

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

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State of Minnesota,

Court File No: 62-CR-15-4175

Plaintiff,

v.

**DEFENDANT'S OBJECTION  
TO STATE'S NOTICE OF INTENT  
TO AMEND THE COMPLAINT**

The Archdiocese of Saint Paul and Minneapolis,  
a Minnesota Corporation  
226 Summit Avenue  
Saint Paul, MN 55102,

Defendant.

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**INTRODUCTION**

After years of investigation, on June 3, 2015, the State brought a legally deficient Complaint against the Archdiocese of St. Paul and Minneapolis, a Minnesota corporation (the "Archdiocese Corporation"). In response to the Archdiocese Corporation's Motion to Dismiss that Complaint, the State now seeks leave to amend the Complaint.

Although it has provided no proposed amended complaint for the Court to review, the State apparently seeks to make amendments "consistent with that additional information provided in the State's Response to Defendant's Motion to Dismiss on this date." According to the State, the "[a]mendment will conform the Complaint to the additional information of record . . . ." In seeking to amend, the State relies upon Minn. R. Crim. P. 17.05. The State served notice of its intent to amend the Complaint on March 21, 2016.

The State now represents that "[o]ngoing investigation revealed additional facts and information relevant to this prosecution, and which are necessary to the State's response to the pending motion." (State's Resp. 1.) Yet none of the facts alleged in the State's Response are

newly discovered. A close examination of the “additional facts” makes clear that all the information was obtained by, or available to, the State prior to filing the Complaint on June 3, 2015 or, in a few instances, in the summer of 2015, long before the State’s March 21, 2016 Notice of Intent to Amend.

The State’s “Supplemental Statement of Facts” contains two principal supplements. First, the “Supplemental Statement of the Facts” sets forth irrelevant and salacious innuendo regarding sexual orientation that draw further attention to the irrelevant facts set forth in the Complaint (which are already subject to a Motion to Strike). Second, the State adds additional allegations relating to canon law to support the State’s allegations of *canonical* failures by former Archdiocese Corporation officials. These allegations are similarly subject to a Motion to Dismiss, because the State is unconstitutionally relying on church doctrine and purported canonical failures to bring a secular criminal prosecution.

### **LEGAL STANDARD**

The district court’s discretion whether to permit an amendment to the Complaint is framed by two Minnesota Rules of Criminal Procedure: Rule 3.04 and Rule 17.05.

#### **I. THE STATE CANNOT AMEND UNDER RULE 17.05.**

Although this case has not yet reached trial, the State’s Notice of Intent to Amend moves to amend the Complaint under Minn. R. Crim. P. 17.05. However, it is well settled that Rule 17.05 applies only after commencement of trial. *See State v. Pettee*, 538 N.W.2d 126, 131-31 (Minn. 1995) (prior to trial, Minn. R. Crim. P. 3.04, subd. 2, applies); *State v. Bluhm*, 460 N.W.2d 22, 24 (Minn. 1990) (holding that Minn. R. Crim. P. 17.05 applied only after jeopardy has attached after the jury is sworn); *State v. Alexander*, 209 N.W.2d 745, 748 (Minn. 1980) (interpreting Rule 17.05 to apply to motion to amend only after the commencement

of trial); *State v. Doeden*, 245 N.W. 2d 233, 234 (1976) (“[Rule 17.05] refers to motion to amend indictments or complaints after the commencement of trial.”). The purpose of Rule 17.05 is “to protect against confusing the jury, violating due process notions of timely notice, and adversely affecting the trial tactics of the defense.” *State v. Guerra*, 562 N.W.2d 10, 13 (Minn. Ct. App. 1997) (citation omitted). Based on this clear precedent, Rule 17.05 does not apply here.

## **II. THE STATE’S MOTION TO AMEND IS SUBJECT TO RULE 3.04.**

When a motion to amend a complaint is brought before trial, Minn. R. Crim. P. 3.04, subd. 2, governs instead. *Bluhm*, 460 N.W.2d at 24 (holding Rule 3.04, subd. 2, applies to motions to amend prior to the commencement of trial). This rule applies in pretrial proceedings where “the initial complaint does not properly name or describe the defendant or the offense charged” or where “evidence presented establishes probable cause to believe that a different offense has been committed from that charged in the complaint.” Minn. R. Crim. P. 3.04, subd. 2. Rule 3.04 “recognizes the importance of timeliness” by requiring that amendments be made promptly once the circumstances that warrant an amendment become known. *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. Ct. App. 2004) (holding that the district court in that case did not abuse its broad discretion by denying an untimely motion to amend the complaint). “The district court has broad discretion to grant or deny leave to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion.” *Id.* at 850.

The State does not seek to amend the Complaint to add additional or different offenses. The State’s Notice comes only after the Archdiocese Corporation filed a Motion to Dismiss the Complaint for failure to allege a crime. Yet the State apparently seeks to redirect the focus of the Complaint by introducing 15 pages of additional facts to the probable-cause portion of the Complaint in order to be “consistent with that additional information provided in the State’s

Reponses to Defendant’s Motion to Dismiss.” As such, any effort to amend the Complaint would be subject to Rule 3.04, subd. 2(a). (Of course, the need to amend reflects the State’s own recognition that “the initial complaint does not properly describe [] the offense charged,” precisely what the Archdiocese Corporation contends.)

### **ARGUMENT**

Leave to amend the Complaint should be denied because the State’s Notice is both untimely and prejudicial.

#### **I. THE STATE’S NOTICE IS UNTIMELY.**

Rule 3.04 requires amendments to be made promptly once the circumstances that warrant an amendment become known. *Baxter*, 686 N.W.2d at 850. In *Baxter*, the district court denied as untimely the State’s motion to amend the complaint, on the day of trial, from one count of third-degree criminal sexual conduct to three counts of first-degree criminal sexual conduct. *Id.* at 849-50, 852. The district court had determined that the information the proposed charging amendment was based upon was available to the State earlier and its undue delay was prejudicial to the defendant’s substantial rights. *Id.* The Court of Appeals upheld the district court, noting that “[t]he district court has broad discretion to grant or deny leave to amend a complaint, and its ruling will not be reversed absent a clear abuse of that discretion.” *Id.* at 850.

The State’s Complaint alleges that the Archdiocese Corporation “encouraged, caused or contributed” to three juveniles’ delinquency and need for protection. The Complaint is based on specific instances of abuse by Wehmeyer and his provision of tobacco and alcohol to juveniles from 2009 through 2011. The Archdiocese Corporation reported the abuse by Wehmeyer to Ramsey County in June 2012. Ramsey County then investigated these events for three years before the June 3, 2015 Complaint was filed.

After years of investigation, the State now represents that “[o]ngoing investigation revealed additional facts and information relevant to this prosecution, and which are necessary to the State’s response to [defendant’s motion to dismiss the complaint].” (State’s Resp. 1.) But none of the facts alleged in the State’s Response are new.

A close examination of the State’s “Supplemental Statement of Facts” makes clear that the information sought to be included was either obtained by, or available to, the State prior to filing the original complaint on June 3, 2015. The State’s “additional facts” are set forth in a supporting affidavit and exhibits. The exhibits include:

1. **Restated Articles of Incorporation of the Archdiocese of St. Paul and Minneapolis dated June 12, 2003.** This document was available to the public and accessible through a search of the Minnesota Secretary of State website throughout Ramsey County’s investigation.
2. **Corporation Bylaws template for a Parish Corporation within the Archdiocese of St. Paul and Minneapolis.** The State provides no explanation regarding when it obtained this document that was presumably in the records obtained during the initial three-year investigation into the Archdiocese Corporation.
3. **Excerpted report of Inv. G. Leatherman concerning interview with witness M. S.** The State’s notes from the interview of this witness are dated January 17, 2015, almost six months before the Complaint was filed.
4. **Transcript of 911 Telephone call to Fillmore County Sheriff’s Office on September 29, 2009.** The existence of Mr. Wehmeyer’s arrest in response to a September 2009 911 call in Fillmore County was known to the State when the Archdiocese Corporation reported the abuse to Ramsey County in June 2012. Moreover, the State concedes that “[n]o person affiliated with the Archdiocese requested any documents or information from authorities relating to Wehmeyer’s arrest” including the 911 call transcript. (State’s Resp. 5.) Law enforcement did not alert the Archdiocese Corporation to the concern in the 911 call or apparently take any other action to protect children. Therefore, this information is irrelevant as to the Archdiocese’s knowledge of Wehmeyer’s behavior prior to his abuse of the victims.
5. **Report of Inv. G. Leatherman of follow-up interview with witness F. W.** The substance of this information relates to a conversation that took place on

December 12, 2013. This information was provided to Ramsey County in February 2015, four months before the Complaint was filed.

6. **Report of Inv. G. Leatherman of interview with witness D. G., with related documents that were provided by D. G.** Ramsey County interviewed witness D. G. on May 14, 2015. The investigators had additional follow-up contact with this witness on May 18, 2015, and May 29, 2015. Each of these investigative actions took place before the Complaint was filed.
7. **Excerpted Report of Inv. G. Leatherman concerning review of affidavit of witness W. S.** The State's interview of this witness occurred on November 24, 2015, before the Complaint was filed.
8. **Report of Inv. G. Leatherman concerning interview of witness J. C.** The State had contact with this witness on May 20, 2015, prior to filing the Complaint.
9. **Report of Inv. G. Leatherman concerning interview of witness P. B.** The State has disclosed that the State had contact with this witness as early as July 2015.
10. **Report of Inv. G. Leatherman concerning affidavit of and interview of witness E. T.** Ramsey County conducted an interview of this witness on June 4, 2015.
11. **Report of Inv. G. Leatherman concerning affidavit of witness M. B.** Ramsey County reviewed this affidavit on August 12, 2015, approximately seven months before serving the State's Notice.
12. **Report of Sgt. E. Skog concerning interview of Archbishop John Nienstedt.** Ramsey County conducted this interview on May 27, 2015, before filing the Complaint.
13. **Excerpts of Affidavit of Jennifer Haselberger, dated July 7, 2014.** This interview took place almost a year before the Complaint was filed. Ramsey County investigators have been aware of this witness throughout their initial investigation. The follow-up interview with Hasselberger on March 18, 2016, concerned events that took place in 2013.
14. **Excerpted report concerning interview with witness T. W.** The State conducted interviews of this witness dated July 11, 2012 and March 27, 2015, well before the Complaint was filed.
15. **Report of Inv. G. Leatherman concerning interview with witness R. W.** The State conducted interviews of this witness dated July 13, 2012 and February 2, 2015, well before the Complaint was filed.

16. **Excerpted report of Inv. G. Leatherman concerning interview of witness J. H.** The State's interviews with this witness took place on June 21, 2012, June 27, 2012, October 17, 2013, January 31, 2014, and April 16, 2015. All of these interviews occurred before the Complaint was filed.
17. **Report of Inv. G. Leatherman concerning interview of witness C. W.** This interview took place on May 28, 2015, before the Complaint was filed.
18. **Report of Inv. G. Leatherman concerning interview of witness M. W.** This interview took place July 7, 2015, eight months before the State's Notice was served.
19. **Letter from Curtis Wehmeyer to Archbishop Nienstedt, April 23, 2009.** The State provides no explanation regarding when it obtained this document. Presumably, the record was obtained during the initial three-year investigation.
20. **Excerpts of deposition of Andrew Eisenzimmer, May 6, 2014.** This deposition occurred before the Complaint was filed.
21. **Excerpts of deposition of Archbishop Nienstedt, April 2, 2014.** This deposition occurred before the Complaint was filed.
22. **Criminal Complaint Against Curtis Wehmeyer – 9/20/2012.** This document was created by Ramsey County almost three years before the Complaint was filed.

In sum, the additional facts the State seeks to add into the Complaint are not newly discovered. With one exception, they were known to the State before the Complaint was filed or, in a few cases, in the summer of 2015.

The State intentionally decided not to include the already known facts in the initial Complaint when it set forth its theory of probable cause. Now, facing the potential dismissal of its legally deficient Complaint, the State makes an untimely request to amend in an attempt to cure the deficiencies in its novel prosecution. Moreover, as set forth in the Archdiocese Corporation's Reply Memorandum Supporting its Motion to Dismiss the Complaint, the new additional allegations do not cure the legal failures of the Complaint. The State's request should be denied.

## **II. THE STATE’S PROPOSED AMENDMENTS PREJUDICE THE ARCHDIOCESE’S SUBSTANTIAL RIGHTS.**

The proposed amendments fail to establish probable cause that the Archdiocese Corporation “encouraged, caused or contributed” to three juveniles’ delinquency and need for services. Instead, the proposed amendments improperly prejudice the Archdiocese Corporation’s right to prepare a defense by: (1) focusing this case on salacious and irrelevant allegations, and (2) further drawing the Court into the prohibited territory of examining religious and canon law. *See State v. Dickson*, 244 N.W.2d 738, 741 (1976) (identifying the “opportunity to prepare a defense to the charge” as “a substantial right”).

### **A. Responding To The Irrelevant Allegations Would Unfairly Prejudice The Archdiocese Corporation.**

The proposed amendments allege that “[a] marked similarity exists between some of Wehmeyer’s misconduct and misconduct attributed to [the former] Archbishop.” (State’s Resp. 5.) The assertions regarding the former Archbishop include: allegations that he was “cruising” in a park in the early 1980s—over 30 years ago; allegations regarding an unwelcome advance on an adult male in 2002; and allegations that he took an active interest in men in the seminary. (State’s Resp. 6-10.) The thinly veiled, wholly unsupported, and highly prejudicial suggestions from these stale allegations are that the former Archbishop was “similar” to Wehmeyer. But the former Archbishop’s interest in men beginning their vocation in the priesthood or any other allegations about the former Archbishop’s sexual orientation is irrelevant to the crimes the State has charged and whether the Archdiocese Corporation had any knowledge that Wehmeyer was a danger to the Victims in this case before the abuse was reported.

The proposed amendments go on to allege a “social relationship between Curtis Wehmeyer and his Archbishop.” (State’s Resp. 1, 11.) The Supplemental Statement of



Facts describes a relationship that included “dining together and drinking alcohol.” (State’s Resp. 11.) The proposed amendment implies scandal. Yet even if true, these allegations amount to nothing more than evidence of a social relationship between Wehmeyer and the former Archbishop. Even taken at face value, the State has not asserted that the former Archbishop knew of Wehmeyer’s criminal sexual abuse and these assertions cannot substitute for that allegation. They simply do not establish that the Archdiocese Corporation, or the former Archbishop, had any knowledge that Wehmeyer was sexually abusing the Victims before the abuse was reported.

The State’s allegations regarding the former Archbishop are an attempt to draw the Court into a sideshow and cause a media uproar. Without an allegation by the State that the former Archbishop actually knew of the criminal sexual abuse, the former Archbishop’s personal life, including his alleged sexual orientation, is wholly irrelevant to the facts at issue. The State’s attempt to draw focus there is improper, including his alleged sexual orientation, and prejudices the Archdiocese Corporation’s ability to prepare a defense to the charges based on the elements of the offense and corporate criminal liability. The former Archbishop is not a defendant in this case. *See In re Smith*, 656 F.2d 1101, 1106-07 (5th Cir. 1981) (“no legitimate governmental interest served” by the government's public allegation of wrongdoing by an uncharged party). These additional allegations are precisely the kind of irrelevant and inflammatory statements the Archdiocese Corporation moved to strike from the Complaint in its January 19, 2016 Motion to Strike Prejudicial Surplusage.

In addition, many of the allegations in the proposed amendment occurred prior to May 2, 2008, when the former Archbishop began serving the Archdiocese Corporation. Thus, as a simple matter of timing, these allegations are even more plainly irrelevant to the Archdiocese

Corporation's knowledge and actions regarding Wehmeyer's abuse and provision of tobacco and alcohol to minors. If the State is permitted to amend its Complaint as it proposes, the Archdiocese Corporation will be substantially prejudiced by having to respond to these expansive, improper, and irrelevant allegations, and by the public reaction that would accompany such allegations.

**B. The Additional Religious Standards Prejudice The Archdiocese Corporation's Ability To Prepare A Defense Based On Secular Principles Of Law.**

The State's proposed Supplemental Statement of Facts (and newly disclosed expert) further directs this Court improperly into the interpretation of internal church law. Such an inquiry is prohibited by the First Amendment.

As set forth more fully in the Archdiocese Corporation's Motion to Dismiss, in *State v. Bussmann*, 741 N.W.2d 79 (Minn. 2007), and *State v. Wenthe*, 839 N.W.2d 83 (Minn. 2013), the Minnesota Supreme Court held that the First Amendment entanglement doctrine prohibits the State from examining issues of religious doctrine or policy. The Supreme Court identified specific types of religious evidence that give rise to First Amendment limits on the State's authority:

- (1) the power imbalance resulting from the power of priests over parishioners;
- (2) the official policies of the Catholic Church regarding pastoral care;
- (3) concerns within the Catholic Church regarding sexual misconduct;
- (4) testimony relating to a church's response to allegations of sexual misconduct;
- and (5) the religious training the priest received.

*Wenthe*, 839 N.W.2d at 92.

In both cases, the Minnesota Supreme Court articulated an overarching concern that introduction of this type of evidence would enable a factfinder to judge a defendant based on church doctrine rather than Minnesota law. *Id.* at 95.

Here, the State seeks to amend the Complaint to add more of precisely this type of prohibited evidence. The State attempts to locate probable cause through numerous references to religious decisions, doctrines, and policies. These include: (1) that “[u]nder canon law, the archbishop enjoys virtually unlimited monarchical authority over and within the Archdiocesan structure” (State’s Resp. 2 & n.1 (citing to canon 1983 Code c. 381, §1)); (2) that “[s]uch organizational structure accomplishes a core purpose of canon law – that diocesan power and authority resides with . . . that one particular bishop assigned responsibility by the Post for a particular geographical territory of the Catholic Church” (State’s Resp. 3); (3) four opinions from the State’s Canon Law Expert regarding the religious authority of the Archbishop (State’s Resp. 3-4); (4) opinions from the State’s Canon Law Expert regarding the severity of the crime of sexual abuse of minors in the Church’s law Canon 1395 (State’s Resp. 4); and (5) hearsay allegations that Wehmeyer functioned as a priest during a camping trip with one of the victims because he allegedly performed the sacrament of confession (State’s Resp. 4). These amendments aim to have a factfinder adjudicate the defendant based on church policy and canon law.

The State’s proposed amendments seek to engraft improperly religious standards on to Minnesota statutes. The State continues to advance its theory based not on secular principles of law, but on the Archdiocese Corporation officials’ decisions under canon law to ordain Wehmeyer as a priest and to appoint and to retain him as a pastor. The State’s contention that the former Archbishop and other church leaders are guilty of a crime because they failed to fulfill their canonical duties is based entirely on interpretations of religious policies and canon law. Such an attempt is in plain violation of both the United States Constitution and Minnesota Constitution. *Wenthe*, 839 N.W.2d at 95. This improper basis for culpability not only violates

the Archdiocese Corporation's constitutional right to be free of excessive State engagement with its exercise of religion, it also prejudices the Archdiocese Corporation's ability to prepare a defense under neutral principles of law.

**CONCLUSION**

For all of the foregoing reasons, the Archdiocese Corporation respectfully requests that the Court deny the State's motion to amend the Complaint.

Dated: April 4, 2016



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