



ARCHDIOCESE OF NEW YORK

POLICY RELATING TO SEXUAL MISCONDUCT

1.0 POLICY. It is the position of the Archdiocese of New York (hereinafter “Archdiocese”) that sexual misconduct by personnel of the Archdiocese is contrary to Christian principles and is in violation of the conditions of employment of all personnel of the Archdiocese. All personnel of the Archdiocese must comply with applicable laws regarding incidents of actual or suspected sexual misconduct, and with the requirements stated in this policy with respect to incidents of sexual misconduct which occur while the work of the Archdiocese is being performed.

The Archdiocese recognizes that sexual misconduct may involve acts among co-workers. Therefore, the Archdiocese, through responsible management, will endeavor to prevent sexual harassment from occurring in our workplace. Submission to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature is not a condition of employment or involvement with the work of the Archdiocese. Neither submission to nor rejection of such conduct will be used as a basis for any type of employment decisions. Such conduct can unreasonably interfere with work performance and create an intimidating, hostile and offensive working environment. It will not be tolerated.

This policy is intended to establish guidelines in an effort to prevent sexual misconduct by personnel of the Archdiocese and the resulting harm to others, while the work of the Archdiocese is being performed, and to provide guidance to the personnel of the Archdiocese on how to respond to allegations of sexual misconduct if any do occur. It will be reviewed annually by Archdiocesan legal counsel and competent Archdiocesan authorities.

Archdiocesan personnel should be aware that, although this policy specifically addresses sexual misconduct which occurs while the work of the Archdiocese is being performed, sexual misconduct by any personnel of the Archdiocese, whether in the course of employment or not, will be considered grounds for suspension or termination of employment or involvement with the work of the Archdiocese.

This policy does not and is not intended to create any contractual obligation, expressed or implied, on the part of the Archdiocese.

2.0 DEFINITIONS. For the purposes of this policy only:

2.1 "Sexual Misconduct" means any actions or words of a sexual nature which are contrary to the moral doctrine, teachings and Canon law of the Catholic Church and:

- a. Are proscribed by Federal, State or local law; or
 - b. Cause harm to another.
- 2.2 "Archdiocese" encompasses the Roman Catholic Archdiocese of New York in accord with Canon 369 of the Code of Canon Law; all parishes and other inferior canonical juridical persons whose competent ecclesiastical superior is the Archbishop of New York; Archdiocese of New York, a New York corporation incorporated pursuant to the Religious Corporations Law of the State of New York; all other corporations including parish corporations having the Archbishop of New York as their presiding officer; and all institutions, agencies and organizations sponsored by these canonical or civil entities.
- 2.3 "Personnel" includes all persons (clergy, religious and laity) who are employed by, are under personal contract of employment with or volunteer in any of the entities encompassed by the Archdiocese. Of special concern are those in supervisory capacities or in particularly sensitive areas, such as: those who work with or around children, the very elderly and the physically or mentally infirm, those who counsel others, and generally those who work with people who are less capable of protecting themselves.
- 2.4 "Reasonable cause" means a prudent estimation based on trustworthy information that an incident occurred.

3.0 DISTRIBUTION OF POLICY. A copy of this Policy shall be distributed to personnel of the Archdiocese.

- 3.1 This Policy shall be incorporated into all Archdiocesan personnel guidelines and printed in the Pastoral Handbook.
- 3.2 This Policy shall be communicated to the competent ecclesiastical superiors of all members of religious institutes and societies of apostolic life who serve as personnel of the Archdiocese.
- 3.3 This Policy shall be an item for inclusion in the negotiations of all collectively bargained contracts of employment with the Archdiocese, now and in the future.
- 3.4 Acknowledgment of receipt and understanding shall be included in all personal contracts of employment with the Archdiocese.
- 3.5 A signed acknowledgment of receipt and understanding shall be required of all non-contractual employees and all volunteers included in as "Of special concern" in section 2.3 above. The signed acknowledgments of receipt and understanding of these guidelines will be returned by the above personnel to the superior or supervisor and filed in the appropriate personnel file. A copy of the required acknowledgment is attached to this policy as Appendix A.

4.0 EDUCATION. Education alone cannot shape mature attitudes and behavior, nor will it change inappropriate sexual behavior. Each adult must be responsible for his or her sexual growth and maturity. To support this responsibility, the Archdiocese, from time to time, may be able to arrange programs which include information or training applicable to these areas. The following personnel of the Archdiocese, and such other personnel of the Archdiocese who may be required from time to time, must attend designated educational programs on methods of recognizing and preventing sexual misconduct involving children or others: all personnel included in the group “Of special concern” in 2.3 of this policy. Other personnel of the Archdiocese are encouraged to attend such educational programs when available.

5.0 BACKGROUND AND REFERENCE CHECKS. Beginning Friday, June 1st 2001, the following prospective and current personnel of the Archdiocese shall complete an informational questionnaire to be provided: those in supervisory capacities or in particularly sensitive areas, such as: those who work with or around children, the very elderly and the physically or mentally infirm, those who counsel others, and generally those who work with people who are less capable of protecting themselves.

Completed questionnaires shall be reviewed and, as appropriate, investigated by the appropriate department or agency supervisor, and shall be kept in the appropriate Archdiocesan personnel file with access of all background check information (questionnaires, follow-up investigation results, etc.) limited to persons in charge of employment, appropriate department or agency supervisor and legal counsel. As part of this process, personnel in affected positions will be asked to complete an authorization form so that the Archdiocese may obtain access to personnel files maintained by prior employers.

6.0 SUMMARY OF CIVIL STATUTES AND CANON LAW. The law changes from time to time by enactment of amendments to statutes and judicial interpretations. Because of this, it is incumbent upon all personnel to familiarize themselves with such changes that may occur. It is not possible to set out the text of all applicable laws in this document, but assistance will be given to all personnel having questions or seeking knowledge concerning the law. The following is a summary of applicable laws relating to incidents of sexual misconduct.

6.1 Criminal Laws

New York Penal Law §130.00 (Sexual Offenses) prescribes varying degrees of criminal sanctions for non-consensual sexual activity between parties not married to each other, and, even where there may be actual consent, situations in which one party may be under the control of the other because of factors of youth, age disparity, mental, emotional or physical limitation or other factors. Acts prohibited include “any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.”

New York Penal Law §260.10 also prescribes criminal penalties and fines for any person who “knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health.”

New York Penal Law §100.00 further provides that a person is guilty of criminal solicitation when, with the intent that another person engage in conduct constituting a crime, he solicits, requests, commands, importunes or otherwise attempts to cause such other person to engage in such conduct.

6.2 Civil Law

Any violation of the criminal law which causes injury to another can also form the basis for a civil suit for monetary damages.

Even in cases where there may be no criminal violation involved, physical or sexual behavior of any kind against another may entitle the victim to a civil recovery.

6.2.1 Sexual Harassment

It shall be an unlawful discriminatory practice for an employer, because of the sex of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment except as provided in paragraph 11 of New York State Executive Law §296 (the “Human Rights Law”).

Title VII of the Civil Rights Act, 42 U.S.C. §2000e et seq., similarly prohibits harassment of a sexual nature in the workplace. Sexual harassment has been deemed by judicial decisions in New York Courts to mean:

Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

Personnel of the Archdiocese are specifically cautioned that inappropriate conduct which the actor or others may view as merely humorous may be

sexually offensive to others and constitute a violation of these discrimination laws.

6.3 Reporting Incidents of Child Abuse or Maltreatment

6.3.1 Child Abuse

A child is considered abused if he/she is under eighteen years of age and his/her parents or other persons legally responsible for his/her care inflict, or allow to be inflicted upon such child, physical injury, or creates or allows to be created substantial risk of personal injury, by other than accidental means, which causes or creates a substantial risk of death or serious or protracted disfigurement, or impairment of function of any bodily organ, or upon whom an act of sexual abuse has been committed or allowed to be committed.

6.3.2 Occupations Required to Report

New York State law requires that persons engaged in certain occupations report incidents of suspected child abuse, including sexual abuse, to state or local authorities. New York Social Services Law §413. Occupations subject to these requirements include physician, registered physician assistant, surgeon, medical examiner, coroner, dentist, dental hygienist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, psychologist, registered nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, school official, social services worker, day care center worker, provider of family or group family day care, employee or volunteer in a residential care facility, or any other child care or foster care worker, mental health professional, substance abuse counselor, alcoholism counselor, peace officer.

6.3.3 Substance of Report

The reporting requirements of New York Social Services Law §413 are as follows: Whenever such person is required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall immediately notify the person in charge of such institution, school, facility or agency, or his or her designated agent, who then also shall become responsible to report or cause reports to be made. However, nothing in this section is intended to require more than one report from any such institution, school or agency.

Reports of suspected child abuse or maltreatment made pursuant to this title shall be made immediately by telephone or by telephone facsimile machine on a form supplied by the commissioner. Oral reports are to be

followed by a report in writing within forty-eight hours after such oral report. Oral reports shall be made to the New York State Child Abuse and Maltreatment Register, Albany, New York, telephone (800) 342-3720. This agency will apprise the proper borough or county Bureau of Child Welfare. Written reports shall be made to appropriate local child protective service, except that written reports involving children in residential care (i.e. foster home, group home, school for the blind and deaf, private boarding school) shall be made to the statewide central register of child abuse and maltreatment. New York Social Services Law §415.

Written reports shall be made in a manner prescribed and on the forms supplied by the state or local commissioner and shall include the following information: the names and addresses of the child and his or her parents or other persons responsible for his or her care, if known, and, as the case may be, the name and address of the residential care facility or program in which the child resides or is receiving care; the child's age, sex and race; the nature and extent of the child's injuries, abuse or maltreatment to the child or, as the case may be, his or her siblings; the names of the person or persons alleged to be responsible for causing the injury, abuse or maltreatment, if known; family composition, where appropriate; the source of the report; the person making the report and where he or she can be reached; the actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child or notifying the medical examiner or coroner; and any other information which the commissioner may, by regulation, require, or the person making the report believes might be helpful. New York Social Services Law §415.

6.3.4 Reporting Requirements to be Distributed to Staff.

Any person, institution school, facility, agency, organization, partnership or corporation which employs persons mandated to report suspected incidents of child abuse or maltreatment shall provide all such current and new employees with written information explaining the reporting requirements set forth above. New York Social Services Law §413.

6.3.5 Report Where School Employee Is Implicated

When a school employee is in any way implicated in an allegation of child abuse, then the district superintendent or the Deputy Superintendent of Schools must be contacted immediately. The Superintendent shall immediately make a written report to the state authorities. The report shall include the information listed above. Archdiocesan Office of Superintendent of Schools Administrative Manual.

6.3.6 Requirements For All Other Persons

In addition to those persons and officials required to report suspected child abuse or maltreatment, any person may make such a report if such person has reasonable cause to suspect that a child is an abused or mistreated child. New York Social Services Law §414.

6.3.7 Penalties and Fines for Failure to Report Suspected Abuse or Maltreatment

Any person, official or institution required by law to report a case of suspected child abuse or maltreatment who willfully fails to do so shall be guilty of a misdemeanor and civilly liable for damages. New York Social Services Law §420.

6.3.8 Immunity From Liability for Reporting

Any person, official or institution participating in good faith in the providing of child protective service, the making of a report, the taking of photographs, the removal or keeping of a child pursuant to this law, shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any such person, official, or institution required to report cases of child abuse or maltreatment or providing a child protective service shall be presumed, provided such person, official or institution was acting in discharge of their duties and within the scope of their employment, and that such liability did not result from the willful misconduct or gross negligence of such person, official or institution. New York Social Services Law §419.

6.4 The Code of Canon Law.

Canon 1386 - One who gives or promises something so that someone who exercises a function in the Church would illegitimately do or omit something is to be punished with a just penalty; likewise, the person who accepts such gifts or promises.

Canon 1387 - Whether in the act or on the occasion or under the pretext of confession, a priest who solicits a penitent to sin against the sixth commandment of the Decalogue is to be punished with suspension, prohibitions and deprivations in accord with the seriousness of the offense; and in more serious cases, he is to be dismissed from the clerical state.

Canon 1389 - §1. One who abuses ecclesiastical power or function is to be punished in accord with the seriousness of the act or omission not excluding deprivation from office unless a penalty for such abuse has already been

established by a law or a precept.

§2. One who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry or function which damages another person is to be punished with a just penalty.

Canon 1395 - §1. Outside the case mentioned in can. 1394, a cleric who lives in concubinage or a cleric who remains in another external sin against the sixth commandment of the Decalogue which produces scandal is to be punished with a suspension; and if such a cleric persists in such an offense after having been admonished, other penalties can be added including dismissal from the clerical state.

§2. If a cleric has otherwise committed an offense against the sixth commandment of the Decalogue with force or threats or publicly or with a minor below the age of sixteen, the cleric is to be punished with just penalties, including dismissal from the clerical state if the case warrants it.

7.0 OBLIGATION TO REPORT. Any personnel of the Archdiocese who have actual knowledge of or who have reasonable cause to suspect sexual misconduct by any other personnel of the Archdiocese shall comply with the requirements of law as set forth above (unless to do so would violate the priest/penitent relationship of the Sacrament of Reconciliation or the privilege of confidential communication made to a priest “in his professional character as spiritual advisor.” New York Civil Practice Law and Rules §4505) and shall report to the Archdiocese as follows:

7.1 A verbal report of the incident shall be made immediately to one’s superior or supervisor who will in turn make an immediate verbal report to the Chancellor, the Archdiocesan Director for Finance and Administration, the Director of the Office of Priest Personnel or the Vicar for Religious. The superior or supervisor will obtain a report form from either of the aforementioned diocesan officers and give it to the person reporting the incident. The person making the report will fill out the form and return it to the Chancellor, the Archdiocesan Director for Finance and Administration, the Director of the Office of Priest Personnel or the Vicar for Religious who then assumes responsibility for the investigation of the report which will probably necessitate further contact with the person reporting the incident. Personnel not wishing to report an incident to the superior or supervisor may make the report directly to the Chancellor, the Archdiocesan Director for Finance and Administration, the Director of the Office of Priest Personnel or the Vicar for Religious.

7.2 The Chancellor, the Director of the Archdiocesan Director for Finance and Administration, the Director of the Office of Priest Personnel or the Vicar for Religious shall immediately notify the Archbishop of New York, the Archdiocesan Attorney, and the appropriate liability insurance carrier of the report.

7.3 Any personnel who believe that they have been subjected to sexual harassment by any other personnel of the Archdiocese are encouraged to report it immediately to the Chancellor, the Archdiocesan Director for Finance and Administration, the Director of the Office of Priest Personnel or the Vicar for Religious. The complaint will be handled in confidence and no other personnel, including supervisory personnel, need be advised of this action, If a complainant does not wish to discuss the details of the complaint with either of the above, the complainant may request that a meeting be arranged with another member of Archdiocesan Administration.

8.0 INVESTIGATION OF INCIDENT REPORTS. Each reported incident will be immediately investigated, with care taken not to interfere with any criminal investigation, and with a high level of Christian care, concern and confidentiality for the alleged victim, the family of the alleged victim, the person reporting the incident, and the alleged perpetrator.

8.1 Legal advice, both civil and canonical, shall be obtained by the Archdiocese as soon as possible; and the alleged perpetrator shall be assisted in obtaining similar advice.

8.2 A review of the report shall be undertaken to determine the validity of each claim. If the alleged claim appears substantiated, after consultation with competent Archdiocesan officials, the alleged perpetrator may be relieved from the exercise of any function or responsibility or ministry and/or employment in the Archdiocese and placed on administrative leave pending the outcome of the internal and any outside investigation, such leave to be with or without pay and/or benefits as competent Archdiocesan authorities may decide.

8.3 If the alleged perpetrator is a clergyman incardinated in the Archdiocese of New York, the report and investigation will be referred to the local Ordinary in accordance with Canon Law and subject to the provisions of canon 1722.

8.3.1 If he is a clergyman incardinated in another diocese, the local Ordinary shall immediately refer the matter to his proper Ordinary for discussion or further action.

If the alleged perpetrator is a member of a religious institute or a society of apostolic life, the Vicar for Religious of the Archdiocese of New York shall immediately contact the competent ecclesiastical superior of such member for consultation on the proper procedure to be followed.

8.4 In accord with the provisions of Canons 489-490, appropriate records will be kept of each incident reported.

8.5 Notification of the report shall be given to insurers in accordance with the terms

of applicable insurance policies.

- 8.6 When accusations are made of sexual misconduct involving personnel of the Archdiocese, contact by a representative of the Archbishop of New York with the alleged victim and family should be promptly initiated. Contact should be made by appropriate counselors chosen by the Archbishop for the purpose of offering whatever concern or solace may be needed, with no comment as to the truth of any accusation. Medical, psychological and spiritual assistance and, in appropriate instances, economic assistance may be offered in the spirit of Christian justice and charity, but legal advice must first be obtained.
- 8.7 Any media contact or inquiries regarding an incident of sexual misconduct by personnel of the Archdiocese must be directed to the Director of the Archdiocesan Office of Communications.

9.0 ACTION WHEN GUILT IS DETERMINED. Any personnel of the Archdiocese who admit to, do not contest, or are found guilty of an incident of sexual misconduct shall be relieved immediately from the exercise of any function or responsibility of ministry and/or employment in the Archdiocese of New York.

- 9.1 If the party is a lay person, determination of guilt shall be cause for loss of employment and any appropriate canonical prohibitions or deprivations in accord with the norm of canons 1336-1338. Subject to the conditions of any applicable contracts or terms of employment and at the discretion of the authorities of the Archdiocese of New York, such person may be assisted with any required rehabilitative or convalescent care. In all cases, the principles of Christian charity and canonical equity, especially the norms of canon 231 §2, are to be observed.
- 9.2 If the party is a member of a religious institute or society of apostolic life or a cleric not incardinated in the Archdiocese of New York, determination of guilt shall be cause for any appropriate prohibitions and deprivations in accord with the norm of canons 1336-1338. If a priest, he is to be deprived of the faculties listed in canons 764 and 967 §2 in accord with the norm of canon 974 §2. Further, penalties and penances may be imposed or recommended after consultation with the party's proper ecclesiastical superior.
- 9.3 If the party is a cleric incardinated in the Archdiocese of New York, he shall be subject to suspension in accord with the norm of canon 1333. Further penalties and actions as found in canons 1336-1338 and 1740-1747 may also follow pending the outcome of any civil/criminal actions in the State or Federal courts or the appropriate ecclesiastical Tribunal. At the discretion of the Archbishop, an extended supervised aftercare program may be implemented as outlined in section 9.3.2.
- 9.3.1 A member of the Archdiocesan clergy shall receive diagnostic evaluation and treatment at the expense of the Archdiocese.

9.3.2 After a priest has cooperatively completed initial psychiatric evaluation and treatment he will enter an extended supervised aftercare program, designed by the Archdiocese in collaboration with the treatment resource, which program will include:

9.3.2.1 ongoing psychotherapy as recommended by the treatment resource with regular progress reports from therapist to the Archdiocese in the person of the Director of the Office of Priest Personnel;

9.3.2.2 regular accountability meetings with the Director of the Office of Priest Personnel;

9.3.2.3 if recommended by the treatment resource, establishment of a supervised transitional living arrangement and a vocational rehabilitation program;

9.3.2.4 careful monitoring of the aftercare program by the psychotherapist and the Director of the Office of Priest Personnel;

9.3.2.5 a contract between the priest and the Archdiocese, specifying all the components of the aftercare program;

9.3.3 Following diagnostic evaluation, the individual priest will be expected to continue individual and group psychotherapy and any other professionally recommended therapy, if necessary. He will also be expected to report to the Director of the Office of Priest Personnel on a regular basis.

10.0 INCIDENTS INVOLVING SEXUAL HARASSMENT. Incidents involving sexual harassment among co-personnel will be addressed on a case-by-case basis. Factors to be considered in determining appropriate action, which may include termination, are:

1. the nature and degree of the conduct;
2. whether lack of consent to physical contact was involved;
3. whether any previous complaints of sexual harassment had been made against the person;
4. whether the person had been warned about inappropriate conduct prior to the incident;
5. the type of harassment involved, i.e., hostile environment versus a demand for sexual involvement in exchange for employment-related benefits;

6. where hostile environment harassment is involved, the view of the victim as to the proper penalty and an objective consideration of the conduct involved and the appropriate penalty.

11.0 FALSE ACCUSATION AND UNSUBSTANTIATED CLAIMS. There is always the possibility of false accusations or unsubstantiated claims made for whatever reason.

- 11.1 Civil statutes provide penalties for the crime of falsehood in which individuals become victims of false denunciations and calumny and courts often impose financial reparations in such cases.

In accord with the principle stated in canon 220 of the Code of Canon Law, canons 1390-1391 make provisions for canonical sanctions in various cases of falsehood and calumny.

**ADDENDUM TO THE ARCHDIOCESAN
POLICY RELATING TO SEXUAL MISCONDUCT**

Effective May 14, 2002

- A. Sexual abuse of a minor is a crime. Whenever a complaint is received by an Archdiocesan official that a priest has sexually abused a minor, the complainant will be strongly urged to report the complaint immediately and directly to the appropriate District Attorney's Office.
- B. When an Archdiocesan official has reason to suspect that a priest has sexually abused a minor, the Archdiocese will immediately refer the matter to the appropriate District Attorney's Office for investigation.
- C. The Archdiocese, after consultation with the appropriate District Attorney's Office, will take appropriate action concerning the priest, as warranted, including removing the priest from his assignment, to ensure the safety of minors.

Appendix A

Acknowledgment of Receipt

On _____, I received a copy of the Archdiocese of New York's Policy on Sexual Misconduct. I have read the Policy, including the reporting requirements for allegations of child abuse, understand its meaning, and agree to conduct myself in accordance with its terms.

I acknowledge that the Policy is not intended to create any contractual obligations, express or implied, on the part of the Archdiocese of New York or its affiliated entities.

Name

Signature

Title

Name of Institution/Department