personnel files of an entire class of employees, but
21 only of documents relating to priests who have been accused of child
22 sexual abuse. Further, information in the personnel files that relates
23 to such accusations and the Archdiocese's response to them was the proper
24

25 ¹⁴ Contrary to their argument that the tort claimants need to show
26 a compelling need for disclosure, it is the priests who must establish
good cause.

1 subject of discovery, because it provided pattern and practice evidence
2 relevant to claims for punitive damages.

3 Also contrary to these clergy's arguments, the tort claimants need
4 not show that the value of the information outweighs the privacy
5 interests of the affected individuals. Instead, those seeking to
6 continue the protection need to show particularized harm, which the court
7 then balances against the public interest.

8 I have reviewed the documents relating to Mr. H. Because nothing in
9 the documents at issue here relates to allegations of sexual abuse of
10 minors, or of the Archdiocese's response to allegations of abuse,
11 documents relating to him will continue under the protection of the
12 protective order.

13 Thomas Laughlin has not shown good cause to continue the protection
14 of relevant documents relating to him and his conduct. However, he is
15 currently engaged in litigation concerning allegations of child sexual
16 abuse against him. As I did with documents relating to Fr. B, and for
17 the same reasons, I will stay the release of documents relating to
18 Laughlin until the pending litigation against him in district court is
19 resolved through settlement, dismissal, judgment, or otherwise.

20 B. Documents filed with the court under seal (Docket #4765 and
21 4766)

22 The various tort claimants seek an order unsealing a memorandum and
23 declaration with attached exhibits, which were filed with the court under
24 seal to support claims for punitive damages during the claims estimation
25 process. Debtor and the opposing clergy oppose lifting the seal on these
26 documents. These documents must be analyzed under a different legal

1 standard than applies to those that were produced during discovery but
2 never filed with the court.

3 Under the common law, there is a well-established presumption of
4 public access to judicial documents. See Nixon v. Warner Communications,
5 Inc., 435 U.S. 589, 597 (1978). This right of access is not absolute;
6 courts have authority under the common law to deny access "where court
7 files might have become a vehicle for improper purposes." Id. at 598.
8 See also In re Gitto Global Corp., 422 F.3d 1, 6 (1st Cir. 2005).

9 This public right of access is codified for bankruptcy cases in 11
10 U.S.C. § 107(a), which provides that all papers filed in a bankruptcy
11 case are public records open to examination, except as specifically
12 provided in the statute. See Gitto Global Corp., 422 F.3d at 6-7; In re
13 Crawford, 194 F.3d 954, 960 (9th Cir. 1999); William T. Bodah and
14 Michelle M. Morgan, "Protective Orders in the Bankruptcy Court: The
15 Congressional Mandate of Bankruptcy Code Section 107 and its
16 Constitutional Implications," 24 Hastings Const. L. Q. 67 (Fall 1996).
17 The statute provides for two exceptions to this broad right of public
18 access: the court may (and, on motion of a party in interest, shall) (1)
19 protect an entity with regard to certain commercial secrets and
20 information, or (2) "protect a person with respect to scandalous or
21 defamatory matter contained in a paper filed in a case under this title."
22 § 107(b)(2). The exceptions are "construed narrowly, in light of the
23 general public policy that court records should be open for public
24 inspection." 2 Lawrence P. King, Collier on Bankruptcy ¶ 107.03[1][b]
25 (15th ed. Rev. 2007). See also Crawford, 194 F.3d at 960 n.8 (§ 107
26 exceptions to public access are narrowly construed). "Because § 107

1 speaks directly to the question of public access, . . . it supplants the
2 common law for purposes of determining public access to papers filed in a
3 bankruptcy case." Gitto Global Corp., 422 F.3d at 8. Any issues of
4 public disclosure of documents filed in a bankruptcy case must be
5 determined under the statute, not under the common law. Id.

6 The parties opposing release of the documents argue that the
7 punitive damages documents contain defamatory or scandalous matter about
8 them and therefore they should be protected. At bottom, their argument
9 is that information in the documents, including their names, would
10 unfairly associate them with the priest sexual abuse scandal and would
11 subject them to scorn or loss of reputation in the community.

12 The question then becomes what precisely is meant by "scandalous or
13 defamatory matter" that warrants protection. The Code does not define
14 these terms.

15 In Gitto Global Corp., the court considered the meaning of
16 "defamatory" in the context of § 107(b)(2). It rejected the debtors'
17 argument that, to be defamatory, material in the court records need only
18 cause a reasonable person to alter his or her opinion of the debtor. The
19 court noted that § 107 indicates a clear legislative intent that papers
20 filed in bankruptcy court be available to the public and that many
21 documents filed in a bankruptcy case will include material that is likely
22 to affect an individual's reputation in the community, including
23 allegations of mismanagement or fraud. Id. at 8-9. Reading the statute
24 to provide protection for "any material tending to harm a person's
25 reputation . . . would significantly curtail the public's access to these
26 records." Id. at 9.

1 Given the presumption of access to court records, and the fact that
2 many documents filed in bankruptcy court could affect a person's
3 reputation, the court concluded that a showing of more than a detrimental
4 impact on a person's reputation is required. The court held

5 that material that would cause a reasonable person to alter his
6 opinion of an interested party triggers the protections of
7 § 107(b)(2) based on a showing that either (1) the material is
8 untrue, or (2) the material is potentially untrue and
improper end.

9 Id. at 14.

10 This reading is consistent with the common law, which denies public
11 access to court files that "have become a vehicle for improper purposes."
12 Nixon, 435 U.S. at 598. Accord In re Phar-Mor, Inc., 191 B.R. 675, 678-
13 679 (Bankr. N.D. Ohio 1995) (noting historical authority of courts to
14 protect persons from scandalous or defamatory material, as currently
15 provided in Fed. R. Civ. P. 12(f), and that § 107 is a codification of
16 Nixon's recognition of the common law presumption of public access,
17 subject to exceptions only when court filings are used for improper
18 purposes).

19 Examples of improper purposes include "gratifying public spite,
20 promoting public scandal, and using court files as 'reservoirs of
21 libelous statements for press consumption.'" Gitto Global Corp., 422
22 F.3d at 12 (quoting Nixon, 435 U.S. at 598). As the court noted, "[a]s
23 is the case under [Fed. R. Civ. P.] 12(f), these bases for removing
24 material from the public eye focus not just on the impact of the material
25 on a person's reputation, but also on the role of the material in the
26 court records." Id.

1 The Eighth Circuit considered a claim that material in court records
2 was "scandalous" under § 107(b)(2), and reached a conclusion consistent
3 with the First Circuit in Gitto Global Corp. A person seeking to prevent
4 public access to documents filed under seal in the bankruptcy court "must
5 show more than injury to reputation[.]" In re Neal, 461 F.3d 1048, 1053
6 (8th Cir. 2006). In addition,

7 the court must also look to the role of the material in the
8 court records. "[T]he purpose of including material in a paper
9 filed with the court should inform the inquiry into whether
10 that material falls within the § 107(b)(2) exception." The
11 question for the court then becomes "whether a reasonable
12 person could alter their opinion of Defendants based on the
13 statements therein, taking those statements in the context in
14 which they appear."

15 Id. at 1054-55 (citations omitted).

16 Matter is "scandalous" if it "improperly casts a derogatory light on
17 someone[.]" 5C Wright and Miller, § 1382 at 465 (discussing Fed. R. Civ.
18 P. 12(f), which allows the court to strike scandalous allegations from
19 pleadings). "It is not enough that the matter offends the sensibilities
20 of the objecting party if the challenged allegations describe acts or
21 events that are relevant to the action." Id. (footnote omitted). Thus,
22 material that casts a derogatory light on someone is not kept out of the
23 public eye if it supports and is relevant to a claim for punitive
24 damages. Id.

25 Therefore, in order to keep the court documents at issue in this
26 case sealed,¹⁵ the parties seeking to prevent public access must show not

27 ¹⁵ The cases do not apply a different standard for documents or
28 materials that were filed under seal than for those that were sought to
(continued...)

1 only that the materials are likely to cause a reasonable person to alter
2 his or her opinion of the person who is the subject of the materials, but
3 also that they contain material that is either untrue, or potentially
4 untrue and either irrelevant or included in the record for improper
5 purposes.

6 Assuming for purposes of this analysis that documents that contain
7 or relate to accusations of child sexual abuse have the potential to
8 cause a reasonable person to alter his or her opinion of the accused
9 clergy, the question is whether the use of the documents in the court
10 record is improper. That requires a determination of whether the
11 information contained in the documents filed with the court has either
12 been shown to be untrue or is "potentially untrue and irrelevant or
13 included within a bankruptcy filing for an improper end[,]" Gitto Global
14 Corp., 422 F.3d at 14, including "gratifying public spite, promoting
15 public scandal, and using court files as 'reservoirs of libelous
16 statements for press consumption.'" Id. at 12 (quoting Nixon, 435 U.S.
17 at 598).

18 I must first address the argument of a religious order, referred to
19 as "the P," that documents it produced in earlier litigation relating to
20 Fr. Perone, which are included as an exhibit to the document filed in
21

22 ¹⁵(...continued)

23 be sealed after the fact. In Neal, the list of creditors at issue had
24 originally been filed under seal. Given the strong policy codified in
25 § 107(a) of allowing public access to court records, and the fact that
26 the protective order in this case was a stipulated blanket order that did
not include a court finding of good cause for protection, I conclude that
applying the standard set out in Gitto Global Corp. and Neal is
appropriate.

1 bankruptcy court, should be protected. Because the documents relating to
2 Fr. Perone in dispute here were filed in the court records, those
3 documents are not subject to the good cause standard for protection under
4 Fed. R. Civ. P. 26(c), but instead are subject to the same standard for
5 protection as other documents filed under seal. The fact that they
6 originated with "the P" rather than with the Archdiocese is, in this
7 situation, irrelevant.

8 Turning to the question of whether to lift the seal on Docket #4765
9 and 4766, I first note that, of all the clergy discussed in Olson's
10 memorandum and for whom she attached exhibits to her declaration, all but
11 two have already had documents relating to them posted on or been named
12 on the public website. Therefore, they have already been associated with
13 the priest child sexual abuse scandal.

14 The first question is whether the material filed with the court is
15 untrue. There has been argument that some of the information contained
16 in documents filed under seal did not result in claims being filed
17 against the accused clergy, and that some of the clergy deny any
18 allegations of abuse contained in those documents. However, there has
19 been no showing that the information in the exhibits filed under seal is
20 untrue.

21 Although it is possible that the accusations that appear in the
22 filed documents are untrue, there is no dispute that the accusations were
23 made. Because the accusations themselves could potentially be untrue, I
24 need to determine whether the materials containing those accusations were
25 irrelevant or included in the filing for an improper purpose. That
26 determination is made as of the time the documents were filed with the

1 court, not some later date such as the date when claimants sought to make
2 them public. To hold otherwise would afford different treatment to
3 motions to allow a document to be filed under seal and motions to unseal
4 documents. See n.15, supra.

5 The parties who oppose lifting the seal argue that the material was
6 irrelevant because the particular clergy involved were not the subjects
7 of claims in bankruptcy court. But the purpose of the filing was to
8 support an argument for punitive damages, to which the Archdiocese's past
9 pattern and practice of response to allegations of child sexual abuse by
10 clergy was relevant. Thus, documents that relate to allegations of abuse
11 and of the Archdiocese's response to those allegations are relevant.

12 With very limited exceptions, I conclude that the material included
13 in the filed documents was relevant. I discussed in Part 2.A. above what
14 I consider to be relevant for purposes of this case, and what types of
15 personal information I will require the tort claimants to redact from the
16 documents produced in discovery. To the extent that the same information
17 is contained in the filed documents, the tort claimants shall redact that
18 information before the filed documents are unsealed.

19 In particular, one of the exhibits to Olson's declaration, Exhibit
20 40A, is a list of accused priests that was compiled by counsel from a
21 number of sources. Some of the clergy named on that list have not
22 previously been publicly identified. The tort claimants shall redact
23 from Exhibit 40A and any other place they appear in the filed documents
24 the names of any priests who are listed on Exhibit B.

25 The parties opposing release of the seal also argue that the various
26 tort claimants want the documents to be made public for improper

1 purposes, such as punishing the Archdiocese, spreading negative publicity
2 about the clergy and the Archdiocese, or merely for marketing purposes.

3 I have reviewed the documents that were filed under seal. They
4 relate to the issue of punitive damages, which was before the district
5 court judge who was estimating the claims for purposes of voting on the
6 proposed plan of reorganization. The Archdiocese's pattern and practice
7 of responding to allegations of child sexual abuse was relevant to the
8 punitive damages issue in the estimation. I find no indication that the
9 materials were included in the bankruptcy filing for any purpose other
10 than to support the claims for punitive damages. That purpose is not an
11 improper end. Therefore, I will order Docket #4765 and 4766 to be
12 unsealed, subject to the redactions I discussed above.

13 Further, in order to be consistent with Judge Hogan's arbitration
14 decision and to assure no interference with pending litigation,
15 information relating to Fr. B and Thomas Laughlin contained in the filed
16 documents shall not be released until the pending litigation against
17 those two individuals is completed.

18 C. Deposition transcripts

19 The various tort claimants also seek to make publicly available
20 transcripts of depositions of Thomas Laughlin, Archbishop Levada,
21 Auxiliary Bishop Steiner, Fr. Leinert, and Fr. Peri. It does not appear
22 that these deposition transcripts are covered by the protective order.
23 If they are, no party has stated an opposition to their release to the
24 public, or shown good cause to continue any protection if it exists. I
25 conclude that, if the deposition transcripts are covered by the
26 protective order, the protective order is lifted with regard to them.

1 If, however, there are references in the transcripts to persons listed on
2 Exhibit B, those references shall be redacted.

3 There may be a dispute about exhibits used in the depositions of
4 Archbishop Levada, Fr. Leinert, and Fr. Peri. I have reviewed the
5 exhibits, which I assume were produced subject to the protective order.
6 The question is whether there is good cause to continue to protect them
7 from public view.

8 There is no good cause shown to protect the exhibits used in the
9 deposition of Archbishop Levada. They may be released. As for the
10 exhibits used in the deposition of Fr. Leinert, they may be released,
11 with the requirement that the names and addresses of Fr. Perone's family
12 members contained in the two pages of Exhibit 3 that are at issue be
13 redacted. There were no exhibits at issue with regard to Auxiliary
14 Bishop Steiner.

15 I have also reviewed the exhibits connected with the deposition of
16 Fr. Peri. The portions of Exhibits 1 and 9 that were provided to the
17 court may be released. The portions of Exhibit 3 that were provided were
18 never referred to in the deposition, and they include some material that
19 is irrelevant to allegations of child sexual abuse and some that is of a
20 private nature, such as psychological reports on a priest. The portions
21 of Exhibit 3 provided to the court shall not be released.

22 Release of the deposition of Thomas Laughlin will be stayed until
23 the pending litigation against him in district court is resolved.

24 CONCLUSION

25 To the extent relevant and with redactions of certain personal
26 information, I will lift the protective order on most of the documents

1 the tort claimants seek to release. Attached to this opinion is Exhibit
2 A,¹⁶ which shows my decision with regard to each of the disputed
3 discovery documents. The parties shall redact the indicated irrelevant
4 and private information before releasing any of the documents to the
5 public. Exhibit B, filed under seal, includes the names of the clergy
6 for whom I will not lift the protection. The protective order shall
7 continue for all documents relating to Fr. B and Thomas Laughlin until
8 the pending district court litigation against them is resolved, at which
9 point the protective order will be lifted and the documents indicated for
10 release on Exhibit A may be released.

11 The tort claimants may release the deposition transcripts and
12 exhibits listed above, subject to the redactions I have indicated.
13 Release of the transcript of Thomas Laughlin's deposition shall be stayed
14 until the pending district court litigation against him is resolved.

15 I will lift the seal on Docket #4765 and 4766, subject to the
16 redactions discussed above.

17 My order lifting the protective order, lifting the seal on the filed
18 documents, and allowing the release of the deposition transcripts and
19 exhibits shall be stayed 30 days from the date of entry of the order in
20 this matter, to allow the parties time to file any notice of appeal and
21 to seek a stay of document release pending appeal.

22 Counsel for the tort claimants should submit the order.

23 ###

24
25 ¹⁶ As I explained above, Exhibit A will be filed under seal for at
26 least 30 days to allow an appeal and any motion for stay pending appeal
to be filed and resolved.

Documents

Files Posted 1-8-09

[Judge Hogan's Order](#)

- | | | |
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| • Fr Goodrich PART 1 | • Fr Goodrich PART 2 | • Fr Goodrich PART 3 |
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[Judge Hogan's Order](#)

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|-------------------------------|--------------------------------------|---------------------------------|
| • Fr Bucher | • Fr Ghilardi | • Fr Grammond |
| • Fr Jacobson | • Fr Orso-Manzonetta | • Fr Rodakowski |
| • Fr Ronan | • Fr Senko | • Fr Thielen |

Files Posted 4-15-08

[Statement of Archbishop John G. Vlazny](#)

- | | | |
|---|---|---|
| • BOYLE (PD 0385-0443).pdf | • CHAVEZ(PD 0444-0542).pdf | • DUFFY (PD 0543-0559).pdf |
| • DURAND PART 1 of 4(PD 0560-0659).pdf | • DURAND PART 2 of 4(PD 0660-0709).pdf | • DURAND PART 3 of 4(PD 0710-0759).pdf |
| • DURAND PART 4 OF 4(PD 0760-0858).pdf | • GRAMMOND PART 1 OF 5(PD 0859-0952).pdf | • GRAMMOND PART 2 OF 5(PD 0952-1044).pdf |
| • GRAMMOND PART 3 OF 5(PD 1045-1127).pdf | • GRAMMOND PART 4 OF 5(PD 1128-1227).pdf | • GRAMMOND PART 5 OF 5(PD 1228-1323).pdf |
| • HARRIS PART 1 OF 2(PD 1324-1395).pdf | • HARRIS PART 1 OF 2(PD 1396-1467).pdf | • MACNAUGHTON PART 1 OF 3(PD 1468-1540).pdf |
| • MACNAUGHTON PART 2 OF 3(PD 1541-1613).pdf | • MACNAUGHTON PART 3 OF 3(PD 1614-1683).pdf | • MCLEOD(PD 1913-1981).pdf |
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