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IRCP REPORT

On March 1, 2018, the Diocese of Buffalo announced the establishment of its voluntary Independent Reconciliation and Compensation Program (“IRCP”). The Program offered an opportunity for healing, justice, and monetary compensation to individuals who had previously submitted complaints to the Diocese that they were sexually abused, as a minor, by clergy of the Diocese.

At the time, the Diocese stated it would not respond to interim inquiries about the number of claims, timetables for the resolution of claims, and similar matters, but it would provide a report at the conclusion of the Program. While a few compensation awards are still outstanding, the Program is substantially complete and the Diocese provides this report.

BACKGROUND

The IRCP was the next step in the Diocese's ongoing efforts, extending back decades, to prevent sexual abuse and to address the needs of victims of past abuse.

Well before the issue of sexual misconduct by Church personnel received widespread national attention, the Diocese of Buffalo prepared a written policy to address abuse. This policy was distributed to all Diocesan clergy in 1990, twelve years before the United States Conference of Catholic Bishops approved a revised Charter for the Protection of Children and Young People in 2002 to ensure the Church's vigilance in guarding against violations of trust.¹

Since the adoption of the Charter in 2002, the Diocese has implemented a number of additional programs, safeguards, and

¹ The USCCB also adopted the Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons ("Essential Norms"). *See Charter for the Protection of Children and Young People, Essential Norms and the Statement of Episcopal Commitment (Promise to Protect - Pledge to Heal)* (United States Conference of Catholic Bishops, 2011).

procedures designed to educate, prevent and respond to any incidents of sexual abuse of minors. The Diocese created the Office of Safe Environment and has instituted a Diocese-wide Safe Environment Program, which includes screening and background checks on potential employees and volunteers. Mandatory safe environment training has also been instituted for all Diocesan clergy, employees, and volunteers who work with children. Using a well-respected and highly used program called *Virtus*[®], Protecting God's Children[®] for adults, the Diocese's training is ongoing. Following the initial training session, participants are required each month to read additional training materials and answer questions about recognizing the warning signs of inappropriate behaviors by adults, recognizing unusual behavior by children that may be a warning sign of abuse, and recognizing new trends in the way predators target young victims. Diocesan clergy, employees, and volunteers are trained as to identifying signs of sexual abuse and

reporting suspected sexual abuse. Since 2003, the Diocese has trained more than 41,000 adults who come in contact with children, and has done more than 41,000 background checks on clergy, employees, and volunteers.

Those preventive efforts have proven extremely effective. While even one case of abuse is one too many, media coverage has largely ignored a key fact: there have been only three (3) priests against whom the Diocese has received substantiated allegations of child sexual abuse that have occurred in this century. All three of those priests were removed from ministry, and their cases were widely publicized. To place that in context, the Erie County District Attorney's Office stated on February 7, 2015 that, "Erie County has had the second highest number of cases of child abuse in New York State with approximately 9,000 cases reported per year."²

² <http://www2.erie.gov/da/index.php?q=press/da-flynn-announces-enough-abuse-campaign-combat-child-sexual-abuse>.

Since 2003, the Diocese has had an agreement with the district attorneys in eight Western New York counties concerning the handling of sex abuse allegations. The agreement specifies, among other things, the circumstances in which the Diocese must report allegations of sexual abuse of a minor and stipulates that the Diocese do so “without prior screening regarding the truth of the allegation.” It also states that the Diocese will report any transfer or reassignment of the individual against whom the allegation is made. The reporting criteria were set by the district attorneys, and the agreement, which has been updated over the years, remains in effect today.

On August 26, 2018, Bishop Malone announced that the Diocese had taken the additional step of establishing a new Office of Professional Responsibility. The Office’s mission is to review the Diocesan Code of Conduct, strengthen it wherever necessary, and enforce it. Steven L. Halter, a special agent in the FBI for over 27

years, with experience in investigations involving crimes against children, was appointed Director of Professional Responsibility. His duties include investigating complaints of clergy or employee sexual abuse and misconduct.

Prior to the Charter, the Diocese made efforts to address the emotional, psychological, and pastoral needs of victims, and has continued to do so through its Victim Assistance Coordinator (“the VAC”), a position formally established in 2003.

In the past, the Diocese had received claims for compensation for alleged sexual abuse. As a further step toward reconciliation with victims of sexual abuse, the Diocese instituted the IRCP to address those claims in a systematic and comprehensive manner. “I know this is the right thing to do,” said Bishop Malone in announcing the Program. “We pray that the monetary compensation together with the acknowledgment that they were hurt can be a significant step in helping them to heal. If we can help

victims to heal, then we as a Church can begin to heal from this awful part of our past.”

THE PROGRAM

Using the general IRCP model used by other New York Dioceses as a starting point, the Diocese tailored its Program to the circumstances and needs of the Diocese of Buffalo. While it did make a significant financial commitment to the Program, the Diocese recognized that it could not undertake an unlimited, open-ended commitment. For that reason, the Diocese undertook a clearly delineated Program, which set forth specific eligibility requirements. For example, the Program was expressly limited to claims of sexual abuse as a minor by a clergy of the Diocese that had previously been reported to the Diocese.³

³ The Diocese also announced its intention to evaluate its experience after the Program’s completion and to consider whether it could be expanded or followed by an additional phase or program.

Unlike other IRCs, the Diocese did not categorically exclude all claims involving allegations of abuse by clergy who were members of a religious order. In this regard, the Diocese sought to accurately reflect the historical fact that, at times, some religious order priests have served as a representative of the Diocese in certain circumstances. This aspect of the Diocese's IRC was more inclusive of victims and claims than other IRCs, which categorically excluded all claims against religious order priests.

To administer the Program, the Diocese engaged two well-respected retired Judges, with decades of judicial experience in Western New York: former New York State Supreme Court Justice Jerome Gorski, and former New York State Supreme Court Justice and former Surrogate Judge Barbara Howe ("the Administrators"). To allow Judge Gorski and Judge Howe to best utilize their experience and professional judgment, the Program gave them independence and flexibility in deciding how to go about resolving

claims. In addition, unlike other programs, the Administrators were given complete authority to resolve disputes about claim eligibility; the Diocese could not pre-screen claims.

THE DIOCESE'S OUTREACH

Prior to the Program, the Diocese had undertaken a review of its records and made extensive efforts to identify potentially eligible individuals and their current contact information. The Diocese was thus able to promptly send out packages, via courier service, to potentially eligible individuals. Each package contained a letter about the IRCP from the Victim Assistance Coordinator, the Program Summary, a Claim Form, and a prepaid return courier service envelope for the individual to utilize in submitting a completed claim form. The Diocese sent out 93 such packages; 82 packages were successfully delivered; and 68 of those individuals submitted claims. Through extensive and diligent efforts, the

Diocese was able to reach a number of individuals who had not been in contact with the Diocese for years.

Not surprisingly, however, the Diocese was not able to directly contact each potentially eligible individual it had identified. The Diocese also recognized that it might not be aware of some potentially eligible individuals. In addition, the Diocese did not want to discourage any individual who believed that his or her claim was eligible from filing that claim with the IRCP.

On March 1, 2018, Bishop Malone held a press conference to announce the IRCP so that news of the Program could reach the public at large. The Diocese also made the Program Summary and Claim Form publically available; it posted them on the Diocese's website; and it provided them to anyone upon request. Likewise, the Program Summary, while setting forth the eligibility requirements, made clear that anyone could submit a claim and that

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the Administrators (not the Diocese) would decide any disputed issues of eligibility.

IRCP CLAIM AND ELIGIBILITY INFORMATION

The Diocese has received 262 claims and requests for permission to file claims.⁴ Each claim was reviewed in accordance with the Diocese's policies and procedures. For example, the claims were reviewed to determine if they were subject to reporting to the district attorneys under the Diocese's agreement with those offices and whether they contained allegations against a priest in active ministry that required action pursuant to the Diocese's policies and procedures under the Charter. If a claim involved a new report of abuse, it was presented to the Diocesan Review Board. The Diocese also reviewed each claim in connection with its new practice of publishing a list of diocesan priests with substantiated allegations of child sexual abuse and deceased priests who had more than one allegation of abuse against them.

⁴ For the sake of convenience, claims and requests for permission to file claims are referred to collectively as "claims." The Program had a June 1, 2018 deadline for filing claims. Numerous claims were received after the deadline and continued to be received as recently as April 2019.

The Diocese received an unexpectedly large number of claims of which it was previously unaware. In reviewing the new claims, the Diocese found it noteworthy that the vast majority involved abuse alleged to have occurred decades ago. That information is consistent with the breakdown of the previously known allegations of abuse.

The Diocese objected to the eligibility of a number of the claims. The Diocese filed its objections out of fairness to all claimants and potential claimants, including those who did not file claims because they did not meet the Program's eligibility requirements. The most frequent objection by the Diocese was that a claim had not been reported to the Diocese prior to March 1, 2018 and therefore did not meet that eligibility requirement. In many instances, the claim form itself did not contend that the eligibility requirements had been met, or it affirmatively demonstrated that the claim was not eligible. The Diocese filed its objections with the

Administrators and sent a copy of each objection to the claimant or claimant's attorney. Thus, each claimant had an opportunity to respond to the Diocese's objection and to support the eligibility of his or her claim. Some claimants did respond, and the Diocese did withdraw several of its objections in view of a claimant's further submission.

The Administrators ultimately determined that 135 claims failed to meet the IRCP eligibility requirements. The IRCP was designed to allow claimants to be represented by counsel, if they so desired, but also to allow *pro se* claimants to navigate the IRCP process. The Program was successful in that regard, as evidenced by the fact that approximately 72% of *pro se* claimants were found eligible as compared to 33% of claimants represented by counsel.

IRCP HEARING, AWARD, AND ACCEPTANCE INFORMATION

The Administrators gave every eligible claimant an opportunity to be heard by them, either in person or by telephone. The

Administrators sent a letter to each eligible claimant advising them of that opportunity. Approximately 94 claimants (and/or their attorney) took advantage of that opportunity and spoke directly to both Administrators, in person or by telephone. The Diocese did not attend or participate in any of those hearings or telephone conferences, thus giving the claimants an unfettered opportunity to present their claim to the Administrators.

The Administrators issued 127 compensation awards. The awards ranged from \$2,000 to \$650,000. The amount of each award was determined solely by the Administrators. The average award was \$158,622.

Each claimant was free to accept or reject the award. The claimant could reject the award for any reason or for no reason. The Diocese, however, was bound by the award. It could not appeal or seek to modify any award made by the Administrators.

To accept an award, a claimant was required to execute and return an Agreement and General Release in which the claimant released the Diocese and any other parties from any and all claims related to his or her allegations of sexual abuse. The claimants were provided with the proposed Agreement and General Release shortly after receipt of the Administrators' award decision. Pursuant to the Program Summary, each claimant had sixty (60) days from receipt of the Agreement and General Release in which to execute and return it. As of this date, 107 of 127 awards have been accepted by the claimants. That 84.3% acceptance rate is a minimum as three awards are currently pending and could still be accepted by the claimant. The awards accepted to date total \$17,600,000 and the average accepted award is \$164,486. The acceptance rate was approximately the same regardless of whether the claimants were represented.⁵

⁵ To date, 92% of the *pro se* claimants have accepted their awards as compared to 73% of the

The November 6, 2018 election guaranteed Democratic control of the New York State Senate and was viewed as making the enactment of a child victims act a virtual certainty. Yet, all 107 acceptances were made well after the election, thus confirming that the amounts of the awards were reasonable. In fact, 22 acceptances were made after the Legislature passed the Child Victims Act on January 28, 2019.

The Program Summary provides that the Diocese will make payment within thirty (30) days of receipt of the original executed Agreement and General Release from the claimant. The Program gave claimants the option of receiving payment via electronic funds transfer (“EFT”) and a number of claimants have chosen to receive payment by EFT. To date, the Diocese has paid 106 awards totaling \$17,540,000. Only one acceptance, in the amount of \$60,000, remains unpaid. There are three additional awards, totaling

claimants represented by counsel.

\$425,000, which remain pending, and which could be accepted by the claimants.

THE CHILD VICTIMS ACT AND MOVING FORWARD

New York recently enacted the Child Victims Act, which provides a one-year “window” in which certain claims for sexual abuse may be brought, even though such claims would previously have been barred by the statute of limitations. That window period does not open until August 2019. As a result, the Diocese is not yet able to assess the impact of the Child Victims Act. In addition, as noted above, the Diocese received an unexpectedly large number of new or previously unknown claims. For those reasons, the Diocese is unable at this time to expand the IRCP or proceed with an additional phase of the Program.

At the same time, the Diocese’s experience was that the IRCP offered a number of positive aspects that should not be overlooked moving forward. Claimants, many of whom had not told family

members of the abuse, valued the private and confidential nature of the Program. In fact, the vast majority of those accepting awards have requested continuing confidentiality. The non-binding nature of the Program gave them a risk-free opportunity to resolve their claim; they could withdraw at any point or decline a compensation award. The Program offered the possibility of resolution without the delay of litigation and without the adversarial confrontation inherent in the litigation process. Both attorney-represented claimants and *pro se* claimants were able to successfully pursue IRCP claims. For some claimants, the IRCP allowed them to resolve their claims without attorney's fees.

For those reasons, and others, the Diocese will look for opportunities to implement versions or features of the IRCP, if appropriate, in future alternative dispute resolution, including that concerning the Child Victims Act.