

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

MICHAEL SHOVAH)
Plaintiff,) Case No.)
)
v.)
)
FR. GARY MERCURE, THE ROMAN)
CATHOLIC DIOCESE OF ALBANY,)
NEW YORK , INC.)
Defendants.)

COMPLAINT AND DEMAND FOR TRIAL BY JURY

PRELIMINARY STATEMENT

1. This is a civil action brought by Plaintiff for recovery of compensatory and exemplary damages for sexual activity against him as the term sexual activity is used in 18 U.S.C. §§ 2422, 2423 and 2602 ["sexual activity"] and childhood sexual abuse as that term is defined in 12 V.S.A. § 522(c).
2. Within the six years predating the filing of this complaint Plaintiff discovered that the injuries and conditions as to which he complains herein were caused by sexual activity and the childhood sexual abuse set out in this Complaint.
3. Plaintiff's right of action as asserted in this complaint accrued within six years of the filing of this complaint.

JURISDICTION

4. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1367 and 18 U.S.C. § 2255.

VENUE

5. Venue is proper in the District of Vermont inasmuch as the childhood sexual abuse and sexual activity complained of occurred in Vermont as the result of the transportation of the Plaintiff to Vermont in violation of 18 U.S.C. §§ 2422, 2423 and 2602.

PARTIES AND OTHER PERSONS

6. Plaintiff was a child under the age of 18 during the time of the sexual abuse and sexual activity alleged in this Complaint.
7. At all times material, Defendant The Roman Catholic Diocese of Albany, New York, Inc. ["Defendant Diocese"] was a New York not for profit religious corporation.
8. During all times relevant to this action, Defendant Fr. Gary Mercure was a priest and employee of Defendant Diocese.

FACTS

9. Plaintiff was raised, baptized and confirmed in the Roman Catholic faith as professed and taught by Defendant Diocese and as furthered by Fr. Gary Mercure.
10. As a youth, Plaintiff was a parishioner in Defendant Diocese and received religious training.
11. During this period, Plaintiff regularly attended mass and celebrated the sacraments in Defendant Diocese.
12. Plaintiff came to know and trust Defendant Fr. Gary Mercure as an employee of Defendant Diocese, as a Roman Catholic priest and as a holy man.
13. Plaintiff relied on the expressed and implied representation of Defendant Diocese that Defendant Fr. Gary Mercure was a priest of good standing, was a person of the highest morality, was a man who could be entrusted with the religious, moral and physical care of youths entrusted to him.
14. Defendant Fr. Gary Mercure brought Plaintiff to Vermont for the purpose of engaging in sexual activity with him and did engage in sexual activity with Plaintiff while on a trip to Vermont from New York.

COUNT 1 - DEFENDANT MERCURE – SEXUAL EXPLOITATION AND ABUSE OF CHILDREN - 18 U.S.C. § 2255

15. Defendant Mercure transported Plaintiff in interstate commerce between the State of New York and the State of Vermont with intent to engage in sexual activity for which Defendant Gary Mercure could be charged with a criminal offense, i.e., lewd and lascivious conduct with a child in violation of 13 V.S.A. § 2602 and sexual assault in violation of 13 V.S.A. § 3252.
16. Defendant Mercure, in violation of 18 U.S.C. § 2422, knowingly persuaded, induced and enticed Plaintiff to travel in interstate commerce between the State of New York and the State of Vermont to engage in sexual activity for which Defendant Gary Mercure could be charged with a criminal offense, i.e., lewd and lascivious conduct with a child in violation of 13 V.S.A. § 2602 and sexual assault in violation of 13 V.S.A. § 3252.
17. Defendant Mercure, in violation of 18 U.S.C. § 2423 transported Plaintiff in interstate commerce with the intent of engaging in sexual activity for which Defendant Mercure could be charged with a criminal offense, i.e., lewd and lascivious conduct with a child, in violation of 13 V.S.A. § 2602 and sexual assault in violation of 13 V.S.A. § 3252.

COUNT 2: DEFENDANT DIOCESE - BREACH OF FIDUCIARY DUTY

18. By permitting Defendant Mercure to hold himself out as a qualified Roman Catholic priest, religious instructor and counselor, and by permitting him to undertake the religious instruction and spiritual and emotional counseling of minors, Defendant Diocese entered into a fiduciary relationship with the minor Plaintiff.

19. Defendant Diocese breached their fiduciary duty to the Plaintiff by not preventing Defendant Mercure from engaging in the wrongful conduct described herein.

COUNT 3: DEFENDANT DIOCESE - NEGLIGENT SUPERVISION

20. Before Defendant Mercure's assaults on the Plaintiff, Defendant Diocese knew or should have known that some of the men it hired, retained, supervised and significant numbers of Catholic clergy in New York and elsewhere, had tendencies to sexually molest children and in fact were sexually molesting children.
21. During the time before Defendant Mercure abused Plaintiff, Defendant Diocese failed to make inquiries that would have led it to be aware of Defendant Fr. Gary Mercure's sexual abuse of children and his transportation of children to Vermont to sexually molest them.
22. Defendant Mercure, while an employee of Defendant Diocese, engaged in sexual abuse of young boys before, during and after his abuse of Plaintiff.
23. Defendant Diocese had a duty to the persons with whom Defendant Fr. Gary Mercure would and did come in contact with an employee, particularly children, to supervise Defendant Fr. Gary Mercure, to be observant for instances of sexual misconduct and to remove Defendant Fr. Gary Mercure from any situation where he was a danger to other people, particularly children such as Plaintiff.
24. Although Defendant Fr. Gary Mercure was a person Defendant Diocese should have known would sexually abuse children, Defendant Diocese continued to employ Defendant Fr. Gary Mercure.
25. Defendant Diocese permitted Defendant Fr. Gary Mercure to remain as an employee in the Diocese notwithstanding his tendencies to sexually abuse children and his actual sexual abuse of children while in Vermont.
26. As a result of Defendant Diocese's failure to adequately screen Fr. Gary Mercure out as an employee before placing him in a position within the Diocese where he could come in regular contact with children, Defendant Diocese placed Fr. Gary Mercure in a situation where he had the opportunity to and did molest and otherwise sexually abuse pre-teen and teenage boys, including Plaintiff.
27. Defendant Diocese chose not to adequately supervise Defendant Fr. Gary Mercure and to investigate his conduct, which permitted Defendant Mercure to be in a position to sexually abuse Plaintiff and other children and otherwise take inappropriate sexual advantage of Plaintiff and other children as asserted in this Complaint.

**COUNT 4: DEFENDANT DIOCESE - FAILURE TO PREVENT HARM
RESTATEMENT 2d OF TORTS §§ 315 and 320**

28. By virtue of Defendant Fr. Gary Mercure's position as a Diocesan employee, a special relationship existed between Plaintiff and Defendant Diocese such that Defendant Diocese was under a duty to exercise reasonable care to prevent third persons from intentionally harming Plaintiff.

29. In allowing Defendant Fr. Gary Mercure to be in contact with young children that were parishioners of the Diocese, thereby giving him the opportunity to sexually abuse children, Defendant Diocese breached the duty it owed Plaintiff to prevent third persons from intentionally harming Plaintiff.

COUNT 5: DEFENDANTS DIOCESE AND MERCURE - OUTRAGEOUS CONDUCT

30. The conduct of Defendant Fr. Gary Mercure and Defendant Diocese, as described in this Complaint, constituted outrageous conduct, done intentionally or with reckless disregard of the probability of causing emotional distress.

31. Defendants' conduct proximately or actually caused the Plaintiff to suffer extreme emotional distress.

DAMAGES

32. The conduct of Defendants as set out in this complaint was outrageous, done knowingly and deliberately, with the knowledge that there was a great risk of harm to Plaintiff, with conscious disregard of the risk and with intent to harm Plaintiff.

33. As a direct result of the misconduct alleged in this complaint, Plaintiff has suffered and will continue to suffer severe pain, emotional distress, embarrassment, humiliation, loss of self-esteem and other psychological injuries; was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has sustained loss of earning capacity and has incurred and will continue to incur expenses for medical, and psychological treatment, therapy and counseling.

WHEREFORE, Plaintiff requests that the court and jury award him compensatory damages and exemplary damages in an amount deemed appropriate by the jury in an amount no less than the minimum amount prescribed by 18 U.S.C. § 2255, together with interest, costs, attorneys' fees pursuant to 18 U.S.C. § 2255 and such other relief as may be available to him.

PLAINTIFF DEMANDS A TRIAL BY JURY.

O'NEILL KELLNER & GREEN



JEROME F. O'NEILL
Attorneys for Plaintiff
84 Pine Street, Fourth Floor
P.O. Box 5359
Burlington, VT 05402-5359
(802)865-4700

August 10, 2011

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MICHAEL SHOVA

(b) County of Residence of First Listed Plaintiff Warren
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jerome F. O'Neill, O'Neill Kellner & Green
P.O. Box 5359, Burlington, VT 05402-5359 - 802-865-4700

DEFENDANTS

FR. GARY MERCURE, THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 USC § 2255

VI. CAUSE OF ACTION

Brief description of cause:
Childhood sexual abuse

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 75,000.00⁺

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

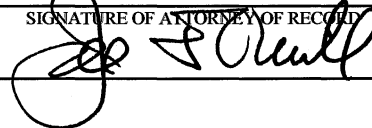
JUDGE Sessions

DOCKET NUMBER 2:10-cv-254

DATE

8/10/11

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

for the

District of Vermont

MICHAEL SHOVA

Plaintiff

v.

FR. GARY MERCURE, THE ROMAN CATHOLIC
DIOCESE OF ALBANY, NEW YORK, INC.

Defendant

)
)
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)
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)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK, INC.
40 North Main Avenue
Albany, NY 12203

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jerome F. O'Neill
O'Neill Kellner & Green
84 Pine Street, Fourth Floor
P.O. Box 5359
Burlington, VT 05402-5359

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Vermont

MICHAEL SHOVA

Plaintiff

v.

FR. GARY MERCURE, THE ROMAN CATHOLIC
DIOCESE OF ALBANY, NEW YORK, INC.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) FR. GARY MERCURE, Id. No. W98080
Old Colony Correctional Center
1 Administration Road
Bridgewater, MA 02324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jerome F. O'Neill
O'Neill Kellner & Green
84 Pine Street, Fourth Floor
P.O. Box 5359
Burlington, VT 05402-5359

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: