

REGIONAL NEWS

Archdiocese of Philadelphia Sued Over Priest-Accuser's Death

BY P.J. D'ANNUNZIO

Of the Legal Staff

A wrongful-death lawsuit and survivorship action has been filed against the Catholic Archdiocese of Philadelphia, the Monsignor who served as secretary of the clergy, and a priest, alleging that sexual abuse led to a man's death from a drug overdose.

The lawsuit, filed Wednesday in the Philadelphia Court of Common Pleas, alleged the Rev. Robert L. Brennan sexually abused recently-deceased Sean Patrick McIlmail, and that Monsignor William Lynn and the archdiocese were responsible for not removing Brennan from contact with children.

Additionally, the complaint said that Lynn and the archdiocese "protected Brennan in his position so as to facilitate his sexual abuse of children, including" McIlmail.

McIlmail suffered from drug addiction, and was found dead from an overdose in his car Oct. 13 in the Kensington section of Philadelphia, media reports have said.

The lawsuit alleged McIlmail suffered psychologically and emotionally as a result of the abuse, and developed "various psychological coping mechanisms" in order to deal with the trauma.

Deborah McIlmail, the mother and executor of Sean McIlmail's will, is represented



AP photo by Matt Runke

dropped after Sean McIlmail's death, media reports said.

Hamilton added that "Brennan is the worst of the worst" and that it is "remarkable that he has not been defrocked."

Hamilton said that while this suit was not the first wrongful-death action against a priest or the church, it was significant in that several of the victims of priest abuse across the country have developed drug abuse and other harmful effects that may lead to death.

Brennan's attorney, Trevan Borum of Philadelphia-based Borum, Burke, DiDonato & Voci, did not return calls seeking comment. A spokeswoman for the archdiocese declined to comment on the issue.

Thomas A. Bergstrom of Buchanan Ingersoll & Rooney represents Lynn and said that he had not yet seen the specifics of the suit.

Bergstrom added, "Anytime anyone does anything wrong here the most logical person

by Daniel F. Monahan and Marci A. Hamilton.

At a press conference Wednesday, Hamilton said she and Monahan were "continuing the fight against" Brennan.

Criminal charges against Brennan were

to sue is Monsignor Lynn. It's sort of inconceivable to me that this case would be brought, given the facts, at least in terms of Monsignor Lynn. In any case, we'll answer it and we'll defend it."

The Legal previously reported that the Philadelphia District Attorney's Office charged Brennan in September with rape, involuntary deviate sexual intercourse and aggravated indecent assault. Brennan, who now lives in Maryland, was arrested by Perryville, Md., police Sept. 27.

The McIlmail complaint alleges that beginning "in 1998, Robert L. Brennan engaged in unpermitted, harmful and offensive sexual conduct and contact upon [Sean McIlmail] in violation of Pennsylvania state law."

At the time of the abuse, the complaint states, Brennan was a priest assigned by the archdiocese to the Resurrection of Our Lord parish in Philadelphia.

Brennan, the plaintiffs state, "began to isolate himself with [Sean McIlmail] when he was a minor."

Furthermore, the complaint states, all defendants in the case—the archdiocese, Lynn and Brennan—"elected to maintain the concealment required by Cardinal [Anthony] Bevilacqua on matters about sexual abuse. As a result of the actions of the defendants, Brennan was able to enjoy unsupervised access to [Sean McIlmail] after this appointment by Bevilacqua and the collective

concealment by defendants of Brennan's known risk to children."

The plaintiffs' complaint said the continuation of Brennan's assignment through June 2004 allowed him to persist in sexual misconduct with children.

"Plaintiff's decedent's sexual abuse by Brennan was an acceptable cost to maintain secrecy about Brennan's sexual misconduct," the complaint alleges.

The complaint also includes allegations that Lynn, as secretary of the clergy and "personnel director" for priests in the Philadelphia archdiocese, was made aware of reports of sexually inappropriate conduct by Brennan toward parish boys.

But the archdiocese allowed Brennan to remain at the Resurrection parish with no restrictions on his ministry, the complaint states.

"By Lynn's actions he assured offending priests including Brennan of a continuing supply of child victims that Brennan could molest, sodomize or rape," the plaintiffs state in their complaint.

Lynn was the first Catholic Church official in the country to be charged with and convicted of covering up harm done to sexual-abuse victims. He was convicted in June 2012.

Hamilton said during the press conference that she hoped the lawsuit against Brennan

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statement.

Counsel for Kindred, Jeffrey S. Adler of Burns White in West Conshohocken, Pa., could not be reached for comment Wednesday.

According to the settlement agreement, Schufjer Bogar agreed to drop all of its pending claims against Kindred and Hayes.

In addition, according to the settlement agreement, Kindred agreed to drop its pending appeal to the U.S. Court of Appeals for the Third Circuit in *Kindred*, in which it had been disputing a district court order requiring it to pay \$60,000 in legal fees to Schufjer Bogar. While Schufjer Bogar will see no money from the settlement, Bogar told The Legal on Wednesday that he's happy the matter has been resolved because the firm has moved on.

Bogar said Schufjer Bogar, which has since rebranded as SB2, completed its bankruptcy proceedings in October and has taken on two of the nine largest nursing home providers in the country as clients, with a third provider currently in negotiations.

Bogar added that the firm is also profitable again.

"We're out of bankruptcy, we got what we

anything at all."

On Wednesday, Bogar said his firm was simply ready to move on and was no longer interested in dwelling on the money it lost.

"I've gained way more than Kindred would have ever paid me," Bogar said. According to Bogar, he learned a valuable lesson from his experience with Kindred: The hourly billing model was the wrong fit for his firm.

Bogar said the firm now bills its clients on a flat-fee basis, providing greater predictability on both ends and vastly improving its collections.

"The flat-fee model saved our law firm," Bogar said. "I don't spend any time anymore arguing about getting paid."

Hourly fees were at the heart of the firm's dispute with Kindred.

According to Bogar, Kindred had accounted for about a third of the firm's total billables.

Bogar estimated that the firm had about 14 attorneys when it brought on Kindred as a client and grew to about 23 attorneys after that, opening offices in South Carolina, Boston and Georgia, among other locations. According to the amended complaint filed

archdiocese to bring sexual abusers within its ranks to light.

"We hope to spur further revelations of the truth," Hamilton said. "We have been fighting in discovery with these cases for over three years. It's time for the church to do the right

Hayes "abruptly" left Schufjer Bogar to work for a South Carolina firm in September 2011 after arranging to bring Kindred with her as a client and to train its employees using methods developed by Schufjer Bogar.

But Hayes, in a brief in support of her motion to dismiss Schufjer Bogar's suit for failure to state a claim, called these allegations "baseless."

Within a few months of Hayes' departure, the billing disputes between Kindred and Schufjer Bogar arose, according to court documents.

On April 25, 2012, Schufjer Bogar and Kindred entered into a settlement agreement under which Kindred was required to pay the firm \$201,000 in order to satisfy its February and March obligations, according to Schufjer Bogar's amended complaint in *Kindred*.

The settlement agreement also provided that Kindred would pay the firm 80 percent of its total legal fees for April, according to the amended complaint.

That arrangement was to continue thereafter until either the firm closed all of its Kindred matters or the two parties agreed on another fee arrangement, but Kindred sent a letter to the firm in June 2012 stating that it

thing."

The Legal does not publish the names of victims and accusers in child sex-abuse cases. Since McIlmail has died, however, The Legal is publishing his name.

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Instead, as Bogar told The Legal in February, both he and former partner Brad Schufjer, who has since retired from the practice of law, borrowed \$100,000 from their parents and \$200,000 from their friends to keep the firm afloat. The firm eventually did file for bankruptcy in March of this year.

Bogar told The Legal in May that the real damage to the firm was caused not by Kindred going elsewhere, but by the company failing to give the firm enough lead time to prepare for the loss.

On Wednesday, Bogar said he now believes the inherent unpredictability of the firm's hourly billing model was the root of its problems with Kindred and is ultimately what soured the relationship.

Bogar said the firm's switch to flat-fee billing is what has allowed it to continue doing work for large clients who have a lot of other expenses to manage in addition to legal fees. "If we hadn't changed our billing system, we wouldn't exist in any meaningful capacity," Bogar said.

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would prompt greater willingness by the

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