



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

JOHN DOE BP,

Plaintiff

v.

FATHER MICHAEL TIERNEY, et al.

Defendants

CASE NOS 1016-CV-29995
1116-CV-20233
1116-CV-30296
1116-CV-31555
1116-CV-17932

DIVISION 7

ORDER

On this 20th day of April, 2012, the Court took up for consideration motions filed by the parties including Defendants' Motion to Compel Answers to Deposition Questions and to Produce Documents and Motion for a Protective Order for the Documents in the David Clohessy Deposition. The parties appeared by counsel. Based on a review of the pleadings, argument of counsel, and applicable legal authorities, the Court enters the following findings and orders:

Findings

- a) Defendants affirm to the Court that they are not seeking the names or other identifying information of individuals who may have been in contact with SNAP except as it relates to plaintiffs in the ongoing litigation against the K.C.-St. Joseph Diocese.
- b) Defendants are not now seeking the names of the members of SNAP.
- c) There is no attorney-client privilege applicable to the communications between SNAP and attorneys for Plaintiffs or Defendants.

d) It is premature to determine whether SNAP is subject to the provisions of the Missouri Rape Crisis Center legislation, R.S. Mo. 455.003, therefore the Court will apply the provisions of the legislation in crafting its Order.

e) The constitutional protections concerning Freedom of the Press are designed to protect the press. It is a limited protection. A significant factor to consider is whether alternative sources of information are available from which to discover the privileged information. See *State ex rel Classic III Inc. vs. Ely*, 954 S.W.2d 650, 656 (Mo. Ct. App. 1997); *U.S. v. Culhbertson*, 630 F. 2d 139, 148 (3d. Cir. 1980), cert denied, 449 U.S. 1126 (1981). The protection does not extend to SNAP an agency that would be defined as one of the “alternative sources” from which information could be obtained.

f) By prior court order, Brendan Donelon is to act as the repository of SNAP documents.

Orders

1) **Motion to Compel Answers to Deposition Questions and to Produce Documents:**

The deposition of David Clohessy taken in January, 2012, was unsealed by prior order of the Court. To the extent specific questions or areas of questioning seek information which either party believes should be considered confidential, the deposition may be identified as Confidential, subject to further motions and orders of the Court.

a) Plaintiffs are ordered to prepare and produce a detailed privilege log which clearly defines the nature of the document to which each objection is made, and the basis of any claimed privilege or protection, including, but not limited to attorney-client privilege, work product protection or “freedom of the press” protections.

b) Documents produced by SNAP as to which Plaintiffs or SNAP claim confidentiality shall be produced subject to a Protective Agreement entered into by the parties as approved by the Court.

c) The names and personally identifiable information about individuals whose names appear in SNAP records are to be deleted.

d) Notwithstanding the above, documents identifying any of the plaintiffs in the Tierney litigation shall be produced without deletions.

e) If and to the extent the Defendants in litigation other than the Tierney cases are authorized by Court order to have access to these records, the orders of those Courts shall define the conditions under which those records are received.

f) In light of the statements that SNAP has not searched for records of at least some individual Plaintiffs, SNAP is ordered to make such a search before responding to discovery requests stating that there are no such records.

g) Defendants have identified eight categories of information as to which they seek discovery from David Clohessy. The Court orders that the following categories of information are subject to discovery from Mr. Clohessy:

Category 1—documents that refer to the Diocese of K.C.-St. Joseph re sexual and other misconduct of priests and other claims.

Category 2—press releases or drafts of press releases that mention Tierney or the Diocese of K.C.-St. Joseph.

Category 3—correspondence to and from the press that mention or refer to Tierney or the Diocese of K.C.-St. Joseph re sexual misconduct and other misconduct of priests..

Category 4—correspondence to or from Randles that mention or refer to Tierney or the Diocese of K.C.-St. Joseph. To the extent counsel claims work product protection, Plaintiffs shall provide a detailed privileged log as specified elsewhere in this order.

Category 5—emails to and from members of the public and plaintiffs that mention or refer to Tierney or the Diocese of K.C.-St. Joseph re sexual misconduct and other claims.

Category 6—documents or correspondence that mention or refer to any priest currently or formerly associated with the Diocese of K.C.-St. Joseph re sexual conduct and related claims.

Category 7—correspondence to or from John Doe B.P.

Category 8—correspondence to or from members of the public that discusses or relates to repressed memory in conjunction with cases involving the Diocese of K.C.-St. Joseph.

2) Motion for a Protective Order For Documents in the David Clohessy Deposition is granted.

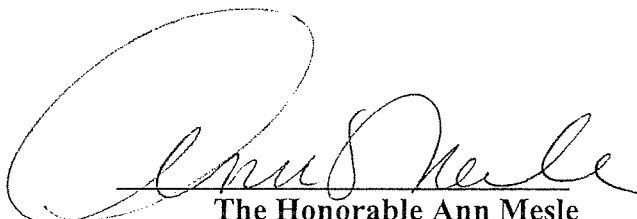
Proposed protective order submitted by Defendants is approved, subject to the modifications and provisions set forth herein, specifically that names and personally identifiable information about all individuals, other than the Plaintiffs in the Tierney litigation, whose

names appear in SNAP records are to be deleted. Further, to the extent the courts in non-Tierney litigation involving the Diocese and priests who served in the Diocese are subject to relations as determined by those courts.

Parties in litigation not involving Tierney who were cross-noticed for the SNAP deposition are to file applicable pleadings with the courts in which their cases are pending.


IT IS SO ORDERED.

4-23-2012
Date


The Honorable Ann Mesle
Circuit Court Judge

I certify that copies were distributed on
this 23rd of April, 2012 to:

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