

June 15, 2007 - Judge orders Catholic Diocese to turn over financial records

By Mike Tobin, The Cleveland Plain Dealer (OH)

A federal judge ordered the Catholic Diocese of Cleveland to turn over reams of financial records, including information on payments to former Bishop Anthony Pilla and on an account he controlled.

U.S. District Judge Ann Aldrich's ruling this week comes at the request of lawyers for Joseph Smith and Anton Zgoznic, two former diocesan employees accused of stealing \$784,000 from the church.

Aldrich ruled the documents, expected to be thousands of pages, can be used only by lawyers associated with the case. But much of the information will likely be aired during a the trial, scheduled to begin in August, in which Pilla is expected to testify.

"This is unprecedented," said Robert Rotatori, Zgoznic's lawyer. "The diocese has never allowed the parishoners to have insight into its finances. This is the first time we will have access to the financial records."

Smith and Zgoznic maintain the money they are accused of stealing was actually additional pay authorized by Pilla and the Rev. John Wright, the church's former financial and legal secretary. Smith and Zgoznic claim the diocese had hundreds of off-the-book accounts that church leaders used to make secret payments to a scores of people.

"These documents will demonstrate that my client was only doing what he was instructed to do and that the officials in the diocese, up to the bishop, knew what was going on," Rotatori said.

The diocese vehemently opposed the request, calling it a "fishing expedition" designed to smear the reputations of Pilla and Wright and cloud the case against Smith and Zgoznic.

Aldrich granted the motion this week.

"The court disagrees, and finds that under the defense theory advanced by Smith, the documents sought are all sufficiently relevant and potentially exculpatory, warranting their production," Aldrich wrote.

Robert Tayek, a spokesman for the diocese, said: "The Diocese has just received the ruling; we are studying it and are considering our options."

Aldrich ordered the diocese to produce documents about a range of topics, including:

* The Anthony M. Pilla Charitable account, which had more than \$500,000. The diocese contends the account was the bishop's personal savings account, while Smith claims it was a secret account that alternated between using Pilla's personal tax number and that of the diocese. Pilla later amended his tax returns to reflect using the account, attorney Philip Kushner said in court documents.

* Payments of \$78,000 to renovate and furnish a spacious Geauga County that was to be used as a retreat house. Smith and Zgoznic claim the Munson Township home was to be used primarily by Pilla and should be considered "additional compensation" because many of the furnishings, including furniture and a large-screen television, later went to Pilla's personal house. The diocese contends it is responsible for furnishing a retirement residence for the bishop.

* Payments of \$27,200 to the family of former Deacon Jerry Bals, who was ousted from the clergy after being indicted on charges of gross sexual imposition and assault against former students at Lake Catholic High School. The diocese called the payments an effort to assist Bals' struggling family. Smith and Zgoznic claim the payments are proof that diocesan officials were free to make payments, with little oversight, to whomever they deemed fit.

* Wright's confidential personnel files maintained by the diocese. Smith's lawyers said past discipline against Wright could be used to question his credibility. The diocese said there are no documents in the file that would reflect on his credibility.

* A \$63,000 loan of church money Wright made to his secretary that Smith said was done without approval from the diocese.

The diocese was also ordered to turn over the internal investigation it commissioned by attorneys at Jones Day after receiving an anonymous letter in late 2003 outlining financial wrongdoing by Smith and Zgoznik.

The diocese claimed the results of the investigation should remain secret because it was done by their attorneys and is protected by attorney-client privilege.

Lawyers for Smith and Zgoznik, however, said the internal investigation was the basis for the government's case against the two men.

Smith worked for the diocese for more than 20 years, including in the positions of treasurer and chief financial officer. In 2000, he succeeded Wright as financial and legal secretary, becoming the highest-ranking lay employee at the diocese.

Smith also owned two companies that he operated from his Avon Lake home.

Zgoznik, of Kirtland, worked for the diocese, both as a full-time and contract employee.

The two men are indicted on charges of conspiracy, money laundering, fraud and tax evasion.

Prosecutors claim between 1997 and 2003, Smith approved inflated payments to Zgoznik, who in turn paid money to the two companies owned by Smith. Together they illegally received \$784,000 in church money, prosecutors said.

The men claim the payments were approved by the diocese as a way to give them additional pay. As proof, they point to a 1996 decision by Wright to give Smith \$270,000 in two payments.

The money was wired from the diocese to an account at Fidelity Investments controlled by Wright and Smith. The payment was designed to keep Smith from leaving the diocese for the private sector.

Wright acknowledges approving \$270,000 payment but denies approving the \$784,000, according to court documents.

Smith resigned in 2004, after the diocese began its internal investigation.