



Diocese of Rockford

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LEGAL SERVICES

The Diocese of Rockford maintains a Legal Office consisting of the General Counsel and one support staff person which is responsible for coordinating the legal affairs of all Diocesan parishes, schools, cemeteries, agencies, and departments.

A. Procedure for addressing legal issues

1. The Legal Office provides legal services without charge to the parishes, schools, cemeteries, agencies, and departments of the Diocese.
2. When a legal issue arises, the administrator of the parish, school, or diocesan entity, or the administrator's delegate, should contact the Legal Office for consultation. The General Counsel will advise the administrator on the appropriate response to the legal matter. "Administrator" as used in this policy is the pastor or parochial administrator of a parish, the pastor and principal of an elementary school, the principal and superintendent of a high school, and the director of a diocesan department or diocesan entity.
3. Certain legal matters require expertise in a particular area of the law, or considerable time, and in such cases, a legal matter may be referred by the General Counsel to outside legal counsel for handling. See Section C.
4. Administrators of parishes, schools, and diocesan entities are not permitted to formally engage the services of outside legal counsel to handle a legal matter involving the parish, school, or diocesan entity without the prior approval and continued oversight of the Diocese's General Counsel.
5. No administrator in his or her own name, or on behalf of his or her parish, school, or diocesan entity may initiate, file, or threaten legal action against any entity or person without prior written approval from the Bishop's office. Administrators contemplating initiating or filing a legal action are encouraged to consult the Diocese's Legal Office before seeking the Bishop's approval.
6. Administrators of a parish, school or diocesan entity who encounter a legal matter not addressed in this memo should contact the Legal Office for direction.

B. Legal Matters handled by the Diocese's Legal Office

1. Most non-litigation legal work is handled directly by the Legal Office, at no charge to the parish, school or diocesan entity. Examples of work handled by the Legal Office include preparing and negotiating contracts for goods and services exceeding \$12,500.00, tax-exempt status applications on properties, filing of annual reports for high schools, student matters, parent/school matters, personnel matters, child safety matters, subpoenas for documents or testimony, cemetery matters, real estate matters including purchase or sale of property, preparing corporate resolutions for parishes, school, and diocesan entities to receive a gift, Diocesan policy matters such as the Employee Handbook or Youth Guidelines, and compliance with federal laws on discrimination and medical leaves.

2. All projects that entail the purchase of goods and/or services exceeding \$12,500.00 must be forwarded to the Chancery for approval. All contracts for such projects must be approved by the Legal Office and signed by a Chancery official. This rule applies regardless of whether the source of funds used to pay for the project is a donation, bequest, DIAL savings, or restricted funds. Please review the *Capital Projects Procedural Manual*.

Examples include a contract for janitorial services with a cleaning company; a contract for roof repairs or boiler replacement; a contract for remodeling school bathrooms; adding an addition to a rectory, parish office, etc.; purchases of chrome books for the school, etc. Services are provided at no charge to the parish, school, or diocesan entity.

3. Standard real estate transactions. Parishes, schools, and diocesan entities are required to follow the *Capital Projects Procedural Manual* when contemplating a purchase or sale of property. That document requires a parish, school, or diocesan entity to obtain approval from the Chancery before purchasing or selling real estate. Once approval is received, the Legal Office will assist the parish, school, etc. in reviewing and negotiating a listing agreement with a realtor if one is chosen, preparing and responding to offers and counter-offers to purchase and sale contracts, approving title insurance documents, and preparing and approving closing documents. The parish, school, or diocesan entity, or its realtor, is responsible for obtaining water and sewer certificates, arranging for showings, securing home inspectors, etc., as well as attending the real estate closing.
4. All notifications and documents from Estates of deceased persons received by parishes, schools, and diocesan entities must be forwarded to the Legal Office. Often, such documents require the signatures of corporate officers of the parish, school, or diocesan entity named as a beneficiary. Those signatures will be provided by the Chancery. The Legal Office will coordinate with the Diocesan Office of Charitable Giving which in turn will work with Pastors, Principals, and Agency Heads in providing the necessary documents to the Estate of the donor and the appropriate recognition to the family of the donors.
5. The administrator of a parish, school, or diocesan entity that receives a lawsuit (complaint and summons) is required to forward it to the Legal Office for handling.
6. The administrator of a parish, school or diocesan entity that receives, or whose employee receives, a subpoena for documents or a subpoena that requires a court appearance of any employee of the parish, school, or diocesan entity is required to forward it (along with all enclosures such as cover letters and riders) to the Legal Office for handling.
7. All requests from an attorney or guardian ad litem to a parish, school, or diocesan entity are to be referred to the Legal Office for response. These requests might be made by an attorney or guardian ad litem by letter, email, telephone, subpoena, or in person. The attorney or guardian ad litem might ask for information or documents, to interview an employee in person or on the phone, or the testimony of the administrator or employee at a hearing. Such requests are not uncommon in divorce and custody cases. The parish, school, diocesan entity, or one of its employees receiving the request should not respond to the attorney to guardian ad litem, but instead should forward the request to the Legal Office.
8. Personnel matters involving a school employee should involve the principal and pastor, or the principal and high school superintendent, and the Diocesan Superintendent of Schools, who will refer the matter to the Legal Office, if necessary. Personnel matters involving an employee of a parish or diocesan entity should involve the administrator of the parish or diocesan entity, and the Legal Office or, if the matter includes a financial aspect, the Diocesan Finance Office.

9. Parishes, schools, and diocesan entities receive requests for records from various sources.
 - a. A request made by a student, former student, or his or her parent/legal guardian that his or her student record or transcript be sent directly to an educational institution may be furnished to that educational institution. All other requests made by anyone, including a current or former student, for student records that are not to be sent directly to an educational institution, are to be forwarded to the Legal Office for response.
 - b. All requests to review or receive a copy of a current or former employee's personnel file are to be forwarded to the Legal Office for handling, regardless of whether the request is made by a current or former employee.
 - c. All requests for copies of teacher notes, incident or accident reports, interview statements or notes, and the like are to be forwarded to the Legal Office for response.
10. An administrator who is personally aware or informed of possible, suspected, or known neglect or abuse of a child, regardless of whether it occurred on Church or School premises, or a matter in which the Department of Children and Family Services ("DCFS") is or will be involved is required to immediately inform the Legal Office. A Mandated Reporter has a separate obligation under the law to report possible, known, and suspected sexual abuse of a minor to the DCFS hotline: 1-800-25-ABUSE.
11. Long terms leases, financing, and maintenance agreements for office machines, such as copiers, exceeding \$12,500.00 must be forwarded to the Chancery for approval, signed by a Chancery official, and approved by the Legal Office. Generally, these contracts are provided by large corporations or financial institutions, contain non-negotiable boilerplate language which is unfavorable to the parish, school, or diocesan entity, and are non-negotiable except for the term (duration) of the agreement. The Legal Office encourages parishes, schools, and diocesan entities to review *Considerations and Checklist for Leasing Photocopiers and other Office Equipment* before considering leasing, financing, and maintenance agreements for office machines. The *Addendum to Office Equipment Agreement*, is to be used with all office equipment leases regardless of the amount in the lease agreement.
12. An administrator of a parish, school, or diocesan entity wishing to lease all or part of a parish, school, or diocesan building or land to a third party is required to send such leasing agreements to the Diocesan Chancery for review and to receive any necessary permission. If a lease agreement is necessary, the General Counsel will prepare it.
13. The Legal Office offers the preparation of non-complex estate plan documents to diocesan priests at no charge. These documents include Power of Attorney for Property, Power of Attorney for Healthcare, Last Will, and completion of the post-mortem instructions form. Priest are encouraged to contact the General Counsel for this service.
14. A parish, school, or diocesan entity that receives a criminal history background check result that has a "hit" must promptly forward the documentation to the Legal Office for review and recommendation.

C. Legal Matters generally handled by outside counsel selected or approved by the Legal Office

Given the limited size of the Diocese's Legal Office, and the time or expertise required of certain legal matters, not all matters encountered by a parish, school, cemetery, agency, or department are handled

by the Diocese's Legal Office. In those circumstances, the cost of outside counsel representation is paid either by Diocesan insurance plan or the parish, school, or diocesan entity, depending on the nature of the matter. The matters that the Legal Office generally does not handle are the following:

1. Lawsuits involving accidents and injuries covered under the Diocesan property insurance plan, such as slip and fall cases, are required to be reported to the Legal Office. They will be assigned by the Legal Office to insurance defense counsel, with oversight by the General Counsel. Costs of legal representation are covered by the Diocesan property and liability insurance plan, or the workers compensation insurance plan.
2. On occasion, a particular litigation may not be covered by the Diocesan property insurance plan. Examples include a breach of contract dispute/lawsuit or a lawsuit claiming an intentional wrongful act resulting in injury, although this second example is rare. These matters are required to be reported to the Legal Office. The Legal Office generally refers these cases to outside legal counsel for defense, and the parish, school, or diocesan entity represented by outside counsel is responsible to pay costs of this representation.
3. Unusual aspects of real estate transactions. As discussed in Section B, paragraph 3 above, standard real estate transactions involving the purchase or sale of property are handled by the Legal Office. However, the Legal Office generally does not handle land use issues and hearings before local governmental bodies, prescriptive easement claims, etc. In these cases, the parish, school, or diocesan entity may hire a local attorney to represent it at land use hearings, zoning board hearings and the like. The local attorney must have expertise in real estate law and be approved by the General Counsel. Alternatively, the Legal Office will refer the matter to an outside counsel with the required expertise. The costs of local attorney and outside counsel representation are the responsibility of the parish, school, or diocesan entity.
4. To ensure proper representation for the parish, school, or diocesan entity, complex construction contracts generally will be referred by the Legal Office to outside counsel who specializes in complex construction law and negotiating AIA Construction contracts that require extensive expertise and/or time. The parish, school, or diocesan entity is responsible for the costs of outside counsel representation. Please review the *Capital Projects Procedural Manual*.
5. Although certain legal matters will be referred to outside counsel for handling, administrators are to notify the Legal Office of all legal matters in order to begin the process of determining whether referral to outside counsel or a local attorney of the administrator's preference, should occur.

D. Receiving a "Do Not Destroy" notice from the General Counsel

When a lawsuit is filed or anticipated to be filed against a parish, school, cemetery, agency, or the Diocese, the law requires that all documents and tangible items relevant to the lawsuit be preserved and not destroyed. The following applies:

1. The obligation to preserve documents and items arises when an administrator or other employee receives a Do Not Destroy notice from the General Counsel. Failure to preserve relevant documents and items can have serious consequences, including a judgment being entered against the party who failed to preserve the documents, even if the failure was not intentional.
2. "Relevant" documents and items is interpreted very broadly. Thus, when identifying documents and items subject to the notice, err on the side of caution. When in doubt, preserve.

3. “Documents and tangible items” include not only papers but also electronically stored information such as emails, text messages, voice messages, social media posts, yearbooks, accident reports, payroll records, timesheets, personnel files, photographs, student records, and other items that may be relevant to the particular matter.
4. An administrator or other employee who receives a Do Not Destroy notice from the General Counsel must take steps to ensure that documents and items relevant to the particular matter are preserved. This may require overriding a computer program that automatically deletes emails after a certain period and/or excepting from a retention policy in place at the parish, school, or diocesan entity those documents and items that may be relevant to the particular matter.
5. All documents and items preserved pursuant to a Do Not Destroy notice must be preserved until the General Counsel informs the administrator or employee that the notice is no longer applicable.
6. If an administrator or other employee receives a Do Not Destroy notice from the General Counsel, details will be provided about the legal matter and possible documents and items that may be relevant.

Contact Information for Legal Office:

Sally Arndt, Assistant: 815.398.3312 sarndt@rockforddiocese.org

Ellen B. Lynch, General Counsel: 815.387.3307 elynch@rockforddiocese.org

Resources found on the Diocese website www.rockforddiocese.org, under Documents and Forms, the Chancery section:

Capital Projects Procedural Manual
Considerations and Checklist for Leasing Photocopiers and other Office Equipment
Addendum to Office Equipment Lease