

**Fr. D**

201. *Fr. D* was ordained in 1969.<sup>24</sup> His file contains no complaints of alleged sexual abuse of minors until May 2002. Instead of applying the *Charter* and the *Essential Norms*, the Diocesan Corporation allowed him to retire. The Diocesan Corporation also failed to sufficiently conduct a timely, independent investigation into allegations that *Fr. D* had sexually abused minors; failed to seek the DRB's assessment or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. D*; and failed to refer or timely refer *Fr. D* to

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<sup>24</sup> Unless otherwise noted, the allegations against *Fr. D* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. D* have not been independently investigated by the Attorney General and are recited only to establish the information provided to, and decisions taken by, the Diocesan Corporation in connection with its response to reports of alleged sexual abuse.

the CDF. Further, the Diocesan Corporation engaged in other misconduct by (a) creating false or misleading records to establish a purported, legitimate basis for *Fr. D*'s retirement and eligibility for associated benefits; (b) providing these benefits and other compensation to *Fr. D* even though his laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (c) failing to reasonably monitor *Fr. D*, exposing itself and minors to unnecessary risks.

*Defendants' Violations of Sexual Abuse Policies and Secular Fiduciary Duties*

202. On May 1, 2002, Complainant 1 called Vicar General Cunningham to allege that a priest had molested him when he served as an altar boy thirty years earlier. Complainant 1 alleged that the priest had also molested others, including the Complainant's brother. Cunningham's summary of the call does not identify the accused priest, but the summary appears in *Fr. D*'s file. The Diocesan Corporation failed to conduct a timely, independent internal investigation into Complainant 1's allegations.

203. On or about June 5, 2002, Complainant 2 filed an anonymous complaint with the Diocesan Corporation through an attorney who withheld the name of the Complainant. Complainant 2 alleged that in the early 1970s, when he served as an altar boy, *Fr. D* had sexually abused him on multiple occasions over a period of approximately one year. In an unsigned letter dated June 10, 2002, contained within *Fr. D*'s file, diocesan attorneys told Complainant 2's attorney that the Diocesan Corporation would review the allegations but that the review could be complicated by the Complainant's anonymity. The Diocesan Corporation failed to conduct a sufficient, timely independent internal investigation into Complainant 2's allegations.

204. Within weeks of the *Charter*'s adoption on or about June 15, 2002, *Fr. D* went on medical leave. On July 8, 2002, Vicar General Cunningham prepared a memo documenting a call from *Fr. D*. The memo indicates that *Fr. D* called to report a colonoscopy showing "no

abnormalities” and to discuss his continuing medical exams related to his physical health. The memo states that *Fr. D* will be taking a “medical leave of absence” and be compensated during the leave as a priest with thirty-three years of service. The memo further notes that beginning in October 2003, *Fr. D* will be entitled to a medical pension of about \$420 per month. The memo makes no reference to the allegations of sexual abuse.

205. Internal diocesan records identify *Fr. D* as taking a “[m]edical leave of absence” on July 15, 2002, and retiring on September 1, 2003, when he was about sixty years old. The documents make no reference to *Fr. D*’s removal from ministry because of sexual abuse allegations.

206. Among other things, the absence of documentation in *Fr. D*’s file indicating the Diocesan Corporation’s regular supervision of *Fr. D* shows that the Diocesan Corporation failed to reasonably monitor him.

207. In about 2015, three years after Bishop Malone’s installation, Fr. Zilliox prepared a summary of *Fr. D*’s file, which included the following concerns: (a) “Where is the decree of suspension . . . ?”; (b) “What about the [internal] Investigation?”; and (c) “Where was the Promoter of Justice in this case?” During his testimony, Auxiliary Bishop Grosz was asked about Zilliox’s summary:

Q: . . . My question is whether Father Zilliox would be mistaken if he thought the Diocese did not conduct the investigation under the charter for [*Fr. D* and two other priests]?

A: I cannot answer that.

208. On or before June 1, 2016, a pastor contacted Auxiliary Bishop Grosz to express his concern with a recent offer by *Fr. D* to assist with Masses at the pastor’s parish and a senior residence. Grosz confirmed to the pastor that *Fr. D* was an “unassignable priest” and thus

prohibited from “functioning in that capacity.”

209. Auxiliary Bishop Grosz and Fr. Zilliox contacted diocesan attorneys on June 1, 2016, to discuss *Fr. D*. According to Grosz’s summary of the call, Grosz described the substance of the 2002 complaints against *Fr. D*. Grosz also informed Zilliox that he had called *Fr. D*, who told Grosz “that there was no decree of suspension issued nor did he seem to indicate what he was clearly told to do or not to do relative to his priestly ministry.”

210. Auxiliary Bishop Grosz met with *Fr. D* on June 2, 2016. Grosz’s summary of the meeting states that Grosz called the meeting to address the two allegations “which were discovered in [*Fr. D*’s] file.” During the meeting, Grosz confronted *Fr. D* with the allegations against him. With respect to Complainant 1’s allegations, *Fr. D* said that “he is not conscious of touching the boy’s genitalia” and that he may have “just grabb[ed] an altar boy around the waist or patt[ed] a boy on the buttocks.” When confronted with the anonymous complainant’s allegations, *Fr. D* identified the individual as Complainant 2 and noted that the child “liked to horseplay.” *Fr. D* stated that he might have accidentally touched Complainant 2 in the genital area and that he had touched Complainant 2’s leg because the boy was ticklish in the leg area.

211. During the same June 2, 2016 meeting, *Fr. D* told Auxiliary Bishop Grosz that in about June or July of 2002, Vicar General Cunningham had informed *Fr. D* that “[he] would be removed from active priestly ministry in light of the two allegations.” *Fr. D* added that, at that time, he had advised Cunningham that he would resign as a hospital chaplain.

212. *Fr. D* admitted during the June 2, 2016 meeting with Auxiliary Bishop Grosz that, after his removal from ministry, he had heard confessions and publicly celebrated Mass. Grosz’s summary of the meeting states that, following this admission, Grosz provided *Fr. D* with two documents, *Types of Sexual Harassment* and *Funeral Arrangements for Priests Restricted from*

*Public Ministry but not Dismissed from the Clerical State.*

213. On September 26, 2016, a diocesan attorney sent Auxiliary Bishop Grosz a report of his internal investigation into Complainant 1's and 2's allegations; as discussed above, diocesan attorneys lacked the required independence to investigate sexual abuse allegations pursuant to the *Essential Norms*. The attorney's report recounts his interviews of *Fr. D* and Complainants 1 and 2, conducted more than a decade after they had lodged their complaints. The report's conclusion consists of two paragraphs and does not contain any express findings. The conclusion section does relate that Complainant 1 "made a credible appearance" and that *Fr. D* did not deny the allegations, noting that "it seemed clear to [the diocesan attorney] that [*Fr. D*'s] actions are weighing heavily on his conscience." The report also notes that the DRB would discuss the matter in three days. No documentation of the planned DRB discussion is found in *Fr. D*'s file.

214. In May 2017, diocesan attorneys sent a letter to *Fr. Zilliox*, which states, in part, that "[a]t the last [DRB] meeting, Bishop Malone indicated that he wanted you to prepare a votum on this matter and that he would recommend that *Fr. [D]* be directed to lead a life of prayer and penance." There are no other records of the DRB's and Malone's assessments or anything to explain why Malone did not refer *Fr. D* to the CDF as required by the *Charter* and the *Essential Norms*.

215. In March 2018, the Diocesan Corporation publicly identified *Fr. D* on a list of "diocesan priests who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor." After this disclosure, the Diocesan Corporation received two more complaints, alleging that in about the 1970s, *Fr. D* had sexually abused minors, including through oral sex.

216. In about June 2018, the Diocesan Corporation received assistance from officials of other dioceses, including then-Judicial Vicar James Donlon of the Albany Diocese, to review cases that the Diocesan Corporation had failed to refer to the CDF. Donlon prepared a memo to Bishop Malone and Judicial Vicar Manganello, recommending that the Diocesan Corporation not seek *Fr. D*'s laicization. Donlon based his recommendation on *Fr. D*'s age and health as well as the weakness of the evidence against *Fr. D*. Notably, Donlon did not mention the 2018 complaints accusing *Fr. D* of engaging in sexual activity. Instead, Donlon only referred to two allegations in his recommendation, which he described as “[not] involv[ing] overt sexual activity but, rather, inappropriate touching.” The Attorney General found no evidence to support Donlon’s characterization of the complaints.

217. *Fr. D*'s file contains an undated, one-page document entitled *Case Summary: Allegations of Sexual Abuse*. In a section described as “Response of accused,” the document states that “in 2016 [*Fr. D*] admitted that Msgr. Cunningham had removed him from active ministry in 2002, and he went on medical leave for what was presented as unrelated health issues.” In a section described as “Diocesan or Institutional proceedings,” the document states that the “Diocese failed to accurately document their [sic] response to the 2002 accusations and it appeared that there had been no follow-up on the part of the diocese to the 2002 accusations.”

218. In about September and November of 2019, the Diocesan Corporation published disclosures on its website, entitled *Diocesan Priests with Substantiated Allegations of Abuse of a Minor*. These disclosures incorrectly represent that the Diocese removed *Fr. D* from ministry in 2018, contradicting internal diocesan documents that show that the Diocese removed *Fr. D* in 2002. In the November 2019 disclosure, the Diocesan Corporation indicated that it had referred *Fr. D* to the CDF, but *Fr. D*'s file does not contain any documents demonstrating a referral.

219. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential Norms* by failing to conduct timely and sufficient independent investigations into allegations that *Fr. D* had sexually abused minors; failing to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. D*; and failing to refer or timely refer *Fr. D* to the CDF. Instead, it prepared false or misleading business records and failed to reasonably monitor *Fr. D*. The Diocesan Corporation's actions concealed *Fr. D*'s conduct from the public and placed its beneficiaries at risk.