CLERGY SEXUAL ABUSE

SELECTED SOURCES; THE CIVIL LAW

Thomas P. Doyle October 27, 2006

CIVIL LAW: BOOKS

Hamilton, Marci. GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW. New York. Cambridge University Press. 2005.

McMenamin, Robert. CLERGY MALPRACTICE. Seattle. William S. Hein. 1987.

- McMenamin, Robert and Kravlovec, William. CLERGY AND TEACHER MALPRACTICE: RECOGNITION AND PREVENTION. Seattle. Jomac Publications. 1987.
- Sutherland, Pamela K. ABUSE OF TRUST: SEXUAL MISCONDUCT BY FIDUCIARIES. A GUIDE TO LITIGATING ABUSE BY PROFESSIONALS. Charlottesville. VA. Michie. 1995.

CIVIL LAW: ARTICLES

- Aaron, Titus. "The civil liability of churches for sexual misconduct." SOCIAL JUSTICE REVIEW, 83(1992):45-47.
- Abrams, Norman. "Addressing the tension between the clergy-communicant privilege and the duty to report child abuse in state statutes." BOSTON COLLEGE LAW REVIEW, 44(2003):1127-1166.
- Ainsa, Francis S. "Permissive statute of limitation policies." THE CATHOLIC LAWYER, 36(1995):83-89.

Anonymous. Child abuse reporting statutes. LAW AND CHURCH. 4(1989):1-2.

Anonymous. (1989). Church liability for torts. LAW AND CHURCH. 5(1989):1-3

Anonymous. (1998). "Clergy malpractice and sexual harassment: A federal appeals court addresses both issues in an important ruling—*Sanders v. Casa View Baptist Church.*"

CHURCH LAW AND TAX REPORT: A REVIEW OF LEGAL AND TAX DEVELOPMENTS AFFECTING MINISTERS AND CHURCHES. 1998. (May/Jun.):3-10.

- Anderson, Jeffrey. "Gods and Monsters: Its Time for the Catholic Church to reform its sexual abuse policies." CALIFORNIA LAW BUSINESS Sept. 18, 2000.
- Arnold, John H. "Clergy sexual malpractice." UNIVERSITY OF FLORIDA JOURNAL OF LAW AND PUBLIC POLICY. 8(1996):25-49
- Aylward, Michael F. "Constitution, crime, clergy: First Amendment implications of sexual abuse claims." DEFENSE COUNSEL JOURNAL. 70(2003):196-205.
- Baker, Jr., John S. "Prosecuting dioceses and bishops." BOSTON COLLEGE LAW REVIEW, 44(2003):1061-1088.
- Ballotta, Karen Ann. "Losing its Soul: How the Cipolla Case Limits the Catholic Church's Ability to Discipline Sexually Abusive Priests." EMORY LAW JOURNAL. Fall, 1994 (43 Emory L.J. 1431).
- Brennan, John S. "The First Amendment is not the 8th sacrament: Exorcising the ecclesiastical abstention doctrine defense from legal and equitable claims for sexual abuse based on negligent supervision or hiring of clergy." THOMAS M. COOLEY JOURNAL OF PRACTICAL AND CLINICAL LAW. 5(2002):243-299.
- Brown, Kenneth C., Abramson, Mark A., & Miller, Jo A. "Shall we "prey": Liability for clergy malpractice in cases of sexual misconduct." NEW HAMPSHIRE BAR JOURNAL. 35(1994):59-67.
- Burek, Lawrence M. "Clergy malpractice: Making clergy accountable to a lower power." PEPPERDINE LAW REVIEW. 14(1986):257-137-161.
- Cafardi, Nicholas P. "Discovering the secret archives: Evidentiary privileges for church records." THE JOURNAL OF LAW AND RELIGION. 10(1993-1994):95-120.
- Carmella, Angela C. "The protection of children and young people: Catholic and constitutional visions of responsible freedom." BOSTON COLLEGE LAW REVIEW. 44(2003):1031-1060.
- Cassidy, R. Michael. "Sharing sacred secrets: Is it (past) time for a dangerous person exception to the clergy-penitent privilege?" WILLIAM AND MARY LAW REVIEW. 44(2003):1627ff.

- Chopko, Mark. "Stating claims against religious institutions." BOSTON COLLEGE LAW REVIEW. 44(2003):1089-1226.
- Chopko, Mark and Stinski, Brent. "Restoring trust and faith: human rights abuses do happen." HUMAN RIGHTS 19(1992): 22-26.
- Cornell, Ruth. "The church and the law in the Ninth Circuit concerning mandatory reporting of child sexual abuse: What the legal advocate representing a church or clergy needs to know about Ninth Circuit child sexual abuse reporting statutes." JOURNAL OF LEGAL ADVOCACY AND PRACTICE. 1(1999):137ff.
- Coughlin, John J. "The clergy sexual abuse crisis and the spirit of canon law." BOSTON COLLEGE LAW REVIEW. 44(2003):977-998.
- Deibel, David. "Saving grace: defending priests accused of sexual misconduct." SAN FRANCISCO ATTORNEY. 24(1998): 14-17.
- Doyle, Thomas and Rubino, Stephen. "Catholic Clergy Sexual Abuse meets the Civil Law." FORDHAM URBAN LAW JOURNAL. 31(January 2004). 549-615.
- Fain, Constance Frisby. "Clergy malpractice: liability for negligent counseling and sexual misconduct." MISSISSIPPI COLLEGE LAW REVIEW. 12(1991): 97-141.
- Fedje, Jill. "Liability for Sexual Abuse: The Anomalous Immunity of Churches." LAW AND INEQUALITY. 9(1990): 133-161.
- Fenton, Zanita. "Faith in Justice: Fiduciaries, Malpractice & Sexual Abuse by Clergy." MICHIGAN JOURNAL OF GENDER AND LAW. 45(2001). (8 Mich. J. Gender & L 45)
- Farrell, Christopher R. "Ecclesiastical abstention and the crisis in the Catholic Church." THE JOURNAL OF LAW AND POLITICS. 19(2003):109-143

Graziano, Sue Ganske. "Clergy malpractice." WHITTIER LAW REVIEW. 12(1991): 349-355.

- Geraghy, Michael C. "Litigating against distant insurance carriers." THE CATHOLIC LAWYER. 36(1995):91-96.
- Gunnerson, Spencer H. "Franco v. The Church of Jesus Christ of Latter-day Saints: The constitutionality of clergy malpractice claims." JOURNAL OF FAMILY LAW STUDIES. 4(2002):175ff

- Hamilton, Marci. "Religion, the Rule of Law, and the Good of the Whole: A View from the Clergy." THE JOURNAL OF LAW AND POLITICS. Vol. XVIII, No 2, Spring 2002: 387-443.
- Hamm, John Patrick. "In defense of the church." UNIVERSITY OF LOUISVILLE JOURNAL OF FAMILY LAW. 33(1995): 705-721.
- Hammar, Richard R. "A legal profile of American churches." CHURCH LAW & TAX REPORT. 10(1996):30.
- Hammar, Richard R. "Application of child abuse reporting laws to ministers and lay church employees." CHURCH LAW & TAX REPORT. 14(2000):1-9.
- Hammar, Richard R. "Application of child abuse reporting laws to ministers and lay church employees -- Part 2." CHURCH LAW & TAX REPORT. 14(2000):10-13.
- Hammar, Richard R. "Application of child abuse reporting laws to ministers and lay church employees -- The 2001 survey of state laws." CHURCH LAW & TAX REPORT. 15(2001):9-19.
- Hammersley, Faye M. "Reconciling L.L.N. v. Clauder and Pritzlaff v. Archdiocese of Milwaukee: Does this mean blanket immunity for religious organizations?" MARQUETTE LAW REVIEW 81(1998):611ff..
- Hettich, Daniel John & Dinger, Erica Lee. "They answer to a higher standard: The ethical obligations of church attorneys in sexual abuse cases." THE GEORGETOWN JOURNAL OF LEGAL ETHICS. 16(2003):635-653.
- Idleman. Scott C. "Tort liability. religious entities. and the decline of constitutional protection." INDIANA UNIVERSITY LAW JOURNAL. 75(2000):219ff.
- Jorgensen. Linda Mabus. Hirsch. Audrey B., & Wahl. Kathleen M. "Fiduciary duty and boundaries: Acting in the client's best interest." BEHAVIORAL SCIENCES AND THE LAW. 15(1996):49-62.
- Keel. J. Michael. "Law and religion collide again: The priest-penitent privilege." CUMBERLAND LAW REVIEW. 28(1997): 681ff.
- Kristjanson. Freya. 'Vicarious liability for sexual assault." CANADIAN WOMAN STUDIES. 19(1999):93-101.

- Logan. Wayne A. "Criminal law sanctuaries." HARVARD CIVIL RIGHTS CIVIL LIBERTIES LAW REVIEW. 38(2003):321-391.
- Lothstein. L.M.. "Can a sexually addicted priest return to ministry after treatment? Psychological issues and possible forensic solutions." THE CATHOLIC LAWYER. 34(1992):89-113.
- Maida. Adam J. "The selection. training. and removal of diocesan clergy." THE CATHOLIC LAWYER. 33(1990):53-60.
- Mancini. Nicholas R. "Mobsters in the monastery? Applicability of civil RICO to the clergy sexual misconduct scandal and the Catholic Church." ROGER WILLIAMS UNIVERSITY LAW REVIEW. 8(2002):193ff
- Mangold. Susan Vivian. "Reforming child protection in response to the Catholic Church child sexual abuse scandal." UNIVERSITY OF FLORIDA JOURNAL OF LAW AND PUBLIC POLICY. 14(2003):155-178.
- Mansfield. John H. "Constitutional limits on the liability of churches for negligent supervision and breach of fiduciary duty." BOSTON COLLEGE LAW REVIEW. 44(2003):1167-1180.
- Martin. Jamie. "Justice for victims? -- The sentencing of public trust figures convicted of child sexual abuse: A focus on religious leaders." ALBERTA LAW REVIEW. 32(1994):16-36.
- McKenna. Kevin E. "Confidential clergy matters and the secret archives." STUDIA CANONICA. 26(1):191-207.
- McMenamin, Robert. "Clergy Malpractice." CASES AND COMMENT. 90(1985).
- Merlino. Anthony. "Tightening the seal: Protecting the Catholic confessional from unprotective priest-penitent privileges." SETON HALL LAW REVIEW. 32(2002):655ff.
- Mitchell, Mary Hart. "Must Clergy Tell? Child Abuse Reporting Requirement Versus Clergy Privilege." MINNESOTA LAW REVIEW. 71(1987): 723-825.
- Moon. Jeffrey Hunter. "Protection against the discovery or disclosure of church documents and records." THE CATHOLIC LAWYER. 39(1999):27ff.
- Norris. Donna M. "Forensic consultation and the clergy sexual abuse crisis." THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW. 31(2003):154-157.

- Nugent. Janna Satz. "A higher authority: The viability of third party tort actions against a religious institution grounded on sexual misconduct by a member of the clergy." FLORIDA STATE UNIVERSITY LAW REVIEW. 30(2003):957-986.
- O'Brien. Richard C. "Pedophilia: The legal predicament of clergy." JOURNAL OF CONTEMPORARY HEALTH LAW AND POLICY. 4(1988):91-154.
- O'Malley. Shannon. "At all costs: Mandatory child abuse reporting statutes and the clergycommunicant privilege." THE REVIEW OF LITIGATION. 21(2002):701ff.
- O'Reilly, J.T. and Strasser, J.M. "Clergy Sexual Misconduct: Confronting the Difficult Constitutional and Institutional Liability Claims." ST. THOMAS LAW REVIEW. 7(1994): 31-73.
- Orsy. Ladislas M. "Bishops' norms: Commentary and evaluation." BOSTON COLLEGE LAW REVIEW. 44(2003):999-1030.
- Perciaccante, Marianne. "The Courts and Canon Law." CORNELL JOURNAL OF LAW AND PUBLIC POLICY. Fall 1996. (6 Cornell J.L. & Pub Pol'y 171)
- Perez. Yanet. "Constitutional law -- Free exercise clause -- Claim of sexually inappropriate conduct by clergyman during the course of pastoral counseling. in breach of the clergyman's fiduciary duty owed parishioner. could be resolved by the courts without becoming entangled in the clergyman's free exercise of religion -- *F.G. v. MacDonnell.* 150 N.J. 550. 696 A.2d 697 (1997)." SETON HALL LAW REVIEW. 28(1997):712-719.
- Philip. Ryan M. "Silence at our expense: Balancing safety and secrecy in non disclosure agreements." SETON HALL LAW REVIEW. 33(2003):845-880.
- Price. David R. & McDonald. James S.. Jr. "The problem of false claims of clergy sexual abuse." RISK MANAGEMENT. 50(2003):48-51.
- Pudelski. Christopher R. "The constitutional fate of mandatory reporting statutes and the clergycommunicant privilege in a post-*Smith* world." NORTHWESTERN UNIVERSITY LAW REVIEW. 98(2004):703ff.
- Quadrio. Carolyn. "Sexual abuse involving therapists. clergy and judiciary: Closed ranks. collusions and conspiracies of silence." PSYCHIATRY. PSYCHOLOGY AND LAW. 1(1994):189-198.

- Redmond. Sheila A. "It can't be true. and if it is. it's not our fault: An examination of Roman Catholic institutional response to priestly paedophilia in the Ottawa Valley." HISTORICAL PAPERS: CANADIAN SOCIETY OF CHURCH HISTORY. 1993:229-245.
- Reid. Brittany. "If gold rust": The clergy child abuse scandal demonstrates the need for limits to the church autonomy doctrine." MISSISSIPPI LAW REVIEW . 72(2002):865ff.
- Rosen. Lindsey. "Recent Decision section. Constitutional law -- In bad faith: Breach of fiduciary duty by the clergy -- *F.G. v. MacDonell*. 696 A.2d 697 (N.J. 1997)". TEMPLE LAW REVIEW. 71(1998):743-771.
- Ross. Karen L. "Revealing confidential secrets: Will it save our children?" SETON HALL LAW REVIEW. 28(1998):963ff
- Rubino. Stephen C. "Suffer the parents: Clergy sexual abuse of children." TRIAL. 32(1996):18-22.
- Russell. Dawn. "Paedophilia: The criminal responsibility of Canada's churches. DALHOUSIE LAW JOURNAL. 15(1992):380-427.
- Russell. Laura. "Pursuing criminal liability for the Church and its decision makers for their role in priest sexual abuse." WASHINGTON UNIVERSITY LAW QUARTERLY. 81(1994):885ff
- Sargent. Mark A. "Legal defense: When sued. how should the church behave?" COMMONWEAL. 129(2002):13-15
- Schaefer. Arthur Gross & Levine. Darren. "No sanctuary from the law: Legal issues facing clergy." LOYOLA OF LOS ANGELES LAW REVIEW. 30(1996):177-214.
- Seferian. Avedis H. & Wakley. James T. "Secrecy clauses in sexual molestation settlements: Should courts agree to seal documents in cases involving the Catholic Church?" THE GEORGETOWN JOURNAL OF LEGAL ETHICS. 16(2003):801-814.
- Serritella. James A. "Insurance coverage issues in cases of clergy misconduct." THE CATHOLIC LAWYER. 39(1999):55-79.
- Serritella, James. "Issues Related to Clergy/Church Misconduct." COVENANT PUBLICATIONS. 1990.
- Shoop. Julie Gannon. "Suffer the little children: Lawsuits target churches for sex abuse by clergy." TRIAL. 29(1993):11-13.

- Short. Emily C. "Torts: Praying for the parish or preying on the parish? Clergy sexual misconduct and the tort of clergy malpractice." OKLAHOMA LAW REVIEW. 57.(2004):183-224.
- Skeel. Jr.. David A. "Avoiding moral bankruptcy." BOSTON COLLEGE LAW REVIEW. 44(2003):1181-1200.
- Smith. Lisa M. "Lifting the veil of secrecy: Mandatory child abuse reporting statutes may encourage the Catholic Church to report priests who molest children." LAW AND PSYCHOLOGY REVIEW. 18(1994):409-421.
- Stauffer, Ian, R, and Hyde, Christian B. "The sins of the fathers: vicarious liability of churches." OTTAWA LAW REVIEW. 24(1993): 561-577.
- Underwood. Anne. "Doing justice in cases of clergy abuse of power: A legal perspective." JOURNAL OF RELIGION AND ABUSE: ADVOCACY. PASTORAL CARE AND PREVENTION. 1(2003):35-65
- Villiers. Janice D. "Clergy malpractice revisited: Liability for sexual misconduct in the counseling relationship." DENVER UNIVERSITY LAW REVIEW. 74(1996):1-64.
- Wallace. Jennifer L. "Fiduciary theory imposes higher duty and direct liability on church for clergy sexual misconduct -- *Tenantry v. Diocese of Colorado*. 863 P.2d 310 (Colo. 1993)." SUFFOLK UNIVERSITY LAW REVIEW. 28(1994):331-339.
- Wells. Catharine Pierce. "Churches. charities. and corrective justice: Making churches pay for the sins of their clergy." BOSTON COLLEGE LAW REVIEW. 44(2003):1201-1228.
- Wilbourn. Beth. "Suffer the children: Catholic Church liability for the sexual abuse acts of priests." THE REVIEW OF LITIGATION.15(1996):251-266.
- Wilkinson, Allen P. "Clergy malpractice: cloaked by the cloth?" TRIAL 26(1990: 36-40.
- Wood. John Trevor. "Causes of action in Missouri against the church and clergy for sexual misconduct in *Gibson v. Brewer*." UMKC LAW REVIEW. 65(1997):1027-1052.
- Wylie-Kellermann. Jeanie. "Reconsideration of sexual misconduct by clergy counselors: The case of *F.G. v. MacDonnell*." THE JOURNAL OF THE AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW. 26(1999):289-293.

Young, John L. and Griffith, Ezra. "Regulating pastoral counseling practice: the problem of sexual misconduct." THE BULLETIN OF THE AMERICAN ACADEMY OF PSYCHIATRY AND LAW. 23(1995): 421-432.