

## **DUE PROCESS POLICY AND PROCEDURE**

### **PREAMBLE:**

When he promulgated the revised Code of Canon Law on January 25, 1983, Pope John Paul II stated the following as one of the reasons for the necessity of the Church's Law: "In order that the mutual relations of the faithful might be regulated according to justice based upon charity, with the rights of individuals guaranteed and well defined." (Sacrae disciplinae leges)

The code itself articulated some of these rights and their corresponding obligations (Canons 208 - 231) including the right of the Christian faithful to "legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical court in accord with the norm of law." (Canon 221.1) To most Catholics, the concept of "ecclesiastical court" is limited to the institution known as the Marriage Tribunal, the forum in which persons seek to vindicate their right to marry in the Church. But for the most part, the vindication of rights does not take place through Tribunals. When difficulties arise between a pastor and parishioner, a principal and a teacher, an administrator and a subordinate, there can and should be simpler and swifter means whereby the situation might be reviewed and rights vindicated. It is also possible that corporate entities within the diocesan church may require a process whereby their juridic representatives may resolve their differences. The law of the Church urges conferences of bishops and even bishops themselves to provide the means whereby contentious issues may be resolved "by common council ... perhaps through the use of wise persons in mediation and study so that the controversy may be avoided or solved by some suitable means." (Canon 1733.1)

To this end, since 1986 the Diocese of Spokane has provided guidelines for the due process of grievances. As the result of experience and study, it is now desirable to revise the Policy for Due Process and the Procedural Norms by which due process is carried out.

### **POLICY**

It is the policy of the Diocese of Spokane to provide a procedure for the hearing of objections to the decisions of ecclesiastical administrators. To this end, the following definitions and procedural norms constitute the manner in which the acts and decisions of Church administrators may be legitimately appealed.

This policy with the accompanying definitions and procedures replaces the former procedure for Resolution of Disputes/Grievances (1986, rev.1989) in the Diocesan Policy Manual. It is approved for use on an experimental basis as of April 4, 1994, and subject to review after one year.

(signed)

William S. Skylstad  
Bishop of Spokane

Date: March 11, 1994

## **I. DEFINITIONS**

### **A. Grievance**

1. The allegation that a decision or action of an administrator of the Diocesan Church has restricted or prohibited without sufficient justification a person's right recognized as such in the law the Church or in the documents of the magisterium.
2. The allegation that a decision or action of an administrator has violated the terms of the contract, job description, personnel policy or other written agreement governing the issue in question.

### **B. Complaint:**

An objection to the discretionary decision or action of an administrator of the Diocesan Church even though this decision or action does not violate the terms of a policy, contract, job description or other written agreement governing the issue in question. (cf. V-B)

### **C. Diocese of Spokane:**

For the purposes of this due process procedure, the Diocese of Spokane is defined as those parishes, institutions, ministries and those persons associated with them who are under the governance of the Catholic Bishop of Spokane. It does not include communities of religious and their members residing within the territory of the Diocese of Spokane so far as their strictly internal affairs are concerned. It does not include the schools, hospitals, institutions and other ministries under the sponsorship of religious institutes.

### **D. Diocesan Secretariat/Secretary:**

Those persons appointed to office by the Diocesan Bishop who assist him in governance of the entire diocese or in governance of the administrative divisions of the Diocese of Spokane. These offices are:

1. The Vicar General, Moderator of the Curia
2. Secretary for Business Affairs
3. Secretary for Catholic Schools
4. Secretary for Evangelization
5. Secretary for Social Ministries
6. The Judicial Vicar

## **II. RECOURSE TO THE PERSON RESPONSIBLE FOR THE INITIAL DECISION**

- A. Any person with a grievance or a complaint as defined under I-A and B above has the right to meet face-to-face with the administrator so that the decision might be explained and reasons given for it. The administrator may summon to this meeting a representative from the council or committee which participated in the decision. If it seems useful, by mutual agreement a mediator may be summoned who will participate in the session by listening and offering advice in order to bring the parties to conciliation. Aware of this provision, when an appointment for such a meeting is scheduled, either the objecting party or the administrator may take the initiative to suggest this arrangement. Neither party may invite legal counsel to this meeting or other conciliation sessions in this due process procedure.
- B. An exception to the provision stated in II-A is a situation when the administrator has rendered a decision in a manner which indicates that he or she is not available for further dialogue with the one who objects to the decision.

## **III. RECOURSE TO THE NEXT HIGHER LEVEL OF ADMINISTRATION:**

If the process of conciliation has failed to produce a satisfactory result or has not been possible (II-B), the person has the right to recourse at the next administrative level. For example, in a parish or parochial school issue, recourse may be had to the pastor. In the Division for Social Ministries, recourse may be had to the supervisor of the one who made the initial decision, etc. These administrators have the right to interview both parties and propose a resolution to the matter. These supervisors may invite persons whom they judge as suitable to participate in the discussion and provide consultation.

#### **IV. RECOURSE TO THE DIOCESAN SECRETARIAT:**

If the person is dissatisfied with the conciliation effort in part III, he/she may have recourse to the Diocesan Secretariat.

- A. The person is to approach the Division Secretary responsible for overseeing the area of ministry involved. In case of doubt over which Secretary is competent to deal with the matter, the Vicar General will decide who is to accept the issue or will deal with it himself. In a dispute between a member of the Secretariat and his or her immediate staff, if the issue has not been resolved by face-to-face dialogue (II), the person may have recourse to the Vicar General.
- B. The Division Secretary or Vicar General will ascertain the facts of the case and endeavor to bring the parties to conciliation. In the matter of a complaint, there is no further recourse within Diocesan structures unless the Bishop personally intervenes. (cf. X-A)
- C. If the person is (a) dissatisfied with the conciliation effort of the Division Secretary or Vicar General and (b) of the opinion that the issue under dispute is a grievance as defined in I-A, he or she has 30 days in which to file a grievance with the Judicial Vicar. (cf. VI-A)

#### **V. THE STATEMENT OF A GRIEVANCE:**

- A. The petitioner is responsible for the formulation of the grievance and may obtain assistance from any source in stating the grievance with clarity and precision.
- B. In filing a formal grievance, the petitioner must bear the following in mind:  
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 overthrow 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 decision of an administrator to, e.g., terminate 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. Unless a contract states otherwise, no employee has the right to a new contract upon expiration of an existing contract.
- C. The formal presentation of a grievance as defined in I-A above must include the following:
  1. A written statement of the matter under dispute citing the names of persons involved, the decision or decisions of the administrator which are contested, the time and the place of these actions or decisions, etc.
  2. An authoritative citation of the right, law, policy, contract provision, job description or other written agreement which governs the matter under dispute.
  3. The explanation or justification of the action or decision given by the administrator and why this explanation is inadequate.
  4. A statement of the efforts at conciliation already undertaken.
  5. The remedy or action requested by the person presenting the grievance.
- D. Standard forms for filing a grievance may be obtained from members of the Secretariat.

#### **VI. FILING THE GRIEVANCE:**

- A. The petitioner (the party having the grievance) arranges an appointment to file the grievance with the Judicial Vicar. It is the role of the Judicial Vicar to ascertain with the petitioner that the wording of the petition is stated with precision and expresses his or her position.
- B. The Judicial Vicar, who may consult with the Due Process Review Board (cf. VII), will determine the method most suitable for the disposition of the petition. Notification of the manner in which the case will be processed will be communicated within 10 days.
  1. If the petition lacks foundation, i.e., fails to qualify as a grievance as defined in Section I-A, or if the matter is determined to be an issue which is beyond the scope of the Diocesan Due Process Procedure, (cf IX) the petitioner will be advised that the matter cannot be further appealed through the due process procedure of the Diocese.
  2. If there is any reasonable hope for conciliation between the parties (the petitioner and the administrator), the Judicial Vicar will assign a mediator to attempt a voluntary settlement between the parties.
  3. If a voluntary settlement through consultation with a mediator fails or if it seems inopportune to proceed in this manner, the matter will be remanded to an arbitrator for a binding

settlement. The process for arbitration will be provided by the Judicial Vicar from guidelines of the Canon Law Society of America.

**VII. ROLE OF THE DUE PROCESS BOARD OF REVIEW:**

The Due Process Board of Review is a panel of three persons nominated by the Judicial Vicar and appointed by the Bishop who consult with the Judicial Vicar concerning:

- A. The selection of qualified persons to serve as mediators, conciliators and arbitrators.
- B. The disposition of formal grievance petitions.
- C. Review and evaluation of the Diocesan Due Process Procedure.

Members of the Due Process Board of Review serve for a definite time as specified in the letter of appointment or at the prudent discretion of the Bishop.

**VIII. ROLE OF THE JUDICIAL VICAR:**

It is the role of the Judicial Vicar to:

- A. Administer the due process policy and procedure of the Diocese.
- B. Advise the Christian faithful and diocesan administrators concerning their rights and obligations in the Due Process Procedure.
- C. Promote conciliation at every stage of the Due Process Procedure.

**IX. MATTERS WHICH ARE NOT SUBJECT TO THE DUE PROCESS PROCEDURE:**

- A. Matters which are already governed by canonical processes, e.g., marriage annulment procedures, canonical criminal cases, procedure for removal of pastors; any matter involving alleged criminal activity.
- B. Situations which, in the judgment of the Judicial Vicar and Due Process Board of Review, must be submitted to the Diocesan Bishop, to the civil legal forum or to some other authority protecting the common good due to the legal complexity of the matter or if it seems that justice will better be served apart from the Diocesan Due Process Procedure.

**X. ROLE OF THE DIOCESAN BISHOP:**

- A. In the matter of a complaint:

Unless the Diocesan Bishop personally intervenes, the manner in which a Secretary or Vicar disposes of a complaint may be presumed to be definitive at the Diocesan level. Division Secretaries and Vicars are obliged to report to the Bishop on the principle matters with which they deal and are never to act contrary to the Bishop's will and mind (Cf. Canon 480).

- B. In the matter of a grievance:

In the matter of an alleged violation of a right or the violation of a policy giving rise to a grievance, it is the mind of the Bishop that his authority be exercised through the formal grievance procedure.

