

Fr. O

451. *Fr. O* was ordained in 1971.³⁷ His file contains a complaint of sexual abuse received by the Diocesan Corporation in 1995, which was treated as alleged abuse of an adult victim despite repeated, reasonably reliable representations that the alleged victim was a minor. This complaint remained pending after the passage of the *Charter* and the *Essential Norms*. Instead of applying these policies, the Diocesan Corporation failed to sufficiently conduct a

³⁷ Unless otherwise noted, the allegations against *Fr. O* are based exclusively on documents that were obtained from public sources or produced from diocesan files for Attorney General review. The allegations against *Fr. O* 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.

timely investigation of the allegations; failed to seek or, alternatively, reasonably document the DRB's assessment of allegations against *Fr. O*; and failed to refer *Fr. O* to the CDF. Further, the Diocesan Corporation engaged in other improper conduct by (a) disregarding the risk of sexual abuse and preparing false or misleading records when it wrote to another diocese to approve *Fr. O*'s out-of-state ministry; (b) misleading beneficiaries by publicly claiming that the Complainant's age at the time of the alleged abuse was unclear or in dispute; (c) providing benefits and other compensation to *Fr. O* even though laicization would have relieved the Diocesan Corporation of its duty to financially support him; and (d) failing to reasonably monitor *Fr. O*, exposing itself and minors to unnecessary risks.

Pre-2002 Notice of and Response to Sexual Abuse Allegations

452. Between *Fr. O*'s ordination and 1995, he was generally assigned to parishes and promoted to pastor in 1984, a position he held until the Complainant submitted her complaint of sexual abuse in 1995.

453. In March 1995, the Complainant's attorney wrote to the Diocesan Corporation to allege that *Fr. O* had (a) befriended the Complainant in 1990; (b) "developed [this friendship] into a relationship . . . at a time when [she] was only fifteen years of age"; (c) made sexual advances on her when she was fifteen or sixteen years old; (d) performed oral sex on her; and (e) had sex with her "for several years."

454. Shortly after the lawyer's letter, Vicar General Cunningham memorialized his meeting with a diocesan attorney and *Fr. O*. Cunningham's memo reflects that the attorney did not question *Fr. O* about the complaint after advising *Fr. O* to retain his own counsel. According to the memo, *Fr. O* offered that the Complainant was born in 1968. If the alleged abuse occurred in 1990, the Complainant would have been about twenty-two years old at the time of the abuse.

455. The Diocesan Corporation received additional information in May 1995 indicating that the Complainant was a minor at the time of the alleged abuse. A diocesan attorney copied Vicar General Cunningham on a May 1995 memo documenting the attorney's conversation with the Complainant's lawyer. The memo summarizes a discussion regarding the Complainant's age at the time of the alleged abuse:

[The Complainant's lawyer] said that the sexual abuse started in the summer of 1984, when [the Complainant] was approximately 15 or 16 years of age. He also said that the sexual abuse included intercourse at that age. He said that it occurred on a regular basis, two or three times per week, until 1991.

456. Vicar General Cunningham arranged for *Fr. O* to go to the St. Luke Institute in April 1995. In July 1995, based, in part, on information from the St. Luke Institute, Cunningham recommended to Bishop Mansell that *Fr. O* resign his pastorate. Cunningham urged *Fr. O* to "take a period of time for spiritual renewal." *Fr. O* submitted his resignation in early August 1995, and Mansell accepted the resignation days later "with the understanding that [*Fr. O* would] be going on a sabbatical for spiritual renewal."

457. *Fr. O*'s file contains an August 8, 1995 newspaper article that reported on his resignation. According to the article, the Diocesan Corporation announced that it had granted *Fr. O* a three-month sabbatical. In a statement to the newspaper, the diocesan spokesperson maintained that he did not know the basis for *Fr. O*'s sabbatical but that sabbaticals were generally granted for spiritual reflections or educational programs. Similarly, in a letter to a parishioner regarding *Fr. O*'s resignation, Bishop Mansell "ask[ed] God to bless Father [*O*] as he begins his sabbatical."

458. Following *Fr. O*'s resignation, discussions between the Diocesan Corporation and the Complainant continued. The Diocesan Corporation asked the Complainant's lawyer to resolve any discrepancy regarding the timing of *Fr. O*'s alleged abuse. The lawyer replied in an

August 8, 1995 letter:

[The Complainant] was first approached by Father [O] in the summer of 1984 between the time [the Complainant] was fifteen and sixteen years old and, during the summer of 1984, he began to perform oral sex upon [the Complainant]. In the fall of 1985 . . . Father [O] was having both oral sex and intercourse with [the Complainant] on a regular basis

459. The Complainant and the Diocesan Corporation engaged in brief settlement negotiations in September 1995. At that time, the Complainant's lawyer threatened to sue the Diocesan Corporation because its attorneys had not returned his calls. This threat led to a discussion of the monetary terms of a potential settlement. A diocesan attorney's summary of the conversation stated: "[the Complainant's lawyer] said he thought the fact that [she] was a minor at the time of the first alleged acts was an important factor." No agreement was reached, and no further steps were taken to resolve the question of the Complainant's age at the time of the alleged abuse.

460. In July 1997, Bishop Mansell and *Fr. O* met and discussed *Fr. O's* request to return to ministry. Mansell rejected the request but outlined a plan for the future:

I told him about the difficulty registered in the evaluation by St. Luke Institute and the obstacle that the evaluation places in the way of an assignment to active ministry. I said therefore it would be necessary for him to return to St. Luke Institute for another evaluation. If their [sic] evaluation is favorable, I indicated that he should then go on a 2-week retreat and then we would look to possibilities for reinstatement to active ministry.

461. In April 1999, the St. Luke Institute sent its assessment to Vicar General Cunningham.³⁸ On May 12, 1999, Cunningham and *Fr. O* met to discuss *Fr. O's* status in light of the assessment. *Fr. O* explained that he planned to object to the Institute's findings and he suggested that he submit to yet another assessment by a different doctor. Cunningham rejected

³⁸ The content of the St. Luke Institute's assessment of *Fr. O* was withheld by the Diocesan Corporation on privilege grounds.

this proposal, reasoning that the Institute had already provided three previous evaluations:

I reminded him that we had had 3 evaluations at St. Luke Institute. Given the recommendations, it would be impossible for the Bishop to give him an assignment at this time. . . . I did tell him I thought it was important that he move on and get the help needed; it is almost 4 years that he has not been able to have an assignment and he was too young not to be working.

462. Between May and August 1999, the Diocesan Corporation and *Fr. O* had ongoing communications about his submission to another mental health evaluation, this time by Southdown. The Diocesan Corporation explained to *Fr. O* that before Southdown could conduct an evaluation, Southdown needed the St. Luke Institute's evaluations. *Fr. O* objected to this request and asked for "an independent evaluation without the information from St. Luke." Ultimately, Southdown assessed *Fr. O* and provided recommendations to the Diocesan Corporation. The documents in *Fr. O*'s file do not indicate whether the priest agreed to share his medical records from the St. Luke Institute with Southdown.

463. On May 30, 2000, Vicar General Cunningham sent a memo to Bishop Mansell that reported on Cunningham's conversation with *Fr. O*. Per the memo, Cunningham instructed *Fr. O* that he would have to satisfy Southdown's conditions before returning to ministry. Cunningham's memo also suggests that, with Southdown's help, *Fr. O* found a doctor in Rochester for treatment.

464. After further discussions between the Diocese and *Fr. O* about his request to return to ministry, the Diocese agreed to his return subject to certain conditions, including that *Fr. O*: (a) receive spiritual direction; (b) attend group therapy; and (c) submit to the monitoring of his progress for eighteen to twenty-four months through regular meetings with his therapist and pastor.

465. In July 2000, Bishop Mansell assigned *Fr. O* to a parish.

466. In October 2001, Bishop Mansell met with *Fr. O* and his pastor. In the summary of this meeting, Mansell documented that *Fr. O* was not being treated by the doctor in Rochester and “that it was very important that he participate in those sessions on a regular basis.”

Defendants’ Violations of Sexual Abuse Policies and Secular Fiduciary Duties

467. After the *Charter’s* adoption in June 2002, the Diocesan Corporation failed to conduct an independent investigation into the Complainant’s pending allegations pursuant to the *Charter* and the *Essential Norms*. *Fr. O* remained in active ministry.

468. In June 2004, Auxiliary Bishop Grosz contacted *Fr. O’s* local psychologist for her view on whether the Diocese should promote *Fr. O* to pastor; *Fr. O’s* file lacks any evidence that this psychologist was associated with Southdown or the St. Luke Institute. According to Grosz’s memo of the call, the psychologist: (a) reported that there was “a heterosexual relationship which has now been addressed” and that *Fr. O’s* “situation as such could be described as ‘totally safe’” and (b) promised to send Grosz an attestation that “she saw no reason where [sic] he could not be appointed as pastor.”

469. In October 2004, Auxiliary Bishop Grosz, acting as the Diocesan Administrator, appointed *Fr. O* as the Administrator of a parish.

470. In May 2005, several months after Bishop Kmiec’s installation, Kmiec appointed *Fr. O* pastor.

471. In September 2006, Chancellor Litwin issued a good-standing letter for *Fr. O* to perform an out-of-state wedding. Litwin affirmed that: (a) “[w]e have never received any information that would cause us to restrict his ministry in any way” and (b) “there is nothing to our knowledge in his background that would restrict any ministry with minors.”

472. In September 2014, Bishop Malone accepted *Fr. O’s* request to retire.

473. On information and belief, after *Fr. O* retired, he continued to publicly celebrate Mass and performed other priestly functions. Such ministry would have been prohibited if the Diocesan Corporation had investigated and substantiated the Complainant's allegations.

474. In March 2018, when the Diocesan Corporation issued a public list of priests "who were removed from ministry, were retired, or left ministry after allegations of sexual abuse of a minor," the Diocesan Corporation did not identify *Fr. O*.

475. In April 2018, the Complainant filed another complaint with the Diocesan Corporation, alleging that: (a) beginning in 1984, when she was fifteen years old, *Fr. O* had sexually abused her, including oral sex and intercourse at least five or seven times a week and (b) *Fr. O* had assaulted her when she threatened to report the relationship.

476. In May 2018, a news outlet reported that the Diocese had kept *Fr. O* in ministry after receiving allegations in 1995 that he had sexually abused a minor. *Fr. O* gave at least two interviews for the story. In the first interview, he denied having any sexual contact with the accuser. In the second interview, however, *Fr. O* purportedly admitted to having sex with the accuser but maintained that she was an adult at the time.

477. When the article was e-mailed to Bishop Malone, he immediately replied to those on the e-mail chain: "My understanding is that this was judged not to be a Charter (minor) case years ago. If I thought it had been, [*Fr. O*] would have been on the [Diocesan Corporation's] list [of credibly accused priests]." One of the diocesan attorneys involved in the Diocesan Corporation's 1995 communications with the Complainant's lawyer supported Malone's view: "I think that's correct. . . . I believe the information available was that [the Complainant] was over 18." *Fr. O*'s file lacks any documents reflecting a judgment by the Diocesan Corporation that the Complainant was an adult at the time of the alleged abuse.

478. The day after the article's release, Bishop Malone issued written decrees that placed *Fr. O* on administrative leave and opened an internal investigation into the allegations. Shortly thereafter, Auxiliary Bishop Grosz then memorialized his interview of *Fr. O*. According to the memo, *Fr. O* denied the allegations, except he claimed that he had had sexual relations with the Complainant and that at times, she had made sexual advances on him. *Fr. O* told Grosz that on one occasion, when the Complainant was about twenty years old, she had grabbed his genitals and the two had sex. Grosz's memo concludes that diocesan attorneys would prepare documents for the DRB and the DRB would issue a recommendation. *Fr. O*'s file does not contain the attorneys' documents or the DRB's recommendation.

479. Before July 30, 2018, the Pope's ambassador to the United States forwarded complaints regarding the Complainant's allegations to the Diocesan Corporation. In response, Bishop Malone explained the Diocesan Corporation's investigations into the Complainant's claims:

From my review of the file in this matter, . . . [in March 1995,] the attorney for the diocese contacted [the Complainant's lawyer] to discuss the claim. [Her lawyer] gave contradictory information about when the relationship between his client and Fr. [O] began. At one point he claimed that the relationship began when his client was only 15 and at another point said that it began in 1990 (when his client would have been 21 or 22).

The [complaint] criticizes the actions of the current Bishop of the Diocese of Syracuse, Robert J. Cunningham, who was the Chancellor of the Diocese of Buffalo back in 1995. In fact, at the time, Fr. [O] vehemently denied many of the allegations, including the claim that the affair began when [the Complainant] was a teenager. After meeting with Fr. [O], then-Chancellor Cunningham required him to resign his position and undergo psychiatric treatment at St. Luke Institute. . .

..

After I received a letter from [the Complainant] earlier this year, I decided to reopen the investigation of this matter. . . .

480. In November 2018, the Diocesan Corporation updated its list of priests with

substantiated claims of sexual abuse of a minor but again did not include *Fr. O* on the updated list. Bishop Malone was asked about *Fr. O* during an interview and at a press conference, and he repeatedly claimed there was a “difference of opinion” regarding the Complainant’s status as a minor. At the press conference, Bishop Malone engaged in the following exchange:

Q: You have said here that you have never protected any priest accused of abusing a minor. Why did you leave Fr. [O] in ministry for more than five years despite an allegation of statutory rape when the victim was sixteen-years old? . . .

A: . . . [I]n this particular case I learned later . . . there was even a difference of opinion, if I’m not incorrect . . . about the age of the individual. [Malone then asked a diocesan representative to comment] . . .

A: [Diocesan representative:] I think it’s important to have some initial factual background about this particular case. . . . [I]n 1995, the correspondence from her attorney said that essentially Fr. [O] befriended his client in 1990 is what one of the letters said. So we went and looked at it, and she was born in 1968, so that made her twenty-one or twenty-two, so there was contradictory information. Several people reached out from the Chancery . . . to the attorney to get some additional information. It remained contradictory and what happened I think back in 1995, as best I can put together, is that it was treated as a case of adult abuse and at that time, it was done, what was done throughout the country, is that Fr. [O] was sent to be evaluated by no less than three to five institutions where he would be out of service for five years until finally he came back and after being evaluated, this was by Bishop Mansell, he was placed back into service because the evaluators told him that it was 100% safe to put him back into service.

Despite the Diocesan Corporation’s claims to the Pope’s ambassador and the public that the Complainant provided contradictory information regarding her age at the time of the alleged abuse, records in *Fr. O*’s file demonstrate that her attorney repeatedly confirmed that the complaint alleged that she was a minor at the time of the alleged abuse. Thus, the complaint should have been subject to the strict requirements of the *Charter* and the *Essential Norms*.

481. On December 12, 2018, Bishop Malone issued a written decree that closed the Diocesan Corporation’s internal investigation of *Fr. O* and referred him to the CDF.

482. On December 14, 2018, Auxiliary Bishop Grosz met with *Fr. O* to advise him that DRB had met and “concluded that the allegation against Father [*O*] was substantiated” and that Bishop Malone would accept the DRB’s recommendation to refer *Fr. O* to the CDF. *Fr. O*’s file does not contain the DRB’s written conclusion. Grosz’s memo of the December 14 meeting also notes: “[*Fr. O*] concluded by indicating he will continue to fight relative to this particular case.”

483. Three months later, a diocesan investigator submitted a written report to diocesan attorneys. The report found that the Complainant was credible based on (a) the investigator’s training and experience as a former prosecutor of sex crimes; (b) his interview of the Complainant; (c) the Complainant’s 1995 complaint to the Diocesan Corporation; (d) a 2018 letter from the Complainant’s father to Bishop Malone, which corroborated the Complainant’s claim that she had reported the abuse before 2018; and (e) *Fr. O*’s alleged admissions that corroborated some of the Complainant’s assertions, including that he and the Complainant had had sexual intercourse several times. All of this information was available or likely could have been obtained at the time of the complaint or in 2002, when the *Essential Norms* expressly required an internal investigation.

484. Among other things, the absence of documentation in *Fr. O*’s file indicating that the Diocesan Corporation regularly supervised him shows that the Diocesan Corporation failed to reasonably monitor him.

485. In about November 2019, the Diocesan Corporation, in a disclosure on its website, indicated that it would refer *Fr. O* to the CDF, confirming that Bishop Malone had not done so prior to that time.

486. The Diocesan Corporation repeatedly violated the *Charter* and the *Essential*

Norms by failing to conduct a timely, independent and sufficient investigation into allegations that *Fr. O* had sexually abused a minor; failing to seek or, alternatively, reasonably document the DRB's assessment of sexual abuse allegations against *Fr. O*; and failing to refer *Fr. O* to the CDF. Instead, it made false or misleading statements to its beneficiaries; prepared false or misleading business records; failed to reasonably monitor *Fr. O*; and disregarded the risk that *Fr. O* could sexually abuse minors. The Diocesan Corporation's actions concealed *Fr. O*'s conduct from the public and placed its beneficiaries at risk.