

MODEL CONGREGATIONAL PEACEMAKING PROCEDURES

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The following definitions and rules of procedure ("Rules") govern the conduct of mediation and arbitration by [name of congregation], hereinafter referred to as "congregation."

DEFINITIONS

Biblical peacemaking conducted within a congregation includes a variety of forums to resolve a dispute out of court. In these rules peacemaking may refer to consulting with one or all parties on peacemaking alternatives, facilitating discussions between opposing sides or using formal processes, such as mediation or arbitration. In the same way, "peacemaker" is used as a substitute word for mediator or arbitrator. Formal processes include:

- a. Mediation, a process in which one or more mediators help parties arrive at a voluntary settlement of disputed issues.
- b. Arbitration, a process in which the parties submit disputed issues to one or more arbitrators for a legally binding decision.
- c. Mediation/Arbitration, a process in which the parties begin with mediation and any issue which can't be agreed upon goes to arbitration.

GENERAL RULES

[These rules apply to both mediation and arbitration.]

1. Purpose. The purpose of peacemaking is to glorify God by helping people to resolve disputes in a non-adversarial manner. In addition to settling substantive issues, peacemaking offers the perspective of biblical values to foster reconciliation between parties alienated by conflict. These Rules shall be interpreted and applied in a manner consistent with this purpose.
2. Agreement. All parties to a dispute or conflict must sign a written agreement for the case to be handled by congregational peacemakers. This agreement includes these Rules as terms of the agreement. The agreement or an attached exhibit shall contain a statement of the issues to be resolved. The peacemakers shall accept only those issues which the parties mutually agree to submit to the peacemaking forum. Unless otherwise determined by the congregation constitution or policy the senior pastor or rabbi will serve as the executive agent for the congregation in administering the peacemaking forum and

these procedures.

3. Businesses as Parties. When one of the parties to a dispute is an incorporated business or a partnership, the business board of directors must appoint in writing a person or persons to take part in peacemaking proceedings with full authority to resolve the issues submitted.

4. Involvement of Insurer. If a dispute or claim submitted to peacemaking involves an alleged injury or damage that may be covered by a party's insurance, the insurer may be invited to participate in the process in order to facilitate a prompt and equitable resolution. A participating insurer shall have the same privileges under these Rules as a party with regard to selecting peacemakers. Parties need to discuss with their insurers any provisions existing in their insurance policies that would preclude or hinder settlement through Christian peacemaking.

5. Suspension of Legal Proceedings. No party having signed the agreement for peacemaking shall start a lawsuit, or other legal or administrative proceeding against any of the other parties who have signed the agreement. If a suit or other proceeding has already been started, the parties involved shall take action to suspend or dismiss those proceedings and shall not resume such proceedings until the congregation peacemaking process is terminated according to these Rules. All parties shall instruct their respective attorneys in writing to obtain the necessary court continuances (postponement) to comply with this paragraph, and provide copies of the letter to the congregation and the other parties.

6. Confidentiality.

- a. Because of its biblical nature, congregational peacemaking encourages parties to openly and candidly admit their shortcomings which may have contributed to a particular dispute. Thus, peacemaking requires an environment where parties may speak freely, without fear that their words may be used against them in a subsequent legal proceeding.

- b. Since these proceedings are for settlement purposes, the parties agree that all

communications, oral or written, of any nature, declared, disclosed or uttered during pastoral/staff interviews, mediation or arbitration sessions, or preparations for these sessions, shall be kept confidential and shall not be revealed or introduced by any party or the congregation in any other forum. No confidential communications of cases handled under these Rules shall be offered as evidence or for any other purpose in any present or future legal or administrative proceeding or subjected to discovery.

c. Arbitration awards shall not be confidential in so far as they must be filed with a civil court for confirmation or enforcement.

d. Congregation leaders or peacemakers may disclose appropriate and necessary information provided by parties pursuant to these rules and the parties agree to hold the congregation and its leadership harmless for doing so under the following conditions: (1) when disclosure is compelled by statute or court of law, (2) when consultation is necessary with experts regarding settlement issues or problems that arise during a case, (3) when contact is made with appropriate civil authorities to prevent a person from being harmed, and (4) when the parties and the congregation leader(s) agree, in writing, to disclose to third parties.

e. The parties agree not to subpoena or summon any peacemaker or any member of the congregation as a witness in any deposition, administrative or judicial proceeding involving any matter submitted to a congregation peacemaking forum. Parties are not limited in introducing in any other forum any information or matter that was already known to or in their possession prior to the submission of the case to the congregation or obtained by other means.

7. Right to Legal Counsel.

a. Peacemaking can affect legal rights and responsibilities. Therefore, each of the parties has the right to be assisted or represented by an attorney during the peacemaking process. Parties shall provide the names, addresses and telephone numbers of their attorneys to the congregation, which may contact the attorneys to invite their cooperation in the peacemaking process.

b. A party must notify the congregation at least five (5) days in advance if he or she desires to have his or her attorney present at the peacemaking meeting. During

peacemaking sessions attorneys may represent and speak for their clients, but attorneys will be expected to respect the purpose of the peacemaking forum.

8. Readiness for Peacemaking. The congregation or the peacemakers may assign homework that will foster self-examination of attitudes, as well as to enable the parties to state their issues and desired remedies. The peacemakers will review the homework to assure completeness before the peacemaking forum begins.

9. Appointment of Peacemakers. Unless the congregation constitution provides for another method, a peacemaking panel consisting of three peacemakers shall be selected in the following manner.

a. Each of the parties to the dispute shall name a peacemaker and the two peacemakers shall select a third person.

b. All peacemakers shall be members in good standing with the congregation. The peacemakers shall be persons whose character is above reproach.

c. All peacemakers must disclose to the congregation and the parties any conflict of interest or any other reason that would likely affect their impartiality prior to the commencement of the peacemaking forum. Upon such disclosure either party may disqualify the peacemaker and another peacemaker shall be selected by the procedure in 9a. above.

10. Limitation of Peacemakers. Attorneys and professional counselors serving as peacemakers do not provide legal advice or psychological counseling to individual parties as a part of the peacemaking process. Also, no peacemaker serving under these rules may act as an advocate or representative for any of the parties.

11. Replacement of Peacemakers. Any peacemaker who withdraws, is disqualified, or is otherwise unable to perform the duties of the office, may be replaced pursuant to Rule 9 of these Rules. In the event of a vacancy in a panel of peacemakers, the remaining peacemakers may continue with the peacemaking if the parties agree.

12. Panel Moderator. The congregation may provide a moderator for each peacemaking forum. The moderator may make decisions for the efficient conduct of the sessions. The decisions of the moderator can be overruled by the peacemakers. The moderator will not

have a vote in any decision of the peacemakers on any procedural or substantive issue, including an arbitration award.

13. Contact With Peacemakers. Parties shall not communicate privately with the peacemakers outside of scheduled peacemaking meetings regarding any matter discussed in these meetings. Any such oral or written communications from the parties to the peacemakers shall be directed to the congregation office for transmittal to the peacemakers and all other parties.

14. Termination. Peacemaking may be terminated under the following conditions:

a. The congregation may terminate mediation or arbitration at any time if the congregation decides that peacemaking is inappropriate or ineffective.

b. Any party may withdraw from mediation at any time. The party who withdraws must provide written notification to the congregation and the other parties of the withdrawal. A mediation case remains pending until either an agreement is reached and signed or written notification of withdrawal is provided.

c. A party may withdraw from mediation/arbitration or arbitration only with the written consent of all other parties to the agreement.

15. Consideration of Children. When the care, custody, support, residence, or any other issue pertaining to a child is involved in the dispute, the peacemakers have a duty to ensure that the parties consider the best interests of the child. Peacemakers may privately interview the child to determine the child's desires, as well as to clarify the child's understanding of the peacemaking process and outcome. Also, peacemakers may order appropriate home studies or police background checks, or subpoena such evidence as the peacemakers deem pertinent to deciding the issues.

16. Costs. The congregation provides its peacemaking ministry free of charge to its members. The agreement for peacemaking service may include a statement requiring reimbursement of special expenses incurred by the congregation or the peacemakers.

17. Use of Evidence. Parties shall cooperate with the congregation and each other in providing a full and fair disclosure of all information, including documents, names of

witnesses and other information that will contribute to an understanding of the dispute. The parties may offer any evidence that they consider relevant to the dispute. The parties shall produce any evidence requested by the congregation or the peacemakers. Conformity to legal rules of evidence shall not be necessary. Parties desiring to have witnesses take part in peacemaking sessions must notify the congregation as soon as possible so that all parties may be informed. The parties are responsible for notifying their witnesses of the time and place of all peacemaking sessions.

18. Record of Proceeding. There shall be no stenographic, audio tape, video tape or other record of any peacemaking meeting unless approved by all the parties and all the peacemakers. The use of any such approved record is subject to Rule 6 of these Rules.

19. Application of Law. Peacemakers shall take into consideration any local, state, or federal statutes or court guidelines that the parties bring to their attention, but the Holy Scriptures (the Bible) shall be the supreme authority governing every aspect of the peacemaking process. If these Rules vary from statutes governing mediation and arbitration, these Rules shall be followed unless the statutes forbid being superseded.

20. Interpretation of Rules. The peacemakers shall interpret and apply the rules contained herein that relate to their powers and duties. All other rules contained herein shall be interpreted and applied by congregation leadership.

21. Immunity of Peacemakers. The parties agree that the congregation, its staff, employees, officers and peacemakers shall be immune from civil liability in damages for all acts within the scope of the peacemaking process.

22. Scheduling Sessions. The congregation arranges the time and place for the first peacemaking session after taking into consideration the preferences of the parties and the peacemakers. Additional sessions may be scheduled by the peacemakers as needed.

MEDIATION RULES

23. Role of Peacemakers. The peacemaker's role is to promote the constructive and balanced discussion of issues and to assist the parties in evaluating the fairness, equity and feasibility of proposed options for settlement. Except as limited by

Rule 10 of these Rules, peacemakers may define the legal issues requiring resolution and suggest options for the parties to consider, including drafting proposals.

24. Attendance at Sessions. Peacemaking sessions shall not be open to the public. All parties must be present at mediation sessions. In addition to witnesses being present, pastors, attorneys or support persons may be present as observers or advisors to parties. These observers or advisors may take part to the extent the parties mutually agree. All persons admitted are subject to the confidentiality rule of these Rules.

25. Participation in Sessions. Parties are expected to speak for themselves and communicate directly with each other in the presence of peacemakers and others admitted to the sessions. Parties may be assisted in their communication when limited by a physical handicap or when English is a second language.

26. Mediation Organization. Mediation normally begins with prayer and an introduction to clarify ground rules, followed by a period for each of the parties to share his or her view of the facts and issues. The problem-solving phase comes next during which the desired remedies of the parties, as well as other possible options for solution, are discussed until an agreement is reached. (The entire process may take more than one session.) Mediation is concluded with a summary by the peacemakers and prayer for the parties.

27. Use of Caucuses. During the course of mediation the peacemakers may meet separately (caucus) with any party to discuss the party's conduct and responsibilities, as well as possible solutions to the dispute. Unless agreed otherwise, the peacemakers may eventually discuss with the other parties any information obtained during a caucus.

28. Agreed Solution. At the end of mediation the peacemakers shall prepare an informal memorandum listing the agreements reached between the parties and provide copies to the parties and their attorneys. Parties may obtain independent legal review of the proposed settlement before signing. If the parties want the agreement to be legally enforceable, they should consult their attorneys for preparation of formal legal documentation.

29. Advisory Opinion. If the parties are unable to reach a voluntary agreement, the

peacemakers shall issue an advisory opinion to the parties or to the court when there is a pending lawsuit. An advisory opinion recommends a plan for settlement of the dispute or reconciliation of the relationship. Such an opinion has no legally binding effect unless adopted by the competent court of jurisdiction.

30. Arbitration. The parties may combine binding arbitration with mediation or agree for arbitration alone to assure a guaranteed settlement. When mediation/arbitration is contracted, the transition from mediation to arbitration shall take place when either the peacemakers decide or the parties agree that further mediation will not resolve the outstanding issues. The General and Mediation Rules of these Rules apply to arbitration except as limited by the following Arbitration Rules.

ARBITRATION RULES

31. Presence of Parties. The parties should be present and speak in person to the issues. Any party may be represented at arbitration sessions by legal counsel or other representatives. The congregation shall give each party at least ten (10) days written notice of the time, place and conditions of any arbitration session, unless the parties agree to modify or waive such notice. Arbitration may proceed in the absence of a party who, after due notice, fails to be present or fails to obtain a postponement from the peacemakers.

32. Conduct of the Sessions. Arbitration sessions may be conducted by the peacemakers in any manner which permits a fair presentation of the case by the parties. Peacemakers may impose appropriate time limits on presentations, as well as length and number of sessions, to expedite the arbitration.

33. Evidence. The peacemakers shall be the final judge of the relevance and significance of the evidence offered. All evidence used in arbitration shall be taken in the presence of all the peacemakers and all the parties, except when arbitration proceeds without a party according to Rule 31 of these Rules.

34. Closing of Arbitration. The peacemakers shall ask whether the parties have any further proofs or testimony to offer. Upon determining that the presentations are concluded, the peacemakers shall declare the arbitration closed.

35. The Award. The award shall be in writing, signed by the peacemakers and rendered promptly, not later than thirty days following the closing of the arbitration. Any settlement reached by the parties may be included in the award. The peacemakers may grant any remedy or relief they believe scriptural, just and equitable, but they shall not be required to explain their reasons for the award.

36. Delivery of Award to Parties. The congregation shall prepare the award as instructed by the peacemakers, obtain the signatures of the peacemakers and deliver the award to the parties. The congregation may at its discretion mail the award or a true copy of it to the parties at their last known addresses or to their attorneys; arrange for personal service of the award; or file the award in any other manner that may be prescribed by law.

37. Modification of Award. A party may submit a request to the congregation for a change or correction of an award within fourteen (14) days after the day the award was received by the parties. A request will not be considered if it simply asks the peacemakers to rethink their decision. An award may only be changed when (1) there was an evident miscalculation, (2) there was a mistake in identification, or (3) the award is imperfect in form and needs clarification. The request, which must also be sent to the other parties, shall explain in writing the reasons for seeking the change or correction and a statement of the claimed miscalculation, mistake or imperfection. If the request is granted, the peacemakers shall define the issues being reviewed and the parties may submit any information they wish to be considered.