

Procedure for Handling Allegations of Sexual Misconduct by Clerics of Adults¹

Diocese of Bismarck

A. Reception of Accusation

- a) Chancellor meets with accuser.
 - a. Information to be gathered: name of accuser, name of victim (if different), date(s) of alleged behavior, location(s), description of event(s). Include whether event occurred during treatment, consultation, interview or examination of a mental or emotional condition, including alcohol or drug addiction. Also birth date of victim (to determine whether there was abuse of minor), and whether any solicitation occurred during the Sacrament of Confession. Also, whether victim is an adult who has a substantial mental or functional impairment (e.g. vulnerable adult). Also any additional individuals (e.g. witnesses) that could corroborate the accuser's accusation and timeline.
 - b. Ideally, the accuser's statement should be from their own hand (preferably typed), signed and dated by him/her. The form available on the Diocesan website would also suffice.
 - c. Inform the accuser and victim (if different) of their right to an attorney and to their right to make a statement to civil authorities (see below).
- b) Inform Bishop (and the religious superior, if applicable) and diocesan legal counsel.
- c) Inform North Dakota Department of Human Services when alleged victim was a vulnerable adult at time of incident. Even if the alleged crime is beyond statute of limitations it is always to be referred onward.
- d) Once it is determined that the alleged victim was a vulnerable adult at time of incident, the appropriate protocol becomes the Procedure for Handling Allegations of Sexual Misconduct by Clerics of Minors (Diocese of Bismarck).

¹ Audience: General promulgation.

Scope: applies to those allegations involving sexual misconduct with an adult over the age of 18 years at the time of alleged incident. "A vulnerable adult is any person older than age 18, or emancipated by marriage that has a substantial mental or functional impairment." (ND Century Code).

Sources: Diocesan policy manual *Establishing Bonds of Trust*; 1983 *Code of Canon Law* (cc. 1717-1731; 1311-1399); A Resource for Canonical Processes for the Resolution of Complaints of Clerical Sexual Abuse of Minors (USCCB); *Sacramentorum Sanctitatis Tutela (SST)*, May 21, 2010; Charter for the Protection of Children and Young People (USCCB), June 2018; Directives for the Implementation of the Provisions of *Vos estis lux mundi* Concerning Bishops and Their Equivalents, June 2019; ND Century Code.

B. Assessment of Allegation → One question is central: “Is there a ‘semblance of truth’ to the allegation”?

- a) If there is NOT a semblance of truth: Chancellor documents how this determination has been made in writing, deposited in the secret archives. Chancellor informs the Bishop, the religious superior, the accuser, the accused, and diocesan legal counsel. Process ends. If the good name of the cleric has been harmed, additional remedies can be pursued.
- b) If there is a semblance of truth, continue below.

C. Preliminary Investigation → A new question now becomes central: “Is the allegation manifestly false or frivolous?”

- a) Bishop consults with promoter of justice regarding imposition of administrative leave.
- b) Bishop decrees the opening of a preliminary investigation and the appointment of the Chancellor as instructor of investigation. Separately decreed are the imposition of “administrative leave” for the accused along with the order of no contact. Accused is informed of accusation, encouraged to secure counsel (canonical and civil), and is offered opportunity to formally respond in writing (which he can refuse). Parish corporate board informed; concerned parishes informed. Instructor gathers evidence as he sees fit and can secure outside assistance, such as from a private investigator. To assist him in this investigation, the instructor can also utilize the list of expert persons provided by the Bishop and established for this purpose.²
- c) Final report by instructor: Collates depositions, evidence, and provides his written opinion on whether the allegation is ‘manifestly false or frivolous’, the estimated responsibility of accused, and any other recommendations. Presented to Bishop.

D. Final Determination by Bishop

- a) Bishop decrees end to investigation and gives final determination in writing on whether allegation is ‘manifestly false or frivolous’ and the estimated responsibility of accused. He is able to utilize the recommendations of the instructor, those on the list of expert persons, and others as he sees fit.
 - 1. If the allegation is determined by the Bishop to be manifestly false or frivolous, all parties are informed, administrative leave is ended, and written report and Bishop’s determination are placed in secret archives. Notified are the accused and his counsel (canonical and civil), the alleged victim, the religious superior (if applicable), diocesan legal counsel, concerned corporate boards, concerned parishes, etc. Process ends. If the good name of the cleric has been harmed, additional remedies can be pursued.
 - 2. If the allegation is determined by the Bishop to be NOT manifestly false or frivolous, the Bishop determines the penalty as per cc. 1331-1353. Notified are the accused and his canonical and civil counsels (along with a canonical letter of warning if applicable), the victim, the religious superior (if applicable), diocesan legal counsel, concerned corporate boards, concerned parishes, etc.

² This list, approved annually by the Bishop, is to be of persons expert or otherwise qualified in such fields as law enforcement, criminal investigation, civil law, canon law, psychology, and social work.