

Canonical Procedure: Adult Misconduct

Amy Jill Strickland, JCL
canonlaw@hotmail.com/240-393-06
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PLEASE DO NOT DIY IT!

Most matters involving misconduct by members will have canonical implications, even if they are not canonical crimes.

Moreover, some alleged/admitted canonical crimes require different treatment than others.

So, it is imperative that a canonist be consulted from the very start—even before the accused is informed of any complaint. A reputable canonist will help you navigate not only the applicable law but the best practices in its application, assist you in finding an advocate for the member, and offer a basic consultation at no cost.

You should also consult your civil counsel if matters involving crimes in civil law may be involved, such as embezzlement, and immigration considerations should also be weighed.

EVERYTHING MUST BE DOCUMENTED...CAREFULLY!

Every step in responding to misconduct by a member should be documented. This should not be done in handwriting someone else must decipher later! A simple "memorandum to the file" can be created for this purpose when it is a matter of recording something like a meeting or phone call.

However, care should be taken as to what is contained in these records.

Finally, some documentation must take a particular form (e.g., the decrees starting and concluding a preliminary investigation).

WHEN IS A FORMAL PRELIMINARY INVESTIGATION REQUIRED?

Before we consider a list, some caveats are necessary.

First, there are many cases in which a preliminary investigation is superfluous (e.g., if someone has been criminally convicted of conduct which is a canonical crime, or has admitted the conduct).

Second, one must always consider the canon law in force at the time of the alleged offense, since laws are not retroactive in their effects.

ISSUES RELATED TO POVERTY

- Theft, embezzlement, and illicit alienation of ecclesiastical goods (can. 1376 §1; reparation is required)
- Trafficking in Mass offerings (canon 1383)

No one is permitted to accept more offerings for Masses to be applied by himself than he can satisfy within a year (canon 953). Every celebrant is permitted to keep the offering for only one Mass per day, except for Christmas, when he is permitted to retain the offering for up to three Masses (canon 951).

ISSUES RELATED TO CHASTITY

- Absolution of an accomplice in a sin against chastity, except in danger of death (reserved to the DDF; also results in an automatic excommunication, reserved to the Holy See)
- Solicitation of a penitent to a sin against chastity in confession or under the pretext of confession (canon 1385, reserved to the DDF if the confessor solicits the penitent to sin with the confessor himself; may result in dismissal from the clerical state)

This two cases are unique because of the sacrosanct nature of Penance. While it is a general principle that the accused always has the right to know the details and source of any accusation, the 2020 DDF norms (art. 4) state: "It is not permissible for anyone to make known the name of the complainant or penitent, neither to the accused or to his procurator, if the complainant or penitent has not given express consent...."

- Attempted marriage to a woman by a cleric (canon 1394; results in automatic dismissal from the institute)

ISSUES RELATED TO CHASTITY (continued)

- Engaging in an ongoing sexual relationship or other external sin against chastity causing scandal
- Forcing someone to perform or submit to sexual acts using force, threats, or abuse of authority
- Offending publicly against chastity

According to canon 695.1, these are ordinarily causes for dismissal. However, for the latter two, discretion is given to the major superior if he thinks that the amendment of the member, the restoration of justice, and the reparation of scandal can be accomplished in another way.

- Procurement of an abortion

According to canon 695.1, a member must be dismissed from the institute for this offense, which also results in excommunication. In more serious cases, it also can be the basis for dismissal from the clerical state.

ISSUES RELATED TO CHASTITY (continued)

- Offending against chastity with a person who habitually has an imperfect use of reason or a "vulnerable adult" by a member of an institute of consecrated life or a society of apostolic life
- Grooming or inducting a person who habitually has an imperfect use of reason or a "vulnerable adult" to engage in pornography, by a cleric or a lay member of a society of apostolic life or institute of consecrated life (NB: other "grooming" is not a canonical crime)
- Immorally acquiring, retaining, exhibiting, or distributing pornography of persons who habitually have an imperfect use of reason, by a cleric

According to canon 695.1, these are ordinarily causes for dismissal. However, in the case of the first, discretion is given to the major superior.

ISSUES RELATED TO OBEDIENCE

- Voluntary abandonment of ministry for six continuous months without permission (canon 1392)

A religious who is illegitimately absent from his religious house for 12 consecutive months is dismissed automatically (canon 694). This must be confirmed by the Holy See or the diocesan bishop, depending on the nature of the institute. Dismissal from the clerical state may also be sought, using the Special Faculties.

- Failure to obey the lawful command/prohibition of the Apostolic See, Ordinary or Superior after a warning (canon 1371)
- Incitement to aversion or disobedience (canon 1373)
- Habitual neglect of the obligations of consecrated life and/or repeated violations of the sacred bonds (canon 696)

CONDUCTING A PRELIMINARY INVESTIGATION

A preliminary investigation is initiated by decree whenever a religious superior becomes aware—in any way—of a reasonable accusation of misconduct that may constitute a canonical crime, unless it would be superfluous. It is not optional, and the DDF expects to be informed if it is determined that an allegation of a reserved delict lacks the semblance of truth—or if an investigation must be delayed because of pending litigation. Otherwise, according to the 2023 version of *Vos Estis*, it should be conducted "in short order."

According to the *Vademecum* (n. 31), when a Major Superior becomes aware of such misconduct, written notification is to be made to the diocesan bishop where the religious lives, the diocesan bishop of the place where the misconduct is to have occurred, and the Supreme Moderator.

The preliminary investigation may be conducted by the religious institute or the diocese of the place where the reported misconduct occurred. The revised *Vos Estis* anticipates it will be the latter.

CONDUCTING A PRELIMINARY INVESTIGATION

Someone is delegated to conduct the investigation on behalf of the major superior; the "User Guide" from the Dicastery for Legislative Texts states: "the appointee should be an expert in canon law or, at least possess an expertise to direct his investigations in a practical way to obtain the necessary elements...."

An ecclesiastical notary also is named; this is customarily a priest if the accused is a priest. If there are to be restrictions decreed at this time, they last only the duration of the investigation.

Interviews are only conducted as needed to clarify if the offense took place and/or if there are canonical issues beyond what may have been established/admitted. All should be signed by the person being interviewed, to attest to accuracy. The person being interviewed must be aware in advance that the accused and his advocate will be able to review and respond to the testimony. The accused is never interviewed, unless he consents, after having the opportunity to seek canonical counsel. Care must also be taken to protect his reputation (canon 220).

CONDUCTING A PRELIMINARY INVESTIGATION (Continued)

If the member is sent for an evaluation/treatment, he must understand that any report made back to the religious superior will be incorporated into his confidential file and used to assist in determining his future in ministry.

The DDF Norms (art. 10) permit for the restrictions usually referred to as "administrative leave" to be imposed during the preliminary investigation for reserved delicts. However, a prohibition against wearing clerical/religious attire is not among these restrictions, because it is a canonical penalty (canon 1336).

Administrative leave also is not the same as suspension or the removal of faculties.

CONDUCTING A PRELIMINARY INVESTIGATION (Continued)

In all cases, the accused and his canonical counsel must be given the opportunity to review the gathered materials and, if desired, make a response before a decision is made to conclude the investigation. The burden of proof is on the accuser (canon 1526), and there is a legal presumption of innocence (canon 1321).

At the end of the preliminary investigation, there is a written decree closing it. A penal precept may be issued at this time, as a formal warning not to repeat any problematic behavior; this is also the time for a wellness or safety plan to be crafted.

If the matter must go to the DDF with a request for a penal process (like a trial), the material is first to be sent to the Supreme Moderator for a votum, and the diocesan bishop of the place the alleged offense occurred is to be informed of the findings of the investigation. Otherwise, the matter is addressed locally via either a judicial or extrajudicial process; while the former is considered normative, the latter is frequently more practical.

PENAL PRECEPTS / VIGILANCE (CANON 1339)

A **penal precept** should be issued whenever there is problematic behavior and must be issued in certain circumstances: "if on one or more occasions warnings and corrections have been made to someone to no effect, or it is not possible to expect them to have any effect, an Ordinary is to issue a penal precept in which he sets out what is to be done or avoided."

This document, in essence, says: "you have done X and, should you do it again, Y will occur." It may also take the form of "you may not do X and, if you do, Y will occur." Canonically, it serves an official warning of a possible canonical penalty because (with rare exceptions), the Church does not impose penalties without offering the offender an opportunity to reform.

The Ordinary is also to subject the offender to **vigilance** if demanded by the gravity of the case, especially when someone is in danger of repeating an offense.

IRREGULARITIES/IMPEDIMENTS

It is a canonical crime to have concealed something that would have disqualified one for ordination, such as having procured an abortion (canon 1388.2). The penalty is suspension, and ignorance of the impediment/irregularity is not an exception (canon 1045). Dispensation from some impediments, such as a procured abortion, is reserved to the Holy See (canon 1047).

One may also become impeded from the exercise of Orders legitimately received, including for serious mental illness (canon 1044). In such a case, the Ordinary must consult an expert before permitting the cleric to function again in ministry.

CANON 1399

Canon 1399 is a canonical anomaly, in that it allows for a penalty to be imposed if “the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals.”