

For research purposes only. Courtesy of New York State Unified Court System eTrack.
Available here: <https://iapps.courts.state.ny.us/webcivil/etrackLogin>



Summons & Complaints and all public documents subsequently completed and filed by Phillips & Paolicelli LLP. Address: 747 3rd Ave 6th floor, New York, NY 10017. Phone: (212) 388-5100.

Summons & Complaints relying on the research of James G. Faluszczyk:

NYS UCS Case Number	Alleged Perpetrator	Defendant #	Defendants	Plaintiff
803974/2021	Dudek OFMConv., Fr. Berard	4	Bishop Ryan HS, St. "Casimir" Church & St. Francis HS et al.	PB-60 Doe

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-60 DOE,</p>	<p>Plaintiff,</p>
<p>vs.</p>	
<p>BISHOP RYAN HIGH SCHOOL, FRIARS MINOR OF THE ORDER OF ST. FRANCIS,, ST. CASAMIR’S CHURCH, and ST. FRANCIS HIGH SCHOOL,</p>	
	<p>Defendants.</p>

SUMMONS

Index No.:

TO THE ABOVE NAMED DEFENDANTS:

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 defaulted for the relief demanded in the complaint.

Dated: March 22, 2021
New York, New York

Yours, etc.

PHILLIPS & PAOLICELLI, LLP

By: /s/ James Plastiras
Diane Paolicelli
dpaolicelli@p2law.com
James Plastiras
jplastiras@p2law.com
Phillips & Paolicelli, LLP
747 Third Avenue, Sixth Floor
New York, New York 10017
212-388-5100

Paul K. Barr

Fanizzi & Barr, P.C.
2303 Pine Avenue
Niagara Falls, NY 14301
716-284-8888
pbarr@fanizziandbarr.com

Attorneys for Plaintiff

TO:

BISHOP RYAN HIGH SCHOOL
1833 Clinton St, Buffalo, NY 14206

FRIARS MINOR OF THE ORDER OF ST. FRANCIS,
129 West 31st Street, 2nd Floor
New York, New York 10001

ST. CASAMIR'S CHURCH
160 Cable St., Buffalo, NY 14206

ST. FRANCIS HIGH SCHOOL
4129 Lake Shore Rd., Hamburg, NY 14075

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

<p>PB-60 DOE,</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>BISHOP RYAN HIGH SCHOOL, FRIARS MINOR OF THE ORDER OF ST. FRANCIS,, ST. CASAMIR’S CHURCH, and ST. FRANCIS HIGH SCHOOL,</p> <p style="text-align: right;">Defendants.</p>

COMPLAINT

Index No.:

Plaintiff PB-60 Doe, by and through his undersigned attorneys, as and for his Verified Complaint, alleges as follows:

NATURE OF THE ACTION

1. This action is brought pursuant to the Child Victims Act, codified at CPLR 214-g.
2. Plaintiff PB-60 Doe was sexually abused and assaulted by Father Berard Dudek (hereinafter “Fr. Dudek”), who was hired, retained, supervised, placed, directed and otherwise authorized to act by Defendants Bishop Ryan High School, Friars Minor Of The Order Of St. Francis (“O.F.M.”), St. Casimir’s Church and St. Francis High School, in conjunction with the Diocese of Buffalo, N.Y. (“Diocese of Buffalo” or “Diocese”).
3. Plaintiff was about 14 years old at the time of his abuse by Fr. Dudek in the mid-1950s.

4. Despite years of refusal to publicly address rampant child abuse by priests and nuns, The Diocese of Buffalo recently published a long list of clergy in their employ who were credibly accused of molesting children.

5. In fact, the Roman Catholic Church, the Diocese of Buffalo, and Defendants have long known that substantial numbers of priests and nuns throughout history, and up to and including the present day, violate their vows or promises of celibacy and otherwise misbehave by soliciting sexual contact with parishioners and others, in particular with children like Plaintiff, who are entrusted to their spiritual care and guidance. Official Church documents dealing with this unspeakable misconduct span the centuries, many of which were and are well known to Defendants.

6. Notwithstanding this knowledge, and the fiduciary duty and relationship of trust owed to parishioners and their children, Defendants negligently, recklessly, and willfully failed to protect Plaintiff from sexual abuse by Fr. Dudek, permitted the abuse to occur, failed to supervise Fr. Dudek, failed to timely investigate Fr. Dudek's misconduct, failed to train minor parishioners, parents, clergy members and/or adult staff about the risk of sexual abuse in their institution, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused, acted to protect their own self-interest to the detriment of innocent children, and are otherwise responsible for Fr. Dudek's sexual assault of Plaintiff, and Plaintiff's consequential injuries and damages.

PARTIES

7. Plaintiff is an individual residing in Erie County, New York.

8. Plaintiff was born in 1941.

9. At all relevant times, Defendant Bishop Ryan High School was a Roman Catholic School, organized pursuant to the laws of the State of New York. According to publicly available information, Bishop Ryan High School is no longer in operation. It was last operated in Erie County, New York, with its principal place of business at 1833 Clinton St, Buffalo, NY.

10. At all relevant times, Defendant St. Francis High School was and is a Roman Catholic school, organized pursuant to the laws of the State of New York, and which operated at all relevant times in Erie County, New York, with its principal place of business at 4129 Lake Shore Rd., Hamburg, NY 14075. Upon information and belief, St. Francis High School assumed the liabilities of Bishop Ryan High School when it closed in the early 1970's and is the successor in interest to Bishop Ryan High School.

11. At all relevant times, Defendant St. Casimir's Church is and was a Roman Catholic Church, organized pursuant to the laws of the State of New York, and which operated at all relevant times in Erie County, New York, with its principal place of business at 160 Cable St, Buffalo, NY 14206. At all relevant and material times, the Roman Catholic Bishop of Buffalo, New York was the President of St. Casimir's Church, and the Roman Catholic Vicar General of Buffalo, New York was the Vice-President of St. Casimir's Church.

12. At all relevant times, upon information and belief, Defendant Bishop Ryan High School was under the direct authority, control and province of St. Casimir's Church.

13. At all relevant times, Defendant Friars Minor Of The Order Of St. Francis ("O.F.M.") was and is a province of the religious order of the Roman Catholic Church and a not-for-profit corporation organized pursuant to the laws of the State of New York, with its principal place of business at 39 East 83rd Street, New York County, New York.

14. At all relevant times, Defendant OFM operated and controlled Defendants Bishop Ryan and St. Francis.

15. At all relevant times, Defendants were each under the direct authority, control and province of the Diocese of Buffalo.

16. At all relevant times, upon information and belief, Defendants, individually and/or collectively, owned the premises where Defendant Bishop Ryan High School was located.

FACTUAL ALLEGATIONS

17. Plaintiff repeats and re-alleges all preceding paragraphs of this Complaint.

18. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Fr. Dudek was not fit to work with or around children.

19. Defendants, by and through their agent, servants and/or employees, became aware, or should have become aware, of Fr. Dudek's propensity to commit sexual abuse and of the risk to Plaintiff's safety.

20. Defendants each negligently hired, retained, directed and controlled Fr. Dudek with knowledge of his propensity for the type of behavior which resulted in Plaintiff's injuries.

21. Prior to Fr. Dudek being assigned to Bishop Ryan High School, Defendants and their respective executive officers should have known it was not safe to allow Fr. Dudek to have unsupervised contact with minor children, in that Fr. Dudek posed a sexual danger to minor children. The Roman Catholic Bishop and Vicar General of Buffalo concealed the information about the danger Fr. Dudek posed to minor children, in order that the Roman Catholic Bishop and Vicar General of Buffalo could assign Fr. Dudek to work at schools, including Defendant Bishop Ryan High School. Defendants aided and abetted the Roman Catholic Bishop and Vicar

General of Buffalo in concealing the information about the danger Fr. Dudek posed to minor children.

22. At all relevant times, and specifically in the 1950's, Plaintiff was a student at Defendant Bishop Ryan High School.

23. At the time of Plaintiff's abuse by Fr. Dudek, Fr. Dudek was employed by Defendants, under the direct supervision, employ, and control of Defendants, in conjunction with the Diocese of Buffalo. Fr. Dudek was assigned to the position of teacher at Bishop Ryan High School. His duties included interacting with children, including children attending Defendant Bishop Ryan High School, and participating in the sacraments. In the performance of his duties, Defendants authorized Fr. Dudek to be alone with minor boys, including Plaintiff, and to have unfettered and unsupervised access to them on Defendants' property.

24. Defendants required parishioners and students, like Plaintiff, to accept and obey guidance, discipline, and instruction from Fr. Dudek and other clergy members.

25. By assigning Fr. Dudek to the role of teacher, Defendants gave Fr. Dudek complete unfettered access to minors, including Plaintiff, and empowered him to groom, guide, discipline, and otherwise exercise complete authority over minors.

26. Plaintiff was raised as a Catholic, and at all relevant times had developed a reverence, respect and/or fear for the Catholic Church and its clergy, including Fr. Dudek.

27. In or about 1955, on several occasions during Plaintiff's freshman year at Defendant Bishop Ryan High School, Fr. Dudek, acting in his capacity as teacher, and in furtherance of the business of Defendants, sought Plaintiff out after class.

28. There, on school grounds, Fr. Dudek engaged in unpermitted, forcible and harmful sexual contact with Plaintiff.

29. Plaintiff's relationship to Defendants as a vulnerable child and student, and the culture of the Catholic Church which Defendants endorsed, put pressure on Plaintiff not to report Fr. Dudek's abuse or threats.

30. Defendants knew or should have known that Fr. Dudek was a danger to minor boys like Plaintiff before he sexually abused Plaintiff.

31. The Vatican and other church authorities addressed the problem of clergy sex abuse on countless occasions prior to Fr. Dudek's abuse of Plaintiff and communicated as much with all levels of Church hierarchy including bishops, Diocesan leaders, parishes and schools. As such, at all relevant times, Defendants were well aware that errant sexual behavior by some priests was not only widespread but predictable.

32. Defendants owed Plaintiff a duty of reasonable care because they had superior knowledge about the risks their facilities posed to minor children, the risk of abuse in general, and the risks that Fr. Dudek posed to Plaintiff.

33. Prior to the time of Plaintiff's abuse by Fr. Dudek, Defendants knew or should have known of numerous acts of sexual assault committed by clergy members within the Diocese and elsewhere in the Roman Catholic Church, and knew that there was a specific danger of child sex abuse for children in their institutions.

34. The sexual abuse of Plaintiff by Fr. Dudek was foreseeable.

35. Prior to the time of Plaintiff's abuse by Fr. Dudek, Defendants knew or should have known of Fr. Dudek's acts of child sexual abuse on other minors.

36. Defendants had the duty to reasonably manage, supervise, control and/or direct priests who served at their respective institutions, and a duty not to aid pedophiles such as Fr. Dudek by assigning, maintaining, and/or appointing them to positions with access to minors.

37. Defendants owed Plaintiff a reasonable duty of care because they affirmatively solicited children and parents to send their children to their facilities; they undertook custody of minor children, including Plaintiff at Defendant Bishop Ryan High School; they promoted their facilities and programs as being safe for children, they held out their agents, including Fr. Dudek, as safe to work with and around minor boys, they encouraged parents and children to spend time with their agents; and/or authorized their agents, including Fr. Dudek, to spend time with, interact with, and recruit children.

38. Defendants owed Plaintiff a heightened, fiduciary duty of care because they held themselves out as being able to provide a safe and secure environment for children, including Plaintiff; Plaintiff's parents entrusted Plaintiff to Defendants' care, and expected that Plaintiff would be safe and properly supervised in an environment free from harm and abuse; Plaintiff was a vulnerable minor, and unable to protect himself; and these Defendants affirmatively assumed a position of empowerment over Plaintiff.

39. Defendants owed Plaintiff a duty to protect him from harm because Defendants' acts and omissions created a foreseeable risk of harm to Plaintiff.

40. As a result of the foregoing, Plaintiff has suffered and continues to suffer great physical and mental pain and anguish, severe and permanent emotional distress, psychological injuries, fear, anxiety, shame and embarrassment; was prevented and will continue to be prevented from performing his normal daily activities; was and will continue to be deprived of the enjoyment of life's pleasures; has suffered and continues to suffer loss of spirituality; has difficulty concentrating and sleeping; and was otherwise damaged in an amount that exceeds the jurisdictional limit of the lower courts of this State.

41. To the extent that any Defendants plead, or otherwise seek to rely upon Article 16 of the New York Civil Practice Law and Rules (CPLR) to have fault apportioned to another allegedly culpable party, Plaintiff expressly states that Defendants' conduct falls within one or more of the subdivisions of CPLR 1602.

FIRST CAUSE OF ACTION

NEGLIGENT HIRING, RETENTION, SUPERVISION, AND DIRECTION

42. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

43. Prior to the sexual abuse of Plaintiff, Defendants learned or should have learned that Fr. Dudek was not fit to work with or around children.

44. Defendants, by and through their agents, servants and/or employees, became aware, or should have become aware of Fr. Dudek's propensity to commit sexual abuse and of the risk to Plaintiff's safety.

45. Defendants negligently retained Fr. Dudek with knowledge of his propensity for the type of behavior which resulted in Plaintiff's injuries.

46. At all relevant times Defendants had a duty to exercise due care in hiring, appointing, assigning, retention, supervision and direction of Fr. Dudek so as to protect minor children, including Plaintiff, who were likely to come into contact with him, and/or under their influence or supervision, and to ensure that Fr. Dudek did not use this assigned position to injure minors by sexual assault, contact or abuse.

47. Defendants were negligent and failed to use reasonable care in hiring, appointing, assigning, and retention, of Fr. Dudek, failed to properly investigate their backgrounds and employment histories, and/or hired, appointed and/or assigned them to Defendants' respective

institutions, when Defendants knew or should have known of facts that would make them a danger to children; and Defendants were otherwise negligent.

48. Defendants were negligent and did not use reasonable care in their supervision and direction of Fr. Dudek, failed to monitor their activities, failed to oversee the manner in which they carried out the duties to which Defendants assigned them, even though they knew or should have known that Fr. Dudek posed a threat of sexual abuse to minors; allowed the misconduct describe above to occur and continue; failed to investigate Fr. Dudek's dangerous activities and remove them from their premises; and Defendants were otherwise negligent.

49. Fr. Dudek would not have been in a position to sexually abuse Plaintiff had Defendants not been negligent in the hiring, retention, supervision, and direction of Fr. Dudek.

50. At all relevant times, Fr. Dudek acted in the course and scope of his employment with Defendants.

51. Defendants' aforesaid actions were willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiff.

52. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, together with interest and costs.

SECOND CAUSE OF ACTION

NEGLIGENT, RECKLESS, AND WILLFUL MISCONDUCT

53. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

54. Defendants were negligent and did not use reasonable care in their training, if any, of minors and/or their parents about the risk of sexual abuse in their institution and facilities,

to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

55. Defendants were negligent and did not use reasonable care in their training, if any, of adult staff about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and their statutory duty to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

56. At all relevant times, Defendants affirmatively and/or impliedly represented to minor children, their families and the general public that teachers and clergy, including Fr. Dudek, did not pose a risk and/or that they did not have a history of sexually abusing children, and that children, including Plaintiff, would be safe in their care.

57. Defendants knew or should have known this representation was false and that employing clergy, including Fr. Dudek, and giving them unfettered access to children, including Plaintiff, posed an unacceptable risk of harm to children.

58. Upon information and belief, Defendants covered up acts of abuse by Fr. Dudek and concealed facts concerning Fr. Dudek's sexual misconduct from Plaintiff and his family.

59. Defendants were negligent and did not use reasonable care in their training, if any, of minor parishioners and parents about the risk of sexual abuse in their institution and facilities, to identify signs of sexual abuse, grooming behaviors, or sexual predators, and to report any suspicion that a minor may be getting abused, maltreated, groomed, or otherwise sexually abused.

60. By failing to disclose the identities, histories and information about sexually abusive clergy in their employ, including Fr. Dudek, Defendants unreasonably deprived the families of children entrusted to their care, including Plaintiff, of the ability to protect their children.

61. Defendants failed to warn Plaintiff and his parents that Fr. Dudek posed a risk of child sexual assault.

62. The conduct of Defendants as described herein was done with utter disregard as to the potential profound injuries which would ensue, and with depraved indifference to the health and well-being of children, and to the fact that Defendants were knowingly subjecting children in their charge, including Plaintiff, to sexual crimes.

63. Defendants' aforesaid actions were negligent, reckless, willful and wanton in their disregard for the rights and safety of children, including Plaintiff.

64. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

65. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages, in an amount to be determined at trial, in an amount that exceeds the jurisdictional limit of the lower courts of this State, together with interest and costs.

THIRD CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

66. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

67. The sexual abuse of Plaintiff was extreme and outrageous conduct, beyond all possible bounds of decency, atrocious and intolerable in a civilized world.

68. Defendants' aforesaid negligent, grossly negligent and reckless misconduct, endangered Plaintiff's safety and caused him to fear for his own safety.

69. Defendants knew or disregarded the substantial probability that Fr. Dudek would cause severe emotional distress to Plaintiff.

70. As a direct and proximate result of Defendants' foregoing misconduct, Plaintiff suffered severe emotional distress including psychological and emotional injury as described above.

71. By the reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

FOURTH CAUSE OF ACTION

PREMISES LIABILITY

72. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

73. At all relevant times, Defendants owned, operated, and /or controlled the premises formerly known as Bishop Ryan High School, including the areas where the sexual abuse of Plaintiff occurred.

74. At all relevant times, Plaintiff was rightfully present at the aforementioned premises.

75. Defendants had a duty to see that the premises at which Plaintiff was rightfully present were in a reasonably safe condition for the intended use by parishioners and students, like Plaintiff, whose presence was reasonably anticipated.

76. Defendants willfully, recklessly, and negligently failed to provide a reasonably safe premise that was free from the presence of sexual predators and/or the assault by the occupants of the premises, including Fr. Dudek. Defendants thereby breached their duty of care of Plaintiff.

77. As a direct and proximate result of Defendants' misconduct, Plaintiff suffered grave injury, including the physical, psychological, and emotional injury and damages as described above.

78. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

FIFTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

79. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

80. At all relevant times, there existed a fiduciary relationship of trust, confidence and reliance between Plaintiff and each Defendant. The entrustment of Plaintiff to the care and supervision of the Defendants while Plaintiff was a vulnerable child, imposed upon Defendants fiduciary duty to act in the best interests of Plaintiff.

81. Defendants were entrusted with the well-being, care, and safety of Plaintiff, which Defendants had a fiduciary duty to protect.

82. By reason of the foregoing, Defendants breached their fiduciary duties to Plaintiff.

83. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

84. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

SIXTH CAUSE OF ACTION

BREACH OF DUTY IN LOCO PARENTIS

85. Plaintiff repeats and re-alleges each and every allegation set forth above as if fully set forth herein.

86. At all relevant times, Plaintiff was a vulnerable child entrusted to Defendants' care, and was under the supervision and control of Defendants, such that Defendants owed him a duty to act *in loco parentis* and to prevent foreseeable injuries.

87. By reason of the foregoing, Defendants breached their duties to act *in loco parentis*.

88. As a direct and proximate result of Defendants' foregoing breach, Plaintiff suffered grave injury, including the physical, psychological and emotional injury and damages as described above.

89. By reason of the foregoing, Defendants are liable to Plaintiff for compensatory and punitive damages in an amount that exceeds the jurisdictional limit of the lower courts of this State, plus interest and costs.

WHEREFORE, Plaintiff prays for judgment as follows:

- a. Awarding Plaintiff compensatory damages for his injuries, in an amount to be determined at trial;
- b. Awarding Plaintiff punitive damages for his injuries, in an amount to be determined at trial;
- c. Awarding Plaintiff prejudgment interest, to the extent available by law;
- d. Awarding Plaintiffs costs and disbursements and attorneys' fees to the extent available by law; and
- e. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

1. Plaintiff demands a trial by jury of all issues triable by jury in this action.

Dated: March 22, 2020

Yours, etc.

PHILLIPS & PAOLICELLI, LLP

 /s/ James Plastiras
By: Diane Paolicelli
dpaolicelli@p2law.com
James Plastiras
jplastiras@p2law.com
747 Third Avenue, Sixth Floor
New York, New York 10017
212-388-5100

Paul K. Barr
Fanizzi & Barr, P.C.
2303 Pine Avenue
Niagara Falls, NY 14301
716-284-8888
pbarr@fanizziandbarr.com

Attorneys for Plaintiff