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Law on sealing cases debated

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Lawyers argued in Jefferson Circuit Court yesterday whether a Kentucky law that calls for sealing dozens of lawsuits alleging child abuse by priests would protect parishes or result in "secret justice."

The two-hour hearing before Circuit Judge James M. Shake centered on the constitutionality of the 1998 state law, which requires that civil complaints be sealed if they contain allegations of child sexual abuse that occurred more than five years ago.

Shake said he would issue a ruling soon. If he finds the law constitutional, it could then apply to many of the more than 140 lawsuits that accuse the Roman Catholic Archdiocese of Louisville of mishandling past allegations of child sexual abuse by priests and others connected to the church.

"I'm not going to make any promises, but I'll get it to you as quickly as possible," Shake said.

Edward Stopher, an attorney for the archdiocese, argued that allowing people to make such allegations without confidentially checking the

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Judge to rule on law calling for sealing cases

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merits of their claims damages the reputations of innocent clerics and impairs their ministry.

"The harm is not just to the alleged perpetrator," Stopher told Shake. "The harm is to the parish, to its innocent members and, more importantly, their relationships with their priest."

The Courier-Journal, attorneys for most of the alleged victims and the Kentucky attorney general's office all oppose the archdiocese's effort to use the law to seal the cases, although for different reasons.

JON FLEISCHAKER, an attorney for The Courier-Journal, said the law violates the presumption that the public and media must have access to court proceedings.

"It is unconstitutional to have secret justice in this country, and that's what this statute provides for," Fleischaker said.

William McMurry, who represents most of the plaintiffs suing the archdiocese, argued that the 1998 law does not apply because none of the priests or other alleged perpetrators are being sued.

McMurry said after the hearing that he also believes the law is unconstitutional.

Assistant Deputy Attorney General Scott White also said the law doesn't apply to the archdiocesan cases. The attorney general's office isn't taking a position on the constitutionality of the law.

Stopher argued that innocent priests will be hurt if the cases aren't sealed. He compared them to the racially charged situation in New York in the late 1980s in which Tawana Brawley said she was raped by a gang of white men — including a prosecutor — in 1987.

A grand jury later discredited her claim and exonerated the former prosecutor. But Stopher said the incident resulted in a media frenzy.

Stopher argued that failing to uphold the Kentucky law would "con-



Jefferson Circuit Judge James M. Shake said he'll rule soon on the constitutionality of a law that requires sealing some lawsuits alleging child sexual abuse.

done" similar accusations that eventually are deemed unfounded. That would impair the ability of falsely accused priests to minister to parishioners while they contest the accusations, he said.

STOPHER SAID the law is constitutional because it gives judges the option to let the public view the cases.

"There is no requirement under this statute that the court leave a file sealed permanently," Stopher said.

The Courier-Journal could have objected to the law any time in the past four years, but didn't, Stopher said. It is doing so now because the allegations are salacious, he said. The law is being complied with throughout the state, he said, noting that his firm is involved in at least one such case.

Fleischaker said the newspaper didn't object in the past because it didn't know about lawsuits sealed under the law.

Both Kentucky and U.S. appellate courts have ruled that court proceedings are presumed to be public, he said.

The archdiocese wants to seal the cases to prevent the public from discovering settlements and other legal maneuvers, Fleischaker said.

The archdiocese "wants this court to decide those cases secretly," Fleischaker said.

Members of the public have a right to know both the content of those actions and how judges handle the cases, he said.