



## **Clergy abuse: Mediating an American tragedy**

*By: Richard M. Williams, Esq.*

*Published: Daily Journal*

With deep-seated roots in contemporary Western civilization and religion, allegations of sexual abuse by Catholic clergy have been in the public consciousness in many Western countries for decades. In 2004, the John Jay Report indicated that between 1950 and 2002, over 4,000 priests (approximately 4 percent of the then active priesthood) were accused of various forms of sexual misconduct and abuse. Because clergy abuse is so abhorrent to our innate moral sense and leaves such permanent and deep scars on its victims, the issues presented by such cases are unique, and potential solutions are sometimes enigmatic.

By the late 20th and early 21st centuries, major lawsuits in California and across the United States had been filed, with claims that priests had sexually abused minors and the hierarchy of the Catholic Church had consciously attempted to conceal this misconduct. In 2002, the California Legislature passed a law that suspended for one year the existing statute of limitations for the filing of clergy abuse actions. Prior to this 12-month window, suits in California had to be filed before the victim turned 26 or within three years after concluding that the abuse caused them to suffer psychological problems. This law and similar ones in other states opened the door for plaintiffs who were in their 30s, 40s, 50s, and older to file actions based on alleged abuse many decades earlier.

As a result, the court calendars in many states became littered with clergy abuse cases. As the first decade of the 21st century came to a close, discovery in these lawsuits revealed tremendous amounts of factual information to support the allegations of the plaintiffs and their counsel. Several cases were tried, resulting in large verdicts or settlements, thus beginning the movement to use mediators to resolve the pendant array of these abuse cases. While one can only guess at the motivations on each side, both sides were motivated, for distinctly different cultural, moral, religious and financial reasons, to seek mediated settlements of these cases at all stages of trial and through the appellate level.

The traditional mediation model is put to the test by the unique issues raised by clergy abuse claims. An initial joint session between parties may be a deal breaker if it will result in a counterproductive confrontation between church authorities, counsel, and the victim. While a well-intentioned member of the church hierarchy, and not the alleged perpetrator, is usually in

attendance, their presence as a symbol of the evil that the church represents to a victim can have a nullifying effect on later efforts to a mediated settlement. Likewise, the traditional caucus approach involving the testing of positions, factual arguments, and the exchange of monetary demands and offers is also often not the appropriate methodology.

On the other hand, techniques that are useful for mediation of clergy abuse cases include increased use of active probing and listening skills, attempts to elicit useful historical information from the victim, and a concerted effort to empathize about the damage created by the actions of the priest and the church. Because a detailed understanding of the facts of a particular case is essential to a successful mediation, pre-mediation conferences, in addition to comprehensive briefs, from counsel on both sides are critical.

For the church, the preparation may involve not only church representatives but also risk and insurance professionals. Cynicism is to be discussed in these preparation sessions and is to be scrupulously avoided by the defense if a mediated settlement is to be achieved. Once the victim feels these emotions coming from the defense, it is difficult, if not impossible, to settle the case, as these are the same sentiments the victim feels he was given by the church during and after the abusive conduct.

With this backdrop, the issues presented by a clergy abuse case challenge the skills of any mediator. In mediation processes undertaken all over the United States involving both traditional and non-traditional models, by far the most important tool to a successful resolution of a clergy abuse case has been empathy. For victims who feel lost, abandoned and violated, building trust and understanding between the mediator and the victim is much more important than trying to build a bridge with dollars, at least at the outset of the process. Building the necessary trust between the mediator and the victim eventually opens the door to resolution by way of a monetary settlement.

Non-monetary components are also very strong tools to be used in clergy abuse cases and usually discussed before the monetary issue is decided. Agreements for future considerations like training of church personnel, monitoring programs for new priests, and open discussions of church philosophy are very helpful to the resolution process. Equally helpful are agreements by the church to provide therapy and counseling to the victim and his family.

Sometimes the process may require a face-to-face interaction between the victim and an appropriate church representative. This approach can be very dangerous and can usually only be effective late in the process, after lines of trust have been established. Such a tactic can be a very good tool if used during a limited window, but disastrous if misused.

A final component is often a requested apology, or an acknowledgment by the church that it accepts responsibility for the harm done to the victim and his family. These requests are always thorny issues and may best be handled in an appropriate face-to-face between a mature victim and a sincere church representative. A warm handshake and a verbal promise of empathy can literally settle a case, along with a relatively modest monetary payment by the church.

Extensive pre-mediation preparation and education are necessary predicates to the successful mediation of a clergy abuse case, and the traditional mediation model must be stretched and molded to fit the emotional and cultural vagaries presented. However, if a mediator tackles a clergy abuse case with the idea that empathy, complete transparency, and a non-traditional approach are his most useful tools, he will have the best chance to bring a part of this American tragedy to a successful conclusion.