

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE**

KENNETH POOSER,

*Plaintiff,*

v.

ROMAN CATHOLIC DIOCESE OF OGDENSBURG, NEW YORK,  
THE ROMAN CATHOLIC DIOCESE OF BUFFALO, N.Y.,  
WADHAMS HALL SEMINARY COLLEGE, and WADHAMS  
HALL,

*Defendants*

[Please see Attached Rider for Defendants' Addresses]

Index No.

**SUMMONS**

Date Index No. Purchased:  
January 2, 2020

To the above named Defendant(s)

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You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in Erie County, New York, which is located in Erie County, New York.

Dated: New York, New York  
January 2, 2020

SIMMONS HANLY CONROY LLC

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*Plaintiff,*

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YORK, THE ROMAN CATHOLIC DIOCESE OF BUFFALO,  
N.Y., WADHAMS HALL SEMINARY COLLEGE, and  
WADHAMS HALL,

*Defendants.*

Index No.

**RIDER TO SUMMONS**

<b>Defendant/Counsel</b>	<b>Service Address</b>
ROMAN CATHOLIC DIOCESE OF OGDENSBURG, NEW YORK	622 Washington Street Ogdensburg, St. Lawrence County, New York
THE ROMAN CATHOLIC DIOCESE OF BUFFALO, N.Y.	Randall D. White, Esq. Connors LLP 1000 Liberty Building 424 Main Street, Buffalo, NY 14202 rdw@connorsllp.com
WADHAMS HALL SEMINARY COLLEGE	6866 State Highway 37 Ogdensburg, St. Lawrence County, New York
WADHAMS HALL	6866 State Highway 37 Ogdensburg, St. Lawrence County, New York

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Index No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Kenneth Pooser, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Ogdensburg, New York; The Roman Catholic Diocese of Buffalo, N.Y.; Wadhams Hall Seminary College; and Wadhams Hall, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

**JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Erie pursuant to CPLR 503 in that one or more of the Defendants reside in this County.

**PARTIES**

4. Plaintiff Kenneth Pooser ("Plaintiff") is an individual residing in Charleston, Charleston County, South Carolina.
5. Defendant The Roman Catholic Diocese of Ogdensburg, New York

("Diocese of Ogdensburg") is a New York not-for-profit corporation with its principal office at 622 Washington Street, Ogdensburg, St. Lawrence County, New York. The Diocese of Ogdensburg is a Roman Catholic diocese. At all relevant times, the Diocese of Ogdensburg created, oversaw, supervised, managed, controlled, directed and operated various institutions of the Diocese of Ogdensburg, including at all relevant times, Wadhams Hall Seminary College.

6. Defendant The Roman Catholic Diocese of Buffalo, N.Y. ("Diocese of Buffalo") is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 795 Main Street, Buffalo, Erie County, New York. The Diocese of Buffalo is a Roman Catholic diocese. At all relevant times, the Diocese of Buffalo oversaw, supervised, managed, controlled, and/or directed Gerard A. Smyczynski, whom Defendant Diocese of Buffalo had sent to Wadhams Hall Seminary College to study to become a priest of the Diocese of Buffalo.

7. Defendant Wadhams Hall Seminary College was a Roman Catholic seminary within and under the authority of The Diocese of Ogdensburg and was a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 6866 State Highway 37, Ogdensburg, St. Lawrence County, New York. At all relevant times, the Diocese of Ogdensburg created, oversaw, managed, controlled, directed and operated Wadhams Hall Seminary College.

8. Defendant Wadhams Hall is a Roman Catholic institution within and under the authority of The Diocese of Ogdensburg and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 6866 State Highway 37, Ogdensburg, St. Lawrence County, New York. Wadhams Hall is the legal successor of Wadhams Hall Seminary College.

### FACTS COMMON TO ALL CLAIMS

9. In or about 1973, Gerard A. Smyczynski ("Father Smyczynski") was a seminarian at Wadhams Hall Seminary College studying to become a priest for the

Diocese of Buffalo. Father Smyczynski would later be ordained a Roman Catholic priest of the Diocese of Buffalo. Father Smyczynski passed away in approximately 1999.

10. In approximately 1973, Plaintiff attended Wadhams Hall Seminary College for a week as a prospective student.

11. Plaintiff first met Father Smyczynski in or around 1973 during this week-long visit to Wadhams Hall Seminary College. For the duration of Plaintiff's visit, Plaintiff was roomed with Father Smyczynski, an adult seminarian.

12. It was under these circumstances that Plaintiff came to trust and be under the influence of Father Smyczynski, who used his position to sexually abuse Plaintiff.

13. Throughout the week in approximately 1973 when Plaintiff was visiting Wadhams Hall Seminary College, Father Smyczynski sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff on Wadhams Hall Seminary College property, when Plaintiff was approximately sixteen years of age, over five times in violation of the laws of the State of New York.

14. Father Smyczynski used his position at Wadhams Hall Seminary College, which granted him access to minors, to gain access to the minor Plaintiff and to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff.

#### **Defendants' Responsibility for the Abuse Committed by Father Smyczynski**

15. At all times material hereto, Father Smyczynski was under the management, supervision, employ, direction and/or control of Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College.

16. Through his positions at, within, or for Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College, Father Smyczynski was put in direct contact with Plaintiff.

17. Father Smyczynski used his position at, within, or for, Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College and the implicit representations made by them about his character that accompanied that position, to gain

Plaintiff's trust and confidence and to create opportunities to be alone with, and sexually touch, Plaintiff.

18. Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College had the duty to reasonably manage, supervise, control and/or direct seminarians who attended Wadhams Hall Seminary College, and specifically, had a duty not to aid pedophiles such as Father Smyczynski by assigning, maintaining, and/or appointing them to positions with access to minors.

19. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Smyczynski, who sexually abused Plaintiff.

20. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College had a duty to the Plaintiff to properly supervise their agents to ensure that said agents did not use their positions with these Defendants as a tool for grooming and assaulting vulnerable children. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College knew or should have known that Father Smyczynski used his positions with Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College to sexually abuse minor children, including the Plaintiff.

### **Consequences of the Abuse**

21. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Smyczynski's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

22. As a direct result of Defendants Diocese of Ogdensburg's, Diocese of Buffalo's, and Wadhams Hall Seminary College's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was

prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Smyczynski's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

#### **Negligent Hiring/Retention/Supervision/Direction**

23. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

24. Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College at all relevant times indicated that minors who attended Wadhams Hall Seminary College would be physically safe while in the presence of seminarians attending Wadhams Hall Seminary College. Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College entered into an express and/or implied duty to provide that when Plaintiff was a minor left in the presence of an individual assigned to, hired by, retained by, directed by, and/or under the supervision of Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College, Plaintiff would be kept reasonably safe and that that individual would not sexually abuse Plaintiff.

25. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College owed a duty of care to all minors, including Plaintiff, who were likely to come into contact with Father Smyczynski or under the influence of Father Smyczynski, to ensure that Father Smyczynski did not use his position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

26. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College knew or should have known of Father Smyczynski's propensity

for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

27. The sexual abuse of children by adults, including seminarians, is a foreseeable result of negligence.

28. Father Smyczynski sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff while he was a seminarian and agent of Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College.

29. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College negligently hired, retained, directed, and/or supervised Father Smyczynski, as they knew or should have known that Father Smyczynski posed a threat of sexual abuse to minors.

30. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College were negligent in failing to properly supervise Father Smyczynski.

31. At all times material hereto, Defendants Diocese of Ogdensburg's, Diocese of Buffalo's, and Wadhams Hall Seminary College's actions were willful, wanton, malicious, negligent, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

32. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

33. Liabilities of Defendant Wadhams Hall Seminary College were transferred to, or assumed by, Defendant Wadhams Hall. As a result, Defendant Wadhams Hall is liable to the Plaintiff for the damages caused by Defendant Wadhams Hall Seminary College stated in this cause of action.

34. By reason of the foregoing, Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall are liable to the Plaintiff jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION**  
**Negligence/Gross Negligence**

35. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

36. At all times material hereto, with regard to the allegations contained herein, Father Smyczynski was under the supervision, employ, direction and/or control of Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College.

37. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College owed Plaintiff, at the relevant times a minor, a duty to protect Plaintiff from Father Smyczynski's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Smyczynski's misconduct.

38. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College knew, or were negligent in not knowing, that Father Smyczynski posed a threat of sexual abuse to minors.

39. The acts of Father Smyczynski described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, retainment, assignment, and/or agency with Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College.

40. Defendants Diocese of Ogdensburg's, Diocese of Buffalo's, and Wadhams Hall Seminary College's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damages set forth herein at length.

41. Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving

- risk of harm to others;
- b. failed adequately to supervise the activities of Father Smyczynski;
  - c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and
  - d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

42. At all times material hereto, Defendants Diocese of Ogdensburg's, Diocese of Buffalo's, and Wadhams Hall Seminary College's actions were willful, wanton, malicious, negligent, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

43. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

44. Liabilities of Defendant Wadhams Hall Seminary College were transferred to, or assumed by, Defendant Wadhams Hall. As a result, Defendant Wadhams Hall is liable to the Plaintiff for the damages caused by Defendant Wadhams Hall Seminary College stated in this cause of action.

45. By reason of the foregoing, Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall are liable to the Plaintiff jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

### THIRD CAUSE OF ACTION Breach of Non-Delegable Duty

46. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

47. Plaintiff, when he was a minor, was placed in the care and supervision of

Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in educational, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and these Defendants.

48. Plaintiff was a vulnerable minor when placed within the care of Father Smyczynski, an agent of Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College.

49. At all times material hereto, Father Smyczynski was under the supervision, employ, direction and/or control of the Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College.

50. As a consequence, Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College were in the best position to prevent Father Smyczynski's sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Father Smyczynski's sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

51. By virtue of the fact that Plaintiff was sexually abused as a minor entrusted to the care of Defendants Diocese of Ogdensburg and Wadhams Hall, Defendants breached their non-delegable duty to Plaintiff.

52. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

53. Liabilities of Defendant Wadhams Hall Seminary College were transferred to, or assumed by, Defendant Wadhams Hall. As a result, Defendant Wadhams Hall is liable to the Plaintiff for the damages caused by Defendant Wadhams Hall Seminary College stated in this cause of action.

54. By reason of the foregoing, Defendants Diocese of Ogdensburg, Diocese of

Buffalo, and Wadhams Hall are liable to the Plaintiff jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

#### FOURTH CAUSE OF ACTION

##### Breach of Fiduciary Duty

55. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

56. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College. This relationship is based on the entrustment of the Plaintiff while he was a minor and a prospective seminarian to the care and supervision of these Defendants. This entrustment of the Plaintiff to the care and supervision of Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College, while the Plaintiff was a minor and a prospective seminarian, required Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect Plaintiff due to his infancy and vulnerability.

57. Pursuant to their fiduciary relationship, Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College were entrusted with the well-being, care, and safety of Plaintiff.

58. Pursuant to their fiduciary relationship, Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College assumed a duty to act in the best interests of Plaintiff.

59. Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College breached their fiduciary duty to Plaintiff.

60. At all times material hereto, Defendants Diocese of Ogdensburg's and Wadhams Hall Seminary College's actions and/or inactions were willful, wanton, malicious, negligent, reckless, and outrageous in their disregard for the rights and safety

of Plaintiff.

61. As a direct result of said conduct, Plaintiff has suffered the injuries and damages described herein.

62. Liabilities of Defendant Wadhams Hall Seminary College were transferred to, or assumed by, Defendant Wadhams Hall. As a result, Defendant Wadhams Hall is liable to the Plaintiff for the damages caused by Defendant Wadhams Hall Seminary College stated in this cause of action.

63. By reason of the foregoing, Defendants Diocese of Ogdensburg and Wadhams Hall are liable to the Plaintiff jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

#### FIFTH CAUSE OF ACTION

##### **Negligent Infliction of Emotional Distress**

64. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

65. As described above, the actions of Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall Seminary College, as well as their predecessors and/or successors, agents, servants, and/or employees, were conducted in a negligent and/or grossly negligent manner.

66. Defendants Diocese of Ogdensburg's, Diocese of Buffalo's, and Wadhams Hall Seminary College's actions endangered Plaintiff's safety and caused Plaintiff to fear for his own safety.

67. As a direct and proximate result of Defendants Diocese of Ogdensburg's, Diocese of Buffalo's, and Wadhams Hall Seminary College's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

68. Liabilities of Defendant Wadhams Hall Seminary College were transferred to, or assumed by, Defendant Wadhams Hall. As a result, Defendant Wadhams Hall is liable to the Plaintiff for the damages caused by Defendant Wadhams Hall Seminary College stated in this cause of action.

69. By reason of the foregoing, Defendants Diocese of Ogdensburg, Diocese of Buffalo, and Wadhams Hall are liable to the Plaintiff jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

#### SIXTH CAUSE OF ACTION

##### *Breach of Duty in Loco Parentis*

70. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 22 as if fully set forth herein.

71. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. These Defendants owe—and owed—a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

72. Defendants Diocese of Ogdensburg and Wadhams Hall Seminary College breached their duty to act *in loco parentis*.

73. At all times material hereto, Defendants Diocese of Ogdensburg's and Wadhams Hall Seminary College's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

74. As a direct result of Defendants Diocese of Ogdensburg's and Wadhams Hall Seminary College's conduct, Plaintiff has suffered the injuries and damages described herein.

75. Liabilities of Defendant Wadhams Hall Seminary College were transferred to, or assumed by, Defendant Wadhams Hall. As a result, Defendant Wadhams Hall is liable to the Plaintiff for the damages caused by Defendant Wadhams Hall Seminary College stated in this cause of action.

76. By reason of the foregoing, Defendants Diocese of Ogdensburg and Wadhams Hall are liable to the Plaintiff jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

### JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 2, 2020  
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.  
Paul J. Hanly, Jr.

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