

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

MICHAEL DIGIULIO,

Plaintiff,

v.

THE DIOCESE OF BUFFALO, N.Y.; ST. ANDREW'S ROMAN
CATHOLIC CHURCH SOCIETY OF THE TOWN OF
TONAWANDA, NEW YORK, INCORPORATED; and ST.
ANDREW'S COUNTRY DAY SCHOOL,

Defendants.

[Please see Attached Rider for Defendants' Addresses]

Index No.

SUMMONS

Date Index No. Purchased:
February 19, 2020

To the above named Defendant(s)

[Empty rectangular box for defendant name]

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
February 19, 2020

SIMMONS HANLY CONROY LLC

Paul J. Hanly, Jr.
Attorneys for Plaintiff
112 Madison Avenue, 7th Floor
New York, NY 10016
(212) 784-6401 Telephone
(212) 213-5949 Facsimile
phanly@simmonsfirm.com

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RIDER TO SUMMONS

Defendant/Counsel	Service Address
THE DIOCESE OF BUFFALO, N.Y.	795 Main Street, Buffalo, Erie County, New York c/o Randall D. White, Esq., Connors LLP, 1000 Liberty Building, 424 Main Street, Buffalo, NY 14202
ST. ANDREW'S ROMAN CATHOLIC CHURCH SOCIETY OF THE TOWN OF TONAWANDA, NEW YORK, INCORPORATED	1525 Sheridan Drive, Kenmore, Erie County, New York
ST. ANDREW'S COUNTRY DAY SCHOOL	1525 Sheridan Drive, Kenmore, Erie County, New York

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COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Michael DiGiulio, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Diocese of Buffalo, N.Y., St. Andrew's Roman Catholic Church Society of the Town of Tonawanda, New York, Incorporated, and St. Andrew's Country Day School and alleges, on personal knowledge as to herself 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 that 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 and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

PARTIES

4. Plaintiff Michael DiGiulio ("Plaintiff") is an individual residing in North Tonawanda, Niagara County, New York.

5. Defendant The 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 created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Buffalo, including during all relevant times, St. Agatha Roman Catholic Church and Our Lady of Charity Parish.

6. Defendant St. Andrew's Roman Catholic Church Society of the Town of Tonawanda, New York, Incorporated ("St. Andrew's Church") is a Roman Catholic parish within and under the authority of the Diocese of Buffalo and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 1525 Sheridan Drive, Kenmore, Erie County, New York. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated St. Andrew's Church.

7. Defendant St. Andrew's Country Day School ("St. Andrew's School") is a Roman Catholic parochial school within and under the authority of the Diocese of Buffalo with its principal office at 1525 Sheridan Drive, Kenmore, Erie County, New York. At all relevant times, the Diocese of Buffalo created, oversaw, supervised, managed, controlled, directed and operated St. Andrew's School.

FACTS COMMON TO ALL CLAIMS

8. Plaintiff and her family were parishioners of and attended St. Andrew's when Plaintiff was a minor child.

9. During the times relevant to the allegations set forth herein, Monsignor Joseph E. Schieder was assigned by Defendant Diocese of Buffalo to be a priest at St. Andrew's Church and St. Andrew's School (collectively referred to herein as "St. Andrew's"), where Plaintiff's family were parishioners and where Plaintiff was a student.

10. Through his positions at, within, or for the Defendants, Monsignor

Schieder was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner and student of the Diocese of Buffalo.

11. During approximately 1969 when Plaintiff was approximately 13 years of age, Monsignor Schieder approached Plaintiff at St. Andrew's and lured Plaintiff to the St. Andrew's rectory.

12. Monsignor Schieder used such encounters, gained through his position at St. Andrew's which granted him access to Plaintiff when Plaintiff was approximately 13 years of age, to sexually assault, sexually abuse, and have sexual contact with the Plaintiff on at least 6 occasions in violation of the laws of the State of New York.

Defendants' Responsibility for the Abuse Committed by Monsignor Schieder

13. At all times material hereto, Monsignor Schieder was under the management, supervision, employ, direction and/or control of the Defendants.

14. Through his positions at, within, or for the Defendants, Monsignor Schieder, was put in direct contact with Plaintiff.

15. Monsignor Schieder used his positions at, within, or for the Defendants and the implicit representations made by the Defendants about their characters that accompanied those positions, to gain Plaintiff's trust and confidence and to create opportunities to be alone with, and to sexually touch, Plaintiff.

16. Defendants had the duty to reasonably manage, supervise, control and/or direct priests who served or resided at St. Andrew's, and specifically, had a duty not to aid pedophiles such as Monsignor Schieder by assigning, maintaining, and/or appointing them to positions with access to minors.

17. Defendants knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Monsignor Schieder who sexually abused Plaintiff.

18. Defendants had a duty to the Plaintiff to properly supervise their priests to ensure that priests did not use their positions with the Diocese of Buffalo and with St.

Andrew's as a tool for grooming and assaulting vulnerable children. Defendants Diocese of Buffalo and St. Andrew's knew or should have known that Monsignor Schieder used his position with the Diocese of Buffalo and St. Andrew's to sexually abuse minor children, including the Plaintiff.

Consequences of the Abuse

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

20. As a direct result of the Defendants' 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 Monsignor Schieder'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 she suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

21. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

22. Defendants Diocese of Buffalo and St. Andrew's owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence of Monsignor Schieder, in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Monsignor Schieder did not use his position to injure minors by sexual assault, abuse, or sexual contact with minors.

23. The sexual abuse of children by adults, including priests and teachers, is

foreseeable.

24. Defendants Diocese of Buffalo and St. Andrew's at all relevant times held St. Andrew's out to be a safe place for learning and engaging in youth activities. St. Andrew's entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

25. Defendants Diocese of Buffalo and St. Andrew's negligently hired, retained, directed, and supervised Monsignor Schieder, though they knew or should have known that Monsignor Schieder posed a threat of sexual abuse to children.

26. Defendants Diocese of Buffalo and St. Andrew's knew or should have known of Monsignor Schieder's propensity for the conduct that caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

27. Monsignor Schieder sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff on St. Andrew's premises, including the rectory at St. Andrew's.

28. Defendants Diocese of Buffalo and St. Andrew's were put on notice of Monsignor Schieder's improper and inappropriate actions with minors.

29. Defendants Diocese of Buffalo and St. Andrew's were negligent in failing to properly supervise Monsignor Schieder.

30. Defendants Diocese of Buffalo and St. Andrew's was negligent in failing to supervise the rectory at St. Andrew's in order to prevent pedophiles from using it as an opportunity to meet, attract, and groom children.

31. At all times material hereto, Defendants Diocese of Buffalo and St. Andrew's actions were willful, wanton, malicious, reckless, negligent, and/or outrageous in its 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. By reason of the foregoing, the Defendants 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

34. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

35. Defendants Diocese of Buffalo and St. Andrew's knew, or were negligent in not knowing, that Monsignor Schieder posed a threat of sexual abuse to children.

36. The acts of Monsignor Schieder described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Buffalo and St. Andrew's.

37. Defendants Diocese of Buffalo and St. Andrew's owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Monsignor Schieder's sexual deviancy and the consequential damages, both prior to and/or subsequent to Monsignor Schieder's misconduct.

38. Defendants Diocese of Buffalo and St. Andrew's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

39. Defendants Diocese of Buffalo and St. Andrew's:
- 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 Monsignor Schieder;
 - c. failed adequately to supervise the rectory, church, and school;
 - d. 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, upon premises or with instrumentalities under their control; and

- e. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

40. At all times material hereto, with regard to the allegations contained herein, Monsignor Schieder was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo and St. Andrew's.

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

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

43. By reason of the foregoing, the Defendants 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

44. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

45. Plaintiff, when he was a minor, was placed in the care and supervision of Defendants Diocese of Buffalo and St. Andrew's 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 Defendants.

46. Plaintiff was a vulnerable child when placed within the care of Defendants

Diocese of Buffalo and St. Andrew's.

47. As a consequence, Defendants Diocese of Buffalo and St. Andrew's was in the best position to prevent Plaintiff's abuse, to learn of Monsignor Schieder's repeated sexual abuse of Plaintiff, and to stop it.

48. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of Defendants Diocese of Buffalo and St. Andrew's, Defendants Diocese of Buffalo and St. Andrew's breached their non-delegable duty to Plaintiff.

49. At all times material hereto Monsignor Schieder was under the supervision, employ, direction and/or control of Defendants Diocese of Buffalo and St. Andrew's.

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

51. By reason of the foregoing, Defendants 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

52. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

53. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Buffalo and St. Andrew's. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the Defendants as a parishioner at St. Andrew's. This entrustment of the Plaintiff to the care and supervision of the Defendants, while the Plaintiff was a minor child, required Defendants to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

54. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff.

55. Pursuant to their fiduciary relationship, Defendants assumed a duty to act in the best interests of Plaintiff.

56. Defendants breached their fiduciary duty to Plaintiff.

57. At all times material hereto, Defendants' actions and/or inactions were willful, wanton, malicious, reckless, negligent, and outrageous in their disregard for the rights and safety of Plaintiff.

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

59. By reason of the foregoing, the Defendants 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

60. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

61. As described above, the actions of Defendants Diocese of Buffalo and St. Andrew's, their predecessors and/or successors, agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

62. The actions of Defendants Diocese of Buffalo and St. Andrew's endangered Plaintiff's safety and caused him to fear for his own safety.

63. As a direct and proximate result of Defendants Diocese of Buffalo and St. Andrew'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.

64. By reason of the foregoing, the Defendants 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

65. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 20 as if fully set forth herein.

66. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendants Diocese of Buffalo and St. Andrew's for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational, youth and recreational activities under responsible adult supervision. During the times that Plaintiff was at St. Andrew's, he was under the supervision and control of Defendants Diocese of Buffalo and St. Andrew's. During the times that Plaintiff was a parishioner at St. Andrew's, he was under the supervision and control of Defendants Diocese of Buffalo and St. Andrew's. Defendants Diocese of Buffalo and St. Andrew's owe - and owed -- a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

67. Defendants Diocese of Buffalo and St. Andrew's breached its duty to act *in loco parentis*.

68. At all times material hereto Defendants Diocese of Buffalo and St. Andrew's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

69. As a direct result of Defendants Diocese of Buffalo and St. Andrew's conduct, Plaintiff has suffered the injuries and damages described herein.

70. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to 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;

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: February 19, 2020
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.
Paul J. Hanly, Jr.
phanly@simmonsfirm.com
Jayne Conroy
jconroy@simmonsfirm.com
Trent B. Miracle
tmiracle@simmonsfirm.com
SIMMONS HANLY CONROY LLC
112 Madison Avenue
New York, NY 10016
(212) 784-6401 Telephone
(212) 213-5949 Facsimile

Attorneys for Plaintiff

Of counsel:
Mitchell Garabedian
mgarabedian@garabedianlaw.com
William H. Gordon
wgordon@garabedianlaw.com
LAW OFFICES OF MITCHELL GARABEDIAN

100 State Street, 6th Floor
Boston, MA 02109
Phone: (617) 523-6250