



CREATING A SAFE ENVIRONMENT

Sex-abuse fallout triggers uncertain summer for Diocese of Rochester

By Karen M. Franz/Catholic Courier

*This is the second of two parts on the Diocese of Rochester's ongoing response to the sexual-abuse crisis. **Part I** appeared in the *Catholic Courier's* April edition, and in the Spring *Creating a Safe Environment* newsletter.*

The summer of 2019 promises to be an uncomfortable one for New York's Catholic bishops and their staffs.

Last fall, the state's attorney general launched an investigation into the handling of cases of clergy sexual abuse by New York's seven dioceses and the Archdiocese of New York. The probe is one of nine similar investigations underway by attorneys general across the nation.

New York's investigation, announced in early September 2018, followed quickly upon the mid-August release of a **sensational grand jury report** on clergy sex abuse in several Pennsylvania dioceses. Father Daniel J. Condon, diocesan chancellor, described the New York AG's subpoena as

"a tremendously broad and deep demand" for records. "We have been responsive to the subpoena and continue to be," the chancellor said, noting that the effort has required the scanning of handwritten and typewritten documents from the past 70 years for electronic submission. "We gave or are giving them what they've asked for, which is everything," including records plaintiffs' attorneys frequently refer to as the "secret files," he said. As in Pennsylvania, where the grand jury process took two years, New York's investigation is expected to last several months, as investigators waded through mountains of documents provided by the state's seven dioceses and the Archdiocese of New York.

A 'window' opening

Meanwhile, the **Child Victims Act**, signed by Gov. Andrew Cuomo Feb. 14, will in August open a one-year, look-back "window" into the state's statute of limitations on civil suits related to child sexual abuse. During this one-year period, pre-



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viously time-barred claims of child sexual abuse can be filed against individuals and organizations, no matter how long ago the abuse is alleged to have occurred. The state's Catholic bishops had opposed passage of the CVA when it was introduced in the Legislature each of the prior 14 years, in part because the look-back provision in

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Review board provides guidance in handling abuse allegations

Mike Latona/Catholic Courier

For more than a quarter-century, an advisory group in the Diocese of Rochester has played a crucial role in addressing cases of alleged child sexual abuse by clergy.

The Diocesan Review Board, a confidential consultative panel, provides guidance and advice to Bishop Salvatore R. Matano in assessing sexual-abuse allegations and determining whether accused people are suitable to continue in ministry. The board also assists in updating diocesan policies related to handling and preventing sexual abuse.

The board was established by Bishop Emeritus Matthew H. Clark in 1993, nine

years before the U.S. Conference of Catholic Bishops' Charter for the Protection of Children and Young People made such boards mandatory for all dioceses and eparchies nationwide.

In keeping with provisions of the bishops' 2002 charter, the current review board primarily comprises laypeople who are not employed by the diocese. These volunteer members have experience and expertise in such areas as law enforcement, child-protective services and the practices of law, psychiatry and psychology. Two priests also sit on the board.

Members of the current Diocesan Review Board are **Douglas Nordquist**, retired

Town of Ogden police chief; **James Van-Brederode**, current Town of Gates police chief; **John McIntyre**, psychiatry professor at the University of Rochester Medical Center; **Robert Napier**, a criminal defense lawyer; **Teresa Pare**, an attorney specializing in family law; **Margaret Joynt**, a retired child-advocacy lawyer; **Jeff Munson**, a clinical social worker who works with men who were sexually abused as youths; **Father Daniel Condon**, diocesan chancellor; and **Father Kevin McKenna**, rector of Sacred Heart Cathedral and diocesan chancellor from 1991-2001. Assisting the board are attorney Philip Spellane along with Deborah Housel, dioc-

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earlier drafts applied only to private entities. The bishops' other objection had been the extreme difficulty of defending against lawsuits when the alleged perpetrators as well as potential defense witnesses from the era have died or become incapacitated by age. Indeed, such difficulty is precisely why statutes of limitations exist. As the **New York State Unified Court System explains**: "Statute of limitations laws are based on fairness. Over time, memories fade, evidence is lost, and witnesses disappear."

Nevertheless, **the bishops dropped their opposition** to the CVA when the enacted version (S02440) leveled the playing field, making it possible to file previously time-barred lawsuits against any organization, including such governmental entities as public school districts. Now, "Anybody that works with a child in a trusted environment has exposure, whether or not they've been clear about that," Father Condon observed.

The CVA also permanently extended the statute of limitations under which claims of sexual abuse may be made. Under the Child Victims Act, victims in civil cases now have until age 55 to file claims, and criminal cases can be brought until the victim reaches age 28.

Reconciliation & compensation

Several months before the 2018 elections flipped control of the state Senate and ensured the CVA's passage, the Diocese of Rochester initiated a program in March of 2018 for the independent reconciliation and compensation of victims. It hired former state **Supreme Court Justice Robert Lunn** to be an independent arbiter of cases. "We've always tried to enter negotiations (to) seek some resolution for victims who had no other recourse" because their claims were time-barred by the former state statute of limitations, Father Condon said.

But with passage of the CVA, previously time-barred cases can be filed during the one-year window that opens in August. So **the diocese announced March 14** that it would conclude the reconciliation and compensation program when Lunn completes the 30-32 cases already in the pipeline.

Meanwhile, as August nears, some plaintiffs' attorneys are preparing cases based on "the theory of dual agency," asserting that dioceses are responsible for abuse perpetrated by members of religious orders who served at order-operated facilities inside diocesan boundaries, Father Condon explained. For example, "People who received settlements

from the Irish Christian Brothers (which formerly operated Bishop Kearney High School) will now sue the Diocese of Rochester because the school was here," he said.

Listing the accused

Dioceses also have taken heat for declining to include on their published lists of credibly accused clerics the names of credibly accused members of religious orders who have served within diocesan boundaries.

Father Condon said the Rochester Diocese does not want to get into publishing lists of religious because information provided by their orders could be incomplete or out of date. "(Attorneys) want to imagine that there is a universal repository of information on clergy, but there isn't," he remarked.

Thus, credibly accused members of religious orders — such as **six Jesuit priests and former priests and one former Jesuit seminarian** who served at McQuaid — do not appear on the Diocese of Rochester's dispositions list, but may be on lists published by their respective religious orders. "The Jesuits are responsible for them," Father Condon said of the McQuaid Jesuits and former Jesuits, noting that superiors of religious orders are best positioned to make determinations on the credibility of claims against their members.

Asked about the possibility of linking from the diocesan dispositions list to lists posted by religious orders that have served in the diocese, Father Condon said, "We haven't come to a final determination on that, and I imagine there will be changes to the list in the future." But for now, "the list is what it says it is, dispositions since 2002."

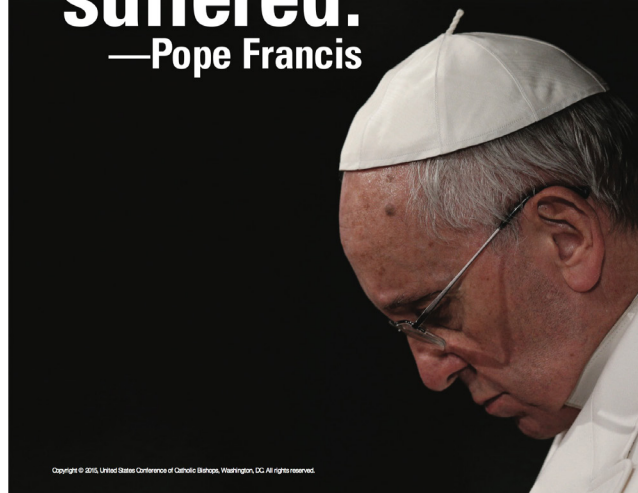
What the future holds

Finally, plaintiffs' attorneys also have speculated to local media that the Diocese of Rochester will be forced to file for bankruptcy after the CVA window opens in August.

After their states passed laws similar to the CVA beginning in the mid-2000s, nearly a dozen U.S. dioceses and archdioceses filed for bankruptcy amid multimillion dollar claims on cases going back 60 or more years. The

"Words cannot fully express my sorrow for the abuse you suffered."

—Pope Francis



spokesman for one such diocese described bankruptcy as the fairest way to ensure all victims who came forward received a monetary settlement. Otherwise, **the spokesman said**, "the first victims who would have come forward could have received all the money that the diocese had available."

Father Condon explained that when a diocese files for bankruptcy, "victims become part of the creditors' committee, and the court treats them like any other creditor" in allocating resources to pay claims, thus ensuring equitable treatment.

Asked how many and how costly claims he expects to receive after the CVA window opens, Father Condon said he did not know. Nor could he predict whether the diocese would be forced into bankruptcy.

So far, the diocese has paid out more than \$1.6 million in sex-abuse claims, not counting settlements through the reconciliation process with Lunn, the chancellor said. Settlements were funded from a variety of sources — including the diocese's pooled, self-insurance program and accumulated reserves — with the largest having been paid by an insurance company, he said.

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san victim assistance coordinator.

When the diocese receives a complaint of child sexual abuse by clergy or other church personnel, diocesan officials first notify civil authorities, regardless of whether the alleged abuse occurred recently or many years ago. The diocese then launches an investigation of its own, with the review board examining information collected by McCabe Associates, a private investigation firm based in Gates. Whereas most allegations received over the years have concerned priests, complaints also can be brought against deacons and such laypeople as diocesan/parish staff members, teachers and program volunteers.



Douglas Nordquist

In addition to examining the findings from McCabe, the board weighs such factors as past histories of the accuser and the accused, statements by both parties, witness statements and whether additional witnesses exist. After discussing a case as a group, the review board makes recommendations to Bishop Matano.

"Any opinion (Bishop Matano) has, he keeps it to himself until he hears from everybody," said Nordquist, who has served on the Diocesan Review Board since 2006.

"I would say (Bishop Matano) is very dependent on getting good counsel from the board," agreed Father McKenna, a five-year member.

Based on the evidence and the board's recommendation, Bishop Matano then assesses the credibility of an accusation. If he deems that the complaint is credible, the accused is not allowed to return to any ministry if he or she had been ministering at the time the allegation was made; most recent claims have been against people who already have been removed from ministry and/or are deceased.

Nordquist, Father McKenna and Pare acknowledged that it's often difficult to determine the credibility of a complaint, espe-

cially regarding an incident that is alleged to have taken place many years ago. By contrast, Pare noted that when she deals with child sexual abuse in her family law practice, "the players are still very much around and the pieces are easier to dig up."

"All we can do is our very best," Pare observed of the review board's efforts. "We put in a lot of resources, a lot of time and attention."

Nordquist agreed that the board strives to approach each allegation thoroughly and fairly. "It may turn out not to be credible, but it has to be investigated. God forbid that (sexual abuse) did happen," he said.

"Our bishop is so mindful and protective of the parish members, he errs on the side of caution whenever he can," added Pare, a five-year member of the panel.



Father Kevin McKenna

Yet Father McKenna pointed out that the review board does not automatically presume guilt on the part of the accused.

Child sexual abuse "is a serious allegation, and many times a priest or deacon's future in ministry is dependent on this investigation," said Father McKenna, a longtime canon lawyer and noted author on church law. "The bishop obviously can't have somebody (in ministry) who's a risk to parishioners, but at the same time you have to be very careful (to



Teresa Pare

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weigh both sides of the story)."

Nordquist, a member of Rochester's Peace of Christ Parish, cited the review board's collective integrity in making such determinations, noting that each member is not only well-qualified professionally but also an active Catholic striving for the good of the faith.

Pare, meanwhile, said she hopes the board's work helps the Catholic Church move toward healing from the sexual-abuse crisis.

"It really breaks my heart to see people turn away, to lose their trust in the church," said Pare, who belongs to St. Benedict Parish in Canandaigua and Bloomfield. "We're trying to show that we're working to see that these things never happen again."

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Settlement process involved retired justice

Jennifer Burke/Catholic Courier

This article originally appeared in the June 2019 Catholic Courier.

During his 14 years on the State Supreme Court bench, the Honorable Robert J. Lunn served for 10 years as a trial court judge followed by four years as an appellate court justice.

In the spring of 2018, the Diocese of Rochester hired Lunn, who retired in 2008 from the New York State Supreme Court Appellate Division, to administer its compensation process for alleged victims of sexual abuse by diocesan personnel.

"I think over the years ... I've developed and continued a reputation for being fair and impartial and not tilting one way or another," Lunn told the Catholic Courier. "I believe that's what went into their decision to ask me to act as administrator."

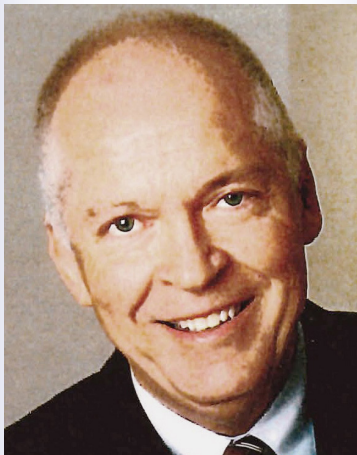
The process for each case began with an investigation by McCabe Associates, a Gates-based private investigation and security consulting firm, which turns over its findings to Lunn. He then reviews the case files and interviews the alleged victim as well as his or her attorney, if any.

"I would interview (the alleged victim) with the benefit of having read the initial investigator's report, which often raised questions I wanted to clarify," Lunn explained, noting that diocesan personnel do not participate in the interviews, which "was one of the rules I insisted on when I agreed to participate."

The judge said the experiences recounted by victims were very intense and traumatic, and early in the interview process, Lunn said he had nightmares about what he'd heard.

"I've spent my whole career judging

"I've developed and continued a reputation for being fair and impartial and not tilting one way or another."



Honorable Robert J. Lunn

credibility, and there was no doubt in my mind these people were being very candid and truthful when they came before me," he said. "I was surprised at the lifelong emotional effects this has had on the alleged victims."

After interviewing each claimant, Lunn wrote a determination outlining whether the person should receive a financial settlement from the diocese and, if so, recommending a specific amount to be awarded. In this way, his role as an administrator differs from that of a mediator or arbitrator, Lunn noted.

"I make a decision, and whatever I decide will be final. There's no right of appeal. There's no necessary meeting of the minds," he said.

Claimants are free to opt out of the settlement process if they disagree with Lunn's determinations, and remain free to pursue any legal options that may be open to them.

"If they don't like my number, they can walk away from it," he said.

The diocese has agreed to accept Lunn's determinations without appeal.

"They are bound by my recommendation if the alleged victim accepts it," the judge explained.

Father Daniel Condon, diocesan chancellor, noted that those whom Lunn awarded settlements "were free to accept or reject (the proposed settlements) within 30 days."

If a claimant chooses to accept Lunn's determination, he or she signs a release agreeing not to pursue legal action against the diocese regarding the alleged abuse, and the diocese issues a check for the amount set by Lunn.

The framework for the process changed

Feb. 14 when **Gov. Andrew Cuomo signed the Child Victims Act**, which in August will open a one-year window into New York state's statute of limitations on civil suits related to sexual abuse of children.

Prior to the legislation's passage, alleged victims with time-barred claims had little — if any — legal recourse. But starting in August they will have one year to file cases even if the civil statute of limitations on their claims has long passed.

In light of this new legislation, in mid-March the diocese stopped accepting new cases into the settlement process, although Lunn continued to work on cases that already were in process. Lunn had written determinations on 20 cases.

Father Condon said in 13 additional cases, claimants with counsel elected to proceed toward settlement with the diocese after the investigation phase of the process. Within each group, some claimants accepted the settlements that were offered and some did not, he said.

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HELP FOR VICTIMS

Victims of sexual abuse by any employee of the Church should always report to the civil authorities.

To report a case of possible sexual abuse and to receive help and guidance from the Roman Catholic Diocese of Rochester, contact the diocesan

Victims' Assistance Coordinator:
Deborah Housel
(585) 328-3228, ext. 1555;
toll-free
1-800-388-7177, ext. 1555
or email:
victimsassistance@dor.org.



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Creating a Safe Environment Newsletter

is published quarterly by the Roman Catholic Diocese of Rochester with the aim of helping all of us keep children and vulnerable adults safe at home, at church and in all places in our community.

Comments can be directed to:
Karen Rinefierd,
Diocesan Coordinator
of Safe Environment Education
and Compliance,
585-328-3228, ext. 1255
or Karen.Rinefierd@dor.org.

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ext. 1555
victimsassistance@dor.org.

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ADDITIONAL SAFETY RESOURCES

ONLINE SAFETY RESOURCES

CHILDREN & TEENS' SAFETY SITES:

Webonauts Internet Academy:

<http://pbskids.org/webonauts/>
PBS Kids game that helps younger children understand the basics of Internet behavior and safety.

NSTeens:

<http://www.nsteens.org/>
A program of the National Center for Missing and Exploited Children that has interactive games and videos on a variety of Internet safety topics.

FOR PARENTS:

Common Sense Media

<https://www.commonsensemedia.org/parent-concerns>
A comprehensive and frequently updated site that is packed with resources. Dedicated to improving the lives of kids and families by providing information and education

Family Online Safety Institute:

<http://www.fosi.org/>

iKeepSafe:

<http://www.ikeepsafe.org/>
Resources for parents, educators, kids and parishes on navigating mobile and social media technologies

Faith and Safety:

<http://www.faithandsafety.org>
Safety in a digital world, a joint project of the U.S. Conference of Catholic Bishops and Greek Orthodox Church in America

LOCAL RESOURCES AND CONTACT INFORMATION

Bivona Child Advocacy Center
(Monroe, Wayne counties):
www.BivonaCAC.org
585-935-7800

Chemung County Child Advocacy Center:
607-737-8449
www.chemungcounty.com

Child Advocacy Center of Cayuga County:
315-253-9795
www.cacofcayugacounty.org

Finger Lakes Child Advocacy Program
(Ontario County):
www.cacfingerlakes.org
315-548-3232

Darkness to Light organization:
www.d2l.org

STEBEN COUNTY: Southern Tier Children's Advocacy Center:
www.sthcs.org
716-372-8532

NYS State Central Registry
(Child Abuse Reporting Hotline):
1-800-342-3720

NYS Child Advocacy Resource and Consultation Center (CARCC)
866-313-3013

Tompkins County Advocacy Center:
www.theadvocacycenter.org
607-277-3203

Wyoming County Sexual Abuse Response Team:
585-786-8846

Yates County Child Abuse Review Team:
315-531-3417, Ext. 6