NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (http://ncronline.org)

Milwaukee judge keeps depositions sealed, says release won't advance bankruptcy

Maryangela Layman Roman Catholic News Service | Apr. 11, 2012

MILWAUKEE -- A U.S. bankruptcy judge ruled April 5 that the depositions of Milwaukee's retired archbishop, a Milwaukee auxiliary bishop and a former priest will remain sealed and may not be made public.

The ruling by Judge Susan V. Kelley was in response to a motion filed by Jeff Anderson and Associates, the law firm representing claimants in U.S. Bankruptcy Court for the Eastern District of Wisconsin where Kelley is presiding over the Chapter 11 reorganization of the Milwaukee Archdiocese.

At issue are the depositions of retired Archbishop Rembert G. Weakland, Auxiliary Bishop Richard J. Sklba and a former priest, Daniel Budzynski.

In denying the motion to unseal them, Kelley noted she had previously authorized "rule 2004 examinations," or depositions, which were taken last October and November, for three reasons:

-- The potential loss of evidence because of the age or infirmity of the witnesses; Weakland is 85; Sklba is 76; and Budzynski is 84.

-- The testimony would be used to value claims and determine whether they were objectionable.

-- The identifications of any additional sexual abuse survivors prior to the claims bar date to enable them to file timely claims. "Bar date" is the deadline creditors have to file against a debtor.

With that Aug. 12, 2011, ruling as background, Kelley said there was no basis to order public disclosure of the transcripts and documents now -- the depositions have been taken, the bar date has run and the archdiocese's three claim objections were heard and are on appeal.

Further, she said no benefit to advancing the archdiocese's Chapter 11 case is served by unsealing the materials, and there was the risk that even with careful redaction of the documents, identification of survivors of sexual abuse would result, requiring the court to restrict "scandalous" documents.

The documents are sealed from public view, and members of the official committee of unsecured creditors are not permitted access to the deposition transcripts and exhibits. But Kelley clarified that they are available to attorneys, including counsel for the committee.

In arguing that the documents be unsealed, Anderson said it would give the public a right to access. While he promised that all private information from the documents would be redacted and "no private data would be out there," Kelley questioned the practicality of that, agreeing with the archdiocese's argument "that there cannot be perfect redaction."

Attorney Francis LoCoco of Whyte Hirschboeck Dudek, representing the Archdiocese of Milwaukee, began his

arguments against release of the information saying, "Nothing has changed since last summer when we worked on these issues." He noted the court and attorneys had spent hours crafting a balance between the need for confidentiality and the public's right to know.

He said at the end of "a very extensive hearing," the court "set parameters, including that these depositions were to remain confidential."

LoCoco called the information in the depositions "scandalous" under federal bankruptcy rules and should not be made public. Doing so "would create an enormous distraction. It would cost enormous amounts of time and money and it would not advance the case," he said.

"Many abuse survivors live in mortal fear that their identities will be made known" if the documents were made public, he said.

With his voice breaking as he spoke, LoCoco apologized for getting emotional, but said protecting abuse survivors is a responsibility that he takes seriously.

He also called it presumptuous on Anderson's part to speak on behalf of all abuse survivors, noting that 220 individuals -- those not represented by Anderson's firm -- did not join the motion to make the depositions public.

Also arguing against the release of the depositions was James Murray, attorney for Weakland. He noted the retired prelate is not a defendant in the bankruptcy case. In 2008, when the archbishop gave a previous deposition, Murray recalled, he was open and forthcoming. Yet, despite assurances by those taking the deposition that his testimony would be held confidential, it was posted on the Internet.

Weakland would similarly be humiliated if last fall's deposition is also out there for all to consume, argued Murray, imploring the judge "not to change the rules."

In reaction to Kelley's ruling, the archdiocese released a brief statement: "We know from experience that most abuse survivors do not want to be identified and even the slight possibility of that happening creates for them great fear and anxiety.

"The unsealing of these records does absolutely nothing to advance the goals of the Chapter 11 proceeding, which is to financially reorganize the archdiocese in order to reach resolution with its creditors," it read.

Maryangela Layman Roman is managing editor of the Catholic Herald *in Milwaukee.*

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