

## I. The USCCB Adopts the *Charter* and the *Essential Norms*

28. Beginning in early 2002, *The Boston Globe* published a series of articles that detailed extensive abuse by numerous priests in the Archdiocese of Boston. These articles also uncovered a pattern of priest reassignments intended to obscure and conceal the scope of the abuse. The articles found a culture of secrecy and clericalism within the archdiocesan leadership, which prioritized protection for abusive priests over the redress of harm to victims. Almost immediately after *The Boston Globe* published its findings, the USCCB convened an eight-member Ad Hoc Committee on Sexual Abuse, which began to develop the *Charter*. Two members of the committee were laypeople; one was a victim of sexual abuse.

29. The full body of U.S. bishops approved the *Charter* at a meeting in Dallas, Texas in June 2002. Soon thereafter, the USCCB, with the approval of the Vatican, decreed the *Essential Norms* to establish binding procedures for responding to allegations of sexual abuse of minors. The *Charter* is an agreement among U.S. bishops to adopt and implement certain policies and procedures. The *Essential Norms* convert these and related commitments into canon law, enforceable as the ecclesiastical law that governs the U.S. dioceses. As stated on the Diocese's website, the Diocesan Corporation's own internal policies and procedures, entitled *Policy and Procedures for the Protection of Children, Young People and Vulnerable Adults* ("*Diocesan Policies and Procedures*"), were revised to incorporate the *Charter* and the *Essential Norms*.

30. When the USCCB adopted the *Charter* and established the *Essential Norms* in 2002, Bishop Malone and Auxiliary Bishop Grosz each voted in favor of their adoption. Both testified during the Investigation that they reviewed and discussed the *Charter* at length in connection with its adoption during the 2002 conference. Malone also acknowledged the

Diocesan Corporation's duty to comply with the *Charter*.

31. The USCCB amended the *Charter* in 2005, 2011, and 2018.

32. To address allegations of sexual abuse of a minor, the Diocesan Corporation is governed by interrelated policies and procedures that are reflected in three writings: (a) the *Charter*, (b) the *Essential Norms*, and (c) the *Diocesan Policies and Procedures*.<sup>1</sup> Some of these policies are founded on canon law, but the Diocesan Corporation trusts the laity to implement many of them, which, at their core, are secular in nature. Together, the three policies mandate a multi-layered approach to reviewing, evaluating, and investigating allegations of sexual abuse of minors by clergy. They specify the steps that the Diocesan Corporation is required to take at each juncture in its response to a sexual abuse allegation, particularly, the initial receipt of an allegation, the Diocesan Corporation's internal investigation, the potential adjudication of the allegation, and eventual public disclosure of any finding of abuse. In particular:

- upon receipt of an allegation, the Diocesan Corporation must determine whether the allegation merits an internal investigation using lenient standards that require investigation as long as, for example, the allegation is not “manifestly false or frivolous”;
- if the allegation meets this minimal standard, an independent and timely internal investigation must be conducted;
- the findings of the investigation are presented to an advisory committee known as the Diocesan Review Board, which provides an assessment to the bishop;
- “[w]hen there is sufficient evidence that sexual abuse of a minor has occurred,” the bishop must refer the matter to the Vatican, specifically, the Congregation for the Doctrine of the Faith (“CDF”), which determines whether to direct a canonical trial to adjudicate the allegations;
- if found guilty at a canonical trial, the accused may be permanently removed from ministry; and

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<sup>1</sup> As of August 18, 2020, the *Diocesan Policies and Procedures*, dated October 17, 2016, is available on the Diocesan Corporation's website.

- the Diocesan Corporation must communicate with the public about the accused in an open and honest manner.

### Initial Inquiry into an Allegation

33. Upon receipt of an allegation of sexual abuse of a minor, the *Diocesan Policies and Procedures* require the auxiliary bishop or vicar general to conduct an initial inquiry into the allegation. There are several articulations of the standard of review for the initial inquiry, including whether the allegation: “appears to . . . have any credibility”; has any “semblance of truth”; or is not “manifestly false or frivolous.” All are understood to set a low threshold of proof necessary to support the allegation. To illustrate the standard, Bishop Malone has stated that if the accused priest was out of the country at the time of the alleged abuse, an internal investigation would not be required. Auxiliary Bishop Grosz testified to the Attorney General that, in practice, an attorney, not a member of the clergy or canon law adviser, would opine, in the first instance, whether or not a sexual abuse allegation was manifestly false or frivolous. If the allegation satisfies the lenient evidentiary standard, the *Diocesan Policies and Procedures* require the Diocesan Corporation to proceed and conduct an internal investigation.

### Internal Investigation

34. The *Essential Norms* require an internal investigation, referred to as the preliminary investigation: “When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively ([citing canon 1717 of the canon law] . . .).”<sup>2</sup>

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<sup>2</sup> See USCCB, Charter for the Protection of Children & Young People art. 5 (“When the preliminary investigation of a complaint against a priest or deacon so indicates, the diocesan/eparchial bishop will relieve the alleged offender promptly of his ministerial duties.”) (2002); USCCB, Charter for the Protection of Children & Young People art. 5 (“A priest or deacon who is accused of sexual abuse of a minor is to be accorded the presumption of innocence during the investigation of the allegation . . . .”) (2005); USCCB, Charter for the Protection of Children & Young People art. 5 (same) (2018).

35. The *Essential Norms* further mandate that a diocese’s internal policies and procedures “comply fully with, and . . . specify in more detail, the steps to be taken in implementing the requirements of canon law, particularly . . . canons 1717-1719.” Canons 1717 to 1719 require that, after the initial inquiry, a bishop must issue decrees documenting the beginning and completion of an internal investigation. These canons also mandate preservation of the records—known as the “acts”—which reflect a diocese’s investigation. Other canons governing canonical trials echo the requirement that the acts be in writing: “The judicial acts, both the acts of the case, that is, those regarding the merit of the question, and the acts of the process, that is, those pertaining to the procedure, must be put in writing.”<sup>3</sup> As one commentary to the canon law explains: “All of the acts must be committed to writing since ‘quod non est in actis non est in mundo,’ [l]oosely translated, this reads, ‘whatever is not included in the acts is considered non-existent.’” In accord with this requirement, Bishop Malone’s general practice when he served as the bishop in Maine was to maintain a written investigatory record.

36. Similarly, the *Diocesan Policies and Procedures* reflect the requirement that the Diocesan Corporation document its internal investigations: “Appropriate records will be kept of each complaint and investigation. Records shall be confidential and be kept securely at the Bishop’s office, with access limited to the Bishop, the Vicar General, the assigned investigator, and counsel for the Diocese.” The Vatican’s guidance for internal investigations, published in July 2020, reiterates this intent: “[O]nce the preliminary investigation has concluded, whatever its outcome, the [bishop] is obliged to send, without delay, an authentic copy of the relative acts to the CDF.”

37. This expectation of maintaining documentation is further evidenced in document-

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<sup>3</sup> Code of Canon Law pt. I, tit. III, ch. 5, canon 1472 § 1.

retention requirements in canon law. Specifically, records concerning sexual abuse allegations are maintained in accordance with canon 489, which requires in section 1 that a diocese maintain “a secret archive, or at least in the common archive . . . a safe or cabinet, completely closed and locked, which cannot be removed [and in which] documents [are] to be kept secret [and] protected most securely.” Additionally, section 2 of canon 489 provides: “Each year documents of criminal cases in matters of morals, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what occurred along with the text of the definitive sentence is to be retained.”

38. The *Diocesan Policies and Procedures* direct the appointment of an investigator to conduct the investigation and, according to Auxiliary Bishop Grosz, prepare a written report. The investigator’s role is secular and does not require expertise in canon law. For example, as illustrated below, in instances where the Diocesan Corporation appointed an investigator, it selected a private law firm—not a canon law adviser. Yet the Attorney General found many instances where investigative records were not maintained—contrary to Grosz’s claim in his testimony that the Diocesan Corporation’s investigator presents its findings in a written report to the Diocesan Review Board (“DRB”).

#### Diocesan Review Board

39. The DRB, pursuant to the provisions of the *Charter* and the *Essential Norms*, is a lay review panel—not a religious or spiritual body—designed to provide the bishop with an advisory assessment of allegations of clergy sexual abuse and a recommendation on how to respond. As the Diocesan Corporation recently highlighted in a 2018 press conference to address its response to sexual abuse allegations, a principal purpose of the DRB is the laity’s involvement in the Diocesan Corporation’s decisions regarding accused priests. The *Charter*

requires that a majority of a DRB consist of lay persons not employed by a diocese, and it explains that the DRB “will” or “is” to assist the bishop in reviewing particular allegations, a priest’s fitness for ministry, and relevant policies and procedures.<sup>4</sup>

40. The *Essential Norms* contain additional DRB requirements and specifically mandate that the DRB consist of (a) at least five members “of outstanding integrity and good judgment in full communion with the Church,” who will serve for a term of five years; (b) at least one member, who is an “experienced and respected pastor” of the diocese; and (c) at least one member experienced in the “treatment of the sexual abuse of minors.” The *Essential Norms* also urge dioceses to allow their Promoters of Justice to participate in DRB meetings. A Promoter of Justice is appointed in a diocese to prosecute a Church crime before a Church tribunal.

41. On information and belief, it is the practice of some dioceses in the United States to record the business and recommendations of their DRBs by maintaining meeting minutes and agendas for DRB meetings.<sup>5</sup>

#### Permanent Removal from Ministry: Referral to the CDF and Zero Tolerance

42. Before the adoption of the *Charter* and the *Essential Norms*, in 2001 Pope John Paul II formally determined that the sexual abuse of a minor constitutes a grave offense subject to a review by the CDF, a group of senior officials at the Vatican. This review represented a new procedure for a cleric’s alleged sexual abuse of a minor. The Pope made this determination and

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<sup>4</sup> The *Essential Norms* do mandate DRB consultation but then provide that the consultation “may” include reviewing allegations, fitness for ministry, and policies and procedures related to the sexual abuse of minors.

<sup>5</sup> See, e.g., Secretariat of Child and Youth Protection, 2019 Annual Report: Findings and Recommendations at 24 (2020); Secretariat of Child and Youth Protection, 2018 Annual Report: Findings and Recommendations at 21 (2019); Secretariat of Child and Youth Protection, 2017 Annual Report: Findings and Recommendations at 20 (2018); Secretariat of Child and Youth Protection, 2013 Annual Report: Findings and Recommendations at 10 (2014).

created this new procedure “to underscore the Holy See’s aversion to this betrayal of the trust which the faithful rightly place in Christ’s ministers, and to ensure that the guilty [would] be appropriately punished.”

43. The Vatican instituted the new 2001 procedure through two governance documents. The first, a decree issued in April 2001, recognized the necessity to promulgate norms to specifically define the grave offenses within the CDF’s exclusive jurisdiction.<sup>6</sup> The second, a May 2001 letter from the then-head of the CDF, Cardinal Joseph Ratzinger, to all bishops advised that: (a) the sexual abuse of a minor is a Church crime reserved to the CDF; (b) bishops must refer these cases to the CDF; and (c) the CDF could decide the case on its own or direct a diocese to hold a canonical trial. The trial could result in a sentence of laicization (also known as the removal from the clerical state).<sup>7</sup>

44. The 2002 *Charter* recognizes Pope John Paul II’s mandate to refer priests to the CDF. Specifically, by citing to the CDF’s May 2001 letter, the 2002 *Charter* acknowledges that the Pope’s mandate remained in force in 2002: “In every case, the processes provided for in canon law must be observed, and the various provisions of canon law must be considered (. . . cf. Letter from the Congregation for the Doctrine of the Faith, May 18, 2001).”

45. The *Charter* also established a zero-tolerance policy: “Where sexual abuse by a priest or a deacon is admitted or is established after an appropriate investigation in accord with canon law, . . . [d]iocesan/eparchial policy will provide that for even a single act of sexual abuse . . . of a minor—past, present, or future—the offending priest or deacon will be permanently

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<sup>6</sup> “The[] regional applications of Universal Canon Law that apply to a specific episcopal conference are referred to as Complementary Norms.” USCCB, Beliefs and Teachings: What We Believe, at Canon Law, *available at* <http://www.usccb.org/beliefs-and-teachings/what-we-believe/canon-law/index.cfm> (last visited July 10, 2020).

<sup>7</sup> The formal term for the event commonly known as “laicization” is “removal from the clerical state.” We use the lay term “laicization” throughout this Complaint for ease of reference only.

removed from ministry.” All subsequent versions of the *Charter* contain this policy, and the *Essential Norms* reiterate the same standard.

46. Under canon law, bishops may only *temporarily* remove priests from ministry. To permanently remove a priest, a bishop must abide by Church judicial procedures, including review by the CDF, in part, to afford formal process to accused priests. Therefore, the *Essential Norms*, adopted within months of the *Charter*, preserve a priest’s right to canonical review of the allegations against him and expressly incorporate Pope John Paul II’s mandate to refer accused priests to the CDF:

6. When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in harmony with canon law will be initiated and conducted promptly and objectively. . . . When there is sufficient evidence that sexual abuse of a minor has occurred, the [CDF] shall be notified.

. . . .

8. When even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants.

A. In every case involving canonical penalties, the processes provided for in canon law must be observed, and the various provisions of canon law must be considered ( . . . Letter from the [CDF], May 18, 2001). Unless the [CDF], having been notified, calls the case to itself because of special circumstances, it will direct the diocesan bishop/eparch to proceed.

47. After the adoption of the *Essential Norms* in December 2002, subsequent versions of the *Charter* were amended to expressly acknowledge the CDF’s role:

Sexual abuse of a minor by a cleric is a crime in the universal law of the Church. Because of the seriousness of this matter, jurisdiction has been reserved to the [CDF] . . . . In fulfilling this article, dioceses/eparchies are to follow the requirements of the universal law of the Church and of the *Essential Norms* approved for the United States.

48. Following the CDF’s consideration of the referral, the CDF can order a canonical



trial of the accused priest in the referring diocese, another diocese, or the CDF. Available remedies at trial include laicization or a sentence to a life of prayer and penance.

49. Bishop Malone testified to the Attorney General that unless and until a priest is laicized, that priest will continue to receive compensation and benefits from the Diocesan Corporation even if the priest is designated unassignable or sentenced to a life of prayer and penance. If a priest is laicized, however, the Diocesan Corporation is no longer required to provide him any financial support.<sup>8</sup>

50. According to Bishop Malone, the sentence of laicization after a canonical trial would be publicly disclosed pursuant to the *Charter's* requirement of transparency.

#### The Policy of Transparency

51. Transparency is an essential objective of the USCCB's *Charter*, which is expressly addressed in the original and each subsequent version of the *Charter*. The 2002 *Charter* provides:

Each diocese/eparchy will develop a communications policy that reflects a commitment to transparency and openness. Within the confines of respect for the privacy and the reputation of the individuals involved, dioceses/eparchies will deal as openly as possible with members of the community. This is especially so with regard to assisting and supporting parish communities directly affected by ministerial misconduct involving minors.

52. The 2005 *Charter* builds on the 2002 policy and adds an explicit requirement that parishes "be open and transparent in communicating with the public about sexual abuse of minors by clergy." The 2005 *Charter* further stresses transparency when "*informing* parish[es] and other church communities directly affected by ministerial misconduct involving minors."

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<sup>8</sup> During his testimony to the Attorney General, Bishop Malone explained that one exception to this rule is a canon law provision that allows a diocese to provide some sustenance to a laicized priest to prevent him from becoming destitute. In his over forty-five years as a priest, however, Malone never encountered an instance where this provision had been applied.

(emphasis added). The 2011 and 2018 versions of the *Charter* revise the term “ministerial misconduct” to refer expressly to “sexual abuse of a minor.”