

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

JOHN DOE B.P.,

PLAINTIFF,

vs.

FATHER MICHAEL TIERNEY, et al.,

DEFENDANTS.

Case No. 1016-CV-29995

DIVISION 7

**MOTION TO QUASH AND FOR PROTECTIVE ORDER**  
**REGARDING DEFENDANT FATHER MICHAEL TIERNEY'S**  
**SUBPOENA DIRECTED TO DAVID CLOHESSY**

COMES NOW the undersigned counsel for David Clohessy, and hereby moves this Court for an Order quashing the subpoena of David Clohessy pursuant to Rule 57.09 of the Missouri Rules of Civil Procedure. Mr. Clohessy adopts and incorporates herein by reference the reasons contained in the Motion for Protective Order and to Quash filed by Plaintiff John Doe B.P. On behalf of Mr. Clohessy and The Survivors Network of those Abused by Priests ("SNAP") organization for which he works, the following additional objections are asserted:

1. SNAP is foremost a support group serving victims across the nation who have been sexually abused by clergymen. SNAP has been in existence for 23 years, and Mr. Clohessy has been the director of this organization for 22 of those years. SNAP has assisted at least 20,000 victims and family members in that time. SNAP's assistance to sexual abuse victims includes, *inter alia*, advocacy, direct counseling, and counseling through support group meetings.

2. This assistance is necessarily confidential—SNAP has always maintained the strict confidentiality of all communications with any person seeking support or guidance.

3. The individuals who contact SNAP include victims of sexual abuse or family

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members of these victims, and the information they share is highly private, sensitive, and damaging. Revelation of their stories and identities would be extremely disruptive to these individuals—especially if their stories are now going to be the property of a priest accused of sexual misconduct and his lawyers.

4. Forced revelation of their identities and information to Father Michael Tierney (hereinafter sometimes referred to as “Fr. Tierney”) and his lawyers would also significantly hinder SNAP’s future efforts at helping victims of sexual abuse because it would undermine the organization’s credibility among those who would entrust the organization with these highly personal and painful reports of abuse. This includes not only sexual assault victims, but non-victim witnesses and whistleblowers. SNAP is regularly contacted by people who are aware of or suspect sexual abuse but wish to remain anonymous. These people include siblings, spouses, family friends, co-workers, neighbors, schoolmates and a host of others. Forced revelation of the communications of these non-victim witnesses and whistleblowers, as called for under Fr. Tierney’s subpoena, would also substantially undermine SNAP’s ability to gather critically important information that is necessary to assist victims.

5. Fr. Tierney’s notice requests Mr. Clohessy to bring eight (8) categories of documents, including:

1. Any documents or correspondence, including but not limited to electronic mail, that mention or refer to Father Michael Tierney or the Diocese of Kansas City-St. Joseph;
2. Any press releases or drafts of press releases that mention Father Michael Tierney or the Diocese of Kansas City-St. Joseph;
3. Any correspondence to or from members of the press that mentions or refers to Father Michael Tierney or the Diocese of Kansas City-St. Joseph;
4. Any correspondence to or from Rebecca Randles that mentions or refers to Father Michael Tierney or the Diocese of Kansas City-St. Joseph;

5. Any correspondence, including but not limited to electronic mail, to or from members of the public (including plaintiffs in any litigation), that mentions or refers to Father Michael Tierney or the Diocese of Kansas City-St. Joseph;

6. Any documents or correspondence, including but not limited to electronic mail, that mention or refer to any priest currently or formerly associated with the Diocese of Kansas City-St. Joseph;

7. Any correspondence, including but not limited to electronic mail, to or from [John Doe BP] of Kansas City, Missouri.

8. Any correspondence, including but not limited to electronic mail, to or from members of the public that discuss or relates to repressed memory.

6. All eight (8) requests are generally unduly burdensome for the following reasons:
- a. They are not limited in time, requiring Mr. Clohessy to obtain and review more than a decade of correspondence, literally thousands of documents, a project that will require a great deal of time and expense;
  - b. They are hopelessly overbroad. Mr. Clohessy and SNAP have advocated on behalf of victims of the Diocese of Kansas City-St. Joseph for a decade or more. Many of these requests seek "all correspondence" that merely mention the name "Diocese of Kansas City-St. Joseph." This request is therefore targeting thousands of documents;
  - c. They trample the privacy interest of countless third-parties that have corresponded with Mr. Clohessy and SNAP over the years;
  - d. They seek information that is covered by the attorney-client privilege and the work product doctrine;
  - e. They would require SNAP to violate RSMo. § 455.003 which prohibits persons employed by or volunteering services to a rape crisis center for victims of sexual assault from testifying concerning any confidential

information unless confidentiality has been waived in writing by the person served by the center. Rape crisis centers are defined under RSMo. § 455.003 as “any public or private agency that offers assistance to victims of sexual assault.” Clearly, SNAP meets this definition;

- f. They are punitive in nature, and seek to create a financial burden upon Mr. Clohessy and SNAP to deter the group from exercising its First Amendment right to speak publicly about matters of great importance—namely, the recurring sexual abuse scandal that is plaguing the Diocese of Kansas City–St. Joseph;
- g. They do not appear to seek any relevant evidence to the above-captioned case. It is not obvious how press releases or e-mails that mention the Diocese of Kansas City–St. Joseph, Fr. Tierney, or repressed memory would tend to prove or disprove Fr. Tierney’s liability or the plaintiff’s damages; and
- h. Given that they seek irrelevant information, this subpoena represents an abuse of process on the part of Fr. Tierney—the use of legal process to accomplish an improper purpose.

7. The seventh request violates an order entered in the instant case that forbids Fr. Tierney and his attorneys from purposefully revealing the identity of the plaintiff. If Fr. Tierney and his attorneys are willing to violate that order, then it is also likely they will also be willing to publish the private facts about the countless sex abuse victims that SNAP and Mr. Clohessy have sought to assist.

8. The eighth request is completely overbroad. It requests all documents of any kind

from any person from the beginning of time. It requires production of the identities of sexual assault victims, witnesses, and whistleblowers with the only limitation being that the information discusses or relates to repressed memory. It is also hopelessly vague regarding what is meant by "repressed memory."

9. Finally, there has been no showing that the order regarding pretrial publicity has been breached, and until such a showing is made, it seems premature to engage in this scope of discovery by Fr. Tierney. If the subpoena is not quashed outright, Mr. Clohessy suggests that pursuant to Rule 56.01(c), the Court order that his deposition not occur until such time that Fr. Tierney can demonstrate that he has been prejudiced as a result of a breach of such an order, and that no deposition duces tecum occur until after the party depositions occur.

10. For these reasons, the subpoena should be quashed in its entirety. On behalf of SNAP and the people the organization has served for years, Mr. Clohessy asks the Court to stop Fr. Tierney from engaging in a highly damaging, expensive, and irrelevant fishing expedition that will emotionally scar countless victims of sexual abuse all over again. He asks the Court to stop Fr. Tierney from using the subpoena power to silence SNAP by saddling SNAP with the costs of complying and defending against an improper subpoena, and by deterring future victims of priest abuse from contacting SNAP for fear that an accused priest might discover and expose the most painful experiences of their lives. He asks the Court to uphold the First Amendment rights of SNAP to speak out on matters of public importance without fear of litigation and abusive use of the tools of discovery.

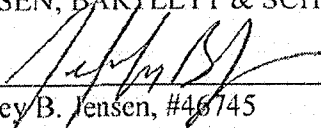
WHEREFORE, David Clohessy prays this Court enter its Order and Judgment as follows: (1) quashing Fr. Tierney's subpoena of David Clohessy; (2) issuing a protective order to prevent the deposition of Mr. Clohessy until such a deposition becomes relevant; (3) awarding

to David Clohessy his attorneys' fees and costs incurred in connection with this motion; and (4) for such other and further relief as this Court deems just and proper in the premises.

Respectfully Submitted,

JENSEN, BARTLETT & SCHELP, LLC

By:

  
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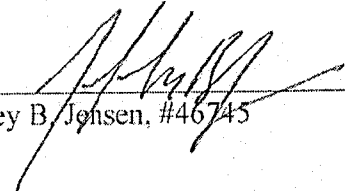
CERTIFICATE OF SERVICE

I hereby certify that this 14<sup>th</sup> day of November, 2011, a true and correct copy of the above and foregoing was served by First Class Mail, postage prepaid, to:

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