

III. Summary of Breaches of Fiduciary Duties, the Improper Administration of the Diocesan Corporation, and the Diocesan Corporation's Unauthorized Activities

59. When the Defendants were faced with alleged clergy sexual abuse of minors, in accordance with secular, fiduciary duties and the obligation to properly administer the Diocesan Corporation pursuant to the N-PCL and EPTL, the Defendants were required to (a) ensure that the Diocesan Corporation had adequate policies in place to prevent the sexual abuse of minors;

(b) respond to sexual abuse allegations; *and* (c) confirm that their policies were followed.

60. In addition, the Defendants' secular obligations as a corporation or as fiduciaries of a corporation required them to (a) inquire into any historical failure by the Diocesan Corporation to adhere to material policies; (b) implement remedial measures to avoid these failures in the future; (c) reasonably monitor priests accused of the sexual abuse of minors; (d) reasonably address the risk that certain priests could sexually abuse minors; (e) maintain accurate business records regarding sexual abuse allegations; and (f) train the Diocesan Corporation's fiduciaries and staff to ensure compliance with the *Charter*, the *Essential Norms*, and applicable standards of care.

61. The Defendants were also obligated to exercise due care when responding to allegations of clergy sexual abuse of adults, including to (a) reasonably document allegations of sexual abuse; (b) sufficiently investigate these allegations; and (c) reasonably regard the risks that certain priests could sexually abuse adults.¹⁰

62. The Defendants repeatedly violated New York law by breaching their fiduciary duties; improperly administering the Diocesan Corporation and the temporalities and property belonging to the corporation; and engaging in unauthorized activities. These claims are supported by the Diocesan Corporation's violations of the *Charter* and the *Essential Norms*. Specifically, the Defendants failed to (a) conduct sufficient, timely, or independent internal investigations into sexual abuse allegations; (b) seek or reasonably document the DRB's assessments of sexual abuse allegations; and (c) refer or timely refer accused priests to the CDF, as required by the discipline, rules, and usages of the corporation and ecclesiastical governing body.

¹⁰ In September 2019, the Diocesan Corporation implemented written policies and procedures to address allegations of adult abuse.

63. The Defendants engaged in additional misconduct and separately breached their fiduciary duties or improperly administered the Diocesan Corporation by:

- failing to inquire into the Diocesan Corporation's violations of the *Charter* and the *Essential Norms*;
- failing to reasonably monitor priests accused of the sexual abuse of minors;
- disregarding the risk of sexual abuse by allowing certain priests to remain in ministry;
- preparing false or misleading business records regarding priests accused of the sexual abuse of minors;
- failing to train personnel, who had violated the *Charter*, the *Essential Norms*, or applicable standards of care; and
- in a few instances of alleged adult abuse reviewed by the Attorney General, failing to reasonably document or sufficiently investigate the allegations and disregarding the risks that certain priests could sexually abuse adults.

Insufficient and Unreasonable Internal Investigations

Unreasonable and Delayed Investigations

64. The Attorney General reviewed a sampling of the Diocesan Corporation's files for individual priests. Within that sample, the Diocesan Corporation's business records contain numerous files that show no evidence of reasonable or prompt investigations into sexual abuse allegations received by the Diocesan Corporation. The failure to conduct such investigations alone demonstrates a systemic failure to follow the Diocesan Corporation's governing policies and procedures.

65. In those instances where there is evidence of *some* inquiry, diocesan records and testimony by Auxiliary Bishop Grosz establish that the actions taken were woefully inadequate. Grosz expressly disavowed responsibility for conducting the Diocesan Corporation's internal investigations, yet, in a sampling of files reviewed by the Attorney General, often the only

evidence of any inquiry is by Grosz. Grosz contacted accused priests (sometimes by telephone) to personally question them in order to determine whether they had sexually abused minors. Despite his role, Grosz could not recall ever receiving training regarding the investigation of alleged sexual abuse; gathering of evidence in sex abuse cases; or questioning victims, witnesses, and accused priests. He remarked to the Attorney General that “[a] lot of this was experiential[, meaning b]eing on the spot and just kind of as you go along learning what to do, guided by legal counsel, of course, and by the protocol.”

66. Auxiliary Bishop Grosz claimed that investigators prepared written reports for presentation to the DRB. But no written, investigatory reports appear in the majority of the accused priests’ files reviewed by the Attorney General. The absence of a written record of the investigatory steps taken and information collected fundamentally undermined the adequacy of the review of sexual abuse allegations by the DRB and the bishops.

Lack of Independence

67. The Diocesan Corporation failed to meet the requirement in the *Essential Norms* that internal investigations be conducted independently. In his testimony, Auxiliary Bishop Grosz could not identify who conducted investigations by the Diocesan Corporation between 2002 and 2010. But Grosz testified that the Diocesan Corporation’s longtime, defense counsel conducted the internal investigations into allegations of sexual abuse from about 2011 to 2019.

68. Diocesan counsel lacked the independence required by the *Essential Norms* because of their established role, advising and defending the Diocesan Corporation on its handling of the clergy sexual abuse crisis in various respects, including:

- representing the Diocesan Corporation in its defense to sexual abuse allegations for over two decades, including at least two joint-defense arrangements with attorneys representing priests accused of sexually abusing minors;

- assisting with public announcements regarding priests alleged to have sexually abused minors;
- acting as a diocesan spokesperson during press conferences regarding the sexual abuse of minors;
- assisting in drafting disclosures, which publicly identified priests as having sexually abused minors; and
- communicating with families of deceased priests, who were publicly identified by the Diocesan Corporation as having sexually abused minors.

Failure To Seek or Reasonably Document DRB Assessments

69. The Diocesan Corporation repeatedly failed to incorporate or reasonably document DRB assessments into its review of alleged clergy sex abuse.

70. Auxiliary Bishop Grosz testified that the DRB regularly meets and reviews investigative reports in order to assist the bishop in his determination regarding the credibility of an allegation of sexual abuse of a minor. Bishop Malone testified that the DRB's chairman would generally call for a consensus among DRB members to reach their final recommendation.

71. The Diocesan Corporation, however, has provided little documentation or other evidence demonstrating the DRB's review, deliberations, and recommendations. In a sampling of diocesan files, the Attorney General found no documentation prepared directly by the DRB. Indeed, the Diocesan Corporation's documents, at best, include indirect evidence of DRB activity. That evidence consists of documents referring to the DRB, including memos prepared by diocesan attorneys; bishops' letters to accused priests; occasional decrees issued by bishops in connection with purported internal investigations; and individual memos drafted by Auxiliary Bishop Grosz. Grosz's memos, by his own testimony, could not have been based on a firsthand account of the DRB's activities because all pre-date his first attendance at a DRB meeting in 2019.

72. The DRB maintains no written minutes of its meetings. This practice departs from the procedure of other dioceses across the United States, which, on information and belief, maintain DRB meeting minutes.¹¹

73. Auxiliary Bishop Grosz testified that he did not know of any document that reflects the DRB's business since 2002. And despite Bishop Malone's claim that "[diocesan] attorneys would have some record of what happened [at the DRB]," Malone also could not identify any records prepared by the DRB to document its review.

74. Priest personnel files revealed that a priest who served on the DRB beginning in about 2003 was later identified by the Diocesan Corporation as having a substantiated allegation of the sexual abuse of a minor. This raises serious concerns about whether the accused priest's personal conduct affected the objectivity and operation of the DRB. But these questions cannot be resolved because no records have been identified to reflect the DRB's deliberations, assessments, and recommendations during the accused priest's tenure on the DRB.

Failure To Refer Priests to the CDF

Bishop Malone and Auxiliary Bishop Grosz Knew of the Diocesan Corporation's Failure

75. It is undisputed that, for the fifteen-year period between 2002 and July 2017, the Diocesan Corporation failed to comply with the requirement that it refer alleged incidents of clergy sexual abuse of minors to the CDF. Auxiliary Bishop Grosz admitted in his testimony to the Attorney General that, before 2017, the Diocesan Corporation had not referred a single priest to the CDF. Bishop Malone separately confirmed that, before his installation, his predecessor

¹¹ 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).

bishops in the Diocesan Corporation had failed to refer priests to the CDF pursuant to governing policies. Malone further admitted that he had not made his first CDF referral until 2017—five years after his installation as bishop.

76. The Diocesan Corporation’s internal records similarly confirm that it had not complied with its own procedures concerning the CDF. A draft of a submission to the CDF—prepared in 2017 in support of the Diocesan Corporation’s first referral to the CDF—remarks on the Diocesan Corporation’s historical non-compliance and expresses concern about the Diocesan Corporation’s legal exposure if New York were to extend the civil statute of limitations for sex abuse victims:

[T]he issue that is pending in New York State is the possibility of removing all civil statute [sic] of limitation requirements, which could open up a window for many of these cases to be reopened and it is my goal to assure you and the state that we followed our procedures accordingly so [sic] limit any liability if it were to come to that. I share this because this case in particular has caused me to review many cases like this that I have discovered since [sic] I arrived here in Buffalo nearly 5 years ago, and were [sic] not handled properly.

The Diocesan Corporation Misled the Public and Its Beneficiaries

77. In October 2018, Fr. Robert Zilliox, a diocesan priest, canon lawyer, and advisor to Bishop Malone on matters of clergy sexual abuse, publicly disclosed his view that the Diocese had failed to remove eight or nine priests from the priesthood (or the clerical state) for the sexual abuse of minors.

78. Bishop Malone and Auxiliary Bishop Grosz well knew that Fr. Zilliox’s statement was accurate, but at a press conference on November 5, 2018, the Diocesan Corporation, through its representative, sought to deflect attention from its failure to comply with the *Charter* and take steps to permanently remove credibly accused priests. The Diocesan Corporation gave the false impression that removing a priest from the clerical state was a lengthy and technical process with no substantive effect:

I won't dispute, [Zilliox] was technically correct. What he said, there are eight or nine priests that . . . he would argue, I would argue actually that it's higher than that, but he would argue should be removed from the priesthood, that is permanently removed from the clerical state. . . . So . . . when Fr. Bob Zilliox, when he made that statement, okay, what does it mean to be removed from the clerical state? . . . You have to go through these canonical processes, where you make this big thick packet called a *votum* and you send it over to Rome. They usually send it back and then you have to do a canon law trial. . . . The notion that the person needs to be removed from the clerical state will have zero impact on the people's lives around that person. The priest, the day before he's removed from the clerical state, and the day after he's removed from the clerical state, his life so far as everyone else can observe, is identically the same. . . . He is a priest, but he is not what you and I would call a priest: he is not saying Mass, he's not seeing kids, he's not wearing the Roman collar. No one is getting confused by him wearing clerical garb. Those eight or nine people are all not acting as priests.

79. Contrary to these statements, removing a priest from the clerical state for sexual abuse is materially different from allowing an unassignable priest to remain in the priesthood under locally-enforced restrictions on his ministry. Priests designated as unassignable by the Diocesan Corporation were protected from an adjudication of the allegations against them; were generally not publicly identified as subject to any complaint or penalty; and, as continuing diocesan employees, presented an ongoing risk that required monitoring, which the Diocesan Corporation failed to do adequately. In contrast, if the priest was subject to a CDF-ordered canonical trial that sentenced him to a permanent removal from the clerical state, there would be findings concerning the priest's sexual abuse and, if applicable, a sentence of laicization would be made public. He would cease to be a cleric and become a lay person in the eyes of the Church. He would not be entitled to any income or other benefits as a cleric. And he would be permanently prohibited from exercising priestly ministry, presenting himself as a priest, or using the title of "Father."

80. In the same November 5, 2018 press conference, Bishop Malone misleadingly implied that the Diocesan Corporation had been diligently working to refer priests to the CDF

and that the Vatican had caused any delay in consideration of cases. When asked about diocesan efforts to address another priest, *Fr. R*, who had purportedly “acknowledged abusing probably dozens of boys” nine months earlier, Malone stated:

[*Fr. R*’s] case is one of several that are now in preparation to be sent to the Vatican for their adjudication. . . . [O]ne’s already gone over there, that’s *Fr. [G]*. I signed off on three others today. It’s a very complicated canonical process to prepare the documentation. It really has to be perfect in the information provided, so that when it gets to the Vatican they don’t have to say, “is there something missing here,” send it back to us and then, on these things, as in many other things, the Vatican moves kind of slowly.

Malone did not acknowledge that the Diocesan Corporation had not referred a single accused priest to the CDF until July 2017, fifteen years after the *Charter* and five years after his installation as bishop. In addition, contrary to Malone’s statements about delays by the Vatican, the CDF responded thirty-seven days after its receipt of the Diocesan Corporation’s single referral in 2017.

81. In a radio interview five months later, on or about April 16, 2019, Bishop Malone acknowledged that as of 2001 “every case of substantiated abuse by a cleric was to be sent to the Vatican for their adjudication” to determine whether the priest should be “dismissed from the clerical state or given a lifelong penance, a sentence of prayer and penance.” He further acknowledged any such determination “would have been public information.” He admitted that “for whatever reasons, that never happened [in the Diocesan Corporation] until [he] started [at the Diocesan Corporation].” He did not disclose, however, that he had personally taken *five years* to make a single referral to the CDF and that numerous long-standing complaints of clergy sexual abuse had not yet been referred by the spring of 2019.

The Diocesan Corporation Admitted That It Failed To Refer More than Two Dozen Priests to the CDF

82. In about September 2019, the Diocesan Corporation publicly revealed the scope

of its failure to make timely, or, in some instances, any referrals to the CDF. In the iteration of the list that the Diocesan Corporation published at that time, it identified seventy-five priests as “Diocesan Priests with Substantiated Allegations of Abuse of a Minor.” This list is duplicated below with information concerning the priests’ “status.”

[Disclosure on next page]

Diocesan Priests with Substantiated Allegations of Abuse of a Minor

Last Name	First Name	Birth Date	Death Date	Ordination	1 or more (+) Allegation:	Status
[REDACTED]	[REDACTED]	1937	8/26/2009	1966	+	Removed from ministry 1993; deceased
[REDACTED]	[REDACTED]	1948		1975	+	Left Catholic Church 1982; Episcopal priest
[REDACTED]	[REDACTED]	1942		1967	+	Removed from ministry 2002; case is in Rome
[REDACTED]	[REDACTED]	1945	1/21/2009	1972	1	Deceased priest of the Diocese of Trenton
[REDACTED]	[REDACTED]	1961		1988	+	Removed from ministry 2011; case will go to Rome
[REDACTED]	[REDACTED]	1931	7/22/2012	1956	+	Removed from ministry 1994; deceased
[REDACTED]	[REDACTED]	1933	10/22/1984	1965	+	Deceased
[REDACTED]	[REDACTED]	1931	12/9/1997	1956	+	Deceased
[REDACTED]	[REDACTED]	1923	11/17/2006	1951	+	Deceased
[REDACTED]	[REDACTED]	1916	7/14/1991	1950	+	Deceased
[REDACTED]	[REDACTED]	1940		1966	+	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1903	1/3/1977	1929	+	Deceased
[REDACTED]	[REDACTED]	1941		1966	+	Removed from ministry 2003; case will go to Rome
[REDACTED]	[REDACTED]	1943		1969	+	Removed from ministry 2018; case is in Rome
[REDACTED]	[REDACTED]	1937	1/25/2002	1963	+	Deceased
[REDACTED]	[REDACTED]	1946	1/17/2010	1972	+	Removed from ministry 1989; deceased
[REDACTED]	[REDACTED]	1932	8/19/1995	1957	+	Removed from ministry 1992; deceased
[REDACTED]	[REDACTED]	1934		1963	1	Removed from ministry 2003; case is in Rome
[REDACTED]	[REDACTED]	1948		1975	+	Removed from ministry 2015; case sent from Rome to a US Tribunal
[REDACTED]	[REDACTED]	1928	8/14/2012	1956	+	Deceased
[REDACTED]	[REDACTED]	1956		1985	+	Removed from ministry 1993; case will go to Rome
[REDACTED]	[REDACTED]	1949		1976	+	Removed from ministry 1994; case will go to Rome
[REDACTED]	[REDACTED]	1910	12/19/1989	1942	+	Deceased
[REDACTED]	[REDACTED]	1945		1979	+	Removed from ministry 2007; case is in Rome
[REDACTED]	[REDACTED]	1923	11/30/1988	1947	+	Deceased
[REDACTED]	[REDACTED]	1936	10/27/1990	1963	+	Deceased
[REDACTED]	[REDACTED]	1926	11/23/2016	1975	+	Deceased
[REDACTED]	[REDACTED]	1921	6/21/2010	1946	+	Deceased
[REDACTED]	[REDACTED]	1948		1974	1	Removed from ministry 2004; case is in Rome
[REDACTED]	[REDACTED]	1944		1970	+	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1930	12/19/1983	1957	+	Deceased
[REDACTED]	[REDACTED]	1942		1968	+	Removed from ministry 1986; laicized 1988
[REDACTED]	[REDACTED]	1924	11/17/1988	1964	+	Deceased
[REDACTED]	[REDACTED]	1948		1976	+	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1947		1978	+	Transferred to St Petersburg Dioc 1983; faculties revoked 2003

[REDACTED]	[REDACTED]	1927	3/7/2019	1952	+	Removed from ministry 2004; deceased
[REDACTED]	[REDACTED]	1929	12/26/2011	1954	+	Removed from ministry 2003; deceased
[REDACTED]	[REDACTED]	1947		1973	+	Left priesthood 1976; laicized 1977; Episcopal priest
[REDACTED]	[REDACTED]	1932	1/13/1982	1962	+	Deceased
[REDACTED]	[REDACTED]	1938	2/17/2004	1964	+	Removed from ministry 1993; deceased
[REDACTED]	[REDACTED]	1934		1962	+	Left Diocese 1972; retired in Vienna; case is in Rome
[REDACTED]	[REDACTED]	1937	12/26/2014	1963	+	Removed from ministry 2004; deceased
[REDACTED]	[REDACTED]	1941		1971	1	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1941		1980	+	Removed from ministry 2003; case is in Rome
[REDACTED]	[REDACTED]	1901	1/3/1977	1927	+	Deceased
[REDACTED]	[REDACTED]	1909	11/26/1982	1936	+	Deceased
[REDACTED]	[REDACTED]	1950		1976	1	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1943	3/29/2018	1969	+	Deceased
[REDACTED]	[REDACTED]	1939	7/10/1997	1964	+	Removed from ministry 1975; deceased
[REDACTED]	[REDACTED]	1912	6/14/1997	1942	+	Deceased
[REDACTED]	[REDACTED]	1939		1965	+	Removed from ministry 2003; case will go to Rome
[REDACTED]	[REDACTED]	1943		1969	1	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1939		1966	1	Removed from ministry 2003; case will go to Rome
[REDACTED]	[REDACTED]	1877	RIP	1903	+	Left diocese 1915; deceased
[REDACTED]	[REDACTED]	1952		1978	+	Left priesthood 1999; married
[REDACTED]	[REDACTED]	1935	10/28/2013	1960	+	Removed from ministry 1995; deceased
[REDACTED]	[REDACTED]	1908	6/12/1996	1935	+	Deceased
[REDACTED]	[REDACTED]	1939	7/23/2007	1966	+	Deceased
[REDACTED]	[REDACTED]	1938	6/12/2006	1964	+	Deceased
[REDACTED]	[REDACTED]	1944		1970	+	Removed from ministry; left the priesthood
[REDACTED]	[REDACTED]	1917	8/18/1976	1959	1	Laicized 1976; deceased
[REDACTED]	[REDACTED]	1945		1971	+	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1953	8/12/1999	1980	+	Deceased
[REDACTED]	[REDACTED]	1907	3/6/2001	1934	+	Deceased
[REDACTED]	[REDACTED]	1944		1970	+	Removed from ministry 1993; case will go to Rome
[REDACTED]	[REDACTED]	1940	4/8/2010	1971	1	Removed from ministry 1982; deceased
[REDACTED]	[REDACTED]	1924	1/7/2004	1949	+	Deceased
[REDACTED]	[REDACTED]	1917	12/16/1999	1950	+	Deceased
[REDACTED]	[REDACTED]	1942		1978	+	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1906	2/28/2002	1936	+	Deceased
[REDACTED]	[REDACTED]	1924	12/2/2008	1950	+	Deceased
[REDACTED]	[REDACTED]	1928	12/9/2017	1953	+	Removed from ministry 2004; deceased

[REDACTED]	[REDACTED]	1942	5/27/2016	1968	+	Removed from ministry 1993; deceased
[REDACTED]	[REDACTED]	1942		1967	1	Removed from ministry 2018; case will go to Rome
[REDACTED]	[REDACTED]	1947	6/24/2019	1974	+	Removed from ministry 2003; case sent to Rome; recently deceased

83. The September 2019 list confirms that fifty-two accused priests were alive as of June 2002, when the *Charter* came into effect. More than two dozen of these accused priests are listed as cases that are “in Rome” (the CDF); “will go to Rome”; or were “sent from Rome to a US Tribunal.”¹² The list purports that only nine of the priests identified as warranting CDF review had actually been referred to the CDF by September 12, 2019. Except for *Fr. G*, the Diocesan Corporation produced no evidence that it had actually transmitted any of these priests to the CDF.

84. An additional thirteen now-deceased priests are identified on the list as having been (a) alive in June 2002 when the USCCB adopted the CDF-referral requirement and (b) “removed from ministry” or suspended prior to their death.¹³ There is no indication in the list that the Diocesan Corporation referred these priests to the CDF.

85. At his December 2019 examination, Bishop Malone admitted that as of the examination, the Diocesan Corporation still had not referred to the CDF all of the cases that it identified as warranting referral in the September 2019 list.

Consequences of the Failure To Refer to the CDF

86. The Diocesan Corporation’s failure to refer accused priests to the CDF meant that many of them remained incardinated priests of the Diocese subject only to a removal from ministry by the bishop. Their conduct remained hidden from the public and some continued to receive salaries and benefits for as long as fifteen years, even though the Diocesan Corporation itself was on notice of a substantial likelihood that these accused priests had sexually abused minors. Eight priests publicly identified by the Diocesan Corporation in its September 2019 list,

¹² Twenty-three of the priests identified on the Diocesan Corporation’s September 2019 list died or had left the priesthood before the *Charter* was adopted.

¹³ This does not include one priest, who was laicized in 1988.

for example, are identified as removed from ministry in the early 2000s but were not referred or scheduled to be referred to the CDF until after June 2017. The benefits available to these priests included health, dental, and car insurance as well as room and board, a salary, or retirement benefits. Had the Diocesan Corporation followed its policies and procedures and referred accused priests to the CDF for canonical trials and potential laicizations, laicized priests would not have been entitled to financial support from the Diocesan Corporation.

87. By failing to refer priests to the CDF as required by the *Charter* and the *Essential Norms*, the Diocesan Corporation also forestalled any determination of the merits of the allegations against the accused priests. This deprived the accused and victims of an opportunity to be heard.

88. The absence of any formal review or finding against an accused priest also allowed the Diocesan Corporation to avoid damaging disclosures and public scrutiny. According to Bishop Malone's testimony, the Diocesan Corporation would have publicly disclosed laicizations ordered as a consequence of a CDF referral. Such a disclosure would have provided the transparency promised in the *Charter*, giving the public and the Diocesan Corporation's beneficiaries notice of past abuse and potentially allowing abuse victims some validation, relief, or closure. By treating accused priests as "unassignable" and placing them in retirement or on medical leave, the Diocesan Corporation offered none of the transparency promised in the *Charter*, and instead operated to prevent any public consideration of the Diocesan Corporation's ongoing response to widespread allegations of abuse.

Failure To Inquire into Violations of the *Charter* and the *Essential Norms*

89. The Diocesan Corporation's treatment of abuse allegations was well-known to Bishop Malone and Auxiliary Bishop Grosz throughout their tenures. In about 2013, early on in

his tenure as bishop, Malone learned that the Diocesan Corporation had failed to refer priests to the CDF during the decade since the *Charter* was adopted. Additionally, Grosz continuously handled the Diocesan Corporation's response to allegations of clergy sexual abuse prior to and after the implementation of the *Charter*. Thus, Grosz knew or should have known that none of Malone's predecessor bishops had referred any priests to the CDF.

90. The Diocesan Corporation's failures to perform other specific steps under the *Charter* and the *Essential Norms* were apparent in diocesan records for accused priests. For example, in approximately 2015, when Bishop Malone directed Fr. Zilliox to begin personally reviewing priest files for accused priests that had been removed from pastoral positions on the basis of abuse allegations, Zilliox identified basic procedural gaps, writing in his review notes: "Where is the decree of suspension" and "What about the [internal] Investigation."

91. As fiduciaries, Bishop Malone and Auxiliary Bishop Grosz were obligated to inquire into the Diocesan Corporation's failure to adhere to its material policies and to attempt, in good faith, to develop remedial measures to avoid this failure in the future. There is no evidence that Malone or Grosz took any meaningful steps to investigate or remediate the Diocesan Corporation's past failures. Malone admitted that he did not inquire into why the Diocesan Corporation had previously failed to refer accused priests to the CDF.

Failure To Reasonably Monitor Accused Priests

92. Auxiliary Bishop Grosz testified that he was responsible, beginning in the early 1990s, for monitoring priests who had been removed from their assignments in the Diocese on the basis of sexual abuse allegations. Grosz testified that he monitored these priests to ensure that they: (a) did not commit sexual abuse; (b) abided by ministry restrictions; (c) followed recommendations from mental health professionals; and (d) received what he described as

“proper compensation and insurance” from the Diocesan Corporation.

93. In his examination, Auxiliary Bishop Grosz admitted to substantial deficiencies in his and the Diocesan Corporation’s ability to adequately monitor accused, removed priests. He acknowledged that the Diocesan Corporation lacked any policies and procedures regarding the supervision of these priests, who were in a removed status for many years. He admitted that he had no training to monitor suspects of sex crimes for recidivism and that at times he had monitored these priests through phone calls. He also conceded that he had not regularly monitored these priests because of his “total commitment with all of the sexual abuse cases” and the out-of-state residences of some priests. Indeed, out of a sampling of files reviewed by the Attorney General, at least two priests engaged in instances of public ministry despite a complete prohibition.¹⁴

The Disregard of the Risk of Sexual Abuse by Active Priests

94. The Diocesan Corporation’s failure to investigate and refer the allegations it received against accused priests created a general risk for its beneficiaries because individual allegations would remain unconfirmed and the diocesan community would remain unaware of systematic efforts to avoid the policies and procedures created to address and prevent abuse.

95. In addition, in several instances the Diocesan Corporation allowed particular priests to remain in ministry or at work in a church even though it was aware of the priests’ alleged sexual abuse or misconduct. This conduct by the Diocesan Corporation created specific risks of sexual abuse for its beneficiaries.

96. For example, in 2006 the Diocesan Corporation allowed *Fr. G* to minister out of state even though it knew of eight alleged incidents of his sexually inappropriate behavior with

¹⁴ See *infra* ¶¶ 211-12, 659-60.

young girls.¹⁵

97. As late as 2008, *Fr. H*, a priest who was unassignable due to sexual abuse allegations, worked at a diocesan worship site.¹⁶

98. Until at least 2013, the Diocesan Corporation allowed *Fr. Q* to remain in ministry even though by 2002 the Diocesan Corporation had been on notice of a substantial likelihood that he had engaged in sexual misconduct with minors and young adults.¹⁷

99. As late as 2017, the Diocesan Corporation allowed *Fr. V* to remain in ministry even though it found that he had groomed a minor and engaged in inappropriate sexual misconduct with adults.¹⁸

False or Misleading Business Records and Public Statements

100. The Diocesan Corporation and its agents repeatedly prepared and maintained false or misleading business records regarding accused priests in violation of New York law.

101. A person is guilty of falsifying business records in the second degree if he (a) “[m]akes or causes a false entry in the business records of an enterprise” or (b) “[o]mits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position.” Penal Law § 175.05.

102. In several instances, the Diocesan Corporation’s internal records falsely describe a priest as “retired,” on “medical leave,” or on “sabbatical,” where the priest had actually been removed from ministry because of either sexual abuse allegations or the Diocesan Corporation’s finding that the priest had sexually abused a minor. At times and in connection with drafting

¹⁵ See *infra* ¶ 270.

¹⁶ See *infra* ¶¶ 318-19.

¹⁷ See *infra* ¶¶ 526-27.

¹⁸ See *infra* ¶ 657.

internal business records, the Diocesan Corporation also publicly announced the false or misleading description of the priest's removal from ministry. These internal records and public statements omitted any reference to or information regarding sexual abuse allegations.

103. Further, the Diocesan Corporation issued letters of good standing and similar recommendations that enabled accused priests to minister or publicly hold themselves out as priests in other dioceses. In these letters, the Diocesan Corporation generally gave assurances that the accused priests were in good standing and that the Diocesan Corporation was unaware of any risk these priests could present to the public or to minors, in particular. The Diocesan Corporation provided these letter-endorsements despite documented knowledge that contradicted the letters' unconditional recommendations and assurances of good standing.

104. By creating these false or misleading records, the Diocesan Corporation covered up sexual abuse allegations and its response to these allegations. This practice also prevented complainants from obtaining an accurate record of the alleged conduct if they sought the records through litigation or by less formal requests. Falsified records further prevented the Diocesan Corporation from accurately documenting the problem of alleged sexual abuse and implementing appropriate policies and procedures to address the problem.

Failure To Adequately Train the Diocesan Corporation's Personnel

105. Bishop Malone was on notice from early on in and throughout his tenure that the Diocesan Corporation, through its personnel, had failed to properly respond to certain allegations of sexual abuse of minors as required by the *Charter*, the *Essential Norms*, or the *Diocesan Policies and Procedures*. Despite this knowledge, Malone did not take steps to provide appropriate or additional training to Auxiliary Bishop Grosz or any other officials of the Diocesan Corporation who were directly responsible for these compliance failures.