AB 2875 – SECRET SETTLEMENTS

Assemblymember Fran Pavley

IN BRIEF

Prohibits confidential settlements in any civil action pertaining to a felony sex offense.

THE ISSUE

Confidential settlements are an everyday occurrence and they can have tragic consequences. They are used in a wide variety of civil actions for personal injury, including actions involving alleged sexual molestation. Parties may settle civil lawsuits pursuant to a confidentiality agreement that not only seals information about defendants, plaintiffs, informants and witnesses, but also details about the alleged sexual abuse. Parties are then prohibited from ever speaking about the abuse or disclosing that there was a lawsuit. The accused admits no wrongdoing, charges are never filed and the police are not notified. Unfortunately, this secrecy often allows for further wrongful acts to continue. It deprives the public of crucial information that can protect future victims.

There have been a myriad of articles that have highlighted the sexual abuse scandal engulfing the Roman Catholic Church, including reports of repeated instances in which church leaders allowed priests to stay in their positions despite allegations that the priests were sexually molesting youngsters, or shuffling them from one post to another, where they continued to have contact with children. It has also been reported that the Church has settled many claims charging sexual abuse by priests on condition that the victims not reveal the abuse or the fact or terms of the settlement.

In 2004, a national study commissioned by the U.S. Conference of Catholic Bishops revealed approximately 11,000 people in the United States had made credible accusations of child sexual abuse against more than 5,000 clergy since 1950. The church has paid out more than $1 billion for claims and reached countless confidential out-of-court settlements.

For example, according to the Boston Globe, from 1992 to 2002 the Archdiocese of Boston secretly settled child molestation claims involving 70 priests and at least 200 abuse victims.

Despite headlines focusing on the priest pedophile problem in the Catholic Church, secret settlements involving child sexual abuse are not by any means limited to the Catholic Church. Data shows that secret settlements happen broadly across all denominations, not only with clergy, but with church volunteers as well. Other recent examples where secrecy has occurred includes community youth service organizations; foster parents; administrators of homes for the mentally disabled; and pop stars.

During the Michael Jackson child molestation trial in 2005, it was reported that on at least two occasions he paid out millions of dollars in the 1990's to secretly settle molestation allegations. Although a criminal investigation was launched, no charges against Jackson were ever filed because the boys declined to cooperate with authorities after receiving the secret settlements.

Experts say the effects of sexual abuse never go away, continuing to influence victims in various ways, such as contributing to drug and

alcohol abuse, low self-esteem, divorce, and distrust.

BACKGROUND

Parties to a lawsuit can enter into a secrecy agreement at almost any point during the proceedings.

- During the pre-trial discovery phase, a judge may be asked to issue a protective order which forbids the plaintiff from sharing information disclosed during the case with anyone, even government regulators.
- At the conclusion of a trial, a defendant can request the plaintiff to agree to an order to seal all records in a case, including all exhibits and transcripts. Sealing orders can go so far as to remove all traces that a lawsuit even existed.
- After a trial, a defendant can ask for a confidentiality agreement that prohibits victims from saying or revealing anything publicly about the case. A confidentiality agreement can prohibit a victim from cooperating with government safety regulators and even law enforcement agencies.

EXISTING LAW

In 2003, this Legislature passed and the Governor signed AB 634 (Steinberg) which establishes state policy disfavoring confidential settlement agreements in elder abuse cases and requires a showing before the court before a confidential settlement agreement in this type of case may be recognized or enforced by the court.

THE SOLUTION

AB 2875 seeks to establish a targeted policy, and balanced approach, by prohibiting confidential settlement agreements in any civil case involving a felony sex offense.

AUTHOR'S STATEMENT

Secrecy agreements should not be permitted in felony sex abuse cases. Statistics show a significant rate of recidivism for sexual predators. When settlements require secrecy as the price of compensation for victims, the result is a significant increase in the likelihood of repeated molestations and the destruction of innocent people's lives.

It is imperative that we do all we can to safeguard our children and community from sexual predators.

SUPPORT

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California District Attorneys Association
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California Protective Parents Association
Child Abuse Solutions
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FOR MORE INFORMATION

Staff: Debra Gravert, (916) 319-2344
debra.gravert@asm.ca.gov