

Transparency marks Montana sex abuse lawsuit mediation

Dan Morris-Young | Mar. 28, 2013

A weeklong "global mediation" slated to begin April 15 in Seattle will seek a broad settlement for two comprehensive sex abuse lawsuits pending against the diocese of Helena, Mont., and the Ursuline Sisters.

More than 360 plaintiffs, several insurance carriers, the Helena diocese and Ursuline Sisters will be represented at the Seattle gathering to negotiate culpability and potential financial awards for sex abuse claims against priests and women religious.

Some claims date to the mid-1930s, but the bulk are from the 1950s through 1970s, attorneys said.

If the process is successful, at least two major goals would be met, attorneys for both the diocese and claimants told *NCR*. First, the diocese would avoid bankruptcy. Second, a significantly larger portion of any ultimate monetary settlement would reach claimants rather than be consumed by costly, extended legal maneuvering.

Court proceedings have been on hold for more than a year following Bishop George Thomas' pledge to open diocesan financial records, to share information from accused priests' files, and to work toward a mediated solution with plaintiffs' attorneys.

In return, diocesan attorneys have been granted limited access to claimants. In the last year, the diocesan legal team has interviewed "all but perhaps about 10" of the 360-plus claimants, said Mike Patterson, the diocese's lead attorney in the lawsuits.

Representing 270 of the plaintiffs, attorney Timothy Kosnoff lauded the diocese for "not taking a liability defense approach" and choosing instead to focus on "what actually happened, the nature of the [alleged] abuse, and the immediate and long-term impact of it" so that the diocese "could get their arms around them."

Thomas said he followed his heart in insisting the diocese focus on "the pastoral care of souls" instead of legal battles. He has offered to meet with people who say they have been sexually abused by church personnel "any time, any place." Although he has met with victims of clergy sexual abuse, no claimants in the upcoming mediation have yet asked to meet with him personally, he said.

Alluding to what he said "in the old days we called the *sensus fidelium* ('sense of the faithful')," the bishop said grass-roots response to the diocese taking the legal "road less traveled" has been gratifying.

"I have had people who recognized me on the street come up to me and say, 'Thank you, bishop,' " Thomas said.

If a global resolution is reached, "this could become the standard-bearer for how these cases are handled by the church across the country, and perhaps worldwide," Kosnoff said.

Kosnoff called the cooperation between the plaintiffs' lawyers and the diocese "unprecedented" and said he would "give the diocese an A" grade on transparency "within the parameters we agreed upon."

Blaine Tamaki, the attorney representing the more than 90 claimants in the lawsuit paired with the Kosnoff filing, is more cautious in his assessment.

"Given the number of victims of molestation, and the number of priests and nuns involved in the decades of abuse, and the stage of litigation, it is too soon to conclude how open the diocese has been to date or will be in the future," Tamaki wrote in an email.

Kosnoff's firm represented a large number of the almost 500 plaintiffs in the sex abuse lawsuit against the Society of Jesus' Oregon Province that led to the province filing bankruptcy in 2009 and a \$166 million settlement in 2011.

Kosnoff said 121 of his 270 clients in the Helena proceedings were also parties to the Jesuit settlement. Many of the claimants represented by Tamaki also took part in the Oregon Province settlement.

According to Patterson, about a fourth of the claims in the Helena suit are against members of the Ursuline order, which was long active in Montana; about 12 percent are against diocesan personnel; and the balance is "primarily Jesuit related."

Under Montana law, an individual's financial award stemming from a settlement with the Helena diocese and/or Ursulines will be offset by the amount he or she received in the Jesuit case, attorneys said.

Patterson commended Thomas for embracing mediation and transparency.

"Heretofore, the paths followed were simply not ideal for any side, certainly not for a diocese and not for the victims, nor for the attorneys who had the lawsuits prior to a bankruptcy being filed, nor for the (insurance) carriers," said Patterson, who has "been involved in a lot of these cases around the U.S." and who also represents the Seattle archdiocese.

"Unequivocally," claimants will receive a larger portion of any settlement, he said.

"I am optimistic that our groups will be able to reach a settlement number," Patterson said, "but that is only part of the equation. I do not want the anticipation that somehow this is all going to be tied up in a pretty bow at the end of the mediation."

It will take additional time, he said, to hammer out agreements with insurance carriers and others on the actual funding of a settlement, something he hoped could be "accomplished toward the end of summer."

The negotiations will be directed by Tom Harris, a mediator at Seattle-based Washington Arbitration & Mediation Service, at whose offices the scheduled series of meetings will take place.

Patterson described the ongoing cooperative framework as "a new model" for handling church sex abuse cases. However, transparency and forthrightness have characterized some other dioceses' efforts as well, according to Patrick J. Wall, an often-consulted expert on the abuse crisis.

Wall said Thomas and the Helena diocese "are following a minor church tradition" of such openness. He cited the handling of clergy sex abuse cases by the Chicago archdiocese in the 1990s under procedures established by the late Cardinal Joseph Bernardin as well as the comprehensive negotiations by now-retired Bishop Tod Brown and the Orange, Calif., diocese as examples.

In early 2005, Brown apologized to 87 alleged victims of sexual abuse and announced a settlement of \$100 million following two years of mediation.

In general, Wall indicated, the more forthcoming and transparent a diocese remains in addressing sex abuse claims, the more likely it is to reach settlements, resolve them and move on.

He predicted the Helena diocese "will be humming along like normal five years from now because the bishop has decided to take a more reasonable approach. If not, it would be in litigation for another five to 10 years."

Patterson said the outreach to potential sexual abuse victims was carried out early on by the diocese and the law firms for plaintiffs was "as thorough a vetting process as I have seen in any diocese."

He said "16 or 17" individuals who contacted the diocese about alleged past sexual abuse by a church person "for whatever reasons have not yet come forth," but that any settlement will include funding for potential future claimants.

According to diocesan spokesperson Renée St. Martin Wizeman, the current Catholic population of the diocese is 45,000 out of a total population of about 580,000. A decade ago, the diocese reported 67,693 Catholics in a general population of 509,439.

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