

APPENDIX C

DIOCESE OF OAKLAND

DISPUTE RESOLUTION
PROCESS

AUGUST 2012

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I. POLICY

The dispute resolution process adopted by the Diocese of Oakland is intended to provide fair, informal and efficient methods for the resolution of disputes between Diocesan employers and their employees [the Diocesan community] without immediate resort to the courts.

No person who in good faith invokes this policy shall be subject to retaliation for asserting a claim under this policy.

II. SCOPE

A. This policy provides for two levels of dispute resolution, both of which must be exhausted before the Petitioner (as defined herein) may file a lawsuit in federal or state court to challenge administrative actions, including but not limited to, personnel actions:

1. Informal conciliation; and
2. Formal mediation.

B. Informal Conciliation

1. This process is available for any member of the Diocesan community (hereafter referred to as "Petitioner") who believes he/she has been adversely affected by an administrative decision in violation of operating or administrative policies, procedures, or practices.
2. This process excludes review of matters regarding or related to theology, religious philosophy or application of canon law.
3. This process is not available to employees who are affected by an administrative or disciplinary decision, who are terminated during their initial employment probationary period or their probationary period after voluntary transfer to another position.

¹ This policy as amended is effective August 1, 2012, unless and until otherwise modified in writing.

C. Formal Mediation.

1. This process is available to Diocesan organizations and their employees who adopt this Dispute Resolution Process to resolve disputes between them.
 2. Good faith attempts to resolve disputes through conciliation must be made before submitting a petition for mediation.
 3. Where a Petitioner has exhausted both conciliation and then mediation pursuant to the Diocese's Dispute Resolution Process but there is a failure to resolve a dispute, the Petitioner may then, and only then, file a civil lawsuit in federal or state court concerning the subject of the dispute. The failure to exhaust both the conciliation and mediation processes shall constitute grounds for the Diocese to assert a failure to exhaust internal administrative remedies as a defense to any lawsuit filed.
- D. Disputes may be asserted by more than one person or entity, provided that any remedy shall affect only those specific persons or entities who have identified themselves as Petitioners.

III. DEFINITIONS

- A. Dispute: any claim or claims for breach of contract or duty, any claim or claims for violation of law, regulation, or public policy, and/or any other claim or claims for damages or other legal or equitable relief; provided, however, that the term "dispute" shall not refer to any claim or claims, such as for workers' compensation or unemployment benefits, and provided that the term "dispute" shall not refer to any claim or claims that would involve review of matters regarding or related to theology, religious philosophy or application of canon law.
- B. Petitioner: a person who is a member of the Diocesan community (such as a parish member, volunteer in the schools, parent of a child enrolled in the schools, employee) who has submitted a Petition for informal conciliation of a dispute (Exhibit A hereto), and which is made the subject of the conciliation or mediation process.
- C. Respondent: a person or Diocesan entity who is named as a party by the Petitioner in any dispute the subject of the conciliation or mediation process.

IV. ADMINISTRATION OF THIS POLICY

A. Office of Conciliation

1. This policy shall be administered by the Office of Conciliation ("Office") which is Coordinated by the Director of the Department of Human Resources of the Diocese of Oakland.
2. The responsibilities of the Office shall include:
 - a. Coordinate all disputes brought under this policy.
 - b. Interpret and implement the policy for Petitioner and Respondent.
 - c. Establish a panel of mediators from which a person will be selected to resolve disputes submitted to the mediation process.
 - d. Maintain all records of disputes filed under this policy.
 - e. Determine whether disputes fall within the scope of the policy and whether disputes have been timely asserted.
 - f. Facilitate conciliation during the informal conciliation process.

V. INFORMAL CONCILIATION PROCESS

A. Initiating the Process

1. The Petitioner shall identify in writing the nature of the disagreement with the administrative decision, and the remedy sought by submitting a Petition for Conciliation, Exhibit A hereto.)
2. This completed Petition shall be delivered to the Office within 30 days of knowledge of the administrative decision that is disputed. Only those claims and remedies identified in the Petition submitted to the Office will be deemed disputes submitted for resolution pursuant to this policy.
3. The Respondent shall be informed of the dispute and/or the disagreement with the administrative decision asserted by the Petitioner, and the remedy sought.

B. Conciliation Process

1. The Office shall meet with the Petitioner, the Respondent, and any other person identified by the Petitioner or Respondent as having relevant information that may be helpful in resolving the matter.
2. The Office may determine in its discretion whether meetings between the Petitioner and Respondent will facilitate resolution of the matter.
3. The Office may suggest solutions for resolution of the matter to the Respondent. The Office may exchange proposals for resolution suggested by either Petitioner or Respondent.
4. Conciliation is intended to be a non-adversarial proceeding and neither the Petitioner nor Respondent may be represented by an attorney or spokesperson. However, either the Petitioner or Respondent may be accompanied by a supporter at any meetings conducted where both the Petitioner and Respondent are in attendance; provided, however, that The Office may, within its sole discretion, exclude any supporter(s) determined by the Office to be disruptive and/or not conducive to conciliation.
5. Participants in the conciliation process shall maintain confidentiality of the proceedings.
6. The Office shall attempt to resolve the matter within 60 days after initiation of the conciliation process. If the disagreement cannot be resolved within that period, the Office may extend the period for resolution, with the consent of the Petitioner and Respondent, if the Office determines that the parties are making progress toward resolution.
7. If the matter is not resolved, the Office shall issue a written statement confirming the inability of the parties to reach resolution and confirmation of the termination of the proceedings, as well as any recommendations for resolution of the matter, if appropriate.
8. The Office may reopen the informal conciliation process, at its sole discretion, if it concludes a resolution of the matter may be obtained.
9. If the parties are able to resolve the matter, they should reduce their agreement to writing and sign the agreement.

VI. FORMAL MEDIATION

A. Initiating the Process

1. If the conciliation process has failed to resolve a dispute, the Petitioner shall submit a written request for mediation of the dispute (as previously described in the Petition for Conciliation) within 30 days of Petitioner's receipt of the written statement by the Office of the Conciliation that conciliation has not resolved the dispute. (Section V(B)(7), infra.)
2. Within 10 days after its receipt, the Office shall forward a copy of the Petition for Conciliation to the Respondent.

B. Response to the Petition

Within 15 days of Respondent's receipt of the petition, the Respondent shall send to the Petitioner, with a copy submitted to the Office, a written response to the petition, describing his, her or its position, any disagreement with the facts asserted by the Petitioner, and any offer of resolution.

C. Mediation

1. Within 15 days of its receipt of the response, the Office shall select a mediator and notify the parties of the name of the mediator. Either party may object to the initial selection if the objection is submitted to the Office within 5 days of the objecting party's receipt of the Office's notification of the initial selection for mediator. Upon receipt of such a timely objection, the Office shall, within 5 days, select another mediator, to which no objection may be made by either party, and the Office shall notify the parties.
2. The parties and the mediator shall select a mutually acceptable date or dates for the mediation, which shall be in a neutral setting or mutually acceptable location. If the parties cannot agree as to the date(s) and/or location, the mediator shall unilaterally select the date(s) and/or location.
3. Mediation shall generally not last more than one business day and shall be completed within 60 business days of the date of the Office's notification to the parties of the mediator's selection, unless the parties both agree to extend that time period.
4. During the mediation, the parties may be represented by an attorney or non-legal representative. They may present such evidence as they deem appropriate, in writing, before or at the mediation.

5. The mediator shall take any reasonable action that the mediator, in his or her sole discretion, deems to be in the interest of facilitating resolution between the parties.
6. The dispute shall not be deemed to have been resolved by mediation unless, at the conclusion of the mediation (as determined by the mediator), the parties have executed a judicially-enforceable written agreement resolving the dispute.
7. At the conclusion of the mediation, the mediator shall report to the Office as to the status of the dispute and shall forward any written agreement executed by the parties. If the dispute has not been resolved by a written agreement by the parties, the Office shall promptly notify the parties of the termination of the mediation, unless the Office determines, in its sole discretion, that with additional time, the parties may be able to come to a written agreement, in which case the Office shall notify the parties of a date by which the mediation will be deemed closed.
8. Mediation proceedings shall be confidential and not subject to disclosure under California Evidence Code or Federal Rules of Evidence.
9. Mediation proceedings shall not be recorded by any party.
10. The cost, if any, of mediation shall be borne by the Diocese. Each party shall be responsible for paying its own legal fees and costs, if any.

D. Miscellaneous

1. Notwithstanding any of the foregoing, on its own initiative or upon request by the Petitioner or Respondent, the Office may, at any stage of the conciliation and/or mediation process, determine that conciliation and/or mediation is not likely to resolve the dispute and issue a written notification that the Petitioner may proceed to file a lawsuit, if the Office determines that conciliation and/or mediation is not likely to resolve the dispute. In such event, the Office shall promptly notify the parties in writing of such decision, and the dispute resolution process shall be concluded as of the date of parties' receipt of such notification.
2. Notwithstanding any of the foregoing, the Petitioner may withdraw his, her, or its petition at any stage of the mediation process. If the Petitioner does withdraw the petition, the Petitioner may not resubmit the petition for the same dispute and may not thereafter file any lawsuit concerning the dispute, having failed to exhaust the internal dispute resolution process provided herein.

3. Notwithstanding any of the foregoing, except for Section 10 above, mediation may be invoked and handled otherwise where Petitioner and Respondent are represented by legal counsel and such counsel arrange mediation by mutual agreement, whether reduced to writing or not.

VII. MISCELLANEOUS

- A. The Conciliation and Mediation procedures herein are not intended to satisfy any requirement to file an administrative charge of discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) or the California Department of Fair Employment and Housing (“DFEH”). Compliance with this dispute resolution process does not constitute compliance with the EEOC or DFEH exhaustion requirements.
- B. There are time limitations to file a charge of discrimination with the EEOC and the DFEH which apply. Petitioner must timely and separately comply with any requirements of the EEOC and/or DFEH, if required to file such an administrative charge of discrimination as a jurisdictional prerequisite to file a lawsuit. By providing this notice, Respondent does not waive any defenses available to it.
- C. This is not intended to provide legal advice; however, in most cases, in order to pursue a claim with the EEOC for discrimination under the federal civil rights laws, such a claim must be filed within 300 days of the last act of discrimination. In order to pursue a claim with the DFEH under the California Fair Employment and Housing Act, such a claim must be filed, in most circumstances, within one year of the alleged unlawful practice.
- D. Should any portion of this be found to be unenforceable, such portion will be severed herefrom, and the remaining portions shall continue to be enforceable in order to give effect to the parties’ intent to resolve all disputes between them pursuant hereto.

Diocese of Oakland
Department of Human Resources
2121 Harrison Street, Suite 100, Oakland, CA 94612
510-267-8359 -- FAX 510-763-8055

PRELIMINARY PETITION FOR CONCILIATION

NAME OF PETITIONER:

INSTITUTION

ADDRESS

CITY, STATE, ZIP

HOME PHONE #

WORK PHONE #

NAME OF RESPONDENT:

INSTITUTION

ADDRESS

CITY, STATE, ZIP

HOME PHONE #

WORK PHONE #

STATEMENT OF ISSUE:

REMEDY SOUGHT:

SIGNATURE: _____ DATE: _____

