

PROCEDURES FOR CONCILIATION AND ARBITRATION
IN THE DIOCESE OF GARY
INTRODUCTION

The Church is at once a divine and human society. It is at once mystical and earthly. (cf. Second Vatican Council, Dogmatic Constitution on the Church, "Lumen Gentium" No. 8). As a result, in the exercise of their mission in Christ, the members of the Church sometimes find themselves in conflict with one another because of human failing.

Sacred Scripture urges us to reconcile our conflicts within the Church community. Jesus, Himself, presents us with the method for dealing with these conflicts.

"If your brother should commit some wrong against you, go and point out his fault, but keep it between the two of you. If he listens to you, you have won your brother over. If he does not listen, summon another so that every case may stand on the word of two or three witnesses. If he ignores them, refer it to the Church." (Matthew 18, 15-17).

In an attempt to protect the rights of all and to reconcile the conflicts which arise in the Diocese of Gary, we present the following procedures for Conciliation and Arbitration. These procedures are based on the book: Protection of Rights of Persons in the Church: Revised Report of the Canon Law Society of the Subject of Due Process, 1991.

PROCEDURE FOR
CONCILIATION
FOR THE DIOCESE OF GARY

ARTICLE I: INITIATING THE CONCILIATION PROCEDURE

The conciliation procedures will be formally initiated at the time that the written petition has been received by the conciliation clerk.

SECTION 1 - Allowable and Non-Allowable Disputes

1. The kinds of disputes that are allowable: a) disputes between a person and a parochial or diocesan administrator or administrative body within the diocese of Gary where it is contended that an act of decision (including administrative sanctions and disciplinary actions) has violated a right recognized as such in the law of the Church or in the documents of the magisterium. b) disputes between a person and a parochial or diocesan administrator or administrative body within the diocese of Gary where it is contended that failure to act or failure to make a decision has violated a right recognized as such in the law of the Church or in the documents of the magisterium.

2. The following are not subject to settlement under this procedure: a) canonical criminal cases in the strict sense (not administrative sanctions and disciplinary actions.) b) non-criminal matters where there is a question of validity of marriage or holy orders. c) ecclesiastical matters that are specifically reserved by canon law to other processes within the structure of the Church (e.g., transfer and removal of pastors [cc. 1740-1751]). d) disputes involving religious in their strictly internal affairs. e) spiritual matters whenever a claim is made that requires payment.

SECTION 2 - Conciliation Clerk

It is the duty of the diocesan bishop of the diocese of Gary to appoint a conciliation clerk, whose duty, in turn, shall be to process any petition in accordance with the procedures that follow. The term of office of the conciliation clerk shall be three years.

SECTION 3 - Role of Conciliation Clerk

1. The conciliation clerk will receive the written grievance containing within it a signed affirmation that an effort has been made to reach a settlement prior to filing. The conciliation clerk will ascertain with the petitioner that the wording of the petition is stated with precision and truly expresses the position of the petitioner. The petitioner is responsible for the formulation of any dispute and may obtain assistance from any source in stating the dispute with clarity and precision. In stating the dispute two requirements should be kept in mind: (1) a statement of the dispute concretely and specifically, with names, dates, place, occasion, etc.; and (2) some authoritative statement of policy, law or principle may be cited, if applicable. The conciliation clerk will determine whether or not the petition falls within the scope of allowable disputes within five (5) days of receiving the final version.

2. Should the conciliation clerk find the petition allowable under these procedures, the conciliation clerk will transmit a copy to the respondent within twenty-four (24) hours, who is to respond in writing within ten (10) days.

3. Should the conciliation clerk find the petition not allowable under these procedures, the conciliation clerk will refer the petition within twenty-four (24) hours to the conciliation panel who have five (5) days in which to confirm or overrule the conciliation clerk. The conciliation clerk will notify the petitioner of the final determination.

4. If the petitioner does not accept a judgment that the dispute is not allowable, the petitioner may have recourse to the diocesan bishop.

SECTION 4 - The Conciliation Panel

1. A conciliation panel is the body which shall oversee the conciliation procedure.

2. The conciliation panel shall consist of five (5) members representative of the laity, religious and clergy of the diocese of Gary, who shall be recommended by the presbyteral council or some other diocesan body, and appointed by the diocesan bishop for terms of three (3) years.

3. The panel will meet as often as required.

4. The conciliation panel shall be responsible for: a) maintaining an active and adequate list of suggested conciliators. b) reviewing each petition which the conciliation clerk has determined should be dismissed as an unallowable dispute.

ARTICLE II: CONCILIATION

SECTION 1 - Role of the Conciliation Clerk

During the conciliation process, the conciliation clerk is to act as a person processing a petition and a response and shall not make any judgment with respect to the merits of the dispute, except to determine initially whether the dispute is allowable within the Conciliation and Arbitration Procedures.

SECTION 2 - Civil Lawyer

A party shall not be represented by a civil lawyer during the conciliation process.

SECTION 3 - Selection of the Conciliator

Within five (5) days after the receipt of the response, the conciliation clerk shall assist the petitioner and the respondent in selecting a conciliator who in the opinion of the petitioner and the respondent is a competent person who, would be informed of the facts involved in the petition, sensitive to the feelings of the parties, and would be capable of bringing both parties together in a face to face dialogue.

SECTION 4 - Role of the Conciliator

1. The conciliator selected should have as a primary concern the reconciliation of the parties. As much as possible, the conciliator will try to motivate and assist the parties in settling the dispute themselves while discreetly suggesting possible areas of compromise or other suitable solutions.

2. Within five (5) days from the date that the conciliator is chosen, the conciliator shall schedule a meeting with the parties in an effort to resolve the dispute. The conciliator shall make every effort to conciliate the dispute within twenty (20) working days [and not beyond thirty (30) days] after the conciliator's first meeting with the parties. In the event that resolution of the dispute is for any reason not possible within such a time period, the conciliator may take additional time to bring about a resolution, but such a conciliation effort should not extend beyond forty-five (45) days from the date of the conciliator's first meeting with the parties, except by the written consent of all interested parties.

SECTION 5 - Resolution of the Dispute

1. When there has been a resolution of the dispute, the conciliator shall make a written report to the conciliation clerk concerning the nature of the resolution.

2. In the event that a resolution of the dispute is not possible, the conciliator shall make a written report to the conciliation clerk describing the reasons that a resolution was not possible. The parties may mutually agree to further conciliation or arbitration.

ARTICLE III: COSTS OF CONCILIATION PROCEDURE

Operational costs for the diocesan office of conciliation will be part of the budget of the diocese of Gary. All other costs of the conciliation procedures should be borne equally by the parties involved unless they agree otherwise or unless the conciliator assesses such expenses or any part thereof against a specified party or parties.

ARTICLE IV: CONCILIATION PROCEDURE AND CIVIL LITIGATION

1. At any time during the conciliation procedure, introduction of an issue into civil court by the petitioner or respondent will require judgment by the conciliator as to whether the procedure will continue or be terminated.

2. If there is civil litigation pending involving the same issue, the conciliation panel will determine whether or not to accept the petition into the conciliation procedure.

ARTICLE V: CONFIDENTIALITY

Confidentiality will be respected in all cases.

**PROCEDURES FOR
ARBITRATION
FOR THE DIOCESE OF GARY**

ARTICLE I ARBITRATION

SECTION 1 - Allowable and Non-Allowable Disputes

1. The kinds of disputes that are allowable: a) disputes between a person and a parochial or diocesan administrator or administrative body within the diocese of Gary where it is contended that an act or decision (including administrative sanctions and disciplinary actions) has violated a right recognized as such in the law of the Church or in the documents of the magisterium. b) disputes between a person and parochial or diocesan administrator or administrative body within the diocese of Gary where it is contended that failure to act or failure to make a decision has violated a right recognized as such in the law of the Church or in the documents of the magisterium.

2. The following are not subject to settlement under this procedure: a) canonical criminal cases in the strict sense (not administrative sanctions and disciplinary actions). The process for arbitration shall extend to disputes about penalties imposed or declared administratively only if the arbitrators confine themselves to investigating whether or not the norms on the manner of proceeding have been justly and equitably observed, so that if they judge that the manner of proceeding is not to be approved, they shall refer the matter to the bishop. b) non-criminal matters where there is a question of validity of marriage or holy orders. c) ecclesiastical matters that are specifically reserved by canon law to other processes within the structure of the Church (e.g., transfer and removal of pastors [cc. 1740-1752]). d) disputes involving religious in their strictly internal affairs. e) spiritual matters whenever a claim is made that requires payment.

SECTION 2 - Conditions for Arbitration

1. Arbitration may take place under the condition that the conciliator or conciliators certify to the conciliation clerk that good faith efforts at conciliation have been made and have not been successful.

2. Arbitration will be binding on both parties. A prior agreement to this effect will be signed by both parties.

SECTION 3 - Selection of the Arbitrator

1. The arbitrator shall be selected for impartiality. An arbitrator must receive no direct benefit from the outcome of the decision.

2. The arbitrator should have an understanding of how a hearing should be conducted. Expertise in the area under discussion is helpful, but not absolutely necessary.

3. It is the responsibility of the conciliation clerk to select a panel of persons from which the parties may select an arbitrator for an individual case. Since resolution of a dispute through arbitration is a private resolution, the authority of the arbitrator derives from the mutual consent of the parties; it is inappropriate for an arbitrator, or panel of arbitrators, to be appointed by the diocesan bishop.

SECTION 4 - Who May Attend the Hearing

1. Parties who may wish to be assisted by advisers at hearings are to notify the arbitrator prior to the hearing. The arbitrator should make the names of such persons known to the other party.

2. It shall be at the discretion of the arbitrator to determine the propriety of the attendance of any other person at the hearings.

SECTION 5 - Role of the Arbitrator

1. The arbitrator selected shall appoint a time and place for the hearing and notify the parties not less than five (5) days before the hearing. The arbitrator may adjourn or postpone the hearings as necessary.

2. Arbitration may proceed in the absence of any party who, after due notice, fails to be present.

3. The arbitrator shall hear and determine the dispute 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 may deem 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 rules of evidence shall not be necessary. c) the arbitrator may require the parties to submit books, records, documents, and other documentary evidence which is deemed relevant to the case. d) at the discretion of the arbitrator, written statements may be accepted as testimony when physical presence is impossible.

SECTION 6 - The Hearing

1. A hearing shall be opened by recording the place, time and date of the hearing, the presence of the arbitrator and the parties, the presence of other persons, if any, and the receipt by the arbitrator of initial statements.

2. The parties are entitled to be heard, to present evidence relevant or material to the dispute and to question witnesses appearing at the hearing.

3. At the discretion of the arbitrator the normal procedure may vary under which the petitioner first presents claims, but in any case the arbitrator shall afford full and equal opportunity to all parties for presentation of relevant proofs.

4. The names and addresses of all witnesses, and exhibits offered in evidence shall be made a part of the written record. At the discretion of the arbitrator, a taped recording may be made of the proceedings. The written and/or taped record of the proceeding remain the exclusive property of the particular diocese.

5. 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.

6. 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 final determination is made.

SECTION 7 - Final Determination

1. 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.

2. 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.

SECTION 8 - Costs

1. Provisions for recording the entire proceedings may be made at the request of either party or at the discretion of the arbitrator. The total cost of such a record shall be shared equally among the parties, unless the parties agree otherwise.

2. The parties involved in arbitration shall be assessed a fee to cover expenses in an amount to be determined by the conciliation clerk.

3. The expenses of witnesses shall be paid by the respective parties producing witnesses. Travel and other expenses for the arbitrator, and the expenses of witnesses or costs of any proofs requested by the arbitrator, shall be borne equally by the parties unless the arbitrator in his/her determination assesses such expenses or any part thereof against any specified party or parties.

ARTICLE II COSTS OF ARBITRATION PROCEDURE

Operational costs for the diocesan office of conciliation will be part of the budget of the Diocese of Gary. All other costs of the arbitration procedures should be borne equally by the parties involved unless they agree otherwise or unless the arbitrator in the final determination assesses such expenses or any part thereof against a specified party or parties.

ARTICLE III CONFIDENTIALITY

Confidentiality will be respected in all cases.

Approved at Priests' Council Meeting of November 2, 1993
Promulgated July 1, 1994

+Dale J. Melczek

Most Reverend Dale J. Melczek
Apostolic Administrator of Gary