

## IV. GUIDELINES REGARDING ALLEGATIONS

### What Volunteers, Contractors, and Religious Sisters and Brothers Need to Know

#### INTRODUCTION:

1. **Purpose and Scope:** The problem of unethical sexual conduct is a long-standing problem 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. Therefore, a pressing need has arisen to acknowledge and address the problem of unethical sexual conduct by clergy, religious, church employees and volunteers. The Church must 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 truth, Christian love and respect.
2. Unless already subject to diocesan policies through employment or by contract or agreement, these guidelines apply in the Diocese of Honolulu to religious sisters or brothers, volunteers or contractors when carrying out ministry that involves the regular and unsupervised access to children or vulnerable adults.<sup>8</sup> These guidelines apply to all diocesan organizations and institutions, all parishes and their activities including Catholic schools, and any other Catholic institutions affiliated with the Diocese of Honolulu or any parish in its territory.
3. These guidelines apply to both lay persons and religious sisters and brothers.<sup>9</sup> However, some special guidelines follow at the end of this section that apply in particular, to religious sisters and brothers. Norms for clerics<sup>10</sup> and those preparing for ordination<sup>11</sup> are treated in the *Instruction Regarding Allegations of Sexual Harassment and Sexual Misconduct against Clerics* available at [www.catholichawaii.org](http://www.catholichawaii.org).
4. **Publication of these Guidelines:** In addition to publication on the diocesan website (<http://www.catholichawaii.org>), all religious sisters and brothers, volunteers and contractors of the Church are to be informed of these guidelines before the commencement of their service. Acknowledgment of these guidelines shall be made in writing (to the extent practicable). Any written acknowledgements shall be maintained by the Diocesan Safe Environment Office.
5. **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 is mandatory for the religious, volunteers and contractors performing ministry involving ongoing, unsupervised contact with minors.
6. **Background Check:** All religious, volunteers and contractors performing ministry for the Church whose activities involve ongoing unsupervised contact with minors, shall be subject to a background and reference check. This will include a criminal history record check as permitted by federal and state law for any history of sexual misconduct involving minors.

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<sup>8</sup> *Ministry means any activity carried out in the name of the Church on behalf of any person by any clergy, religious, lay employee, volunteer or contractor. Such activity includes but is not limited to counseling, spiritual direction, confession, teaching, worship, service, coaching and social activities.*

<sup>9</sup> *Religious in this document refers not only to members of religious institutes but also to members of societies of apostolic life and to individuals in consecrated life.*

<sup>10</sup> *Clerics refers to all priests and deacons, both diocesan and religious.*

<sup>11</sup> *Those in formation include both seminarians and men in formation for the permanent diaconate.*

7. **Diocesan Review Board:** To the extent referenced in this policy, the Diocesan Review Board is the consultative body appointed by the bishop to assist in the review of allegations of sexual misconduct.

### **Sexual Harassment**

8. Any workplace misconduct of a volunteer or third (3<sup>rd</sup>) party contractor that constitutes sexual harassment under US or Hawaii law shall be subject to sanction under these policies. Volunteers and contractors, and religious brothers and sisters are advised to review the diocesan policy *What Lay Employees Need to Know* available at [www.catholichawaii.org](http://www.catholichawaii.org) for definitions and procedures. But especially volunteers and contractors are advised that any harassing behavior could subject the service by the volunteer or contractor to immediate termination, without recourse under the policies.

### **Sexual Misconduct**

9. **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 the laws of the State of Hawaii. Sexual misconduct includes the following:
  - a. **Sexual misconduct involving an adult:** This form of misconduct between adults may involve activities which are sexual in nature to include sexual touching, lewd talk or jokes, displaying sexual images, indecent exposure, rape or prostitution.
  - b. **Sexual exploitation of an adult:** Sexual misconduct involving adults may also take the form of sexual exploitation of an adult which is a more serious form of sexual misconduct and involves any kind of sexual interaction between adults involving a power, knowledge or gratification disparity. A power disparity can derive from an unequal role relationship (such as in counseling), from advanced age, from the size of the offender or from the manipulative skills of the offender. A knowledge disparity can derive from situations where the offender is older, more intelligent or more developmentally advanced mentally, emotionally or psychologically. A gratification disparity is due to the fact that the primary purpose of the sexual activity is to obtain gratification for the perpetrator and not primarily mutual gratification.
  - c. **Sexual abuse of a minor** is any sexual activity with a child or adolescent under the age of eighteen (18) by an adult. Of their nature, they include power, knowledge and gratification disparities. 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 over short or long periods of time and may be accompanied by varying levels of coercion or even physical violence.<sup>12</sup> In Canon Law, a person who habitually lacks the use of reason is considered equivalent to a minor (canon 99).
10. Sexual misconduct by any religious sister or brother, volunteer or contractor while ministering in any capacity for the Church is completely prohibited.
11. **Step 1 - Contacting Public Authorities:** If the complaint involves a violation of Hawaii criminal law as it relates to sexual abuse or misconduct with minors, the police or Hawaii Department of Human Services/Child Welfare Services are to be contacted immediately in

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<sup>12</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]).*

accord with the law of the State of Hawaii.<sup>13</sup> If the person making the complaint fails to contact the public authorities, then the pastor, principal or supervisor who first knows of the complaint is to do so. If that person fails to contact public authorities, then the Office of the Bishop will do so. All involved are to cooperate fully with all public authorities investigating a complaint.

12. The Bishop or his delegate may designate a diocesan representative to assist the public authorities and to be present at meetings between the public authorities and the accused, if permitted.
13. At the earliest opportunity, the Bishop or his delegate will see that the accused (or his or her employer if a contractor or institute if a religious) is informed of the following:
  - a. That diocesan legal counsel does not represent the accused.
  - b. That the accused has the right to retain his or her own civil or canonical legal counsel.
  - c. Whether such counsel will be provided at diocesan expense.
14. **Step 2 - Reporting to the Bishop:** All allegations of sexual misconduct must be reported to the Bishop. If pastors, principals or other supervisors first receive the allegation, they will 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 what is said of the complainant below also applies to the object of the alleged misconduct.
15. **Protection from Retaliation:** No religious sister or brother, volunteer or contractor 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 person found to have retaliated against another individual for reporting sexual misconduct will be subject to disciplinary action, including the possibility of termination of contract or exclusion from volunteer service or ministry.
16. **Step 3 - Precautionary Measures:** In conjunction with the initial evaluation or at any stage of the process, to prevent scandalous activity, to protect the freedom of witnesses and to guard the course of justice, the supervisor may impose precautionary measures such as temporary removal from service while the complaint is evaluated.
17. If a complaint is filed against a contractor employee, that person will be suspended from further work at any diocesan, parish, or school activity until the matter is resolved. The contractor entity is expected to cooperate in the investigation and resolution of the complaint. Whether the following action steps occur in such a particular case will depend on the circumstances and which entity, the contractor or the diocese or parish has the lead responsibility.
18. **Step 4 - Initial Evaluation:** Upon receipt of the written complaint, the supervisor will consult with the Diocesan Director of Human Resources, and in certain situations the Diocesan Review Board to make his initial evaluation of whether the complaint has the semblance of truth. The supervisor is to consider, among other things, 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. This is not a determination for or against the guilt of the accused. The purpose of this evaluation by the Bishop is to eliminate manifestly false or frivolous allegations. When an allegation has

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<sup>13</sup> *These reporting requirements are in addition to civil requirements that apply to mandated reporters (Chapter 350, Hawai'i Revised Statutes).*

proven to be unfounded but is publicly known, every step possible will be undertaken to restore the good name of the person falsely accused.

19. **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 will be taken. The complainant is to be informed of the outcome and the accused, if he or she is aware of the allegation, is to 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 norm shall also apply.
20. **Step 5 - Investigation:** All credible complaints of sexual misconduct will be referred to a team for investigation. If possible, one (1) member of the investigative team shall be an individual who has expertise in dealing with sexual misconduct. Another member of the team will ordinarily be the Diocesan Director of Human Resources.
21. The investigation will inquire about the facts, circumstances and imputability of the accused. The investigation may be deferred if criminal investigations or civil action are pending. Any investigation may also need to be suspended in accord with the law of the State of Hawaii in situations involving the sexual abuse of minors until after the police or the Hawaii Department of Human Services/Child Welfare Services completes its investigation. It is meant to provide the supervisor or administrator and the Diocesan Review Board with a sense of probability that sexual misconduct did or did not occur. It is not meant to result in a final judgment.
22. Keeping in mind that the accused has the right to privacy and the right to a good reputation, at least until the act is admitted or established; the investigative team will contact the accused and tell him or her of the nature of the allegation and by whom it was made. The accused must be fully informed of the allegation so that he or she can exercise his or her right of defense. Remind the accused of the prohibition of retaliation for making a complaint of sexual misconduct. The team will take the statement of the accused.
23. The findings by the investigative team will be submitted to the supervisor and in certain situations the Diocesan Review Board. The report will include the opinion of the investigators regarding whether an incident of sexual misconduct has occurred and their reasons for their opinion.
24. **Step 7 - Conclusion:** The appropriate supervisor/director will review the results of the investigation and give the accused an opportunity for self-defense. If sexual misconduct is admitted or established, the service of the individual volunteer or contractor employee will be terminated immediately. With respect to individual religious, the Bishop or other appropriate supervisor/director will work with the individual's superior on that person's discipline.
25. The Diocese of Honolulu does not enter into settlements which bind the parties to confidentiality unless the complainant requests confidentiality and this request is noted in the agreement.

## **Guidelines Particularly Related to Religious Sisters and Brothers**

26. Unless by agreement the major superior and the Bishop have decided that some other disciplinary path is applicable, all the above guidelines for lay persons also apply to religious sisters and brothers.
27. If an allegation of sexual harassment or sexual misconduct involves a religious sister or brother, the Bishop is to inform the individual's major superior. Because a religious is under the jurisdiction of his or her major superior, it may be the responsibility of that superior to initiate disciplinary action toward a member. Jointly the Bishop and the major superior will decide whether the Diocesan Review Board 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 major superior will keep each other informed during the process and of the conclusion.
28. The Bishop retains the right to remove the religious sister or brother from ministry (including volunteer service) in the territory of the Diocese of Honolulu. When concern for scandal demands it, the Bishop can further prohibit a religious sister or brother from residing in the Diocese of Honolulu (canon 679).
29. If the complaint involves an allegation of sexual harassment by a religious sister or brother, then the policies contained in *What Employees Need to Know*, as noted above, shall apply.
30. If the complaint involves an allegation of sexual misconduct by a religious sister or brother, then the above guidelines apply and the major superior will be invited to designate a member of the investigative team formed to conduct any investigation. The failure of or delay in response to such an invitation will not defer the investigation.
31. The accused religious sister or brother is encouraged to retain the assistance of canonical counsel. If the accused participates in the preliminary investigation, he or she is to be provided canonical counsel if he or she has not secured counsel for him or herself.