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## Loss of the Clerical State

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Canon law views the status of priests from three perspectives. The first perspective is from the point of view of the sacred order that he has received; the second addresses the faculties which he enjoys; and the third views his relationship to his diocese or religious institute as a cleric.

With regard to the first perspective, once validly ordained, a priest's ordination never becomes invalid, even if he loses the clerical state.<sup>1</sup>

With regard to the second perspective, a priest's faculties are his "license" to exercise his ministry. Some faculties are granted by the universal law of the Church; others are granted by the bishop of the diocese to which the priest is attached by reason of his ordination or by the bishop of the diocese in which he is residing. For sufficiently serious reasons, a bishop can prohibit a priest from exercising his faculties during the course of an investigation into criminal misconduct.<sup>2</sup> If this criminal misconduct is established through a canonical penal process, a priest's faculties can be removed or suspended. He still remains a priest and a cleric; this action simply means that he is forbidden from exercising his priestly ministry.

With regard to the third perspective, a priest is attached – the canonical term is "incardinated" – to the diocese or religious institute for which he is ordained. This "incardination" which occurs at the time of his ordination as a deacon is what constitutes him a cleric.<sup>3</sup>

A priest can lose the clerical state. The effect of this is a permanent separation from all ministry; he loses all rights and faculties associated with the priesthood and is not authorized to exercise ministry in the name of the Church; he is also dispensed from all obligations arising from his ordination to the priesthood, most notably the obligations of celibacy; and he loses his "incardination," that is, the special bond or attachment to the diocese or religious institute for which he was ordained.<sup>4</sup>

The clerical state is lost in one of three ways:<sup>5</sup>

(1) A priest can personally request a dispensation from the obligations arising from his ordination. This is commonly known as a petition for "laicization," and it is granted only by the Holy Father through a process which is conducted by the Congregation for Divine Worship and the Discipline of the Sacraments. Depending on the reasons for the request, it is usually granted within six months of the presentation of the petition to the Congregation. However, in urgent cases involving issues such as criminal behavior, a dispensation can be granted within a number of weeks. This process must be initiated by the priest himself.

(2) A priest can be dismissed from the clerical state as a penalty for serious offenses. The law requires that such a dismissal be conducted by a judicial forum, that is, before a diocesan tribunal in accord with the legal procedures that govern criminal trials under canon law.<sup>6</sup> Certain crimes, such as the sexual abuse of minors, are reserved to the Congregation for the Doctrine of the Faith. This means that once the local bishop has completed his investigation of the alleged crime, the results of this investigation must be sent to the Congregation which will then judge whether the penalty of dismissal from the clerical state can be imposed.<sup>7</sup> Since this is done within a judicial process, the procedural laws of the Church must be observed with regards to the rights of victims, the rights of the accused priest, and the rights of the diocesan bishop. Given the nature of any judicial process, this can be a most time consuming procedure, at times taking years to complete.

(3) The Church has also provided for the administrative dismissal of priests in the past for urgent reasons and only in grave matters; and the use of this process has always been considered an exception to the law. The most recent example of this process has been the dismissal of priests through the offices of the Congregation for Divine Worship and the Discipline of the Sacraments for proven acts of misconduct involving the sexual abuse of minors. Certain key elements have always been required in order to invoke this process:<sup>8</sup>

- The priest must specifically state that he is unwilling to petition for laicization personally.
- There must be a criminal conviction associated with the priest's sexual abuse of minors or a decision in a civil lawsuit demonstrating his responsibility for this abuse.
- The priest who is going to be subjected to dismissal must be afforded a true "right of defense." This means that the priest must be given an opportunity of presenting a defense, especially if he has pleaded to a lesser charge in order to avoid criminal prosecution of a more serious charge. The same principle applies if a settlement has been reached in a civil lawsuit and the priest was never afforded an opportunity to respond to the allegations and defend himself.
- A Promoter of Justice must prepare an opinion. The person holding this office has the responsibility of assuring that a proper process has taken place and that there has not been a miscarriage of justice.

The question of dismissing a cleric or removing him from ministry for allegations which are decades old is a significant problem for the Church. The current law of the Church provides for the imposition of the penalty of dismissal through the judicial process only if a provable offense is brought to the attention of church authorities before the 28th birthday of the victim (10 years beyond majority).<sup>9</sup> If a victim has reached his or her 28th birthday and has not reported the offense, the Church's "statute of limitations" applies; and a priest cannot be dismissed from the clerical state or otherwise penalized in the judicial process on the basis that the allegations have not been brought forward within the legally provided period of time. These restrictions, however, would not apply to the use of the third process, the administrative dismissal of a priest from the clerical state.

At the moment, the process for the administrative dismissal of priests for the sexual abuse of minors through the offices of the Congregation for Divine Worship and the Discipline of the Sacraments appears to be suspended. This is a result of the Congregation for the Doctrine of the Faith assuming competence in these cases. It is not clear at the moment whether this process will be reinstated or what office of the Holy See will be responsible for handling these cases.

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