

# **SPIRITUAL COURT OF THE DIOCESE OF NEW YORK AND NEW JERSEY**

## **Section 1                      Church Courts**

Every member of the Church is entitled to due canonical procedure in the courts of the Church.

## **Section 2                      The Diocesan Court**

Due canonical procedure and due process of law shall be the right and entitlement of every person, clergy and lay, subject to the adjudicative authority of The Diocesan Court. The Diocesan Court is composed of four voting members: two members of the clergy and two members of the laity, appointed by the bishop from among the members of the Diocesan Council. The Diocesan Bishop himself, or a member of the clergy appointed by him, shall preside over the court as a non-voting member. In cases involving accusations against members of the clergy, the court shall be restricted in its membership to members of the clergy.

## **Section 3                      Authority of Diocesan Bishop**

Diocesan Bishop has full hierarchical authority for all Church activities within the diocese, including all matters concerning allegations of misconduct. Bishop may fully exercise that authority in accordance with these Procedures, and may impose any clergy discipline not requiring action of a Church court.

## **Section 4                      Competence of the Diocesan Court**

The Diocesan Court shall act as a court of first instance in cases where the accused is a priest, a deacon, or a member of the laity. It shall be competent to judge cases involving allegations of unorthodox belief, breaches of canonical or moral discipline, marital problems, disputes involving clergy and parish officers, disputes over parish institutions, and any other matter involving the good order of the Church.

Jurisdiction of The Diocesan Court shall extend over the following matters and persons:

1. Adjudging alleged transgressions from dogmatic teachings, breaches of canonical or moral discipline, marital problems, disputes involving clergy and parish officers, and disputes over parish institutions.
2. Allegations of violation of or nonconformity with The Statute of the Orthodox Church in America, By-Laws of the Diocese, and other administrative and canonical guidelines of the Diocese, and/or the Orthodox Church in America, and approved by The Holy Synod of Bishops.
3. Conflicts between individuals, persons, whether clergy or laity, arising out of church matters or between individuals and any component part of the Diocese

- expressly including failure of a clergy member and parish or individual to honor obligations to the other, whether contractual, moral, spiritual, or civil.
4. Dereliction of duty on the part of any of the elected or appointed officers of any organization under the jurisdiction of the Diocese.
  5. Acts detrimental to the Church, including, but not limited to, extreme expressions of disrespect toward or disregard for spiritual authority.
  6. Irregularities in the administration or management of church properties and funds.
  7. The adjudicative jurisdiction The Diocesan Court shall extend to every person, clergy or lay, who seeks and accepts admission to the Diocese, is a member of the Diocese or any of its component parts. Further to every individual whose actions in relation to the Diocese are regular and systematic, or who, in a particular instance, causes consequences to any of the constituent members or parts of the Diocese, that it would be reasonable that the matter be adjudicated by The Diocesan Court.
  8. Jurisdiction of The Diocesan Court shall not be impaired or divested by any parties, withdrawal from the Diocese, resignation, transfer, or disavowal of membership.

## **Section 5                      General Procedure**

1. Accusers shall present their accusations in writing to the Bishop of the Diocese of the accused.

2. Before examining the case, the court shall establish the accuser's good and irreproachable character. The accuser shall agree in advance in writing that the decision of the court is final and non-appealable to the civil courts. If the court is not satisfied in these matters, or considers that the accuser, by lodging his accusation, pursues personal advantage or acts out of personal animosity, the case shall be dismissed.

3. If the court determines that there is probable cause to come to trial, the accused shall be summoned in writing by the court. The summons shall specify the nature of the accusation and the name(s) of the accuser(s), and the accused shall be given appropriate time to prepare his defense. If he does not answer two successive summonses, the court shall try the case in absentia.

4. The accused is entitled to request that a third party act as his defense. Both the accuser and the accused may request the testimony of experts and witnesses acceptable to the court.

5. The Diocesan Bishop, by his own judgment, is empowered to impose temporary suspension upon clerics, and temporary excommunication upon members of the laity. The accused has the right to trial in court within 30 days of the day when the penalty is pronounced by the bishop.

6. The decision of the court shall be made by unanimous vote, approved by the Diocesan Bishop, and communicated to the accused in writing within 30 days. If the decision is not unanimous, upon the request of either party the Diocesan Bishop shall appoint a court of four new members, according to the procedure specified in Section 2. The new court shall make a decision by a majority vote, approved by the bishop. If the bishop rejects the decision of the court, upon the request of either party the case shall be referred to the Holy Synod.

7. Penalties imposed by the court (against persons judged guilty after trial as well as against false accusers) are prescribed by the canons of the ecumenical and local councils and the holy fathers. Their application is subject to approval by the Diocesan Bishop who must use the pastoral discretion, which belongs to his office in applying penalties.

8. If one of the parties is not satisfied with the judgment of the Diocesan Court, he may appeal to the Holy Synod, as the Supreme Court of Appeals of the Church, within 30 days of receipt of said judgment.

9. Judgments requiring the final deposition (defrocking) of clerics are effective only upon their confirmation by the Holy Synod.

10. Those protesting canonical penalties imposed by presbyters in the normal course of their pastoral responsibilities may appeal to the Diocesan Bishop within 30 days of the day when the penalty was pronounced. Those protesting canonical penalties imposed or confirmed by bishops in the normal course of their pastoral responsibilities may appeal to the Holy Synod of Bishops, as the Supreme Court of the Church, within 30 days of the day when the penalty was pronounced.

11. Trials are held subject to any other procedural rules as established by the Holy Synod.

12. No one shall be brought to trial more than once for the same alleged offense.

## **Section 6                      Written Complaint**

(a) Any review, investigation, assessment, and disposition of allegations of misconduct shall be based upon a written complaint signed by the alleged victim. The Diocesan Court shall be responsible for taking the steps necessary under the circumstances to cause the written complaint to be prepared and signed. At this time the Bishop also may contact the complainant and his or her family, and make pastoral resources available to them as the Bishop determines best.

(b) The complaint shall include (1) the names, addresses, and phone numbers of the complainant; (2) the victim if different; (3) the respondent (person alleged to be responsible for misconduct); (4) all possible witnesses, and any other individuals believed to have knowledge of the matter; (5) a statement of the facts and details of the alleged misconduct, including best recollections of time(s), date(s) and place(s); and (6) any other relevant information. The complainant may select one or more persons to assist in preparing the complaint.

(c) The complaint also shall contain the following language: "I (we) have read this complaint, understand its contents, and swear that the statements made and allegations contained herein are true to the best of my (our) knowledge and belief." The complaint shall be signed by the complainant(s) and the signature(s) notarized by an officer of The Diocesan Court authorized to take acknowledgements.

(d) It is possible that an investigation of allegations of misconduct will develop evidence of additional matters not mentioned in the initial complaint. In such cases The Diocesan Court, in the interest of fairness and an orderly investigation, may require that an

amended complaint be prepared that includes the new matter, and that is signed and notarized pursuant to subparagraph (c) of this paragraph.

## **Section 7                      Burden of Proof**

(a) As The Diocesan Court consider the evidence adduced during the investigation, and reasonable inferences that can be drawn therefrom, they shall be guided by the following procedures in evaluating the evidence and in making their recommendation:

(1) The complainant has the burden of proof to establish that the Respondent engaged in acts of misconduct;

(2) As a first step, there must be enough evidence from the complainant to cause The Diocesan Court or investigators to believe that one or more of the allegations are substantiated at that point. This generally must be more than the complainant's uncorroborated testimony standing alone. If the complainant meets this test, the so-called scales of justice temporarily would tip in favor of the complainant;

(3) If the preceding step happens, then the responsibility shifts to the respondent to show sufficient evidence to cause the scales of justice to tip back in his favor. This process can continue as witnesses are interviewed and evidence is produced. The scales could tip back and forth several times;

(4) When the investigation is concluded, The Diocesan Court, or investigators, must look at all of the evidence and reasonable inferences that can be drawn, and decide whether the complainant has persuaded them of the allegations;

(5) The standards of subparagraph (a) are subjective, and depend upon the judgments of The Diocesan Court or investigators about the credibility of witnesses, the extent to which important elements are explained or unexplained, and similar matters.

(b) The Bishop, when acting on the recommendation of The Diocesan Court or investigators, as applicable, may undertake a similar analysis, and shall conduct his own independent review and analysis of the evidence to make his decision.

## **Section 8                      Special Procedure for Marital Problems**

1. Whenever the parish priest is unable, through pastoral counseling, to prevent the dissolution of a marriage and the conflict results in a civil divorce and if the interested persons themselves seek from the Church a definition of their status as divorcees, a petition is filed with the Diocesan Court, which examines the documents and makes a new attempt at reconciling the parties.

2. If the reconciliation fails, the court shall come to a final decision. In issuing its opinion, the court may recommend that penance be imposed by the bishop upon the

guilty party/-ies. On the basis of this court decision, the bishop issues the following statement:

"Having heard the conclusion of the Diocesan Court of the \_\_\_\_\_ Diocese concerning the judgment of divorce rendered by the \_\_\_\_\_ Court of \_\_\_\_\_ dissolving the marriage between (Name) \_\_\_\_\_ and (Name) \_\_\_\_\_ celebrated at \_\_\_\_\_ on \_\_\_\_\_, I, \_\_\_\_\_, Bishop of \_\_\_\_\_ hereby acknowledge the conclusion of the civil court as final. [Invoking God's mercy and compassion, I allow (Name) \_\_\_\_\_ to enter into a new marital union with (Name) \_\_\_\_\_ and receive the sacraments of the Church starting on \_\_\_\_\_."

## **Section 9                      The Holy Synod as Supreme Court of Appeals**

1. The Holy Synod shall act as the Church's Supreme Court of Appeals.
2. If a person, clerical or lay, is dissatisfied with the judgment rendered in his case by a Diocesan Court, he may file an appeal addressed either to the Metropolitan or to the Secretary of the Holy Synod through the Chancery of the Church.
3. The Holy Synod shall take up the case at its regular session, provided the appeal has been filed at least a month before the session.
4. The accused shall be entitled to the rights specified in Section 4 (d) of the Article XI of The Statute of The Orthodox Church in America.
5. The Holy Synod shall never act as a court of first instance in cases which are within the competence of Diocesan Courts.
6. The rulings of the Holy Synod are final, except for those instances which the canons reserve to the judgment of the universal Church.

## **Section 10                      The Holy Synod and the Judgment of Bishops**

1. Accusations against bishops are referred directly to the Holy Synod, which is the court of first instance empowered to pass judgment in such cases.
2. If the accusations are considered to have substance either by the Metropolitan or by at least three members of the Holy Synod, and after the accuser's good character, irreproachable standing in the Church, and motivation have been established, the accused shall be summoned and judged by the Holy Synod in closed session. In cases of grave accusations involving the possibility of canonical deposition, the accused shall be called through a formal summons presented to him in person by three bishops.
3. If the accused refuses to appear after receiving three summonses, the Holy Synod shall suspend him from his duties and judge him in absentia.
4. Penalties against bishops judged guilty after trial, as well as against false accusers, are prescribed by the canons of the ecumenical and local councils and the holy fathers.
5. A judgment of deposition or defrocking of a bishop has final validity only when signed by at least 12 bishops. (If such need arises, bishops may be invited from neighboring ecclesiastical provinces to complete the quorum.)
6. The judgments of the Holy Synod are final, except for those instances which the canons reserve to the judgment of the universal Church.