



### **Decree of Issuing Instruction**

In November of 2002, the United States Conference of Catholic Bishops first issued the *Charter for the Protection of Children and Young People* and promulgated the related *Essential Norms* to deal with an unprecedented crisis in the Church. Now, over ten years later, much has been learned about the problem of sexual harassment and sexual misconduct in the Church and in society as a whole. Also, much has been done in terms of prevention and responding promptly and effectively to allegations of a sexual nature. What has been learned from the past ten years has been incorporated into the current *Instruction Regarding Allegations of Sexual Harassment and Sexual Misconduct Against Clerics*, with three appendixes. This instruction was reviewed and approved by the Diocesan Review Board, replaces prior clergy policies, and goes into effect immediately.

The goals of the current instruction include the following: first, to establish clear and easy to follow procedures for anyone who wants to make a complaint of sexual harassment or sexual misconduct; second, to provide direction to all those in positions of authority regarding the steps to be taken when an allegation is made; third, to outline the due process that must be followed so that the rights of the accused are protected; and fourth, to foster a spirit of transparency.

This instruction is to be distributed to all clerics, both diocesan and religious who have faculties from the Diocese of Honolulu, as well as to seminarians and those in formation for the permanent diaconate, who will sign an acknowledgement that they have received it. Clerics new to the diocese will receive the instruction and sign the acknowledgement when receiving faculties, and men new to formation will receive the instruction and sign the acknowledgement upon acceptance by the diocese. The acknowledgements will be maintained by the Office of Clergy. The instruction is also to be made available to anyone on the diocesan web site. *Appendix A: How to Make a Report of Sexual Harassment or Sexual Misconduct About a Cleric* is be widely distributed within the diocese by the Human Resources Department.

Given at the curia of the Diocese of Honolulu on the 22<sup>th</sup> day of January 2014.

+ *Clarence Silva*

Most Reverend Clarence Silva  
Bishop of Honolulu

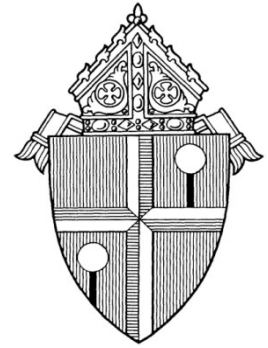
*Aemise Oliveira*

Ecclesiastical Notary

Diocesan Seal

# THE OFFICE OF CLERGY

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## Instruction Regarding Allegations of Sexual Harassment and Sexual Misconduct Against Clerics

### I. Introduction

1. **Purpose:** Sexual abuse, exploitation, and other forms of misconduct are long-standing problems in society. Within the Church, this issue has caused serious damage to the whole Body of Christ. It has harmed the innocent and undermined trust. There has always been a need to acknowledge and address the problem of sexual misconduct by clergy, religious, church employees and volunteers, and from time to time the procedures and processes utilized to do so need to be updated in view of best practices that have come to light. While opening the door to pastoral care to all possible subjects of harassment or misconduct, the Church must also protect the rights of both the accuser and the accused. The entire Church must create an atmosphere where silence, ignorance and minimization are overcome by healing, truth, Christian love and respect.
2. **Scope:** This instruction sets forth procedures to be followed whenever allegations or incidents of sexual harassment or sexual misconduct have occurred involving:
  - priests and deacons incardinated into the Diocese of Honolulu
  - seminarians and men in formation for the permanent diaconate, except in matters that apply only to clerics properly speaking by universal canon law or by particular law of the United States Conference of Catholic Bishops (USCCB)
  - priests and deacons incardinated in other dioceses with an assignment made by the Bishop of Honolulu and while in Hawaii
  - priests and deacons who are members of religious institutes or societies of apostolic life with an assignment made or confirmed by the Bishop of Honolulu and when carrying out that assignment
  - military chaplains only when carrying out ministry off-base in the Diocese of Honolulu with permission of the local ordinary or pastor
  - visiting or retired priests and deacons not incardinated in the Diocese of Honolulu for incidents that occur in carrying out ministry with permission of the local ordinary or pastor
3. This instruction is intended to serve as a part of the internal governing structure of the Catholic Church and provides internal operating procedures only. It does not create any civil or criminal cause of action nor is it intended to hinder the course of any civil or criminal action that may be operative.
4. This instruction fulfills the requirements of the USCCB, *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors* by

*Priests or Deacons*, revised 2006 (EN) no. 2. A copy of this instruction is filed with the USCCB.

5. If the bishop is accused of the sexual abuse of a minor, he is obliged to inform the Apostolic Nuncio, the papal ambassador to the United States. The vicar general or the vicar for clergy is also to inform the Apostolic Nuncio. The bishop is subject to the same national norms as priests and deacons, universal canon law, and federal and state criminal law.
6. **Authorities and Substitutes:** *The bishop* in this document refers to the incumbent diocesan Bishop of Honolulu or, in case of a vacant See, the diocesan administrator or apostolic administrator. All functions of the bishop fall to the vicar general if the bishop is absent or at the direction of the bishop. The bishop may also mandate others, within the norm of canon law, to fulfill individual tasks entrusted to him.
7. Matters to be handled by the vicar for clergy will be handled by the vicar general if the vicar for clergy is absent or recuses himself.
8. **Publication of the Instruction:** The vicar for clergy is to provide copies of this document to all clerics subject to this instruction before the commencement of their service. All diocesan seminarians and men in formation for the permanent diaconate are to be informed upon acceptance as a candidate. Acknowledgment of this instruction shall be made in writing, and such written acknowledgements shall be maintained by the Office of Clergy.
9. A copy of this instruction is available to anyone from the Office of Clergy or the Safe Environment Office upon request or on the diocesan web site.
10. **Education:** The Diocese of Honolulu from time to time shall arrange programs and seminars for training and education on issues of interpersonal boundaries, sexual harassment and sexual misconduct. Participation in such programs and seminars may be mandatory for the clergy and prospective clergy, and all clergy and prospective clergy will be provided with a copy of the Diocese of Honolulu's Code of Pastoral Conduct.
11. **Background Check:** All prospective clergy and clergy new to the Diocese of Honolulu shall be subject to a background and reference check and, for clergy, a letter of suitability from their ordinary. This will include a criminal history record check as permitted by federal and state law for any history of sexual misconduct involving minors. All clergy assigned to the Diocese of Honolulu from other countries where criminal history record checks are not able to be conducted will require a letter of suitability from their ordinary in lieu of a criminal background check and will be subject to independent verification and review.
12. **Diocesan Review Board:** The Diocesan Review Board is the council appointed by the bishop to assist where appropriate in the review of allegations of sexual misconduct. The members are Catholics,<sup>1</sup> the majority of whom do not work for the Diocese of Honolulu, and who are of outstanding integrity and good judgment. The board includes a psychiatrist or psychologist with expertise in the treatment of the sexual abuse of minors, a civil attorney, and a respected and experienced pastor. The promoter of justice will attend and participate in meetings.
13. Notification of the membership of the Diocesan Review Board shall be sent from time to time to the clergy and is available from the Office of the Bishop upon request.

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<sup>1</sup> The bishop has the right to dispense from this requirement in situations where individuals would be available to serve on the board with particular areas of expertise that would be beneficial.

## II. Sexual Harassment

14. **Sexual Harassment:**<sup>2</sup> Sexual harassment is defined as unwanted sexual advances or other unwanted or offensive visual, verbal or physical conduct of a sexual nature by one adult toward another adult. (Any act of sexual harassment toward a minor is an act of sexual misconduct, which is treated in section II below.) Sexual harassment includes but is not limited to:
- Unwanted sexual advances or propositions
  - Offering jobs, promotions or benefits in exchange for sexual favors
  - Threatening to demote, terminate or withhold benefits if an employee protests, refuses or ignores sexual advances
  - Visual conduct such as leering, making sexual gestures or displaying sexually suggestive objects, pictures, cartoons or posters
  - Verbal conduct such as making or using derogatory comments, epithets, slurs or jokes
  - Verbal abuse of a sexual nature such as graphic commentaries about an individual's body
  - Sexually degrading words used to describe an individual
  - Suggestive or obscene letters, notes or invitations
  - Unwanted physical conduct such as touching, assault, impeding or blocking movements
15. Sexual harassment by clerics is completely prohibited. Sexual harassment is unacceptable on ecclesiastical property, at ecclesiastical events held at other locations and on church-related trips. All complaints of sexual harassment are to be investigated and acted upon promptly according to the following process.
16. **Step 1 - Confrontation of the Offender:** Any individual who believes that he or she is being harassed has a right to firmly and promptly notify the offender that his behavior is unwelcome and inappropriate. The offender is to stop the offensive behavior immediately.
17. **Step 2 - Reporting:** Power and status disparities between an alleged harasser and the subject of harassment may sometimes make such confrontation ineffective or undesirable. If, in the judgment of the person being harassed, such informal, direct communication between individuals is ineffective or undesirable, the subject of harassment is urged to report the alleged harassment.
18. The person being harassed may make the report to his or her pastor, principal, supervisor, the vicar for clergy, the vicar general or the bishop. A report may also be made by a third party who has certain knowledge of the situation. A pastor, principal, or other supervisor will refer all situations involving clerics to the vicar for clergy for him to handle.
19. **Protection from Retaliation:** No cleric is in any way to retaliate against an individual who makes a report of sexual harassment. Any acts of retaliation are to be reported immediately, as above. Any cleric found to have retaliated against someone for reporting sexual harassment will be subject to disciplinary action.

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<sup>2</sup> The definition of sexual harassment that follows is from the Hawai'i Civil Rights Commission. See Appendix 1 for complete text of civil law.

20. **Step 3 - Informal Resolution:** With the consent of the person making the complaint, the vicar for clergy may attempt to resolve the matter in an informal manner. If this can be done successfully and to the satisfaction of the person making the complaint, then the vicar for clergy is to write a summary of the complaint and the resolution. He is to maintain a copy of the written summary, which may also be reviewed by the Diocesan Review Board if requested by the bishop or in connection with the board's overall advisory role to the bishop.
21. **Step 4 - Formal Complaint:** After or instead of an informal process, the complainant may make a formal complaint either verbally or in writing. It is helpful to the process for the complainant to be as detailed as possible regarding the identity of the accused, the nature of the acts, the time and place of the acts and special circumstances surrounding the acts (e.g., use of drugs or alcohol, force or threats, gifts or promises). If the complainant makes the complaint verbally, the vicar for clergy is to document the details of the complaint, which the vicar is to sign and date. The complainant is encouraged, but not required, to review the written report for accuracy and sign it. Even if the person making the complaint does not sign the document, the claim must still be investigated.
22. Individuals who believe they have been or currently are being harassed are encouraged to maintain a written record of objectionable conduct to document the allegations. (Note: Such documentation is not privileged and may be subject to discovery by criminal or civil courts.)
23. In situations involving religious clerics or secular clergy not incardinated in the Diocese of Honolulu, the cleric's own ordinary will be notified of the complaint as soon as possible and will be asked to take appropriate action as may be warranted then or at the conclusion of the process. This action will not replace the investigation of the Diocese of Honolulu.
24. **Step 5 - The Investigation:** Any allegation of sexual harassment is to be promptly investigated in a manner that protects the privacy and reputation of the persons involved (*Code of Canon Law*, canon 220). Privacy will be maintained for the complainant and the accused cleric throughout the investigation to the extent appropriate under the circumstances and subject to the requirements of applicable federal, state and canon law. The accused cleric also possesses the right to a good reputation at least until such time as the harassment is determined as true.
25. The vicar for clergy will investigate all complaints involving clerics himself or through others, including an outside investigator. See Appendix B.
26. When first interviewing the accused cleric, the vicar for clergy will remind the cleric of the prohibition of retaliation for making a complaint of sexual harassment.
27. The accused has the right to a presumption of innocence and the right of defense, which means that he must be fully informed of the allegation and evidence against him. The accused may admit the harassment if he so chooses. However, the accused cannot be compelled to admit the harassment or say anything that would be self-incriminating (canon 1728, §2). The accused cleric also possesses the right to privacy and a good reputation at least until such time as the harassment is determined as true.
28. In pursuing the investigation, the wishes of the complainant are to be considered. Nevertheless, the vicar for clergy should thoroughly probe the matter as he sees fit. In addition, when the complaint is related to a workplace, the vicar for clergy may work in connection with the diocesan director of human resources or similar professional and the

diocesan attorney. The bishop may also direct the vicar for clergy to consult the Diocesan Review Board in conducting the investigation and making a determination.

29. **Step 6 - Making the Determination:** In making a determination about whether a violation has occurred, the vicar for clergy is free to seek the advice and counsel of the bishop, the human resources director, a civil attorney, and a diocesan canonist. In seeking the advice of others, the person conducting the investigation should be mindful of the rights of the accused to privacy, a good reputation and presumption of innocence until an act is proven.
30. If the vicar for clergy finds that a violation has occurred, the harasser will be subject to appropriate disciplinary action, depending on the severity of the situation, and reasonably calculated to prevent further inappropriate conduct. Disciplinary actions can include appropriate additional actions under canon law, including warnings, rebukes, penances, and the possible imposition of expiatory penalties as provided for in canon law (canons 1336-1340).
31. In situations where a violation has occurred, the cleric may be referred for voluntary therapeutic counseling or other professional training, as the situation dictates.
32. In all situations, a written summary of the findings of the investigation and the sanctions imposed is to be placed in the cleric's record in the Office of the Vicar for Clergy. The written summary of the findings is to be signed by the person conducting the investigation. In situations where it was determined that no sexual harassment occurred, the reasons for this finding are to be included in the report.
33. In situations where a violation has occurred, the complainant will be informed of the disciplinary sanctions imposed. If the person doing the investigation determines that no sexual harassment has occurred, this finding will be communicated to the complainant in an appropriately sensitive manner.
34. **Knowingly False Allegations:** If an investigation results in a conclusion that the complainant falsely and knowingly accused a cleric of sexual harassment, the complainant will be subject to possible sanctions, including the possibility of termination of employment or exclusion from volunteer service. Efforts will then need to be made to restore the good name of the accused cleric, as needed.
35. **Recourse:** If either the accused or the complainant is not satisfied with the determination, the person has the right to take recourse to the bishop, who will consult the Diocesan Review Board and then determine how to proceed. To take recourse, the request must be put in writing along with the reasons for seeking recourse within one month of having been given the results of the investigation.

### III. Sexual Misconduct

36. **Sexual Misconduct:** Sexual misconduct is defined as any sexual conduct which is contrary to the doctrine or moral teaching of the Catholic Church and any sexual conduct proscribed by federal or state law. Sexual misconduct includes the following:

- *Sexual exploitation of a vulnerable adult:* This involves any kind of sexual interaction between a cleric and an adult who can be taken advantage of due to age or physical or mental infirmity.
- *Sexual abuse of a minor* is any sexual activity with a child or adolescent under the age of 18 by an adult. Sexual abuse of a minor can involve sexual touching, lewd sexualized talk, exposure to genitals or indecent images, rape, incest, prostitution, pornography or possession of pornography involving minors. It may occur once or over short or long periods of time and may be accompanied by varying levels of coercion or even physical violence.<sup>3</sup> In canon law, a person who habitually lacks the use of reason is considered equivalent to a minor (canon 99; Pope John Paul II, Apostolic Letter *Sacramentorum Sanctitatis Tutela* [SST] 6).

37. In addition to the acts of sexual misconduct defined in the previous paragraph, the following delicts are also to be treated according to the process set out in this instruction: an attempted marriage, even if only civil, living in concubinage, persisting in scandal in an external sin against the sixth commandment of the Decalogue or such a sin which involves force or threats or is public (canons 1394, §1; 1395).

38. Any individual who believes that he or she is being subjected to sexual misconduct by a cleric has a right to firmly and promptly notify the offender that his behavior is unwelcome and inappropriate. The offender is to stop the offensive behavior immediately.

39. **Step 1 - Contacting Public Authorities:** If the complaint involves a minor or involves any other violation of federal or state criminal law,<sup>4</sup> the police or Hawai'i Department of Human Services is to be contacted immediately (*EN 11*).<sup>5</sup> The pastor, principal, supervisor or diocesan official who first knows of the complaint will verify that public authorities have been contacted or, if necessary, will make the report him or herself. The pastor, principal, supervisor or diocesan official will then inform the bishop regarding when and which public authorities have been notified.

40. All involved are expected to cooperate fully with all public authorities investigating a complaint (*EN 11*).

41. The bishop may designate a diocesan representative to assist the public authorities and to be present at meetings between the public authorities and the accused cleric, if permitted. This representative will seek a written report from the public authorities indicating that a report was filed, by whom and the date of filing.

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<sup>3</sup> The Federal Child Abuse Prevention and Treatment Act definition of sexual abuse states: "The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or interfamilial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children" (42 United States Code Annotated § 5106g [4] [2003]).

<sup>4</sup> See Appendix 2 for the Hawai'i Sexual Assault Statutes to determine when public authorities should be contacted. Consult a civil attorney for advice if needed.

<sup>5</sup> These reporting requirements are in addition to civil requirements that apply to mandated reporters (see Appendix 3 regarding minors and Appendix 4 regarding vulnerable adults).

42. At the earliest opportunity and if permitted under the circumstances,<sup>6</sup> the bishop will see that the accused cleric is informed of the following:
- The nature of the charges lodged against him
  - That diocesan legal counsel does not represent him
  - That the accused has the right to retain his own civil legal counsel (*EN 6*)
  - Whether such counsel will be provided at diocesan expense
43. **Step 2 - Reporting to the Bishop:** All allegations of sexual misconduct are to be reported to the bishop. If pastors or other supervisors first receive the allegation, they are to forward the complaint to the bishop. The complainant might be the subject of the alleged misconduct or a third party (e.g., a parent, teacher or coworker). If the person making the complaint is a third party, then the procedures below apply, as appropriate, both to the party lodging the complaint and to the subject of the alleged misconduct.
44. The complaint to the bishop should ordinarily be made in writing and seek to include the following information at a minimum:
- the identity of the accused
  - the nature of the acts
  - the date and place of the acts
  - the names of witnesses
  - any special circumstances surrounding the acts (e.g., use of drugs or alcohol, force or threats, gifts or promises)
45. The written report must be signed by the complainant and notarized by an ecclesiastical or public notary. If the complaint is lodged orally, the complaint is to be put in writing by the person receiving the complaint and then signed by the complainant and notarized by an ecclesiastical or public notary.
46. If the complainant refuses to sign a written statement or if the complaint comes from an anonymous source or from public sources such as media outlets, the bishop will consult the Diocesan Review Board to determine the scope and extent of whether further investigation or monitoring of the accused cleric is warranted. If a complainant refuses to sign a written statement because he or she wishes to remain anonymous, the complainant is to be cautioned that his or her identity will ultimately have to be revealed to the accused because of the right of defense of the accused (canon 1620, 7°). (The name of the complainant is not revealed to the accused in situations involving solicitation within the sacrament of penance or absolution of an accomplice in a violation of sixth commandment.)
47. If the complaint comes from a third party, an anonymous source or a public source, and the subject of alleged misconduct is unwilling to make a complaint or participate in an investigation by ecclesiastical authorities, it should be made clear to the subject of alleged misconduct that this may make it difficult for the diocese to pursue the investigation and take effective action to respond and to protect others.
48. If the sexual misconduct involves a religious cleric, the bishop is to inform the religious' own ordinary. Because a religious cleric is under the jurisdiction of his own ordinary, it may be the responsibility of that ordinary to initiate disciplinary action toward a member. Jointly the bishop and religious ordinary will decide whether the Diocesan Review Board

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<sup>6</sup> Some police departments will not permit notice to the accused until after the criminal investigation is complete. If that occurs, the diocese will document that request and the response.



or the religious institute's review board, if they have one, will take the lead, though each should report the incident to the respective review board. The bishop and religious ordinary will keep each other informed during the process. The bishop retains the right to remove the religious cleric from ministry in the Diocese of Honolulu and can further prohibit a religious cleric from residing in the diocese whenever he deems it prudent to do so (canon 679).

49. In the case of a secular cleric ministering but not incardinated in the Diocese of Honolulu, the bishop shall notify the cleric's bishop, apprising him of the allegation and the procedure that will be followed in investigating the allegation. The bishop will keep the other bishop informed during the process and further may remove faculties and take other action he deems prudent.
50. **Protection from Retaliation:** No cleric is in any way to retaliate against an individual who makes a report of sexual misconduct. Any acts of retaliation are to be reported immediately to the bishop. Any cleric or other person found to have retaliated against another individual for reporting sexual misconduct will be subject to disciplinary action.
51. **Step 3 - Precautionary Measures:** In conjunction with the initial evaluation or at any stage of the process, to prevent scandals, to protect the freedom of witnesses and to guard the course of justice, the bishop, after having heard the promoter of justice and notified the accused, shall impose precautionary measures. These measures are of their nature temporary and non-punitive and are imposed by means of a precept. Once the process ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.
52. The bishop may exclude the accused cleric from sacred ministry or from some office and ecclesiastical function or prohibit public participation in the Most Holy Eucharist; he can also impose or forbid residence in some place or territory (canon 1722; *EN* 6). If the accused is a priest, the vicar for clergy may arrange for him to move to another residence provided by the Church. Clerics may be placed on administrative leave with full pay and benefits. Care will be taken not to compromise any criminal investigation by the state.
53. After consulting with the Diocesan Review Board, the bishop may assign a monitor who shall oversee the cleric in his daily activities. When possible, the monitor shall be the vicar for clergy. A secondary monitor may also be assigned to function in the primary monitor's absence. This monitoring may include:
  - The use of schedules prepared by the accused and approved by the monitor of the accused cleric's daily activities and planned locations
  - Unannounced phone calls to the accused or visits to place where the cleric is scheduled to be
  - Pre-approval by the monitor of any changes in the schedules
54. **Step 4 - Initial Evaluation:** Upon receipt of the written complaint, the bishop is to consult with the Diocesan Review Board to make his initial evaluation of whether the complaint has the semblance of truth. The bishop and the board are to consider the facts alleged in the complaint and the circumstances surrounding them, the credibility of the accuser and the internal consistency of the complaint itself in making this initial evaluation, as well as the cleric's file and other information about the accused and others. This is not a determination for or against the guilt of the accused cleric. The purpose of this evaluation by the bishop is to eliminate manifestly false or frivolous allegations.

55. *Manifestly False or Frivolous Allegations:* After consulting with the Diocesan Review Board, if the bishop determines that the complaint does not have at least the semblance of truth, no action is mandated. For allegations of delicts reserved to the Congregation for the Doctrine of the Faith (CDF), no referral to the CDF is required. The complainant and the accused, if he is aware of the allegation, will be informed of the outcome. (If an allegation is later found to be manifestly false or frivolous as a result of the preliminary investigation, this also applies then.)
56. If at any stage in the process the complainant is found to have falsely accused another of sexual misconduct knowingly, the complainant may be subject to appropriate sanctions, including possible termination of employment or exclusion from volunteer service or other consequences.
57. When an allegation has proven to be unfounded but is publicly known, every step possible will be undertaken to restore the good name of the cleric falsely accused (*EN* 13).
58. *Allegations with a Semblance of Truth:* If the bishop determines that the allegation at least seems true, he is to issue a decree opening a preliminary investigation. The decree is to name the members of the investigative team.
59. In situations of the sexual abuse of minors, the bishop will refer the complainant to the diocesan victim assistance coordinator for immediate pastoral care (*EN* 3). This may include counseling, spiritual assistance, support groups and other social services. These services will be made available even if the complaint comes from a third party or if the subject of alleged misconduct is unwilling to make a complaint or cooperate with the investigation.
60. The bishop will keep diocesan legal counsel and the diocesan insurance carrier, as required by the policy, apprised of pertinent details of the situation.
61. The bishop may decree a deferral of the preliminary investigation while criminal investigations or civil action are pending. Results of the criminal investigations or civil litigation may be taken as evidence in the canonical process.
62. **Step 5 - Preliminary Investigation:** All complaints of sexual misconduct shall ordinarily be referred to a team of two or three persons appointed by the bishop to conduct the preliminary investigation (canon 1717, §1; *EN* 6). If possible, one member of the investigative team shall be an individual who has expertise in dealing with sexual misconduct. Another member of the team may be the vicar for clergy. If the complaint involves sexual misconduct by a religious cleric subject to this instruction, then the religious ordinary is to designate a member of the investigative team. A judge of the Diocesan Tribunal is not to serve as a member of the team (cf. canon 1717, §3).
63. The preliminary investigation is to inquire about the facts, circumstances and imputability of the accused cleric. It is meant to provide the bishop (and the Diocesan Review Board) with a sense of probability that a delict did or did not occur. It is not meant to result in a final judgment.
64. The investigative team will contact the complainant and assure the complainant that the matter will be thoroughly investigated and dealt with seriously. Interviews with the complainant and witnesses by the investigative team should be taken under oath, unless the person refuses an oath, and transcribed. The transcript of the interview should be reviewed and signed by the interviewee, if possible.

65. If not already known, the investigative team will contact the accused cleric and tell him of the nature of the allegation and by whom it was made. The accused is to be fully informed of the allegation so that he can exercise his right of defense. The accused will be reminded of the prohibition of retaliation for making a complaint of sexual misconduct.
66. The accused cleric is encouraged to retain the assistance of canonical counsel (*EN 6*). If the accused participates in the preliminary investigation, he is to be provided canonical counsel if he has not secured counsel for himself (*EN 8a*).
67. The investigative team is to keep in mind that the accused cleric has the right to privacy and the right to a good reputation, at least until an act is proven (*EN 6, 13*; canons 220 and 1717, §2). They are to start with the presumption that he is innocent (*EN 6*) and be mindful of the possibility of a false complaint. The accused may admit the offense if he so chooses. However, the accused cleric cannot be compelled to admit the offense or say anything that would be self-incriminating. The accused may not be put under oath (canon 1728, §2). The interview is to be transcribed, reviewed and signed by the accused. See Appendix C.
68. The accused cleric may be requested to seek and may be urged voluntarily to comply with, a forensic physical and mental health evaluation (*EN 7*). The accused is to be advised to seek civil and canonical counsel before agreeing to undergo such an evaluation. Upon receipt of required releases, the report of the evaluation may be made available to the accused, the bishop and the Diocesan Review Board. This evaluation alone cannot be considered fully probative concerning guilt or innocence. If the accused cleric refuses to undergo a psychological evaluation, this does not create a presumption of guilt, but the bishop may not be able to resolve all credible doubts without it (cf. canon 220).
69. A written summary of the findings by the investigative team is to be submitted to the bishop and the Diocesan Review Board along with a copy of all the interviews and other information gathered. The report is to include the opinion of the investigators regarding whether a delict has occurred and their reasons for their opinion. If the members of the investigative team have different opinions, each member is to give their individual opinions and their supporting reasons.
70. **Step 6 - Preliminary Assessment:** Once the bishop has received the results of the preliminary investigation, he is to convene a meeting of the Diocesan Review Board to review the written complaint and the results of the preliminary investigation. The board is to advise the bishop in how he might proceed. If the bishop decides that further investigation is warranted, then the board must be reconvened once the additional evidence is gathered.
71. Once the bishop is satisfied that sufficient information has been collected to reach a determination regarding whether it is probable that a delict has been committed, the bishop is to issue a decree closing the preliminary investigation. The decree closing the preliminary investigation should also state the bishop's preliminary assessment with a summary of the reasons for his assessment along with an indication of the next steps to be taken (canon 1718, §1). The bishop is to promptly inform the accused cleric of his preliminary assessment and of the next steps that will be taken (*EN 6*). The following are the four mutually exclusive possibilities (step 7, options A-D).
72. **Step 7, Option A -- Referral to the CDF:** Referral to the CDF must take place in the following three situations:

- Any delicts against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years or with a person who habitually lacks the use of reason (*SST* 6, §1, 1°; canon 1395, §2).
  - Situations involving the acquisition, possession or distribution by a cleric of pornographic images of minors under the age of eighteen for the purposes of sexual gratification by whatever means or using whatever technology (*SST* 6, §1, 2°).
  - The solicitation to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of confession, when directed to sinning with the confessor himself (*SST* 4, §1, 4°; canon 1387).
73. If the delict involves a matter that requires referral to the CDF, the decree closing the preliminary investigation is to indicate that the acts are to be forwarded to the CDF. The bishop is to prepare his own votum, carefully considering the report of the investigators and the observations of the Diocesan Review Board, regarding whether it seems probable that a delict has been committed and giving his own recommendation to the CDF as how best to proceed.
74. The votum of the bishop is given significant weight in the decision of the CDF regarding how to proceed. The CDF may respond to the bishop's votum and results of the preliminary investigation by requesting further information or clarification of the data already submitted. Unless the CDF concludes that the allegation is false, it will likely choose one of the following options:
- Direct the bishop to treat the matter through an extrajudicial penal process (see option C below)
  - Remand the cause to the bishop to be processed in a judicial penal process in the Diocesan Tribunal (see option D below)
  - Try the cause in a judicial process in the Tribunal of the CDF
  - Recommend to the Roman Pontiff that *ex officio* dismissal be imposed, even without the consent of the cleric (*EN* 10)
75. When even a single act of sexual abuse by a cleric is admitted or is established after a canonical process, the offending cleric will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the situation so warrants (*SST* 6; canon 1395, §2; *EN* 8-9). A guilty cleric will not be permitted to celebrate Mass publicly, administer the sacraments, wear clerical garb or present himself publicly as a priest or deacon (*EN* 8b).
76. Recourse against any extrajudicial decrees issued or approved by the CDF and appeal against judicial sentences of the CDF must be taken within the time limits defined by law and in the manner prescribed by canon law (see *SST* 27-28).
77. **Step 7, Option B -- Actions Other Than Penal Sanctions:** If referral to the CDF is not required and the bishop determines that, short of imposing penalties, fraternal correction or rebuke or other means of pastoral solicitude can sufficiently repair scandal, restore justice and reform the offender, then he is to issue a decree to that effect (canon 1341). The Diocesan Review Board is to be consulted regarding the methods to be used, which include the following possibilities:
- The accused may merit monitoring if the bishop determines that the complaint is not wholly insupportable, but is nonetheless weak. In such a situation, the activities of the cleric will be monitored for a period and in a manner determined by the bishop.
  - The accused cleric may be requested to seek and may be urged voluntarily to comply with, a therapeutic physical and mental health evaluation at a facility mutually

- acceptable to the bishop and to the accused. This may take place before being restored to any ministry both for prevention and for his own healing and well-being.
- Acts of penance or of charity may be imposed by the bishop.
  - The bishop may issue a formal rebuke of the offending cleric and warning that a further infraction could result in additional penalties.
78. The bishop is to promptly inform the accused cleric of the results. The complainant is also to be informed of the results.
79. The acts of the preliminary investigation, the decrees of the bishop and everything which preceded and followed the investigation are to be kept in the appropriate archive of the curia (canon 1339, §3).
80. If either the accused cleric or the complainant is not satisfied with the outcome, the person has the right to take recourse against the decision. The dissatisfied party must submit his or her written request to the bishop within one continuous month of being notified of the outcome, along with the reasons for seeking recourse. The bishop will consult the Diocesan Review Board and then determine how to proceed. Furthermore, the person has the right to take further recourse to the appropriate Vatican dicastery.
81. **Step 7, Option C -- Penal Sanctions Through Administrative Decree:** If referral to the CDF is not required and the bishop determines that the matter must proceed by way of an administrative (extrajudicial) decree (canon 1720):
- The bishop is to inform the accused cleric of the allegation and the proofs, giving an opportunity for self-defense.
  - The bishop is to weigh carefully all the proofs and arguments in consultation with the Diocesan Review Board.
  - If the delict is certainly established and a penal action is not extinguished by prescription, the bishop is to issue a decree imposing the penalty, setting forth a summary of the reasons in law and in fact.
82. If the bishop proceeds by means of a decree, he is to notify the accused as soon as possible of the penalty imposed. Other means of fraternal correction or rebuke and pastoral means of solicitude treated under option B can be added to the penalty.
83. The complainant is also to be informed of the results as soon as possible.
84. The acts of the preliminary investigation, the decrees of the bishop and everything which preceded and followed the investigation are to be kept in the appropriate archive of the curia (canon 1719).
85. If either the accused cleric or the complainant is not satisfied with the outcome of an extrajudicial process, the person has the right to take recourse against the decision. The dissatisfied party must submit his or her written request to the bishop within one continuous month of being notified of the outcome, along with the reasons for seeking recourse. The bishop will consult the Diocesan Review Board and then determine how to proceed. Furthermore, the person has the right to take further recourse against the decree to the appropriate Vatican dicastery.
86. **Step 7, Option D -- Judicial Penal Process:** If referral to the CDF is not required and the bishop has decreed that a judicial penal process must be initiated, he is to hand over the acts of the investigation to the promoter of justice who is to present a libellus of allegation to the judge (canon 1721, §1). Causes without referral to the CDF involving possible dismissal from the clerical state require a judicial process. Ordinarily, the following situations are referred to the Diocesan Tribunal for a judicial process:

- A cleric who attempts marriage, even if only civilly, if he does not repent after being warned and continues to give scandal (canon 1394, §1)
- A cleric who lives in concubinage or who persists with scandal in another external sin against the sixth commandment of the Decalogue, if he persists in the delict after a warning (canon 1395, §1)
- A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly (canon 1395, §2)

87. A penal process requires the service of three judges and includes the following steps:

- Libellus presented by the promoter of justice
- Acceptance of the libellus and citation of the accused
- Joinder of issues
- Instruction and opportunity for defense by the accused
- Publication of the acts to the accused
- Sentence of the judges
- Execution of the sentence

88. The bishop is to inform the complainant of the results of the judicial penal process.

89. If the accused cleric is not satisfied with the outcome of a judicial process, he has the right to appeal the decision within the time limits defined by law (canons 1630, §1; 1633). If the complainant is not satisfied with the outcome, then he or she can petition the promoter of justice to appeal the decision within the time limits allowed by law (canon 1727, §2). An appeal against a judicial decision given by the Tribunal of the Diocese of Honolulu may be made to the Tribunal of the Diocese of San Jose or to the Roman Rota.

#### IV. Prescription

90. The prompt reporting of complaints is best so that a rapid response may be taken and because delay makes the investigation more difficult. However, for many reasons, the diocese may not learn about a complaint for many years. Therefore, the following substantial periods of prescription, the canonical equivalent of a statute of limitations, are defined for reporting complaints.
91. Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased (canon 1362, §2). However, regarding delicts committed against minors, prescription begins to run from the day on which a minor completes his or her eighteenth year of age (SST 7, §2).
92. An action for the delicts reserved to the CDF is extinguished by prescription after twenty years, with due regard of the right of the CDF to derogate from prescription in individual situations (SST 7, §1).
93. By universal law, an action for the following delicts are extinguished by prescription after five years (canon 1362, §1; canons 1394-1395):
- A cleric who attempts marriage, even if only civilly
  - A cleric who lives in concubinage
  - A cleric who persists with scandal in another external sin against the sixth commandment of the Decalogue
  - A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or with threats or publicly
94. If prescription excludes the possibility of a penal process, the bishop may still proceed as permitted through his executive power of governance and seek further relief through the CDF (*EN* 9). In addition, he can use acts of fraternal correction, warning, rebuke or acts of penance or charity with the goal of repairing scandal, restoring justice and reforming the offender (see Step 7, option B above). He will consult the Diocesan Review Board in such circumstances.

# **Appendix A: How to Make a Report of Sexual Harassment or Sexual Misconduct About a Cleric**

## I. Introduction

1. **Purpose:** Sexual abuse, exploitation, and other forms of misconduct are long-standing problems in society. Within the Church, the involvement of clerics in such misconduct has caused serious damage to the whole Body of Christ. It has harmed the innocent and undermined trust. Therefore, a pressing need has arisen to acknowledge and address the problem of sexual misconduct by clergy. While opening the door to pastoral care to all possible subjects of harassment or misconduct, the Church must also protect the rights of both the accuser and the accused. The entire Church must create an atmosphere where silence, ignorance and minimization are overcome by healing, truth, Christian love and respect.
2. **Confrontation of the Offender:** Any individual who believes that he or she is being subjected to sexual harassment or sexual misconduct by a cleric has a right to firmly and promptly notify the offender that his behavior is unwelcome and inappropriate. The offender is to stop the offensive behavior immediately.
3. **How to Begin:** The first step in making an allegation is to determine whether the situation involves sexual harassment or sexual misconduct (see next page). Then follow the appropriate process on the following pages for making the complaint.



## II. Distinguishing Between Sexual Harassment and Sexual Misconduct

4. **Definition of Sexual Harassment:**<sup>1</sup> Sexual harassment is defined as unwanted sexual advances or other unwanted or offensive visual, verbal or physical conduct of a sexual nature by one adult toward another adult. (Any act of sexual harassment toward a minor is an act of sexual misconduct.) Sexual harassment includes but is not limited to:
- Unwanted sexual advances or propositions
  - Offering jobs, promotions or benefits in exchange for sexual favors
  - Threatening to demote, terminate or withhold benefits if an employee protests, refuses or ignores sexual advances
  - Visual conduct such as leering, making sexual gestures or displaying sexually suggestive objects, pictures, cartoons or posters
  - Verbal conduct such as making or using derogatory comments, epithets, slurs or jokes
  - Verbal abuse of a sexual nature such as graphic commentaries about an individual's body
  - Sexually degrading words used to describe an individual
  - Suggestive or obscene letters, notes or invitations
  - Unwanted physical conduct such as touching, assault, impeding or blocking movements
5. **Sexual Misconduct:** Sexual misconduct is defined as any sexual conduct which is contrary to the doctrine or moral teaching of the Catholic Church and any sexual conduct proscribed by federal or state law. Sexual misconduct includes the following:
- *Sexual exploitation of a vulnerable adult:* This involves any kind of sexual interaction between a cleric and an adult who can be taken advantage of due to age or physical or mental infirmity.
  - *Sexual abuse of a minor* is any sexual activity with a child or adolescent under the age of 18. Sexual abuse of a minor can involve sexual touching, lewd sexualized talk, exposure to genitals or indecent images, rape, incest, prostitution, pornography or possession of pornography involving minors. It may occur once or over short or long periods of time and may be accompanied by varying levels of coercion or even physical violence.<sup>2</sup> In canon law, a person who habitually lacks the use of reason is considered equivalent to a minor (canon 99; Pope John Paul II, Apostolic Letter *Sacramentorum Sanctitatis Tutela* [SST] 6).

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<sup>1</sup> The definition of sexual harassment that follows is from the Hawai'i Civil Rights Commission. See Appendix 1 for complete text of civil law.

<sup>2</sup> The Federal Child Abuse Prevention and Treatment Act definition of sexual abuse states: "The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or interfamilial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children" (42 United States Code Annotated § 5106g [4] [2003]).

### III. Making a Report of Sexual Harassment

6. **Reporting:** Power and status disparities between an alleged harasser and the subject of harassment may sometimes make confrontation of the offender ineffective or undesirable. If, in the judgment of the person being harassed, informal, direct communication between individuals is ineffective or undesirable, the subject of harassment is urged to report the alleged harassment. A report may also be made by a third party who has certain knowledge of the situation.
7. The report can be made to the cleric's pastor, principal, supervisor or the vicar for clergy. A pastor, principal, or other supervisor will refer all situations involving clerics to the vicar for clergy for him to handle.
8. The subject of the alleged harassment also has the right to report the harassment to the bishop or the vicar general.
9. Any acts of retaliation are to be reported immediately, as above. Any cleric found to have retaliated against someone for reporting sexual harassment will be subject to disciplinary action.
10. **Informal Resolution:** With the consent of the person making the complaint, the vicar for clergy may attempt to resolve the matter in an informal manner. If this can be done successfully and to the satisfaction of the person making the complaint, then the vicar for clergy will write a summary of the complaint and the resolution. He will maintain a copy of the written summary.
11. **Formal Complaint:** After or instead of an informal process, the complainant may make a formal complaint either verbally or in writing. It is helpful to the process for the complainant to be as detailed as possible regarding the identity of the accused, the nature of the acts, the time and place of the acts and special circumstances surrounding the acts (e.g., use of drugs or alcohol, force or threats, gifts or promises). If the complainant makes the complaint verbally, the authority receiving the complaint will document the complaint. The complainant is encouraged, but not required, to review the written report for accuracy and sign it. Even if the person making the complaint does not sign the document, the claim will still be investigated.
12. Individuals who believe they have been or currently are being harassed are encouraged to maintain a written record of objectionable conduct to document the allegations. Note: Such documentation is not privileged and may be subject to discovery by criminal or civil courts.
13. The process that will be followed in investigating a formal complaint is available on the diocesan web site.

#### IV. Making a Report of Sexual Misconduct

14. **Step 1 - Contacting Public Authorities:** If the complaint involves a minor or involves any other violation of federal or state criminal law,<sup>3</sup> the person making the complaint is urged to contact the police or the Hawai'i Department of Human Services immediately.<sup>4</sup> The pastor, principal, supervisor or diocesan official who first knows of the complaint will verify that public authorities have been contacted or, if necessary, will make the report him or herself. The pastor, principal, supervisor or diocesan official will then inform the bishop regarding when and which public authorities have been notified.
15. All involved are urged to cooperate fully with all public authorities investigating a complaint.
16. **Step 2 - Reporting to the Bishop:** All allegations of sexual misconduct are to be reported to the bishop. If pastors, principals or other supervisors first receive the allegation, they will forward the complaint to the bishop.
17. The complainant might be the subject of the alleged misconduct or a third party (e.g., a parent, teacher or coworker). If the person making the complaint is a third party, then the procedures below apply, as appropriate, to both the party lodging the complaint and to the subject of the alleged misconduct.
18. The complaint to the bishop should ordinarily be made in writing and seek to include the following information at a minimum:
  - the identity of the accused
  - the nature of the acts
  - the date and place of the acts
  - the names of witnesses
  - any special circumstances surrounding the acts (e.g., use of drugs or alcohol, force or threats, gifts or promises)
19. The written report must be signed by the complainant and notarized by an ecclesiastical or public notary. If the complaint is lodged orally, the complaint will be put in writing by the person receiving the complaint and then signed by the complainant and notarized by an ecclesiastical or public notary.
20. If a complainant refuses to sign a written statement because he or she wishes to remain anonymous, the complainant will be cautioned that his or her identity will ultimately have to be revealed to the accused because of the right of defense of the accused (canon 1620, 7°). (The name of the complainant is not revealed to the accused in situations involving the sacrament of penance.)
21. If the complaint comes from a third party or an anonymous source and the subject of alleged misconduct is unwilling to make a complaint or participate in an investigation by ecclesiastical authorities, it should be made clear to the subject of alleged misconduct that this may make it difficult for the diocese to pursue the investigation and take effective action to respond and to protect others.

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<sup>3</sup> See Appendix 2 for the Hawai'i Sexual Assault Statutes to determine when public authorities should be contacted. Consult a civil attorney for advice if needed.

<sup>4</sup> This reporting is in addition to civil requirements that apply to mandated reporters (see Appendix 3 regarding minors and Appendix 4 regarding vulnerable adults).

22. In situations of the sexual abuse of minors, the bishop will refer the complainant to the diocesan victim assistance coordinator for the immediate pastoral care<sup>5</sup>. This may include counseling, spiritual assistance, support groups and other social services. These services will be made available even if the complaint comes from a third party or if the subject of alleged misconduct is unwilling to make a complaint or cooperate with the investigation.
23. Any acts of retaliation are to be reported immediately to the bishop. Any cleric found to have retaliated against another individual for reporting sexual misconduct will be subject to disciplinary action.
24. The process that will be followed in investigating a formal complaint is available on the diocesan web site.

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<sup>5</sup>United States Conference of Catholic Bishops, Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons, revised 2006, no. 3.

## **Appendix B: For Use by Vicar for Clergy in Receiving a Report of Sexual Harassment by a Cleric**

*Questions should be asked in a nonjudgmental manner.*

Name of person taking report: \_\_\_\_\_

Date: \_\_\_\_\_

Name of the complainant: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number(s): \_\_\_\_\_

Employment or position of the complainant: \_\_\_\_\_

Is the complainant a third party? \_\_\_\_\_ If so, name and contact information of subject of alleged harassment: \_\_\_\_\_

Name of the accused cleric: \_\_\_\_\_

What allegedly happened? (Include detail about the frequency and nature of the alleged harassment and the dates and locations where the alleged harassment occurred.)

How did the he or she respond to the alleged harassment?

Did the accused cleric make or carry out any threats or promises?

What was the nature of the professional relationship, degree of control and amount of interaction between the accused and the complainant? (Does the person control compensation, terms of employment or promotions? Do these individuals work in proximity to one another or on the same projects?)

Were there any witnesses who observed or were knowledgeable of the alleged harassment? (Interview them if possible.)

Did the complainant consult or make a report to anyone else about the alleged harassment? If so, who else knows and what their response was to the disclosure? (Interview them if possible.)

Are there are other individuals who have possibly been harassed by the accused? (Interview them if possible.)

What action would the complainant like to see taken as a consequence of the harassment?

# **Appendix C: For Use in Conducting the Preliminary Investigation of an Allegation of Sexual Misconduct by a Cleric**

*Questions should be asked in a nonjudgmental manner.*

Name of person taking report: \_\_\_\_\_

Date: \_\_\_\_\_

Name of the complainant: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number(s): \_\_\_\_\_

Employment or position of the complainant: \_\_\_\_\_

Is the complainant a third party? \_\_\_\_\_ If so, name and contact information of subject of alleged misconduct: \_\_\_\_\_

Age of subject when the alleged misconduct occurred: \_\_\_\_\_

For situations requiring reporting to the police or other public authorities, date when report was made: \_\_\_\_\_

Who made the report to public authorities? \_\_\_\_\_

Public agency and person who received the report: \_\_\_\_\_

Name of the accused cleric: \_\_\_\_\_

What allegedly happened? (Include detail about the frequency and nature of the alleged misconduct and the dates and locations where the alleged misconduct occurred.)

How did the he or she respond to the alleged misconduct?

Did the accused cleric make or carry out any threats or promises?

What was the nature of the professional relationship, degree of control and amount of interaction between the accused and the complainant? (Does the cleric control compensation, terms of employment or promotions? Is there a pastoral relationship between the accused and the complainant?)

Were there any witnesses who observed or were knowledgeable of the alleged misconduct? (Interview them if possible.)

Did the complainant consult or make a report to anyone else about the alleged misconduct? If so, who else knows and what their response was to the disclosure? (Interview them if possible.)

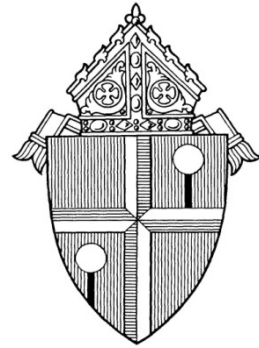
Are there are other individuals who have been harassed by the accused? (Interview them if possible.)



# THE OFFICE OF CLERGY

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CATHOLIC DIOCESE OF HONOLULU • CHANCERY OFFICE  
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## Acknowledgement

### **Instruction Regarding Allegations of Sexual Harassment and Sexual Misconduct Against Clerics (including Seminarians and Those in Formation for the Diaconate)**

I acknowledge that I have received and will read and be familiar with the Instruction Regarding Allegations of Sexual Harassment and Sexual Misconduct Against Clerics.

Name (print): \_\_\_\_\_

I am a (check one): ☐ priest  
☐ deacon  
☐ seminarian  
☐ in formation for the diaconate

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***Return completed forms to the Office of Clergy.***