

CONCILIATION & ARBITRATION POLICY & PROCEDURE DIOCESE OF FARGO

I. INTRODUCTION

Settling of disputes and controversies among Christians in justice and charity belongs to the core of our religion. When we are in conflict with each other, and with those organizations that seek to serve the common good, there is a fundamental spiritual and social need to resolve such conflict. Sacred Scripture urges the worshipping community to be reconciled to itself before addressing its God:

If you are bringing your offering to the altar, says our Lord, and there remember that your brother has anything against you, leave your offering there before the altar, go and be reconciled with your brother first, and then come and offer your gift.

(Matthew 5:23-25)

These policies and procedures have been approved and promulgated by the Bishop of Fargo, who has all ordinary, proper and immediate power in the diocese (c. 381, §1), and who governs with legislative, executive, and judicial power in accord with the norm of law (c. 391, §1). The *Conciliation and Arbitration, Policy and Procedure* serves those individuals and organizations within the structures of the Diocese of Fargo (c. 12, §3) who are in conflict and who seek reconciliation in a non-litigious manner that embraces Christ.

1) Conciliation

Through conciliation, the parties themselves reach a just resolution of the conflict, with the assistance of an impartial facilitator (conciliator) approved by the parties. It is believed that persons of good will, committed to the Gospel spirit of love and reconciliation, can often find resolution with the assistance of another committed to that same spirit.

2) Arbitration

Because not all conflicts will be resolved through conciliation, arbitration is also offered. In arbitration, those in conflict agree to allow an impartial arbitrator approved by the

This *Conciliation and Arbitration, Policy and Procedure* gratefully acknowledges the ideas and at times direct quotes taken from the *Manual* of the Archdiocesan Office of Conciliation (2000), Archdiocese of St. Paul and Minneapolis.

parties to resolve the conflict. Arbitration adds the important element of the readiness of the parties to accept the decision of the arbitrator for a binding settlement.

Participants

- The “petitioner(s)” are individuals, groups of persons, or organizations within the diocese who have requested conciliation/arbitration.
- The “respondent(s)” are individuals, groups of persons, or institutions against whom a grievance or complaint has been lodged.
- The “conciliator” is a person who guides and facilitates the conciliation process, as the parties attempt to achieve a just and peaceful resolution of the problem.
- The “arbitrator” is a person who guides and facilitates the arbitration process, as the parties attempt to achieve a just and peaceful resolution of the problem.
- The Director is the person who administers the conciliation and arbitration process.
- The Board of Conciliation and Arbitration serves the roles of consultation, interpretation, oversight, and as a court of appeal in the conciliation and arbitration process.

Allowable and Non-Allowable Disputes

Allowable disputes include individuals, groups of persons, or organizations within the diocese who contend that an action/decision or a failure to do so by some other individual, group or organization within the diocese has restricted or prohibited without sufficient justification a person’s right recognized as such in the law of the Church, in the documents of the magisterium, or in the terms of a contract, job description, personnel policy or other written agreement governing the issue in question.

A mere disagreement with the decision or action of an administrator is an insufficient foundation for a grievance. Discretionary judgment has been vested in the administrator and his or her decisions are not subject to be overthrown by others in whose judgment a different decision should have been made. It is only when the action of an administrator has restricted someone's right without adequate justification or has failed to honor the terms of a contract, personnel policy or job description, etc. that a grievance according to this procedure has foundation. Consequently, the termination of someone's employment, cannot be the basis of a formal grievance except to the extent that the terms of a personnel policy or contract have not been honored in the termination.

Non-allowable disputes include matters which are already governed by canonical processes, e.g., marriage annulment procedures, validity of Holy Orders, dismissal from seminary formation, canonical criminal cases, procedure for removal of pastors, and matter involving alleged criminal activity. In addition, this policy does not allow for disputes which involve material protected by the seal of confession, challenges to magisterial teachings, the liturgical norms of the Church, internal affairs of members of religious congregations, disputes which are pending in another conflict resolution process or those which have already been submitted to civil litigation. Nor does it include disputes involving schools, hospitals, institutions, and other ministries under the sponsorship of religious institutes.

The above explanations are by no means exhaustive but are intended to provide a general overview of the scope of these policies and procedures. Situations which, in the judgment of the Director, must be submitted to the diocesan bishop, to the civil legal forum, or to some other authority protecting the common good will be directed to these entities and will be better served apart from the conciliation and arbitration process. The diocesan bishop retains the right to determine whether or not a dispute falls within the scope of conciliation and arbitration process. In those cases he is encouraged to provide the Director and the Board with his reasoning.

Confidentiality

The Director, conciliator, and arbitrator shall impress upon the parties at the outset the importance of maintaining confidentiality. All meetings shall be private and without publicity. All communications made to a conciliator, arbitrator or between participants shall be treated as confidential. All reports shall be confidential. If the problem is resolved by agreement, and the parties agree to publicize the agreement, announcement of it shall be made. If there is no agreement, or a party does not wish to publicize the agreement, no announcement shall be made.

II. DIRECTOR OF CONCILIATION AND ARBRITRATION

The Bishop shall appoint or remove the Director. The appointment is for a five year term and shall be served without compensation.

Responsibilities of Director

The director shall:

- administer the diocesan conciliation and arbitration process;
- receive and process written requests for conciliation or arbitration;
- consult with the other board members before accepting or dismissing a request for conciliation and arbitration;
- if a request is rejected, the Director shall provide the reasons in writing;
- provide a periodic report to the Board on current cases and significant developments;
- assist the parties in selection of a conciliator or arbitrator;
- advise the Christian faithful and diocesan administrators concerning their rights and obligations in the conciliation and arbitration process;
- assist the Board in its functions;
- maintain records for each case.

III. THE BOARD OF CONCILIATION AND ARBITRATION

The Board of Conciliation and Arbitration shall consist of a panel of five persons all appointed by the bishop. Members shall be selected from within the Diocese of Fargo. The board shall include the Vicar for Clergy, the Moderator of the Curia, and the Diocesan Human Resource Coordinator who all serve ex-officio. The remaining members are appointed for a term of five years. The non ex-officio members may be appointed to serve two consecutive terms. Members shall elect a chairperson and secretary each year. A member continues to serve in the interim until a successor is designated.

All parties considered for membership on this Board must be marked by suitable qualities for such office, especially strength of character, mature judgment, impartiality, willingness to serve and complete sense of justice and equity. It would be beneficial if members of the Board have experience in canonical, legal and personnel work. Members shall serve without compensation.

Responsibilities

The Board of Conciliation and Arbitration shall:

- meet at least once a year to review the policy and its effectiveness;
- elect a chairperson and secretary each year;
- advise the Director on the acceptance or denial of a request for conciliation or arbitration;
- serve as a court of appeal in questions pertaining to the Director's decision to not allow a dispute (a majority vote of all Board members is required to overturn such decisions);
- serve as a court of appeal in questions pertaining to arbitration decisions (a majority vote of all Board members is required to order a rehearing, either before the arbitrator who made the decision, or before an entirely new arbitrator chosen in the same manner as the original arbitrator.)
- maintain a list of at least five persons who are available to act as conciliators and arbitrators for cases that are accepted and inform the Bishop when new appointments are needed;
- interpret rules of procedure and application when questions are referred to it;
- approve any amendments to the policy and procedure by a majority vote of all Board members; notice of a proposed amendment must be given by the chairperson to all board members two weeks prior to the meeting at which the amendment is to be presented for approval; the bishop must approve such amendments before they become final.

III. PROCEDURE FOR CONCILIATION

The primary focus of the diocesan conciliation process shall be the attempt to bring about the reconciliation of the parties and to heal relationships which have been damaged. It is expected that, before approaching the Director, the parties will have attempted to use other processes which are available to them at the local level (i.e. recourse to the person responsible for the initial decision, recourse to higher levels of administration).

Initiating the Process

- The petitioner submits to the Director a written petition, in which the parties to the conflict are identified, the problem is briefly summarized, and their position and suggested remedies are stated. This petition should include an authoritative statement of the policy, law, or principle which supports the claim that a right has been violated. (see Appendix)
- After consultation with the Board, the Director determines whether the petition falls within the scope of allowable disputes. If it does, the director sends a copy of the petition to the respondent and invites the respondent to participate in conciliation.
- The petitioner and respondent shall be asked to agree to conciliation
- If the Director determines that the petition is non-allowable, the petitioner may request that the question be referred to the Board for review.

Selection of the Conciliator

- After the parties have agreed to participate in conciliation, the Director shall provide both parties with the names and brief biographies of available conciliator from the approved diocesan list.
- Both parties shall be asked to indicate if any proposed conciliator is totally unacceptable and to rank the remaining names according to preference.
- With this information, the Director will appoint a conciliator.
- If either party does not agree to the appointed conciliator, the Director shall appoint a different conciliator from the approved diocesan list.
- If the parties have not agreed upon a conciliator within fourteen (14) days, the Director shall designate a conciliator.

Conciliation Process

- Joint meetings will ordinarily be restricted to the parties and the conciliator.
- If one party desires to have advisors, and if the conciliator agrees, the other party will be notified that s/he will be permitted an equal number of advisors. The civil lawyers of the parties shall not be admitted as advisors.

- At the discretion of the conciliator and with the agreement of the parties, others may join the meeting from time to time. Whenever such additional persons are permitted to be present at a conciliation meeting, the conciliator will instruct those persons about the philosophy and values underlying the diocesan conciliation process, placing particular emphasis upon the need for confidentiality.
- The conciliator will determine ground-rules regarding the participation of advisors and other persons who are permitted to be present. Ordinarily, primary communication should involve the parties, speaking for themselves.
- All meetings shall be private, confidential and without publicity. Confidentiality will be impressed upon both parties at the onset of the process. All communication both written and verbal shall be treated as confidential.

Resolution of the Dispute

- The conciliator shall not force the parties to agree to a solution.
- If the problem is resolved by agreement, the conciliator shall submit to the Director a summary statement of the problem and its resolution. Copies of the signed agreement will be given to the petitioner, respondent, and Director.
- If the problem is unresolved, despite the good faith efforts of the parties, and if further attempts at conciliation appear useless, the conciliator shall submit to the Director a written report containing the names of the parties, a summary of the problem, and the reasons that a resolution was not possible.
- If the conciliator determines that either party is not cooperating in good faith, the Director shall notify the Bishop or a representative designated by him, requesting that someone endeavor to persuade the party to cooperate.
- Conciliators shall strive to conclude the conciliation process within ninety (90) days, except when unusual circumstances justify a longer time or when the parties wish to continue.

Role of the Conciliator

Conciliators shall serve without compensation. They shall always conduct themselves in accordance with the expected ethical norms of this responsibility. Conciliators are appointed by the Bishop and may not be members of the Board.

The Conciliator shall:

- at the first joint meeting, discuss with all participants the philosophy and values underlying the diocesan conciliation process, placing particular emphasis upon the need for confidentiality; each participant will be asked to sign an agreement indicating their acceptance of those principles;
- strive to incorporate prayer and spiritual values into the process;
- meet alone with each party to discuss the problem;
- meet with both parties together, to assist them in coming to a peaceful resolution of the problem;
- schedule meetings as necessary;
- encourage each party to answer questions fully and honestly;

- make appropriate adaptations to achieve the goal of reconciliation;
- keep the Director informed regarding the progress of the case.

IV. PROCEDURE FOR ARBITRATION

Arbitration is the reference of a dispute to an impartial person for final and binding determination on the basis of evidence and arguments presented by the parties. In situations in which arbitration is not the appropriate first step, parties should first explore other forms of conflict resolution such as conciliation. Only for serious reasons should conciliation be waived to allow direct use of arbitration proceedings.

On occasion, variations in the procedures described in this manual will better serve the interests of justice. If such variations are acceptable to the parties and to the arbitrator, they may be employed. In order to ensure a just hearing and resolution, while at the same time avoiding unnecessary delays, the arbitrator shall exercise discretion in establishing or modifying time limits.

Initiating the Process

- The petitioner submits to the Director a written petition, in which the parties to the conflict are identified, the problem is briefly summarized, and their position and suggested remedies are stated. This petition should include an authoritative statement of the policy, law, or principle which supports the claim that a right has been violated. (see Appendix)
- After consultation with the Board, the Director determines whether the petition falls within the scope of allowable disputes. If it does, the Director sends a copy of the petition to the respondent and invites the respondent to participate in arbitration.
- If the Director determines that the petition is non-allowable, the petitioner may request that the question be referred to the Board for review.

Selection of the Arbitrator

- After the parties have agreed to participate in arbitration, the Director shall provide both parties with the names and brief biographies of available arbitrators from the approved diocesan list.
- Both parties shall be asked to indicate if any proposed arbitrator is totally unacceptable and to rank the remaining names according to preference.
- With this information, the Director will appoint an arbitrator.
- If either party does not agree to the appointed arbitrator, the Director shall appoint a different arbitrator from the approved diocesan list.
- If the parties have not agreed upon an arbitrator within fourteen (14) days, the Director shall designate an arbitrator.

Arbitration Process

- All hearings shall be opened by recording the place, time and date of the hearing, and the presence of the arbitrator, the parties, and other persons.
- The parties are entitled
 - to be heard;
 - to present evidence pertinent to the controversy;
 - to question witnesses appearing at the hearings.
- The arbitrator has the discretion to vary the normal procedure under which the petitioner's claims are first presented, but in any case shall afford full and equal opportunity to all parties for presentation of relevant proofs.
- Exhibits offered in evidence, as well as the names and addresses of all witnesses, shall be made a part of the record.
- At the discretion of the arbitrator a taped recording may be made of the proceedings. Any record of the proceedings remains the exclusive property of the diocese.
- The arbitrator shall inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearings closed.
- The hearings may be reopened by the arbitrator on his/her own initiative, or at the request of either party, for a good cause shown, at any time before the decision is made.
- Parties who may wish to be assisted by advisors during this process shall notify the arbitrator prior to the hearing. The arbitrator shall make the names of such persons known to the other party. The civil lawyers of the parties shall not be admitted as advisors.
- It shall be at the discretion of the arbitrator to determine the propriety of the attendance of any other person at the hearings. Whenever such additional persons are permitted to be present at an arbitration session, the arbitrator will instruct those persons about the philosophy and values underlying the diocesan arbitration process, placing particular emphasis upon the need for confidentiality.
- The arbitrator may ask experts to provide information during the hearing.
- Arbitration may proceed in the absence of any party who, after due notice, fails to be present.
- Before rendering a final determination, the arbitrator may provide the parties with a proposed determination, for the purpose of offering them a final opportunity to resolve the conflict through conciliation.

Final Determination

- The determination shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, no later than thirty (30) days from the date of closing the hearings, or if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator.
- The determination shall be final and binding upon all parties to the dispute.
- The determination shall be in writing, signed and dated by the arbitrator, and it shall become a final determination twenty (20) days after delivery of the determination to

the parties unless, within that time, one of the parties or the Board requests in writing a change of decision.

- Written notice of the request for such a change shall be delivered to the opposing party or parties who shall have ten (10) days to respond.
- After reviewing the request for a change of decision, the arbitrator may confirm, modify, correct or clarify the proposed decision, after which the decision shall become final.
- The arbitrator may call for further hearings to assist in deciding the requested change.

Role of the Arbitrator

Arbitrators shall serve without compensation. They shall always conduct themselves in accordance with the expected ethical norms of this responsibility. Arbitrators are appointed by the Bishop and may not be members of the Board.

The arbitrator shall:

- at the first joint meeting, discuss with all participants the philosophy and values underlying the diocesan arbitration process, placing particular emphasis upon the need for confidentiality; each participant will be asked to agree to be guided by those principles;
- strive to incorporate prayer and spiritual values in the process;
- appoint a time and place for the arbitration hearing, and notify the parties not less than five (5) days before the hearing;
- adjourn or postpone the hearings as necessary;
- hear and determine the controversy upon the evidence produced at the hearing:
 - a) Parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrator deems necessary for an understanding and determination of the dispute.
 - b) The arbitrator shall judge the relevancy and materiality of the evidence offered, and strict conformity to civil or canonical legal rules of evidence shall not be necessary.
 - c) The arbitrator may admit evidence which supports or disproves the allegation that a right is recognized as such in the law of the Church or in the documents of the magisterium.
 - d) The arbitrator may require the parties to submit books, records, documents, and other documentary evidence which is relevant to the case.
 - e) The arbitrator may accept written statements as testimony when the physical presence of a witness is not possible.

Appeal Process

An appeal by either party from the final determination may be made according to the procedures outlined below. An appeal must be made within twenty (20) days after the determination becomes final. Based upon the criterion given below the appeal is presented to

the chairman of the Board. This Board shall be competent to review an arbitration decision when it is alleged that:

- new evidence has been discovered, of a character which demands a review or a rehearing;
- principles of fundamental procedural fairness were violated;
- the method of selection of the arbitrator, agreed upon by the parties beforehand, was not followed;
- there was evident partiality on the part of the arbitrator;
- the arbitrator's powers were exceeded;
- the arbitrator refused to hear evidence material to the controversy, or otherwise conducted the hearing in a way which adversely affected a substantial right of one of the parties;
- the decision was based upon false or irrelevant evidence;
- the decision was obtained by corruption, fraud, or other undue means.

Costs

Any witness expense or any evidentiary expense shall be paid by the party producing the witness or the evidence. The expenses of witnesses or costs of proofs requested by the arbitrator shall be borne equally by the parties unless the arbitrator's decision assesses these expenses against a specified party. The parties involved in arbitration may be assessed a fee to cover expenses in an amount determined by the director.

Appendix

- Petition for Conciliation**
- Petition for Arbitration**

NAME: _____

ADDRESS: _____

PHONE: _____

POSITION: _____

1. Please identify the parties involved.

2. The Grievance: What was done to you (or not done), by whom, when etc.

3. Identify what right has been violated. Please site the policy, provision, or law that supports this position.

4. What, if any, justification or explanation of this action was given by the administrator or person with whom you have the grievance? Why do you regard it as insufficient?

5. What efforts have been made toward conciliation in this matter?

6. What action do you request to remedy this situation?

DATE: _____

SIGNATURE: _____

Petitions for Conciliation/Arbitration should be sent to: Diocese of Fargo, Attn: Director of Conciliation & Arbitration, 5201 Bishops Blvd., Suite A, Fargo, ND, 58104-7605.

DATE RECEIVED: _____