

Charges a clear message to church, lawyers say

Joshua J. McElwee | Oct. 21, 2011

KANSAS CITY, MO. -- In charging Bishop Robert W. Finn and the Kansas City-St. Joseph diocese each with failure to report suspected child abuse, Jackson County, Mo., prosecutor Jean Peters Baker sent a clear message to the Catholic church, and to any organization that has an obligation to protect children, say local lawyers.

Beyond Finn, beyond the diocese, say those familiar with the prosecutor's office, Peters Baker wants to send a simple message to those who work with children: Report abuse to police.

"It certainly is a message to ... any organization that deals with children and puts them in proximity with an adult about whom they have concerns," said Sean O'Brien, a former chief public defender in Kansas City. "The obligation is to report that to authorities."

In bringing charges against the diocese, Peters Baker may have wanted to signal that problems "permeated the whole process" of reporting suspected sex abuse at the chancery, said Brian Klopfenstein, who formerly served as the prosecutor for Clay County, Jackson County's northern neighbor.

Klopfenstein cited the chancery's alleged lack of attention to a May 2010 letter from Julie Hess, principal of the elementary school attached St. Patrick Parish, in which she detailed concerns about pastor Fr. Shawn Ratigan, who was later arrested on child pornography charges. "As the information gets passed up the chain of command, everybody drops the ball," Klopfenstein said.

"So it permeates the entire process," he said. "And so, if I'm the prosecutor, maybe I want to give those who are in the chain of command a black eye. That could be it."

Lawyers contacted by NCR also said the charges against Finn and diocese raise a number of legal questions.

Among the questions, they said, are whether the diocese and the bishop may be at odds with each other, as they have separate lawyers and may mount separate defense strategies.

Key to the case against Finn, several lawyers agreed, will be the definition of a mandated reporter. The charge on the indictment sheet provided by the Jackson County prosecutor's office is that Finn was "a mandated reporter and had reasonable cause to suspect a child may be subjected to abuse."

The question, lawyers said, is whether, in his role as head of the diocese, the bishop had enough information to be expected to report to the police.

Klopfenstein, who now maintains his own law practice, said that while it's not certain under exactly what circumstances Finn would be considered a mandated reporter, most legal understandings of mandated reporters are "purposefully broad."

While he couldn't say whether they would specifically cover the bishop in this case, he said they would

generally encompass anybody who is in a position of some authority and would have the responsibility of protecting kids.

In this particular case, O'Brien said, the liability facing Finn is one of omission, particularly if he was made aware of Hess' letter.

'This allegation is what's called omission liability,' said O'Brien, who now teaches at the University of Missouri-Kansas City School of Law. 'He should have notified authorities and failed to do that, in spite of a specific legal duty to do that.'

No matter the question raised by the case, one of Peters Baker's predecessors as Jackson County prosecutor said it's unlikely she would have brought the case if she didn't think she could win a conviction.

Emphasizing that he doesn't have any knowledge of the case except for what's been reported in the news, Albert Riederer, who served as Jackson County prosecutor from 1980 to 1992, said: 'My guess is ... that the facts of the case are such that the prosecutors are confident that there's a good case. They wouldn't bring it otherwise.'

And beyond whether Peters Baker is able to win convictions, Klopfenstein says she's sent a clear message to the church.

'I frankly think the Jackson County prosecutor's office is saying, 'Enough. How many agreements do you have to reach to deal with child abuse until it stops?' And maybe the prosecutor in Jackson County also wants to send a message up the chain of command of the Catholic church: 'Enough.' ?

Support independent reporting on important issues.



Source URL (retrieved on 07/26/2017 - 13:51): <https://www.ncronline.org/news/accountability/charges-clear-message-church-lawyers-say>

Links:

[1] <https://www.ncronline.org/donate?clickSource=article-end>