

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

JOHN DOE B.P.)	
)	
Plaintiff)	Case No. 1016-CV29995
v.)	
)	Div. 7
FATHER MICHAEL TIERNEY, et al.)	
)	
Defendants.)	

**FATHER MICHAEL TIERNEY'S
SUGGESTIONS IN OPPOSITION TO MOTIONS TO QUASH
AND FOR PROTECTIVE ORDER REGARDING SUBPOENA
ISSUED TO DAVID CLOHESSY**

Introduction

Defendants Father Michael Tierney and the Diocese of Kansas City-St. Joseph have been vilified in the press by SNAP, a victims' advocacy group. SNAP routinely holds press conferences and issues press releases in Kansas City announcing lawsuits filed against Father Tierney and the Diocese – referring to Father Tierney as a “predator” and “pedophile” and seeking the imprisonment of the Bishop of the Diocese. Plaintiff's counsel, in violation of this Court's prior Order precluding extrajudicial statements, has assisted SNAP in issuing press releases that prejudice both Father Tierney and the Diocese. The offending press releases were either posted by David Clohessy or reference David Clohessy as a SNAP contact person. Mr. Clohessy's deposition is directly relevant to the issues in this case, including whether plaintiff's counsel has violated this Court's prior Order precluding extrajudicial statements.

Mr. Clohessy's Deposition Testimony is Relevant to This Court's Prior Order Regarding Extrajudicial Statements.

On July 7, 2011, defendant Father Michael Tierney filed a motion under Mo. Ct. Rule 4-3.6 to prevent plaintiff counsel from trying this case and other cases against defendants in the press through SNAP. Mo. Ct. Rule 4-3.6 provides as follows:

A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

This Court entered an Order on August 2, 2011 (Exhibit A) indicating that press releases by plaintiff counsel and SNAP that referred to Father Tierney with such descriptive language as "predator" and "pedophile" were meant to vilify Defendant Tierney in the mind of the public and potential jurors – thus jeopardizing a fair trial in this matter. The Court Order states as follows:

Counsel for the parties in this litigation shall not make, induce or assist any other person to make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing the trial in this matter; Counsel shall not make any statement for public dissemination that impugns or disparages the character, credibility or reputation of a party or disclose any information that is likely to be inadmissible as evidence in trial but that, if disclosed, will create a substantial risk of interfering with an impartial trial. Counsel shall not induce or assist another to make a statement prohibited by this order.

(Exhibit A) (emphasis added).

On October 20, 2011 at 8:14 a.m. SNAP issued a press release announcing a fourth lawsuit against Father Tierney and the Diocese, styled *John Doe SB2 vs. Tierney et al.* (Exhibit B). The press release refers to Father Tierney as a "predator priest who still walks free now." (Exhibit B at p. 1). The press release also references the Bishop, who heads the Diocese, and states that "he [should] spend some time behind bars if he's convicted or pleads guilty." (Exhibit

B at p. 2). The press release goes on to state that 22 Kansas City Catholic priests stand accused of molesting kids. (Exhibit B at p. 2). In addition, the press release lists David Clohessy as a contact person for SNAP, providing his e-mail and cell phone number. (Exhibit B at p. 2).

The attached press release was sent via e-mail from a *Kansas City Star* reporter to the Diocese on October 20, 2011 at 10:55 a.m., requesting a response from the Diocese. (Exhibit B at p. 1). That same day, October 20, 2011, the *Kansas City Star* ran a story regarding the fourth lawsuit against Fr. Tierney and the Diocese. (Exhibit C). The news story outlines allegations from the press release about alleged sexual misconduct committed by Fr. Tierney. The undersigned counsel for Father Tierney declined comment to the *Kansas City Star* based upon this Court's prior Order. (Exhibit C).

The lawsuit mentioned in the October 20, 2011 SNAP press release, *John Doe SB2*, was not filed with this Court until 2:44 p.m. on October 20, 2011 – more than six hours after the SNAP press release was issued. (Exhibit D). There is simply no way that the SNAP press release was made without the assistance of plaintiff counsel since the lawsuit was publically filed hours AFTER the press release was issued.

A second SNAP press release regarding Father Tierney and the Diocese was made on November 8, 2011 regarding a fifth case against Fr. Tierney and the Diocese, styled *John Doe 101 vs. Tierney et al.*. (Exhibit E). The press release details more allegations of sexual misconduct against Fr. Tierney and provides contact numbers for plaintiff counsel, including her cell phone number. (Exhibit E at p. 2). The press release was posted by David Clohessy. (Exhibit E at p. 1). Again, this press release was made BEFORE the lawsuit it discusses was even filed. The Diocese received the press release on November 8, 2011 at or before 11:12 a.m.

(Exhibit E). The *John Doe 101* lawsuit was not filed with this Court until 1:28 p.m. on November 8, 2011, hours after the SNAP press release was issued. (Exhibit F).

It appears as though plaintiff counsel is directly involved with the attached SNAP press releases. SNAP could not detail allegations from lawsuits that weren't even filed at the time of the press releases without plaintiff counsel assistance. A conclusion can be drawn from the timing of the press releases and the filing of the lawsuits that Plaintiff counsel and SNAP are working in concert to vilify Father Tierney and the Diocese in the media. Defendants are entitled to discovery on the working relationship between SNAP and plaintiff counsel.

This Court's August 2, 2011 Order specifically precludes plaintiff counsel from assisting SNAP or anyone else in making extrajudicial statements that will prejudice the trial in this matter or would create a substantial risk of interfering with an impartial trial. The Order further precludes counsel from assisting SNAP or anyone else in making public statements that impugn or disparage the character, credibility, or reputation of Father Tierney or the Diocese. The attached press releases and plaintiff counsel's assistance with those press releases violate this Court's prior Order. The first press release (Exhibit B) specifically refers to Father Tierney as a "predator" in direct violation of this Court's prior Order which stated that descriptors such as "predator" were meant to vilify Father Tierney. The second press release (Exhibit E) doesn't even hide plaintiff counsel involvement – it provides plaintiff counsel contact information, including her cell phone number. Both press releases disparage Fr. Tierney and the Diocese, calling for the Bishop of the Diocese to spend time behind bars and also stating that 22 other priests in the Diocese stand accused of sexual misconduct.

Plaintiff counsel's actions in assisting SNAP with the attached press releases have made it difficult, if not impossible, for Father Tierney and the Diocese to receive a fair trial here. There

can be no question that the press releases were meant for public dissemination – as evidenced by the fact that one of the releases came directly from a *Kansas City Star* reporter. (Exhibit B). This Court gave fair warning to counsel that such conduct would not be tolerated – that this case and others against Fr. Tierney and the Diocese were not to be tried in the press. The press releases here and plaintiff counsel’s obvious contributions to such press releases warrant serious action by this Court— and defendants are entitled to discovery on plaintiff counsel’s involvement with the attached press releases

Mr. Clohessy’s Deposition Testimony Is Relevant to Issues of Repressed Memory.

Plaintiff in this case alleges sexual misconduct against Father Tierney that occurred forty years ago. In order to evade the statute of limitations, plaintiff alleges that he repressed memory of the misconduct until recently. There are now five similar lawsuits filed against Father Tierney and about twenty lawsuits filed against the Diocese in Jackson County, Missouri. All five cases against Father Tierney allege repressed memory and nearly all of these cases against the Diocese allege repressed memory. SNAP, through Mr. Clohessy, could be routinely advising plaintiff and others to claim repressed memory to evade the statute of limitations. Defendants are entitled to discovery on that issue. In addition, the plaintiff in this case and others against Fr. Tierney and the Diocese may have corresponded with SNAP prior to the alleged recovery of their memory, and defendants should be entitled to such correspondence to refute the claim of repressed memory.

Mr. Clohessy’s Deposition Testimony Will Not Infringe Upon First Amendment Rights.

It is ironic that SNAP, a group that routinely issues press releases about alleged victims of clergy sexual abuse, now claims that it is entitled to confidentiality. SNAP is not comprised of lawyers – there is no attorney client or work product privilege that applies to correspondence

with SNAP. SNAP has seen fit to make public statements about this case and these defendants, and defendants should be permitted to inquire about such public statements and information upon which SNAP has based such public statements.

Mr. Clohessy's Testimony is Relevant, and the Deposition Subpoena is not Unduly Burdensome or Overbroad.

Defense counsel anticipates that lawyers for other priest defendants in the Diocese will cross-notice Mr. Clohessy's deposition on December 8th, so that Mr. Clohessy need not sit for multiple depositions. The documents requested at the deposition are narrowly tailored to the issues in this case and others filed against Father Tierney and the Diocese. Defendants request documents referencing Father Tierney or the Diocese, including press releases and correspondence with the press and correspondence with plaintiff counsel regarding Father Tierney or the Diocese. (Subpoena Items 1-5). These categories go directly to the issue of whether there has been a violation of this Court's prior Order. Defendants also request any correspondence to or from the plaintiff in this case – which is surely directly relevant here. (Subpoena Item 7). Defendants also request information regarding any priest currently or formerly with the Diocese in anticipation that other priest defendant attorneys would cross-notice this deposition. (Subpoena Item 6). Finally, the subpoena requests information regarding repressed memory—an issue that is directly relevant to this case and others currently filed against Father Tierney and the Diocese. (Subpoena Item 8). There is no fishing expedition here – the requested documents are directly relevant to this case and these defendants.

Mr. Clohessy's Deposition Testimony Does Not Seek to Compel SNAP to Violate Missouri Law Regarding Confidentiality.

If SNAP wanted to protect the confidentiality of those who contact SNAP, it should not be in the habit of issuing press releases and holding press conferences about cases such as this

one. Mr. Clohessy asserts that Mo. Rev. Stat. Section 455.003, which applies to rape crisis centers, protects him from disclosing information. SNAP is not a rape crisis center. Mo. Rev. Stat. Section 455.003 requires rape crisis centers to maintain confidentiality of any information related to the advocacy services it provides. SNAP does not maintain such confidentiality – in fact it issues press releases regarding persons for whom it advocates, including press releases that identify the alleged victims' identity. (Exhibits B and E). For example, SNAP issued a press release against Fr. Tierney and the Diocese regarding a lawsuit filed by David Tate which includes David Tate's name and details about allegations of sexual abuse. (Exhibit G). This press release also identifies Mr. Clohessy as a SNAP contact person and provides plaintiff counsel's contact information, including cell phone number. (Exhibit G at p. 3). SNAP is not a rape crisis center and does not comply with the confidentiality requirements that apply to rape crisis centers, so the confidentiality provisions of Mo. Rev. Stat. Section 455.003 do not apply to Mr. Clohessy's testimony. Further, to the extent plaintiff in this case and others against Fr. Tierney and the Diocese have filed suit, any expectation of confidentiality with SNAP has been waived.

Mr. Clohessy's Deposition Should Take Place On or Before December 8, 2011.

Father Tierney noticed Mr. Clohessy's deposition for December 8, 2011 on October 27, 2011. On November 10, 2011, counsel for plaintiff indicated a conflict. (Exhibit H). Father Tierney's counsel replied that he would make any alternative date work for the deposition, so long as it was near or before December 8, 2011, but plaintiff counsel has yet to provide any alternative date. (Exhibit H). As noted above, it is anticipated that other defendants involved in similar litigation will cross-notice this deposition, so there is a need for certainty with the date so that calendars can be coordinated. Further, plaintiff counsel was given plenty of notice in

advance – more than thirty days. It is imperative that this deposition take place sooner rather than later due to the continued (almost daily) press releases issued by SNAP that appear to violate this Court’s prior Order regarding extrajudicial statements.

WHEREFORE, defendant Father Michael Tierney respectfully requests that the Court overrule the pending motions to quash and for protective order regarding the subpoena issued to David Clohessy.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States mail, postage prepaid, this 17th day of November, 2011, upon:

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