

Attorneys and pastors threatened with contempt for plan to shift funds in bankruptcy case

by Mark Sauer and Sandi Dolbee

SAN DIEGO - In a highly unusual move, a federal judge Monday ordered attorneys and pastors involved in the Diocese of San Diego's bankruptcy to explain why they should not be sanctioned for attempting to shift funds without authorization.

Judge Louise DeCarl Adler's sternly worded order states that Susan Boswell of Tucson, Ariz., lead bankruptcy attorney for the Roman Catholic diocese, and church officials appear to have "conspired with parishes" to illegally create new bank accounts separate from the diocese.

Adler also noted that the diocese's newly formed Organization of Parishes misrepresented in a memo that she had authorized the 98 San Diego and Imperial county parishes to move their funds to new accounts.

The judge ordered Boswell, the Rev. Bruce Orsborn, the Rev. Michael Gallagher and attorneys representing the Organization of Parishes to appear before her Wednesday to "show cause why you should not be cited for contempt of court."

Orsborn, writing on behalf of the Organization of Parishes in a March 29 memo, laid out for pastors a step-by-step plan to create new bank accounts and said permission to transfer funds had been granted by the judge. The organization was formed shortly after the diocese filed for Chapter 11 bankruptcy protection Feb. 27.

Gallagher, writing to his congregation at Our Lady of Grace in El Cajon, Calif., stated in a March 17 letter that the "court ordered that we establish a new tax identification number for every parish account instead of using the diocesan tax identification number."

Adler's order makes clear she never authorized such transfers nor ordered new tax numbers.

Also singled out in Adler's order were attorneys Jeffrey Davis and Victor Vilaplana, who represent the Organization of Parishes.

Legal experts noted that Adler issued the order on her own. She gave the diocese's attorneys until 5 p.m. today (April 10) to respond.

Neither Boswell nor the two priests responded to requests for comment Monday.

However, Vilaplana acknowledged Monday that Gallagher was wrong to say the court ordered parishes to establish new tax identification numbers, rather than continuing to use the diocese's tax number.

"It (Gallagher's letter) does contain errors," Vilaplana said. "We have taken steps to correct it. This is not something that the organization was in any way involved in, and we didn't know about it until it was brought to our attention."

The attorney conceded Adler's action is unusual. "Obviously, the judge is somewhat troubled by something," Vilaplana said. "The judge wants to maintain the ability to decide who owns all of this property."

Adler used the word "conspired" and the phrase "misrepresenting to others the nature and effect of orders of this court" in her five-page document.

The legal language in the judge's order barely conceals her anger, said Michael O'Halloran, a San Diego attorney specializing in bankruptcy. The rare action by the veteran jurist created a buzz at the courthouse Monday, he said.

"As an attorney, you never want to see your name on such an order," O'Halloran said. "We all live in fear of this kind of thing ever coming our way."

Should Adler find diocesan attorneys and officials in contempt for conspiring to hide assets and misrepresenting facts to the court, her sanctions cannot be punitive in nature, said Lynn LoPucki, a UCLA law professor specializing in bankruptcy issues who has followed the Roman Catholic sexual-abuse lawsuits nationwide.

"The purpose is to coerce those held in contempt to do what needs to be done to rectify the situation," LoPucki said.

Adler could imprison someone if necessary, which happened in one California bankruptcy case a few years ago, LoPucki said, "but that is highly unlikely."

"The judge could also compensate (creditors') attorneys for fees incurred in dealing with this issue," he said.

The last paragraph of Adler's order suggests that sanctions could include kicking Boswell off the case.

John Manly, an Orange County attorney representing 27 people suing the San Diego Diocese for alleged

sexual abuse by priests, said he has never seen anything like Adler's contempt notice in nearly 20 years of practicing law.

"The conduct by the San Diego Diocese stuns even those of us who have been at this (clergy-abuse lawsuits) for 10 years," Manly said.

"There is a venom in the diocese's approach to not only deny victims their day in court, but also any reasonable compensation for what they have suffered," the attorney added. Bishop Robert Brom has said the diocese filed for bankruptcy in an effort to continue the church's ministry while fairly compensating victims.

San Diego attorneys Irwin Zalkin and Andrea Leavitt, who together represent 39 of the approximately 150 people suing the diocese for alleged sexual abuse by priests in incidents dating back decades, declined to comment in advance of Wednesday's hearing.

But Zalkin and Leavitt are among several plaintiffs' attorneys who have challenged the diocese's financial statements since Feb. 27, when it became the fifth U.S. Roman Catholic diocese to file for Chapter 11 protection in the face of numerous abuse lawsuits.

The attorneys, who filed the bulk of their cases in 2003, claim diocesan officials have:

- Wrongly listed \$50 million from a Utah foundation for construction of Mater Dei High School in Chula Vista as a loan rather than a gift.

- Made gifts of at least \$1.5 million from the diocese to parishes.

- Improperly pushed a \$65 million sale of 14 acres at a closed Linda Vista high school campus while contemplating bankruptcy.

- Wrongly claimed the diocese does not own the \$79 million Catholic Cathedral High in Carmel Valley.

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