

CRYSTAL LAKE

# Trial scheduled for Jehovah's Witnesses elders accused of failing to report sexual abuse

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Two Jehovah's Witnesses elders accused of failing to notify police that a congregant was sexually abusing a child are scheduled for a joint trial in July.

Jehovah's Witnesses elder Michael Penkava, 72, of Crystal Lake and Colin Scott, 87, of Cary were charged in November with violating reporting provisions. Both men are accused of failing to notify police about a church member who later was convicted of sexually abusing a child. The abuse continued for more than a decade after the church elders became aware of the accusations, prosecutors have said.

A judge on Wednesday denied a request to exclude testimony regarding potentially "confidential" meetings between church leaders and the now-convicted man.

Questions surrounding the potential confidentiality of those meetings could arise again during trial, however, said Penkava's attorney, Philip Prossnitz.

Ultimately, it was deemed premature to bar the potential testimony Wednesday, without knowing what that testimony might have revealed, Prossnitz said.

"We feel pretty confident that the testimony that [the judge] is going to hear is as we've portrayed it, but at this stage in the proceedings, it's mere argument," Prossnitz said.

The charges against Scott and Penkava are rooted in another man's sexual assault conviction. Accusations against that man, 43-year-old church member Arturo Hernandez-Pedraza, surfaced during a confessional or spiritual guidance setting, said Prossnitz and attorney Terry Ekl, who represents Scott.

In 2019, a jury convicted Hernandez-Pedraza of all counts of aggravated criminal sexual abuse, predatory criminal sexual assault, criminal sexual assault, criminal sexual abuse, sexual relations within families and domestic battery charges filed against him. He currently is serving a 45-year prison sentence at Pontiac Correctional Center.

Penkava invoked his right as a religious leader to not testify at Hernandez-Pedraza's trial, but he still was required to answer questions about actions the congregation took after learning of the sexual abuse more than 10 years before it was reported.

Because the accusations surfaced during a confessional, Penkava and Scott's attorneys now argue that the dis-

closure should be considered privileged communication between faith leaders and congregants.

Assistant McHenry County State's Attorney Ashur Youash, however, said that privilege doesn't extend to situations involving abused or neglected children and isn't grounds for failure to report.

"By adding members of the clergy to the list of mandated reporters, the legislature intended that clergy report instances of child sexual abuse of which they are made aware," Youash wrote in an April 16 court filing.

On July 27, 2006, Penkava, an elder of the Kingdom Hall Crystal Lake - Spanish Congregation, was made aware of a possible instance of child sexual abuse.

At minimum, Scott and Penkava could have reported the girl's name and address to police without divulging the contents of any religious confession, Youash said.

Illinois passed the Abused and Neglected Child Reporting Act in 1975 and in 2002 amended it to include "members of the clergy" as "persons responsible for the child's welfare," prosecutors argued in their written motion.

McHenry County Judge Mark Gerhardt also denied Prossnitz and Scott's request to quash a subpoena that sought "all documents, reports, minutes generated by the Judicial Committee formed for Arturo Hernandez."

That committee, Prossnitz wrote, is a part of the Jehovah Witnesses' "confessional process." Any subsequent conversation between Hernandez-Pedraza, church leaders and the victim's mother, were therefore confidential since they were part of the "spiritual counseling" process, Prossnitz said.

According to the attorney's April 6 motion, the Jehovah's Witnesses' confessional process includes the following steps: First, if an "allegation of a gross sin such as child abuse" arises, two elders confront the accused and if that individual confesses, the matter "moves on." Once a confession is provided, a judicial committee of three elders meets with the accused to "re-establish his confession and then determine whether he is repentant."

"This is an entirely internal, ecclesiastical process," Prossnitz wrote.

If the elders believe the law may require a report to authorities, the elders contact the church's legal department, according to the motion.

Both men's cases are scheduled for a trial by judge on July 28.