

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

Canonical Delicts Involving
Sexual Misconduct *and*
Dismissal *from the*
Clerical State



Washington, D.C.

In spring 1993 the Canonical Affairs Committee of the National Conference of Catholic Bishops authorized the preparation of an instruction for the application of the judicial penal process. The document, *Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*, was prepared by Msgr. John A. Alesandro with the assistance of canonists with expertise in penal law. It was reviewed by the Canonical Affairs Committee, approved by the Administrative Committee in September 1994, and is authorized for publication by the undersigned.

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INTRODUCTION

This document seeks to provide some practical guidelines on the application of the process of dismissal from the clerical state of a cleric who has violated canon 1395, specifically, the cleric who has sexually abused a minor. The Canonical Affairs Committee of the National Conference of Catholic Bishops has developed this instruction to clarify the steps of the process and the principal questions that tend to arise in such cases.

The instruction (cf. c. 34), which is meant to serve as an aid to Latin-rite bishops and diocesan officials, is necessarily technical in nature, but the approach seeks to be practical and useful, a fairly concise handbook for those called upon to implement a process that is rather rarely invoked. If, in a particular case, more complex procedural and substantive issues are encountered, experienced canonists and the canonical manuals should be consulted. Cases involving Eastern-rite clerics are governed by the Eastern Code although some of the comments here, *mutatis mutandis*, may be helpful in addressing such situations as well.

For several years, the representatives of the NCCB discussed with Roman officials the possibility of developing a more streamlined procedure to deal with such cases than that found in the Code of Canon Law. Serious consideration was given to a non-penal approach modeled on the administrative removal of a pastor and appropriately modified to safeguard the canonical rights of the cleric. The personal intervention of the Holy Father in this dialogue led to the establishment of a joint commission of two bishops and four canonists from the Holy See and the NCCB to study the judicial process for the imposition of a penalty in the Code of Canon Law with a view to suggesting ways of facilitating its use rather than developing a completely new process. The commission submitted for consideration a written set of observations on the law and proposals.

The Canonical Affairs Committee, after reviewing the report of the joint commission, undertook to develop a set of guidelines or instructions to assist those called upon to apply the judicial penal process. At the same time, the committee drew from the joint commission's report several recommendations for particular derogations of the law in this area, dealing principally with the age of a minor and the statute of limitations, as a way of facilitating the use of the process in cases of sexual abuse of a minor by a cleric.

These derogations, which were adopted by the conference of bishops in November 1993 were submitted to the Holy See on November 30, 1993. They were modified by the Holy Father in accordance with recommendations of the above-mentioned joint commission and promulgated on April 25, 1994, effective immediately for a period of five years. The promulgated norms have been incorporated into this instruction.

A. CELIBATE CHASTITY

All persons are called to live a chaste life in accordance with their particular state in life. Clerics are subject to special canonical penalties in the area of sexual misconduct because they are obliged to observe perfect and perpetual continence and therefore to live a chaste celibate life. The vocational choice to remain celibate for the sake of the kingdom of heaven is not simply an ideal. It has implications for the legitimacy of the cleric's behavior in the area of sexuality. He must be careful not only about the morality of acts but even about the way that his conduct may reflect on his commitment to the observance of celibate chastity. This is stated expressly in canon 277.

Canon 277.

- § 1. Clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven and therefore are obliged to observe celibacy, which is a special gift of God, by which sacred ministers can adhere more easily to Christ with an undivided heart and can more freely dedicate themselves to the service of God and humankind.
- § 2. Clerics are to conduct themselves with due prudence in associating with persons whose company could endanger their obligation to observe continence or could cause scandal for the faithful.
- § 3. The diocesan bishop has the competence to issue more specific norms concerning this matter and to pass judgment in particular cases concerning the observance of this obligation.

Even those clerics who are ordained as married men, such as permanent deacons and others ordained to the priesthood with special permission of the Apostolic See, are canonically bound to continence with all persons except their spouses. Though not celibates, they are still bound as clerics to live a chaste life that is in accordance with their status.

Because of the commitment to perfect and perpetual continence, sexual misconduct on the part of a cleric can be a source of great scandal to Catholics and non-Catholics alike. This is why the diocesan bishop has the right to issue specific norms and guidelines that relate to the observance of this obligation by clerics and to judge whether a particular cleric

has violated his duty in this area. It is also the theological basis for the Church's decision in canon 1395 to classify certain grave forms of clerical sexual misconduct, such as the sexual abuse of minors, as canonical delicts.

B. CANON 1395

For any person, cleric or non-cleric, to abuse a child sexually is a very serious violation of the moral law. Our society subjects such persons, whether cleric or lay, to criminal prosecution and punishment for such acts. In the Church, because of the cleric's special rights, duties, and privileges, canon law singles him out in this area and allows his misconduct to be punished canonically while a lay person who commits the same acts is not subject to similar ecclesiastical penalties.

Canon 1395.

- §1. Outside the case mentioned in can. 1394 [attempted marriage by a cleric], a cleric who lives in concubinage or a cleric who remains in another external sin against the sixth commandment of the Decalogue which produces scandal is to be punished with a suspension; and if such a cleric persists in such an offense after having been admonished, other penalties can be added gradually including dismissal from the clerical state.
- §2. If a cleric has otherwise committed an offense against the sixth commandment of the Decalogue with force or threats or publicly or with a minor below the age of sixteen, the cleric is to be punished with just penalties, including dismissal from the clerical state if the case warrants it.

The two paragraphs of **canon 1395** apply to a number of situations.

1. **Persistent Misconduct**

The first paragraph addresses sexual misconduct of a **persistent kind**:

A cleric who lives in concubinage. (This is comparable to the cleric who has entered a civil marriage, a matter treated specifically in canon 1394, §1.)

Similar to concubinage, a cleric who persists in some other ongoing scandalous external sin against the sixth commandment. This would include a cleric who openly cohabits with a homosexual partner or engages in an ongoing course of scandalous homosexual or heterosexual activities comparable to cohabitation.

In the cases covered in §1, the appropriate penalty is suspension, which is

a censure or *medicinal penalty* whose purpose is to correct such abuses and return the cleric to a life of celibate chastity. If, after warnings, however, the cleric *persists* in the offense without any indication of repentance, the cleric may be dismissed from the clerical state. The *persistence* of the cleric in the prohibited way of life transforms the offense into one in which an *expiatory penalty* rather than a medicinal penalty may be the only effective way of dealing with the situation.

2. Aggravating Circumstances

The second paragraph applies to a cleric whose violation of the sixth commandment has been aggravated by especially heinous circumstances:

A sexual offense against another perpetrated by the use of *force* or *threats* such as an act of rape against a woman or a man, even if the victim is not a minor.

A sexual offense committed in a *public* manner such as an act of exposure or lewd conduct in a public place, even if no minor is involved (e.g., between consenting adults).

A sexual offense with a young man or young woman who is not yet sixteen years of age, even if committed secretly and without any physical force or threats.

As of April 25, 1994, “sixteen” has been raised to “eighteen” for all acts that would subject the cleric to prosecution in a diocesan tribunal located within the territory of the National Conference of Catholic Bishops. (“With regard to can. 1395, §2: this norm is to be applied to delicts committed with any minor as defined in can. 97, §1, and not only with a minor under sixteen years of age.” Secretariat of State N. 346.053, *Rescript from Audience of His Holiness*, 4/25/94, §1.)

Notice that a sexual offense violative of §2 need not be a complete act of intercourse, nor should the term be equated with the definitions of sexual abuse or other crimes in civil law. The norm is whether the act in question is an external act that qualifies as an *objectively grave violation of the sixth commandment*. If there is doubt about whether a specific act fulfills this definition, the tribunal should consult the writings of recognized moral theologians and, if necessary, obtain the opinion of a recognized expert.

The sexual offenses specified in §2, if continued after a warning, may be punished by a censure or other **medicinal penalty**. Moreover, worse than

the offenses in §1, they represent an especially despicable violation of the cleric's duty since they involve acts that generally victimize another person and cause grave scandal and harm to the Church. Consequently, even *without persistence*, such acts are punishable by **expiatory penalties**, including dismissal from the clerical state *if the circumstances warrant it*. In this regard, the individual facts must be carefully weighed to determine whether the harm of the delict in question rises to the level that calls for a permanent expiatory penalty.

In these cases, the initiation of the process of dismissal does not require the cleric's disregard or disobedience of prior admonishments or other acts of correction as is the case with delicts enumerated in §1. The critical issue is not whether the cleric has been warned to cease and desist and has *persisted* in his offense (although repeated violations after such warnings would clearly strengthen the case for dismissal), but simply whether the *heinousness of the delict* is such as to warrant dismissal.

Although canon 1395 applies to many different delicts of sexual misconduct by clerics, this instruction focuses on the imposition of the expiatory penalty of dismissal for a sexual offense of a cleric committed with a minor. One must bear in mind, however, that sexual abuse of a minor may not be a solitary offense; there may be multiple delicts subject to punishment. The same act may implicate various delicts such as the case in which the cleric has elicited the cooperation of a minor through threats of violence or has sexually abused the minor by the use of physical force; in other cases, the act of sexual misconduct may be substantially connected with other delicts such as solicitation in the confessional (c. 1387), violation of the seal (c. 1388, §1), or abuse of office (c. 1389, §1).

C. INITIAL INVESTIGATION AND DETERMINATION

While pointing out less drastic remedies that might be employed to correct sexual misconduct, this instruction is meant to address principally the canonically correct method of dealing with the serious pastoral situation in which a cleric is guilty of a *canonical delict* for which *dismissal from the clerical state* may be appropriate. At the outset, therefore, it should be stated very clearly that no bishop should initiate a judicial process for the imposition of a canonical penalty unless he is reasonably certain of *two facts*:

1. That the cleric is **guilty of the canonical delict** in question (even though the establishment of such a fact in a judicial proceeding may be difficult and may not prove to be successful).
2. That (assuming, *arguendo*, that proof of guilt will be successful) the canonical imposition of a penalty that may include dismissal from the clerical state is the **appropriate method** of dealing with the overall pastoral situation.

When considering these two threshold facts, the most important factor is the question of the cleric's guilt in committing canonically punishable acts. The decision to initiate the process must turn on the objective truth of the commission of proscribed acts. It should never be based on rumor, surmise, suspicion, personal propensities, or even on known past acts that are no longer canonically prosecutable. Thus, the *preliminary investigation* and *initiator decree* are extremely important steps. They should determine whether there is a factual basis for the imposition of a canonical penalty or merely a suspect situation that should be addressed, and whether the judicial process seeking dismissal from the clerical state should be initiated or some other appropriate disciplinary or penal remedy should be used.

1. Investigation (cc. 1717-1719)

Information about sexual misconduct often comes to the bishop's attention through a complaint. Should every complaint give rise to an investigation? The canons require very little substance to impose the duty of investigation on the bishop. If the information "*at least seems to be true*, he shall cautiously inquire personally or through another suitable person about the facts and circumstances and about imputability" (c. 1717, §1). Any such preliminary information is to be kept in the secret archives

unless it is needed for a penal process (c. 1719).

Every complaint that provides reasonable substance and sufficient facts to be pursued should be investigated. Even an anonymous complaint, if it seems reasonable and admits of some verification for or against, should be carefully followed up. Of course, in some cases, the commission of the delict may be obvious to all, possibly as a result of the cleric's own admission. In such a case any "prior" investigation may be waived under canon 1717 as "superfluous."

The investigation must be careful, from the start, to protect the reputation of all persons involved (c. 1717, §2). This concern applies at every stage of any process, whether administrative or judicial.

Who is an appropriate investigator? First, it is important to recognize who should *not* investigate. The preliminary investigator is disqualified from serving as a *judge* if a penal process is afterwards initiated concerning the matter under investigation (c. 1717, §3). Thus, any diocesan official who may be needed as a judge should have nothing to do with the investigation.

Second, it is preferable that the *diocesan bishop* himself not conduct the investigation. He must be in a position to evaluate its results objectively; personal involvement may interfere with this critical duty.

Third, there is a tendency at times to resort to the opinions of psychiatric *experts* to substitute for effective investigation. A "work-up" by a professional counselor or clinic may unearth propensities for misconduct, but it does not of itself demonstrate whether the acts upon which dismissal would be based did in fact occur.

An investigator must be discreet, sensitive in dealing with the alleged victim and the accused, endowed with a great deal of common sense, and able to get to the truth of the matter. Although the investigator need not be a priest, a priest may be more effective in speaking with those concerned, especially the accused; on the other hand, persons specially trained in dealing with children and their parents may be more effective for those persons. Thus, in some cases a team approach may be advisable, provided that there is coordination of information and an assessment by one knowledgeable about the canonical process.

The investigator is free to use any legitimate means to uncover the truth or falsity of the allegations and is to present all findings to the bishop. In

this regard, it should be noted that the investigator “has the same powers and obligations as an auditor” (c. 1717, §3) and should observe the procedural norms of canons 1558-1571 in so far as applicable.

The investigator must balance a healthy skepticism with respect for others. Clerics are in a position where they are subject to false accusations. Such an eventuality and the damage to the cleric’s good reputation (c. 220) should not be dismissed but given appropriate consideration. On the other hand, it is also difficult to bring and maintain an accusation against a cleric, especially if the alleged victim is a child and the cleric makes a forceful denial of the accusation. The investigator must make it easy for the child and his or her parents to share the information needed to determine the truth of the matter and to assess the seriousness of the misconduct.

The investigator should review every document pertaining to the accused cleric, regardless of location, to determine whether there were ever any previous accusations against him. The investigation should determine accurately the credibility of the accuser and of the accusation itself. To do this, knowledgeable and reliable witnesses (including other priests, deacons, religious, and lay persons) may be asked about the life, morals, and reputation of both the accuser and the accused; whether the person who brought the complaint is credible, or is known for lying, calumny, or other relevant traits, or is otherwise unreliable; whether there is any hatred, jealousy, or enmity known to exist between the one bringing the complaint and the accused cleric. Finally, if, in the course of the investigation, allegations concerning other persons surface (either as victims or as perpetrators), these allegations should also be investigated in the same manner.

2. Determination (c. 1718)

If the investigation has collected sufficient evidence to make a determination, the bishop must decide the following:

- a. Does the cleric’s **conduct** represent a basis for initiating a penal process? In other words, has the cleric in fact committed a canonically imputable delict?
- b. If so, is it still **possible** to initiate a penal process?
- c. If so, is it **expedient** to initiate a penal process?

As regards this last point, canon 1341 lists three *goals* about which a

bishop must be concerned when considering a response to misconduct:

1. **Repair** the harm caused by scandal.
2. **Restore** justice.
3. **Reform** the accused cleric.

Will these goals be achieved by a judicial process for the infliction of a permanent penalty, or should the matter be addressed (at least for the time being) in some other way, e.g., by non-penal disciplinary actions or temporary penalties (c. 1718)?

In making this preliminary determination, the bishop should not proceed against a cleric unless and until he is reasonably certain of the cleric's guilt. Only when the initial investigation has confirmed for him the truth of the allegations should the bishop initiate a judicial process to impose a permanent canonical penalty on the accused cleric. Suspicion is no basis for imposition of such a drastic canonical penalty.

Normally, the bishop should consult personally with the accused cleric. This is not technically required by canon 1718, but it is required by canon 1469, §3 of the Eastern code and represents a practical and pastorally sensitive way for the bishop to make his determination of the appropriate steps to be taken.