

DISMISSAL FROM THE CLERICAL STATE IN CASES
OF
SEXUAL CRIMES AGAINST MINORS

PREPARED BY
THE CANONICAL AFFAIRS COMMITTEE OF THE NCCB

Most Rev. Adam J. Maida, Chairman
Most Rev. Anthony J. Bevilacqua
Most Rev. James A. Griffin
Most Rev. John R. Keating
Most Rev. Daniel L. Ryan
Most Rev. Edmund C. Szoka

July 2, 1987

I. Introduction

A. Reasons for Dismissal from the Clerical State

The Code of Canon Law specifies the following instances in which dismissal from the clerical state may be imposed.

1. Long lasting contumacy or seriousness of scandal in cases of apostasy, heresy or schism. (1364).
2. Sacrilegious abuse of the Eucharistic species (1367).
3. Physical force against the Roman Pontiff (1370).
4. More serious cases of solicitation in the act, or under the pretext of confession (1387).
5. In certain circumstances, a cleric who attempts a civil marriage (1394).
6. In certain circumstances, a cleric who lives in concubinage or who remains in another external sin against the sixth commandment (1395).
7. An offense against the sixth commandment committed with force or threats or publicly or with a minor below the age of sixteen (1395).
8. In certain circumstances, homicide, kidnapping, or physical injury (1397).

While a diocesan bishop can issue penal laws within his competence by reason of person or territory, and although he may establish penalties to provide for suitable discipline, dismissal from the clerical state cannot be established by particular law (1315, 1317).

This paper restricts itself to a consideration of the dismissal from the clerical state with specific reference to an offense against the sixth commandment with a minor below the age of sixteen (#7 above). However, the dismissal from the clerical state may also be invoked in cases of sexual crimes involving a person sixteen years or older when force or threats are factors or when the crimes are public (1395).

B. Effects of Dismissal from the Clerical State

Dismissal from the clerical state entails the loss of rights which pertain to the clerical state. It also releases the cleric from the obligations of the clerical state. However, the obligation of celibacy remains unless this obligation has been lifted by a dispensation from the Roman Pontiff. A cleric dismissed from the clerical state is prohibited from exercising the power of orders. However, a priest so dismissed may absolve a penitent in danger of death. Dismissal from the clerical state deprives a cleric of all offices, functions and any delegated power (292, 291, 976).

While a cleric loses claim to support when dismissed from the clerical state, the ordinary is to see to the care of such a person in the best manner possible when such need is due to the loss of the clerical state (1350).

A cleric who has lost the clerical state cannot become a member of the clergy again without a rescript of the Apostolic See (293).

C. General Observations Affecting Dismissal from the Clerical State

1. Since dismissal from the clerical state is an expiatory penalty and not a censure, the warning specified in canon 1347 is not required before dismissal from the clerical state.
2. Since the law nowhere specifies dismissal from the clerical state as automatic, and since that particular penalty may not be established by particular law (1317), it can only be a consequence of a judicial sentence, and it does not bind the cleric until the sentence is imposed (1314).
3. In view of Canon 293, which specifies that a dismissed cleric cannot return to the clerical state without permission from the Roman Pontiff, this penalty in effect is perpetual, and therefore can be imposed or declared only by judicial sentence (1342, par. 2). It cannot be imposed by decree.

II. Concerning the Procedure for Dismissal from the Clerical State

A. Certain Observations

Before the application of canonical penalties or procedures, the diocesan bishop and/or those to whom he has entrusted portions of the task, should consider the following aspects of a case.

B. General Reflections on Penalties

Canon 1311

The Church has an innate and proper right to coerce offending members of the Christian faithful by means of penal sanctions.

Canon 1314

Ordinarily a penalty is to be inflicted by a sentence (ferendae sententiae) so that it does not bind the guilty party until after it has been imposed; however, a penalty is incurred automatically by the very commission of the offense (latae sententiae) if the law or precept expressly determines this.

Canon 290

After it has been validly received, sacred ordination never becomes invalid. A cleric, however, loses the clerical state;

1. by a judicial decision or administrative decree which declares the invalidity of sacred ordination;
2. by the legitimate infliction of the penalty of dismissal;
3. by a rescript of the Apostolic See which is granted by the Apostolic See to deacons only for serious reasons and to presbyters only for the most serious reasons.

Dismissal from the clerical state must always be the result of a judicial sentence and is never a latae sententiae penalty (Cf. Canon 1342).

Canon 1321

- #1. No one is punished unless the external violation of a law or a precept committed by the person is seriously imputable to that person by reason of malice or culpability.
- #2. A person who has deliberately violated a law or a precept is bound by the penalty stated in that law or that precept; unless a law or a precept provides otherwise, a person who has violated that law or that precept through a lack of necessary diligence is not punished.
- #3. Unless it is otherwise evident, imputability is presumed whenever an external violation has occurred.

One of the elements to be considered in the process is the role of decreased culpability due to the nature of the condition of pedophilia.

C. Various Violations of Clerical Chastity

Canon 1395

- #1. Outside the case mentioned in Canon 1394, 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 first step in any process or action is the determination that some canonical crime has occurred. Canon 1395 #2 provides for a just penalty, even to the gravity of dismissal from the clerical state if the cleric has violated the sixth commandment with a minor below the age of sixteen (pederasty or statutory rape for the purpose of discussion).

The presence of civil prosecution or a civil court verdict and criminal sentence does not necessarily prove that a canonical crime has been committed.

Canon 1362

- #1. A criminal action is extinguished by prescription in three years unless it is a question of:
 - 1* offenses reserved to the Sacred Congregation for the Doctrine of the Faith;
 - 2* an action due to offenses mentioned in Canons 1394, 1395, 1397, and 1398, which have a prescription of five years;
 - 3* offenses which are not punished in common law if particular law has stated another term of prescription.

#2. Prescription starts on the day the offense was committed or on the day when it ceased if the offense is continuous or habitual.

Prescription or the statute of limitations in canon law applies to a penal process for crimes mentioned in Canon 1395. If the situation is that of pederasty or statutory rape, the procedure and trial must be initiated by the promoter of justice before the period of 5 years has passed from either the commission of one action or the cessation of a series of actions.

D. Initiation of the Investigation

Canon 1717

#1. Whenever the ordinary receives information which at least seems to be true of an offense, he shall cautiously inquire personally or through another suitable person about the facts and circumstances and about imputability unless this investigation appears to be entirely superfluous.

#2. Care must be taken lest anyone's good name be endangered by this investigation.

#3. The one who conducts the investigation has the same powers and obligations as an auditor in the process; this person cannot act as a judge in the matter, if a judicial process is set in motion later.

Even if there has been civil action, the diocesan bishop or one to whom he assigns the task, must conduct an investigation to determine whether there has been a crime in the canonical sense, and whether the action is imputable to the cleric in question.

E. Decree of the Ordinary Regarding the Penal Process

Canon 1718

#1. When sufficient evidence appears to have been collected, the ordinary shall decide:

- 1* whether the process for inflicting or declaring a penalty can be set in motion;
- 2* whether this is expedient in light of canon 1341;
- 3* whether a judicial process must be used or unless the law forbids it whether he must proceed by a decree without a trial.

#2. The ordinary is to revoke or change the decree mentioned in #1 whenever it appears to him from new evidence that a different decision is called for.

#3. In issuing the decrees mentioned in #1 and #2, the ordinary is to hear two or more judges or other experts in the law, if he prudently sees fit to do so.

#4. In order to avoid useless trials, before he makes a decision in accord with #1, the ordinary is to consider whether it is expedient that either he or the investigator equitably solve the question of damages with the consent of the parties.

Canon 1341

Only after he has ascertained that scandal cannot sufficiently be repaired, that justice cannot sufficiently be restored and that the accused cannot sufficiently be reformed by fraternal correction, rebuke and other ways of pastoral care is the ordinary then to provide for a judicial or administrative procedure to impose or to declare penalties.

If the certitude of a crime of pederasty or statutory rape is there, various options are open to the diocesan bishop. Removal from office, mandatory counseling and therapy, and if necessary, suspension should precede other penal actions and should attempt to encourage a change of behavior.

Before initiating action for dismissal, the diocesan bishop should attempt to encourage the cleric voluntarily to petition the Holy See for a rescript of laicization. Dismissal from the clerical state is always a last resort (Canon 1341) and imposed only because of obstinate persistence by the perpetrator or because the requirements of justice and the reparation of scandal cannot be achieved in any other manner.

F. Certain Procedural Considerations

Canon 1425

#1. Every contrary custom being reprobated, the following cases are reserved to a collegiate tribunal of three judges:

1* contentious cases: a) concerning the bond of sacred ordination; b) concerning the bond of marriage with due regard for the prescriptions of canons 1686 and 1688;

2* penal cases: a) concerning offenses which can entail the penalty of dismissal from the clerical state; b) concerning the imposition or declaration of excommunication.

#2. The bishop can entrust more difficult cases or cases of greater importance to the judgment of three or five judges.

#3. Unless the bishop has determined otherwise for individual cases, the judicial vicar is to assign the judges in order by turn to adjudicate the individual cases.

#4. If it happens that a collegiate tribunal cannot be established for a trial of first instance, the conference of bishops can permit the bishop to entrust cases to a single clerical judge as long as the impossibility of establishing a college perdures; he is to be a cleric and is to employ an assessor and an auditor where possible.

#5. The judicial vicar is not to appoint substitutes for judges once they are assigned unless for a most serious reason, expressed in a decree.

Canon 1408

Anyone can be brought into court before the tribunal of one's own domicile or quasi-domicile.

Canon 1412

In penal cases the accused, even if absent, can be cited before the tribunal of the place where the offense was perpetrated.

Canon 1719

The acts of the investigation, the decrees of the ordinary by which the investigation was opened and closed, and all that preceded it are to be kept in the secret archive of the curia if they are not necessary for the penal process.

If the ordinary decrees that a judicial penal process is to be begun, he is to give the acts of the investigation to the promoter of justice who is to present a libellus of accusation to the judge in accord with the norms of Canons 1502 and 1504.

In the process of the trial, the same rules regarding the admissibility of evidence and forms of proof are those found in the canons on trials in general (CC 1526 - 1585).

Canon 1722

To preclude scandals, to protect the freedom of witnesses and to safeguard the course of justice, having heard the promoter of justice and having cited the accused, the ordinary at any stage of the process can remove the accused from the sacred ministry or from any ecclesiastical office or function, can impose or prohibit residence in a given place or territory, or even prohibit public participation in the Most Holy Eucharist; all these measures must be revoked once the reason for them ceases; they also end by the law itself when the penal process ceases.

Canon 1723

#1. When citing the accused, the judge must invite the accused to appoint an advocate in accord with the norm of Canon 1481, #1, within a period of time set by the judge.

#2. But if the accused does not provide for this the judge is to name an advocate before the joinder of issues (contestatio litis) who will remain in this function as long as the accused has not personally appointed an advocate.

Canon 1724

#1. In any grade of the trial, renunciation of the instance can be made by the promoter of justice either at the order of or with the consent of the ordinary in light of whose deliberation the process was set in motion.

#2. For validity, the renunciation must be accepted by the accused unless such a one is declared to be absent from the trial.

Canon 1725

In the discussion of the case, whether it be done in writing or orally, the accused always has the right to write or speak last either personally or through an advocate or procurator.

Canon 1726

In any grade or stage of the penal trial, if it becomes clearly proven that the offense was not perpetrated by the accused, the judge must declare this in a sentence and absolve the accused, even if it is also proven that the criminal action is terminated.

Canon 1727

#1. The accused can propose an appeal even though dismissed in a sentence solely because the penalty was facultative or because the judge used the power mentioned in Canons 1344 and 1345.

#2. The promoter of justice can appeal whenever it appears that the reparation of scandal or the restitution of justice has not been provided sufficiently.

Canon 1353

An appeal or recourse from judicial sentences or from decrees which impose or declare any penalty whatsoever has a suspensive effect.

Canon 1728

#1. With due regard for the prescriptions of the canons of this title, unless the nature of the matter is opposed, the canons on trials in general and on ordinary contentious trials must be applied in the penal trial, observing the special norms for cases which refer to the public good.

#2. The accused is not bound to confess the offense and cannot be constrained to take an oath.

G. Results of the Loss of the Clerical State

Canon 291

Besides the case mentioned in Canon 290, n.1, loss of the clerical state does not entail a dispensation from the obligation of celibacy, which is granted by the Roman Pontiff alone.

Canon 292

A cleric who loses the clerical state in accord with the norm of law also loses with it the rights which pertain to the clerical state; nor is he bound by any of the obligations of the clerical state, with due regard for the prescription of Canon 291; he is prohibited from exercising the power of orders with due regard for the prescription of Canon 976; and by the very fact he is deprived of all offices, functions and any delegated power.

Canon 293

A cleric who has lost the clerical state cannot become a member of the clergy again without a rescript of the Apostolic See.

H. Support of Penalized Clerics

Canon 1350

#1. Unless it is a question of dismissal from the clerical state, when penalties are imposed upon a cleric provision must always be made that he does not lack those things which are necessary for his decent support.

#2. In the best manner possible the ordinary is to see to the care of a person dismissed from the clerical state who is truly in need due to the penalty.

III. Suggested Procedure

A. Investigation of the Accusation

The canonical investigation may precede or follow the civil action. In either case there must be a separate canonical investigation and procedure to determine whether or not a canonical crime (such as that mentioned in Canon 1395, #2) has occurred and whether or not the accused has committed the crime. While documents from the civil investigation may be used as part of the process, the civil investigation may never replace the canonical procedure.

B. When the Investigation Indicates that Criminal Procedure should be Commenced.

Before the criminal procedure is used, the ordinary should consider:

- a. fraternal correction,
- b. the offer of opportunities for counseling and/or therapy,
- c. removal from office and possible suspension,
- d. the possibility of the priest's voluntarily petitioning the Apostolic See for laicization and dispensation from the obligations of clerical celibacy. The priest should be informed of the effects of such a petition.
- e. The priest should be notified of the bishop's intention to proceed with a penal process should the priest not voluntarily ask for laicization.

C. If There Is No Reformation or Change in Attitude and/or the Requirements of Canon 1341 Would Argue for Penal Process

1. Initiation of the penal procedure soon enough to avoid the effects of prescription (5 years in the case of crimes mentioned in Canon 1395 #2).
2. Appointment of the promoter of justice and the presentation of a libellus.
3. Appointment of a collegiate tribunal (at least 3 judges but there may be 5).
4. The accused may be cited before the tribunal where the crime was committed even if the accused is absent. He can also be brought into court before the tribunal of his own domicile or quasi-domicile..

5. Appointment of an advocate by the accused. If he does not do so, the judge is to appoint an advocate for the accused.
6. Gathering of evidence including presentations by witnesses, public documents, testimony of experts, testimony of the accused if he so chooses, argumentation by the advocate and the promoter of justice.
7. The accused need not testify and cannot be forced to take an oath.
8. During the discussion, the accused has the right to offer the last word in writing or orally through an advocate, procurator, or directly. The accused also has the right to view the unrestricted acts of the case to offer a defense.
9. After the sentence has been issued, the accused has the right to appeal the sentence and/or the penalty and is to be advised of his right to appeal. Such an appeal suspends the effects of the sentence.
10. If no appeal takes place, or if a second confirming sentence is given in response to an appeal, the judge issues an executory decree (1651). The diocesan bishop then executes the decree either personally or through another (1653). If the cleric is not notified of the judge's executive decree within five years the penalty is extinguished (1362, 1363).
11. Although there is no strict obligation in justice to help with financial support, there is some obligation in charity to see that the priest does not lack the necessities of life. There may be a real need for help during the transition time until he finds a job.

0979