

# **A MANUAL FOR CANONICAL PROCESSES FOR THE RESOLUTION OF COMPLAINTS OF CLERICAL SEXUAL ABUSE OF MINORS**

The following steps are operative in the process to be used when the diocesan bishop receives an allegation of sexual abuse of a minor by a cleric, each of which will be considered in greater detail below:

1. Lodging of complaint with diocesan bishop
2. Preliminary Investigation
3. Referral to the Congregation for the Doctrine of the Faith
4. Subsequent canonical process

## **Step One: Lodging of Complaint with Diocesan bishop**

### **A. Receipt of a complaint**

The process for the resolution of allegations of sexual abuse of minors by members of the clergy begins after a complaint of a possible infraction is received by the diocesan bishop. There are several possible sources for complaints (*CIC*, c. 1717 § 1): the alleged victim; a third party (*e.g.*, a parent or guardian); anonymous sources; the public sphere (*e.g.*, media outlets), etc. In all cases, each and every complaint shall be treated promptly and seriously. No complaint shall be dismissed without at least a minimum of prompt and serious attention.

As a rule, the complaint should be made in writing. It should be signed by the complainant, dated, and then notarized by an ecclesiastical notary. The complaint should be as detailed as possible with regard to the identity of the accused, the nature of the acts, the time and place of the acts, and special circumstances surrounding acts (*e.g.*, use of drugs/alcohol, force/threats, gifts/promises, etc.). A complaint may be lodged orally if circumstances so require. In these cases, the complaint should still be put down in writing by an ecclesiastical official and duly notarized. If possible, it should then be reviewed and signed by the complainant.

Anonymous complaints, or complaints by those who wish to remain anonymous, shall also be given due consideration. It should be kept in mind, however, that the identity of the accuser and/or alleged victim will ultimately have to be revealed to the accused (except for cases involving the sacrament of

penance). Still, the initial treatment of the complaint may proceed even though the identity of the complainant is not yet known or revealed.

Allegations may also arise without the actual lodging of a complaint directly to the Church. This could happen, for instance, if an alleged victim tells his/her story to the media, but does not approach ecclesiastical authorities with a complaint. If the diocesan bishop becomes aware of the allegation, an obligation to examine it may still exist even though the alleged victim did not approach the diocesan bishop.

#### B. Civil Reporting Requirements

“The diocesan bishop will comply with all applicable civil laws with respect to reporting of allegations of sexual abuse of minors to civil authorities and will cooperate in their investigation. In every instance, the diocesan bishop will advise and support a person’s right to make a report to public authorities.”  
(EN, 11)

The civil requirement to report information regarding abuse binds ecclesiastical authorities even if they consider the complaint to be frivolous or non-substantiated according to ecclesiastical standards. The fact that no ecclesiastical process will go forward does not mean the civil reporting is not required. On the other hand, the civil standard for reporting may be higher than what canon law sets as a minimum for the canonical process to move forward. Consequently, the civil and canonical determinations should be made separate of one another and based on the particular legal provisions applicable to each legal system.

#### C. Initial Evaluation of the Complaint

Following the receipt of a complaint, the diocesan bishop must make a determination as to whether or not the complaint has the semblance of truth.

The diocesan bishop may use the expertise of others – most especially the Diocesan Review Board – to reach such a determination. This initial evaluation, however, is not a finding for or against guilt of the accused. It seeks only to establish whether or not the complaint itself at least seems true.

The diocesan bishop has the sole responsibility to determine the status of the complaint by considering, for example, the facts alleged in the complaint and the circumstances surrounding them (*e.g.*, was the priest assigned to the parish at that time?), the credibility of the accuser, the internal consistency of the complaint itself (*e.g.*, does the complaint lodge vague and unsubstantiated accusations? Does the complaint contradict itself in irreconcilable ways?)

#### D. Actions Following the Evaluation of the Complaint

- 1) If the diocesan bishop determines that the complaint does not have at least the semblance of truth, no action against the cleric is mandated (even though administrative actions may still be applied depending on circumstances: cf. EN, 9), and no referral to the CDF is required. The complainant can be informed of the outcome, and the accused cleric, if he had been made aware of the accusation, should be informed of the outcome.

Manifestly false or frivolous accusations do not result in canonical action against the cleric. Moreover: “When an accusation has proven to be unfounded, every step possible will be undertaken to restore the good name of the person falsely accused.” (EN, 13)

If the allegation is determined to be manifestly false or frivolous, the diocesan bishop is not expected to refer the case to the CDF (cf. *SST*, 13; 22 § 1). The acts are to be placed into the diocesan secret archives (cf. *CIC*, c. 1719).

Indeed, if at any stage and grade of a judicial penal process it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused (*CIC*, c. 1726).

- 2) If the diocesan bishop determines that the allegation does have at least a semblance of truth, he is to issue a decree opening a “Preliminary Investigation.”

The determination made at this point concerns the nature of the allegation, not the guilt or innocence of the accused. However, at any point in the process if the diocesan bishop determines it necessary in order to prevent scandal, protect the freedom of witnesses, or to safeguard the course of justice, he shall impose temporary, non-punitive and precautionary measures prohibiting the accused cleric from the exercise of sacred ministry or of some ecclesiastical office, imposing or forbidding residence in a certain area, or even prohibiting public participation in the celebration of Eucharist. These measures shall be imposed on the accused cleric by means of a precept, and such a precept may be imposed from the time the Preliminary Investigation is opened.

If the allegation at least seems true, the process moves forward to a Preliminary Investigation even though the diocesan bishop may feel that the investigation will result in little further information to substantiate the allegation.

## Step Two: Preliminary Investigation

### A. Purpose of the Preliminary Investigation

The purpose of the Preliminary Investigation is indicated in *CIC*, c. 1717 §1: “[the ordinary] is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.” Hence, the Preliminary Investigation is meant to give the diocesan bishop a sense of probability that a delict did or did not occur. He makes this judgment after the Preliminary Investigation offers sufficient elements leading to that judgment (cf. *CIC*, c. 1718 § 1).

The Preliminary Investigation is not a trial (or even a pre-trial hearing); the matter is not yet before the tribunal and the issue is not yet *in contradictorio*. The Preliminary Investigation is an “administrative” action.

The focus of the Preliminary Investigation is on facts, circumstances, and imputability. Imputability is presumed “unless it is otherwise apparent” (*CIC*, c. 1321 § 1;). Imputability is the legal term referring to the responsibility a person has before the law for an action.

The Preliminary Investigation may be completed in a very brief period of time. On the other hand, if it proves impossible to conduct an investigation immediately upon receipt of a credible allegation, the diocesan bishop may prudently delay the investigation until it is suitable to proceed. For instance, civil authorities may request that the Church not investigate an allegation until their civil investigation is complete.

### B. Opening the Preliminary Investigation

If the diocesan bishop judges that the initial allegation at least has the semblance of truth, he issues the decree opening a “Preliminary Investigation.” Care must be taken that the good name of anyone is not endangered from this Preliminary Investigation (*CIC*, cc. 1717§ 2,220).

The Preliminary Investigation is conducted either by the diocesan bishop personally or by another suitable person (cleric or lay), who “has the same powers and obligations as an auditor in the process [and] cannot act as a judge in the matter if judicial process is initiated later” (*CIC*, c. 1717 § 3). The person chosen by the diocesan bishop to conduct the Preliminary Investigation should be appointed to the task by decree unless the appointment is contained within the decree opening the Preliminary Investigation.

### C. Role of the Diocesan Review Board

The Diocesan Review Board may offer the diocesan bishop its advice about the Preliminary Investigation beforehand and about its conclusions afterwards, but the Preliminary Investigation itself is not done by the review board.

The purpose of the review board is to assist the diocesan bishop by functioning “as a confidential consultative body to the bishop in discharging his responsibilities.”

The functions of this board may include:

- “Advising the diocesan bishop in his assessment of allegations of sexual abuse of minors and in his determination of suitability for ministry;
- Reviewing diocesan policies for dealing with sexual abuse of minors;
- Offering advice on all aspects of these cases, whether retrospectively or prospectively.” (EN,4)

It is ultimately the decision of the diocesan bishop as to what extent and at what point in time he wishes to involve the review board in the Preliminary Investigation.

### D. Rights of the Accused Cleric

The Preliminary Investigation should in no way illegitimately harm the right of the cleric to a good reputation (*CIC*, cc. 1717 § 2,220).

Once the cleric knows of the allegation and the process against him, he should be “encouraged to retain the assistance of civil and canonical counsel” (EN, 6). There is no requirement in law that the cleric avail himself of counsel during the Preliminary Investigation, or that the diocese pay for the expenses of either canonical or civil counsel at this stage of the process. If the cleric is invited to participate in the Preliminary Investigation, however, it is strongly urged that he be provided the assistance of canonical counsel.

To be a canonical advocate, the person must be approved for that role by the diocesan bishop (*CIC*, c. 1483). Before episcopal approval, the canonist is a “canonical advisor” or a “canonical consultant,” but not strictly a “canonical advocate.” Only a canonical advocate can take part in a penal process. Further, *SST* expects the canonical advocate to be a priest (*SST*, 12), but the CDF can dispense from the “priest” requirement (Papal Derogation, February 14, 2003).

## E. Conclusion of the Preliminary Investigation

The Preliminary Investigation concludes when the diocesan bishop determines sufficient elements have been collected to reach a determination with regard to the question of the investigation; whether or not it is probable that a delict has been committed as alleged (*CIC*, c. 1717 § 1).

At that point, the diocesan bishop is to issue a decree closing the Preliminary Investigation (*CIC*, c. 1719; see Formulary 3). Unless the accusation is manifestly false or frivolous, the decree should also indicate that the acts are to be forwarded to the CDF together with his own *votum*.

The investigator charged by the diocesan bishop to investigate the allegation should submit a report to the diocesan bishop. The report should indicate the investigator's own conclusion about the probability of the delict having occurred, and it should also state how the investigator came to that conclusion; *i.e.*, it should explain on what elements gained during the investigation the report's conclusion is based.

Upon receiving the report of the investigator, the diocesan bishop is to consider carefully all the acts of the investigation, the report of the investigator, and any observations offered by the Diocesan Review Board. The diocesan bishop is to formulate his own opinion – or *votum* – on whether or not it seems probable that a delict has been committed.

The *votum* of the diocesan bishop will play a significant role in the CDF's determination of whether or not further canonical action is warranted and, if so, what that action might be.

## **Step Three: Referral to the Congregation for the Doctrine of the Faith**

### Notification of Allegation to the CDF

Upon concluding the Preliminary Investigation, the diocesan bishop is to notify the CDF of the results of the investigation (*SST*, 13). This is always done unless the accusation is determined to be manifestly false or frivolous during the Preliminary Investigation.

It is always the CDF that makes the determination of how to proceed with the matter, even though the *votum* of the Diocesan bishop will be very important in the considerations leading to the CDF's decision.

The diocesan bishop may also choose at this point to impose the precautionary measures of the so-called “administrative leave:”

- “To prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases.” (*CIC*, c. 1722)
- By means of a decree the diocesan bishop can impose these measures as soon as the acts of the case, with the *votum* of the diocesan bishop, are sent to the CDF. As the canon itself indicates, the measures end when the penal process is concluded.
- If the diocesan bishop determines it prudent to apply similar measures prior to referral to the CDF, he must do so by means of a precept imposed on the accused cleric, not by means of canon 1722. Such a precept may be imposed from the time the Preliminary Investigation is opened.

Prior to the effective date of *SST*, April 30, 2001, the operative penal process was that outlined in the the 1983 Code of Canon Law. Judicial or administrative penal processes which began prior to *SST* are to be completed according to the codal legislation provided appeals are lodged exclusively before the Tribunal of the CDF. Any processes not started before *SST*, however, are to begin and be completed according to the provisions of *SST*, even if the action is barred by prescription.

If a case had already been resolved through a penal process, then it should not be presented to the CDF. The principle of law applies that no one should be punished twice for the same crime.

If a past case was resolved through a non-penal administrative act by decree, but now the diocesan bishop feels the public awareness of the crime and the public good demand new action, he is to refer the case to the CDF with his *votum*:

- To request the use of his administrative power (e.g., *CIC*, c.1740) to address the issue anew in light of current circumstances;
- To request the use of the judicial or administrative penal process;
- To request ex officio dismissal from the clerical state.

## Step Four: Subsequent Canonical Process

### A. Four Possible Actions

The CDF will review the acts of the Preliminary Investigation and will consider the *votum* of the diocesan bishop; thereafter, it will typically respond in one of the following ways, each of which will be treated below:

- 1) CDF may remand the case to the diocesan bishop to be processed in a judicial trial in the diocesan tribunal (perhaps with some directives on how to proceed further); or
- 2) CDF may try the case in a judicial process in its own tribunal; or
- 3) CDF may direct the diocesan bishop to treat the matter through an administrative (extrajudicial or summary) penal process (*CIC*, c.1720); or
- 4) The particular congress (Feria VI) of the CDF may recommend to the Roman Pontiff that *ex officio* dismissal be imposed.

While the decision to follow one of these four options rests exclusively with the CDF, the Congregation will give most serious consideration to the *votum* of the diocesan bishop. Moreover, it may happen that the CDF will respond by requesting further information or clarification on the data already submitted. The CDF might also suggest a solution other than one of the four options listed above.

### B. Support of the Cleric

If the priest or deacon is not dismissed, provision is to be made for his decent support when he is not given a ministry that would see to his sustenance (*CIC*, c.1350 § 1).

Indeed, the Diocesan bishop is also to provide for a dismissed cleric who is truly in need because of the effects of the penalty (*CIC*, c. 1350 § 2).

### C. Document Retention

The universal law requires that the acts of the Preliminary Investigation, the decrees beginning and closing it, and everything from the moment of “initial contact” are to be kept in the secret archive of the curia, if they are not needed for the penal process (*CIC*, c. 1719).

The Diocesan bishop is advised to be aware of any civil laws regarding the retention of records that might be used in subsequent civil proceedings.