

Removal of the Faculties of a Priest by a Diocesan Bishop

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A faculty is an authorisation by an ecclesiastical authority, usually a bishop, enabling a priest to participate in the ecclesiastical power of teaching, sanctifying or governing for the good of the faithful. Consequently, the priest has "the ability to act in a licit or juridically efficacious manner".¹ The grant of faculties is necessary because the priest would not be able to act without it, since some faculties are granted by law and/or are attached to certain offices such as the office of parish priest or chaplain.

Importance of faculties to Minister

Faculties are essential for many ecclesiastical celebrations that the faithful associate with the ministry of a priest. For example, a priest requires faculties to officiate at a wedding, to confirm and to celebrate the sacrament of penance validly in normal circumstances. However, when the recipient is in danger of death, faculties come from the law itself, enabling a priest lacking faculties to celebrate a sacrament.²

Usually priests in a diocese are granted habitual faculties for all cases which continue throughout their lives as priests.³ These faculties include real power such as the delegated power to grant marriage dispensations for disparity of cult marriages. Other

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¹ Antonio Viana, "Power of Governance" in Ángel Marzoa, Jorge Miras, and Rafael Rodríguez-Ocaña (eds.), Ernest Caparros (Eng. ed.), *Exegetical Commentary on the Code of Canon Law* 5 Vols. (Montreal: Wilson & Lafleur, 2004) 1, 835. [Hereafter *Exegetical Commentary*]

² Canon 883 3°. "As regards those who are in danger of death, the pastor or indeed any presbyter" may administer the sacrament of confirmation.

Canon 976. Even though a priest lacks the faculty to hear confessions, he absolves validly and licitly any penitents whatsoever in danger of death from any censures and sins, even if an approved priest is present.

Canon 1003 §2. All priests to whom the care of souls has been entrusted have the duty and right of administering the anointing of the sick for the faithful entrusted to their pastoral office. For a reasonable cause, any other priest can administer this sacrament with at least the presumed consent of the priest mentioned above.

Canon 1352 §1. If a penalty prohibits the reception of the sacraments or sacramentals, the prohibition is suspended as long as the offender is in danger of death. All translations of the Code of Canon Law are by the Canon Law Society of America.

³ Canon 132 §1. Habitual faculties are governed by the prescripts for delegated power.

§2. Nevertheless, unless the grant expressly provides otherwise or the ordinary was chosen for personal qualifications, a habitual faculty granted to an ordinary is not withdrawn when the authority of the ordinary to whom it was granted expires, even if he has begun to execute it, but the faculty transfers to any ordinary who succeeds him in governance.

faculties involve authorisation to act. For example, to confirm members of the faithful or to assist at weddings.⁴

The granting of faculties is a serious matter and bishops should not automatically grant faculties to priests.⁵ Before a priest ministers in the diocese or functions publicly on behalf of the Church it is required that his suitability be established. Before a priest is granted faculties to hear confessions Rodger Austin points out the requirement of the law to establish the suitability of the priest:

By reason of his ordination to the priesthood, a priest is empowered to absolve sinners of their sins, but he requires authorisation from the bishop, that is be given the faculty, to act as the minister of the sacrament. Prior to granting a priest this faculty the bishop must determine that he is suitable to exercise this ministry of reconciliation.⁶

The grant of faculties should be in writing.⁷ A priest without faculties is a little like a non-registered professional such as a lawyer or a teacher with the requisite degree but who is not a member of the professional association.

Distinction between diocesan and religious priests receiving or losing faculties

Distinctions must be made between a diocesan priest incardinated in a diocese, a diocesan priest from another diocese working in the diocese, and a religious priest working in the diocese receiving or losing faculties. There is no obligation for a diocesan bishop to grant faculties to a priest from another diocese or a religious institute who has moved to the diocese. Nor does the diocesan bishop have to grant him incardination.

When someone is ordained the law states that he is required to be suitable and useful for ministry.⁸ If there is any doubt about his suitability or usefulness, then the person

⁴ Viana, 836.

⁵ Canon 970. The faculty to hear confessions is not to be granted except to presbyters who are found to be suitable through an examination or whose suitability is otherwise evident.

⁶ Rodger J. Austin, "Submission on Canon Law to The Royal Commission into Institutional Responses to Child Sexual Abuse in Australia" October 2016. Cf. canon 966.

⁷ Canons 156, 474.

⁸ Canon 1025 §1. To confer the presbyteral or diaconal orders licitly, it is required that the candidate, having completed the period of probation according to the norm of law, is endowed in the judgment of his own bishop or of the competent major superior with the necessary qualities, is prevented by no irregularity and no impediment, and has fulfilled the prerequisites according to the norm of canons 1033-1039. Moreover, the documents mentioned in canon 1050 are to be obtained and the investigation mentioned in canon 1051 is to be completed. §2. Furthermore, it is required that he is considered in the judgment of the same legitimate superior as useful for the ministry of the Church.

§3. The bishop ordaining his own subject who is destined to the service of another diocese must be sure that the one to be ordained is going to be attached to this other diocese.

should not have been ordained.⁹ Diocesan priests incardinated in a diocese should have faculties from their diocesan bishop because although they do not have a specific right to ministry, there is an expectation in the law that they will be able to minister.¹⁰

Reasons for withdrawing faculties of priests

When a religious priest or a priest from another diocese has faculties in the diocese, there should have been an agreement made between him and his religious institute/diocese and the diocesan bishop for him to work in the diocese. The diocesan bishop must observe the terms of the agreement and for a just reason the bishop could withdraw his faculties. The decree must give the reason(s) at least in summary form.¹¹ Depending on the wording of the agreement, a just reason could be that his services are no longer required in his diocese. In fact, any reasonable motive would qualify as a just reason if there is no agreement.

Removal of the faculties of an incardinated priest, however, would have to be for a grave reason.¹² For example, a credible complaint that the priest was too inquisitive asking questions during a confession. Prior to any removal of faculties there would have to be a preliminary investigation establishing the facts.¹³ Merely saying the priest's services are no longer required is insufficient. If a bishop wishes to remove the faculties from a priest incardinated in his diocese, it would not merely be an administrative process and decision. An example of a lawful administrative decision to withdraw faculties would be if a priest began developing dementia. The loss of faculties would be through no fault of the priest.

⁹ Canon 1052 §1. For a bishop conferring ordination by his own right to proceed to the ordination, he must be sure that the documents mentioned in canon 1050 are at hand and that, after the investigation has been conducted according to the norm of law, positive arguments have proven the suitability of the candidate.

§2. For a bishop to proceed to the ordination of someone who is not his subject, it is sufficient that the dimissorial letters mention that the same documents are at hand, that the investigation has been performed according to the norm of the law, and that the suitability of the candidate has been established. Moreover, if the candidate is a member of a religious institute or a society of apostolic life, the same letters must also attest that he has been received definitively into the institute or society and is a subject of the superior who gives the letters.

§3. If, all these notwithstanding, the bishop doubts for specific reasons whether a candidate is suitable to receive orders, he is not to promote him.

¹⁰ Francis G. Morrissey OMI, "Suitability for Ministry," *The Canonist*, Vol. 3 No. 2 (2012) 224; cc. 281, 274, 1025; CCEO 371.

¹¹ Canon 51. A decree is to be issued in writing, with the reasons at least summarily expressed if it is a decision.

¹² Canon 974 §1. The local ordinary and the competent superior are not to revoke the faculty to hear confessions habitually except for a grave cause.

¹³ Congregation for the Clergy, Prot. No. 37937/05 CA, June 23, 2007, quoted in Francis G. Morrissey OMI, "Violations of Canon 277 (with an Adult) Appropriate and Just Responses" *The Canonist* Vol. 1 No. 2 (2010) 62.

Administrative leave or Removal of Faculties

"Administrative leave" is not a canonical term and is not found in the 1983 Code. The term administrative leave has been borrowed from secular society where people such as police officers or government officials are put on leave without pay while being investigated for possible misconduct. It has come into common usage in the Church because of the sexual abuse crisis, and is equivalent to a priest losing his faculties and his capacity to function publicly. It has been used "to mean that the cleric has been moved from his place of residence, and prohibited from the exercise of public ministry".¹⁴ Following a preliminary investigation, canon 1722 provides that "the Ordinary can, after consulting the promotor of justice and summoning the accused person to appear, prohibit the accused from the exercise of the sacred ministry or of some ecclesiastical office and position, or impose or forbid residence in a certain place or territory, or even prohibit public participation in the blessed Eucharist". A reason for these actions can be the prevention of scandal. However, these restrictions must be revoked once the reasons for them no longer exist.

The *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* for the United States constitutes particular law for the dioceses, eparchies, clerical religious institutes and societies of apostolic life of the United States. These norms were approved by the Apostolic See and state:

When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively (CIC, c. 1717; CCEO, c. 1468). During the investigation the accused enjoys the presumption of innocence, and all appropriate steps shall be taken to protect his reputation. The accused will be encouraged to retain the assistance of civil and canonical counsel and will be promptly notified of the results of the investigation. When there is sufficient evidence that sexual abuse of a minor has occurred, the Congregation of the Doctrine of the Faith shall be notified. The bishop/eparch shall then apply the precautionary measures mentioned in CIC, canon 1722, or CCEO, canon 1473 - i.e., withdraw the accused from exercising the sacred ministry or any ecclesiastical office or function, impose or prohibit residence in a given place or territory, and prohibit public participation in the Most Holy Eucharist pending the outcome of the process.¹⁵

¹⁴ David Price, "Open Forum," *Newsletter of the Canon Law Society Australia and New Zealand*, 2000, no. 1, 27-28; John Beal, "To Be or Not to Be That Is the Question: The Rights of the Accused in the Canonical Penal Process," *Canon Law Society of America Proceedings*, 53 (1991) 77-97.

¹⁵ Norm 6 of the "Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons", *Origins*, vol. 32: no. 25, Nov. 28, 2002, 415 ff.; <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-revised-2011.pdf>.

Canon 1722 specifically mentions "public participation in the blessed Eucharist". This would include concelebration. A priest on administrative leave could celebrate the Eucharist "privately" according to canons 904 and 906.¹⁶ Much would depend on what the Ordinary (Diocesan Bishop, Vicar General or Religious Provincial) specified with his decree placing the priest on administrative leave. For example, the Ordinary might specifically allow celebration of the Eucharist with a particular religious community or with family members. The circumstances of being accused of sexual misconduct could obviously constitute a "good and reasonable cause" requiring that the priest celebrate mass alone.

Usually, key provisions of administrative leave are that the accused priest is not permitted to celebrate the Eucharist publicly, or administer sacraments, and is not to wear clerical dress, or to present himself publicly as a priest. The imposition of administrative leave is not a penalty and recourse does not have a suspensive effect.¹⁷

Process for Removal of Faculties

Removal of faculties is an expiatory penalty according to canon 1336 §1:

In addition to other penalties which the law may have established, the following are expiatory penalties which can affect an offender either perpetually, for a prescribed time, or for an indeterminate time:

1° a prohibition or an order concerning residence in a certain place or territory;

2° privation of a power, office, function, right, privilege, faculty, favour, title, or insignia, even merely honorary.¹⁸

Canon 1336 states that expiatory penalties can affect an offender perpetually, for a determined period of time or for an indeterminate period of time. While all penalties have the general aim of reforming offenders and saving their souls,¹⁹ expiatory

¹⁷ Sentence Apostolic Signatura, Petrus Card. Erdo, 18 March 2006, in Wollongong case, Prot. No. 32108/01 CA, on Royal Commission Website <http://www.childabuseroyalcommission.gov.au/exhibits/bb3eaadf-9283-41ef-9694-e560738d186a/case-study-14,-june-2014,-sydney>.

¹⁸ Canon 1336 §1. In addition to other penalties which the law may have established, the following are expiatory penalties which can affect an offender either perpetually, for a prescribed time, or for an indeterminate time:

1° a prohibition or an order concerning residence in a certain place or territory;

2° privation of a power, office, function, right, privilege, faculty, favour, title, or insignia, even merely honorary;

3° a prohibition against exercising those things listed under n. 2, or a prohibition against exercising them in a certain place or outside a certain place; these prohibitions are never under pain of nullity;

4° a penal transfer to another office;

5° dismissal from the clerical state.

§2. Only those expiatory penalties listed in §1, n. 3 can be *latae sententiae*.

¹⁹ Canon 1752. In cases of transfer the prescripts of canon 1747 are to be applied, canonical equity is to be observed, and the salvation of souls, which must always be the supreme law in the

penalties²⁰ specifically aim to re-establish Church order, repair scandal, remedy the damage done to the Church by the offender, as well as to deter other offenders. Velasio De Paolis points out that "penalties in the Church are rooted in the possibility of expiating and therefore redeeming – with the help of grace – one's criminal past. It is a time of grace and an offer of salvation, through the Church's pastoral service".²¹ A prior warning is not required before expiatory penalties are imposed, and the penalty may be applied temporarily or permanently as in the case of dismissal from the clerical state.²²

Permanent withdrawal of faculties or placing a priest on administrative leave²³ requires a process.²⁴ Any procedures used by a bishop must be in accord with canon law.²⁵ Giuseppe Di Mattia says that "the procedural provisions established to inflict penalties juridically and administratively must be observed in applying the penalties that deprive of the good indicated".²⁶

Firstly, there must be a Preliminary Investigation²⁷ to establish "the facts, circumstances, and imputability"²⁸ of the allegations. Therefore, before any canonical penalties are imposed, including those as a result of a penal trial, there must be a

Church, is to be kept before one's eyes.

²⁰ Cf. fn. 18 Canon 1336 §1 5° dismissal from the clerical state.

§2. Only those expiatory penalties listed in §1, n. 3 can be *latae sententiae*.

²¹ Velasio De Paolis, "Penal Sanctions, Penal Remedies and penances in Canon Law", in Patricia Dugan, ed., *The Penal Process and the Protection of Rights in Canon Law*, (Montreal, Wilson & Lafleur: 2005) 158.

²² Canons 291-293 specify the consequences including loss of all rights as a cleric. Canon 1317. Penalties are to be established only insofar as they are truly necessary to provide more suitably for ecclesiastical discipline. Particular law, however, cannot establish a penalty of dismissal from the clerical state.

²³ Peter Akpoghiran, *The Catholic Formulary, vol. 5: Penal Acts*, (New Orleans: Guadalupe Book Publishers, 2014) 63.

²⁴ Ibid., 47.

²⁵ Canon. 221 §1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.

§2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.

§3. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.

²⁶ Giuseppe Di Mattia OFM, "Expiatory Penalties" in *Exegetical Commentary, IV/I, Commentary on canon 1336*, 345.

²⁷ Canon 1717 §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.

§2. Care must be taken so that the good name of anyone is not endangered from this investigation.

§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.

²⁸ Canon 1717.

preliminary investigation. The Congregation for the Clergy pointed out in a recent Canadian case that a bishop should carry out a preliminary investigation and follow the procedures in canons 1717-1720 before withdrawing faculties, or imposing any penalty.²⁹ Then the facts of the case and the imputability of the cleric will have been properly documented.³⁰ This documentation is important whether there is a judicial trial or an administrative process.

Following the preliminary investigation, the diocesan bishop must "ascertain that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender".³¹

If the diocesan bishop decides that these means cannot achieve all these ends, then there are two penal procedures that can be used:

- a) administrative
- b) judicial (canons 1720-1731).

Theoretically both processes are equally valid. In the first case the bishop or superior acts hierarchically and issues a decree as provided for by canon 1720.³² This might be when a priest is arrested by the police and charged with paedophilia in a secular court.

In the judicial process, the judge(s) in a church court decrees the sentence after the Ordinary hands the case over to the tribunal to conduct a judicial trial.³³ In every case, if truth is in doubt, then in the interests of justice there should be a canonical trial. The diocesan bishop or Ordinary can remove the faculties of the accused priest

²⁹ Congregation for the Clergy, Prot. No. 37937/05 CA, June 23, 2007, quoted in Morrissey, *Violations of Canon 277*, 62.

³⁰ Patrick Lagges, 'The Penal Process: The Preliminary Investigation in Light of the Essential Norms of the United States', in P. Cogan, ed., *Sacerdotes iuris*, (Ottawa: Saint Paul University: 2005) 255-296.

³¹ Canon 1341. An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender.

³² Canon 1720. If the ordinary thinks that the matter must proceed by way of extrajudicial decree: 1° he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defence, unless the accused neglected to appear after being properly summoned; 2° he is to weigh carefully all the proofs and arguments with two assessors; 3° if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of canons 1342-1350, setting forth the reasons in law and in fact at least briefly.

³³ Canon 1721 §1. If the ordinary has decreed that a judicial penal process must be initiated, he is to hand over the acts of the investigation to the promoter of justice who is to present a libellus of accusation to the judge according to the norm of canons 1502 and 1504. Innocent III in the Decretals of Gregory IX (X 5.39.35) said "Rei Publicae interest, ne crimina remaneant impunita" - "It is in the public interest that crimes not remain unpunished."

"to prevent scandals, to protect the freedom of witnesses, and to guard the course of justice".³⁴

The criteria for whether a bishop proceeds administratively or judicially are contained in canon 1342:

§1. Whenever just causes preclude a judicial process, a penalty can be imposed or declared by extrajudicial decree; penal remedies and penances, however, can be applied by decree in any case whatsoever.

§2. Perpetual penalties cannot be imposed or declared by decree, nor can penalties be so applied when the law or precept establishing them prohibits their application by decree.

§3. What a law or precept states about the imposition or declaration of a penalty by a judge in a trial must be applied to a superior who imposes or declares a penalty by extrajudicial decree unless it is otherwise evident or unless it concerns prescripts which pertain only to procedural matters.

Canon 1342 has a bias towards a judicial process. This is related to the right of the Christian faithful in canon 221 to "legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law".³⁵ However, the judicial process is only obligatory for the imposition of perpetual expiatory penalties or where the law prescribes the judicial process must be used.³⁶

It is very important that bishops understand that perpetual penalties cannot be incurred automatically or be imposed by an administrative decree.³⁷ The judicial process is always the preferred method for imposing penalties on an offender.³⁸ Bishops are given wide powers of discretion concerning the remission of penalties.³⁹

³⁴ Canon 1722. 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.

³⁵ Canon 221.

³⁶ Canon 1342 §2. Perpetual penalties cannot be imposed or declared by decree, nor can penalties be so applied when the law or precept establishing them prohibits their application by decree.

³⁷ Canon 1342 §2 points out that it is also possible a law or precept prohibits the imposition of penalties by decree as part of its formulation.

³⁸ Some people wanted to eliminate this preference during the Code revision process, cf. *Communicationes IX* (1977) 161. Cf. V. De Paolis, "Il Processo penale del nuovo codice," in Z. Grocholewski - V. Carcel Orti (eds.) *Dilexit iustitiam* (Vatican City, Libreria Editrice Vaticana, 1984) 473-494.

³⁹ Canon 1354 §1. In addition to the persons listed in canons 1355-1356, all who can dispense from a law which includes a penalty or who can exempt from a precept which threatens a penalty can also remit that penalty.

Penalties may prohibit the exercise of it or some of its acts, but they cannot deprive a priest of the power of the sacrament of Holy Orders.⁴⁰

Capacity of Priests to function without Faculties

A priest without faculties can always celebrate the Eucharist privately because celebration of the Eucharist and priesthood are so essentially related.⁴¹ Preaching is also a very important part of the ministry of a priest. Priests have faculties to preach from the law itself, but these faculties of a priest to preach can be restricted or removed by the competent authority for any just reason.⁴²

Furthermore, a priest without faculties, lawfully and validly absolves penitents in danger of death, even if an approved priest is present.⁴³ Therefore, a priest on administrative leave could absolve validly and lawfully anyone in danger of death. However, a priest on administrative leave, without faculties could not validly absolve penitents in ordinary circumstances outside the danger of death. This is because canon 966 §1⁴⁴ requires, for validity, that a priest needs the faculty to absolve.

When the Ordinary removes faculties, he should do so in writing giving a reason(s) for his decree.⁴⁵ For example, the diocesan bishop may have given the priest a precept, requiring him to observe the restrictions on his ministry under threat of penalty for failure to observe the restrictions. As a parallel, when a priest is guilty of a crime of sexual abuse, but is not dismissed from the clerical state, Norm 8, of the American Essential Norms states:

§2. Moreover, a law or precept which establishes a penalty can also give the power of remission to others.

§3. If the Apostolic See has reserved the remission of a penalty to itself or to others, the reservation must be interpreted strictly.

⁴⁰ Canon 1338 §2. Privation of the power of orders is not possible but only a prohibition against exercising it or some of its acts; likewise, privation of academic degrees is not possible.

⁴¹ Canon 904. Remembering always that in the mystery of the Eucharistic sacrifice the work of redemption is exercised continually, priests are to celebrate frequently; indeed, daily celebration is recommended earnestly since, even if the faithful cannot be present, it is the act of Christ and the Church in which priests fulfil their principal function.

Canon 906. Except for a just and reasonable cause, a priest is not to celebrate the Eucharistic sacrifice without the participation of at least some member of the faithful.

⁴² Canon 764. Without prejudice to the prescript of canon 765, presbyters and deacons possess the faculty of preaching everywhere; this faculty is to be exercised with at least the presumed consent of the rector of the church, unless the competent ordinary has restricted or taken away the faculty or particular law requires express permission.

⁴³ Canon 976. Even though a priest lacks the faculty to hear confessions, he absolves validly and licitly any penitents whatsoever in danger of death from any censures and sins, even if an approved priest is present.

⁴⁴ Canon 966 §1. The valid absolution of sins requires that the minister have, in addition to the power of orders, the faculty of exercising it for the faithful to whom he imparts absolution.

⁴⁵ Canons 47-58

If the penalty of dismissal from the clerical state has not been applied (e.g., for reasons of advanced age or infirmity), the offender ought to lead a life of prayer and penance. He will not be permitted to celebrate Mass publicly or to administer the sacraments. He is to be instructed not to wear clerical garb, or to present himself publicly as a priest.⁴⁶

A priest can have recourse against a bishop who has removed his faculties. The priest remains unable to function publicly pending the outcome of the recourse "*in devolutivo*".

A clerical religious who has been dismissed from his religious institute "may not exercise sacred orders until he finds a Bishop who will, after a suitable probation, receive him into his diocese in accordance with canon 693, or who will at least allow him to exercise his sacred orders".⁴⁷ Such a religious priest without faculties should not celebrate the Eucharist, but if he does so the Eucharist would be valid.

Analysis of a Canadian Case of Removal of Faculties by the Signatura

A bishop revoked a priest's faculties on 19 August 2003 when he stated in a letter:

As of today your faculties are herewith revoked. You can no longer celebrate mass publicly nor hear confessions nor preach... You are not to invite people to attend your privately celebrated Masses and not to concelebrate Mass publicly.

Then on 8 October 2004 the bishop wrote permitting the administration of the sacrament of the anointing of the sick on an individual basis to family members, but only with the permission of the Chancellor or the bishop himself.⁴⁸

Afterwards, the bishop claimed that he revoked the priest's faculties by an administrative act rather than using a judicial process. The bishop maintained that removal of faculties was not a penalty, and that he did not need to use the preliminary process of canon 1717 ff.⁴⁹ The bishop argued that no canon in the Latin Code gives a

⁴⁶ <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-revised-2011.pdf>.

⁴⁷ Canon 701. By legitimate dismissal, vows as well as the rights and obligations deriving from profession cease ipso facto. Nevertheless, if the member is a cleric, he cannot exercise sacred orders until he finds a bishop who receives him into the diocese after an appropriate probation according to the norm of canon 693 or at least permits him to exercise sacred orders.

⁴⁸ "The Revocation of Ministerial Faculties" in William Daniel (trans), *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, (Montreal: Wilson & Lafleur, 2011) 417. [Hereafter *The Revocation of Ministerial Faculties*]

⁴⁹ Canon 1717 §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous. §2. Care must be taken so that the good name of anyone is not endangered from this investigation.

priest a right to ministry. The bishop claimed that prescription⁵⁰ applies in judicial cases, but not in administrative matters. The bishop said: 1) "I did not impose a penalty...2) I used my administrative authority for the good of the diocese; 3) I did not want another court case implicating the Catholic Church; 4) Father Christopher was not suspended and is allowed to celebrate mass privately; 5) Father Christopher receives the same financial benefits as a priest in active ministry".⁵¹

The priest appealed his case to the Congregation for the Clergy who decided on 28 October 2005 that the bishop imposed an expiatory penalty depriving the priest of a faculty (cf. canon 1336 §1 2°), without the required judicial process (cf. canon 1341) since a permanent penalty was imposed (canon 1342 §2).

The bishop appealed the decision to the Signatura who issued a sentence in which it:

- a) accepted that a priest enjoys the faculty to preach everywhere unless this faculty has been restricted or removed or express permission is required by particular law. The faculty to preach can be removed for any just reason.⁵² Also, a bishop can revoke the faculty to hear confessions for a grave cause.⁵³ Both these faculties can be removed administratively and not for a penal reason. Similarly, the law concerning the minister of the anointing of the sick⁵⁴ mentions the

§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.

Canon 1718 §1. When it seems that sufficient evidence has been collected, the ordinary is to decide:

1° whether a process to inflict or declare a penalty can be initiated;

2° whether, attentive to canon 1341, this is expedient;

3° whether a judicial process must be used or, unless the law forbids it, whether the matter must proceed by way of extrajudicial decree.

§2. The ordinary is to revoke or change the decree mentioned in §1 whenever new evidence indicates to him that another decision is necessary.

§3. In issuing the decrees mentioned in §§1 and 2, the ordinary is to hear two judges or other experts of the law if he considers it prudent.

§4. Before he makes a decision according to the norm of §1 and in order to avoid useless trials, the ordinary is to examine carefully whether it is expedient for him or the investigator, with the consent of the parties, to resolve equitably the question of damages.

Canon 1719 The acts of the investigation, the decrees of the ordinary which initiated and concluded the investigation, and everything which preceded the investigation are to be kept in the secret archive of the curia if they are not necessary for the penal process.

⁵⁰ Canon 1362 §1. Prescription extinguishes a criminal action after three years unless it concerns:

1° delicts reserved to the Congregation for the Doctrine of the Faith;

2° an action arising from the delicts mentioned in canons 1394, 1395, 1397, and 1398, which have a prescription of five years.

⁵¹ *The Revocation of Ministerial Faculties*, 214.

⁵² Canon 764.

⁵³ Canon 974 §1

⁵⁴ Canon 1003 §1. Every priest and a priest alone validly administers the anointing of the sick.

presumed consent of the pastor entrusted to care for the member of the faithful, it is not a penalty for a bishop to restrict the priest anointing the sick.⁵⁵ As well, since an inactive priest requires delegation to assist at marriage, (cf. canons 1108 §1, 1111)⁵⁶ the bishop can decide the conditions for granting the delegation do not exist.

- b) agreed that the priest can always celebrate the Eucharist daily as recommended by canon 904 unless he is impeded by canon law.⁵⁷ (canon 900 §2) The celebration of the Eucharist is to be in a dignified place. The priest is meant to present a celebrant less than one-year-old to the rector of the church if the priest is unknown to the rector.⁵⁸ Canon 561 states: "No one is permitted to celebrate the Eucharist, administer the sacraments, or perform other sacred functions in the church without the permission of the rector or another legitimate superior; this permission must be granted or denied according to the norm of law".
- c) recognised that the removal of faculties may be an administrative decision rather than an expiatory penalty. However, in the administrative process for the removal of a parish priest from a parish, (canons 1740-1747) the motivating reason is the protection of the good of the faithful. The Signatura in a sentence of 18 March 2006 accepted that a diocesan bishop could restrict a priest from

§2. All priests to whom the care of souls has been entrusted have the duty and right of administering the anointing of the sick for the faithful entrusted to their pastoral office. For a reasonable cause, any other priest can administer this sacrament with at least the presumed consent of the priest mentioned above.

⁵⁵ Daniel, 217.

⁵⁶ Canon 1108 §1. Only those marriages are valid which are contracted before the local ordinary, pastor, or a priest or deacon delegated by either of them, who assist, and before two witnesses according to the rules expressed in the following canons and without prejudice to the exceptions mentioned in canons 144, 1112, §1, 1116, and 1127, §§1-2.

§2. The person who assists at a marriage is understood to be only that person who is present, asks for the manifestation of the consent of the contracting parties, and receives it in the name of the Church.

Canon 1111 §1. As long as they hold office validly, the local ordinary and the pastor can delegate to priests and deacons the faculty, even a general one, of assisting at marriages within the limits of their territory.

§2. To be valid, the delegation of the faculty to assist at marriages must be given to specific persons expressly. If it concerns special delegation, it must be given for a specific marriage; if it concerns general delegation, it must be given in writing.

⁵⁷ Canon 900 §1. The minister who is able to confect the sacrament of the Eucharist in the person of Christ is a validly ordained priest alone.

§2. A priest not impeded by canon law celebrates the Eucharist licitly; the provisions of the following canons are to be observed.

⁵⁸ Canon 903. A priest is to be permitted to celebrate even if the rector of the church does not know him, provided that either he presents a letter of introduction from his ordinary or superior, issued at least within the year, or it can be judged prudently that he is not impeded from celebrating.

publicly celebrating the Eucharist because of his imprudence with young people using an administrative decree.⁵⁹

- d) pointed out in this case the bishop had removed permanently the faculties of a priest primarily to avoid a civil lawsuit, rather than for canonical reasons "to prevent scandals, to protect the freedom of witnesses, and to guard the course of justice".⁶⁰ Bishops cannot remove the faculties of a priest for extraneous reasons such as avoiding civil law suits. A bishop must always act in accord with the universal laws of the Church. Canon 223 concerning the common good, does not enable a bishop to ignore or neglect more definite laws pertaining to a particular case.
- e) noted there was no Preliminary Investigation. The bishop "entirely neglected an examination about Fr. Christopher's imputability, the suitability of conducting a judicial process and observing prescription action; he did not initiate a previous investigation or observe the penal procedure mentioned in canon 1720".⁶¹
- f) accepted that the bishop had not made a perpetual decision in this case, but a decision for an indeterminate time while the cause endures. The *Signatura* quoted *coram* Fagiolo, 11 June 1993, who stated: "A prohibition to exercise power... can affect an offender as an expiatory penalty (cf. canon 1336 §1 3°); however, apart from a delict, it can be imposed as a mere disciplinary precept for a just and proportionate cause, while the cause endures. A perpetual prohibition to exercise power, however ... cannot easily be considered a mere disciplinary precept".⁶² The *Signatura* noted that during the process for the Revision of the Code of Canon Law, the *coetus* of consultors distinguished between perpetual penalties and penalties for an indeterminate time. (*Comm.* 10 (1976) 174. The *Signatura* commented that since the bishop, by writing a letter on 8 October 2004 allowing for anointing of the sick in certain circumstances, suggests the penalty is not perpetual.

Key Points

The *Signatura's* decision makes it clear that bishops must follow procedural law no matter what the accusation against the priest. There must be a preliminary investigation and due process. The imputability of the priest must be established. Bishops cannot impose penalties or withdraw faculties from priests in an arbitrary manner, or for non-canonical reasons such as to avoid law-suits. Nor can bishops claim to be acting for the good of the Church and withdraw faculties of priests ignoring the rights of priests.

⁵⁹ Daniel, 219.

⁶⁰ Canon 1722.

⁶¹ Daniel, 221.

⁶² *Ibid.*, 222: Case from Pamplona, Pro. No. 22785/91 CA, no. 8 p.6.

Analysis of Australian Cases

An Australian archbishop removed the faculties of three priests using the same process and similar reasons. In one case, the archbishop decreed on 17 July 1998:

that his pastoral office required of him to protect the unity of the people of God and to build up the Body of Christ. Therefore, "Remedial considerations arising from that responsibility lead me to derogate from the normal diocesan custom and withdraw as from this date [17 July 1998] your faculty to celebrate the Eucharist publicly, to hear confessions and to preach ... These remedies will remain in force for such time as is necessary for the public good of the Church".⁶³

The priest requested that the archbishop revoke his decree because "no motives were expressed in his decree and that a basis for the removal of my faculties had not been canonically proven".⁶⁴ The archbishop did not revoke the decree. The priest proposed recourse against the decree to the Congregation for the Clergy seeking the restoration of full faculties of the Archdiocese. The Congregation found that the archbishop had employed a commissioner using a mixture of canonical and civil procedures giving canons 1717 and 1722 as the basis for an investigation and decision. The Congregation found the archbishop violated canons 221, 51, 39 and 1717 and 483 §2.

The Congregation considered that the archbishop had applied a perpetual penalty using canon 1722 without a clear canonical administrative or judicial process. There was no indication that the promotor of justice was involved in the process as canon 1722 requires. The Congregation considered the procedures used were confused and not in accord with canon law and canon 221 in particular. Furthermore, the accusations kept changing and were already extinguished by prescription. The priest's good reputation was tarnished by the Archdiocese circulating information contrary to the prescripts of canons 1717 §2 and 220.

The Congregation declared on 23 August 2001 that the decree of the archbishop removing the faculties of the priest on 17 July 1998 was "null and void and without juridical effect" because of serious flaws in procedure.

In a second case the Congregation was critical of the procedural irregularities in the local process ignoring prescription. The Congregation concluded that the decree of the Ordinary dated 3 September 1998 lacked a basis both in law and in fact. The Congregation pointed out that decree according to canon 51 requires that "a decree be issued in writing, with the reasons at least summarily expressed, if it is a decision".⁶⁵

In another similar Australian case the archbishop had stated in his decree that the criteria of proof to be applied "is not that of 'beyond reasonable doubt' but the lesser

⁶³ Congregatio pro Clericis, 23 August 2001, Prot. No. 2001/1099, quoted in Augustine Mendonça, *The Bishop as the Mirror of Justice and Equity in the Particular Church: Some Practical Reflections on Episcopal Ministry*, unpublished paper.

⁶⁴ *Ibid.*

⁶⁵ Congregatio pro Clericis, 23 August 2001, Prot. No. 2001/0081. See <http://webmail.aol.com/msgview.adp?folder=UkVBRA==&uid=3084672>, quoted in Mendonça.

standards of 'balance of probabilities' and 'unacceptable risk'." The Congregation found that all these criteria were foreign to canon law and its processes, from which no dispensation is possible.⁶⁶

Key Points

A bishop must follow correct canonical procedures when removing the faculties of a priest. He must involve the promotor of justice and carry out a proper preliminary investigation respecting the rights of the priest to due process and a good reputation. The standard of proof is to be that of moral certainty. The bishop must give valid canonical reasons in his decree removing the faculties of a priest.

Model Letter imposing Administrative Leave

Peter Akpoghiran has composed a very comprehensive, model letter with a variety of options for a bishop:

Dear Father,

On (date) I received a report of an allegation against you of violating the Sixth Commandment of the Decalogue with a minor. (canon 1395 and *Sacramentorum sanctitatis tutela* art. 4.).

On (date) I had a meeting with you and informed you of the allegation.

At the aforesaid meeting, I afforded you the opportunity to defend yourself and advised you to secure the assistance of a canon lawyer and a civil attorney.

For the avoidance of doubt, the accusation, levelled against you, is as follows:

1. Statement of the nature of the allegation(s) and date(s)
2. State whether a preliminary investigation was initiated and whether there is a semblance of truth to it.

Having consulted with (name) the Promotor of Justice and having heard you, I hereby impose on you the following restrictions:

1. Except when it is necessary to care for the faithful who are in the proximate danger of death, you are only to celebrate sacraments, including the Holy Eucharist in private.
2. Your faculties as (position) are hereby revoked.
3. You are to leave the (parish Rectory) or some other official residence of the cleric no later than... An alternative residence has been provided for you at

⁶⁶ Congregatio pro Clericis, 21 December 2000, Prot. No. 2000/1201. See <http://webmail.aol.com/msgview.adp?folder=UkVBRA=&uid=3084679>, quoted in Mendonca,

4. You are to avoid all circumstances in which you are alone with one or more minors in any setting or context.

These restrictions do not imply that you are guilty. They have been placed on you as a necessary precautionary measure to:

1. Repair the scandal which some of your actions have caused
2. Protect the freedom of witnesses
3. Safeguard the course of justice.

Failure to observe the restrictions which have been imposed on you may render you liable to a just ecclesiastical penalty, after a warning has been issued in accordance with the provision of canon 1371 2°.

While you are under these restrictions, in accordance with the provision of canon 384, you will continue to receive the sustenance and benefits to which you are entitled as a priest of the Archdiocese/diocese of ...

In accordance with the norms of canon 1722 of the Code of Canon Law, these precautionary measures will be explicitly revoked when the motivating cause for this decision has ceased or when a judicial penal process or an administrative penal process, if one is initiated against you has ceased, provided a perpetual expiatory penalty is not imposed upon you by the Apostolic See.

You have a right to petition for the revocation or emendation of this decision either in whole or in part within the peremptory time period of ten days from the day this letter is communicated to you.

Signed Bishop.⁶⁷

Conclusion

Although priests do not have a right to an office in the Latin Code, the law presumes from the fact that the priests were ordained, that they should be able to minister and to have faculties to function publicly. When it is necessary to remove the faculties of a priest, it cannot be done in an arbitrary manner. The Promotor of Justice is to be involved. There must be a proper canonical investigation and due process. The right of the priest to a good reputation must be upheld. A bishop should "never try to short-circuit the law".⁶⁸ This includes a proper preliminary investigation to establish the facts and then correct procedures for either an administrative or judicial process.

⁶⁷ Akpoghiran, 98-100.

⁶⁸ Morrissey, *Suitability for Ministry*, 232.

Brendan Daly
The Canonist

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Address of His Holiness Pope Francis to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year

21 January 2017

Dear Judges, Officials, Lawyers and Staff
of the Apostolic Tribunal of the Roman Rota,

I extend to each of you my cordial greeting, starting with the College of Prelate Auditors and the Dean, Msgr Pio Vito Pinto, whom I thank for his words, and the Pro-Dean who was recently appointed to this position. I wish you may all work with serenity and fervent love for the Church in this judicial year which we are inaugurating today

Today I would like to turn to the theme of the relationship between faith and matrimony, especially from the prospective of faith inherent in the human and cultural context, in which the nuptial intention is formed. Saint John Paul II focused on it, and based his teaching on Sacred Scripture, which “indicates with remarkably clear cues how deeply related are the knowledge conferred by faith and the knowledge conferred by reason.... What is distinctive in the biblical text is the conviction that there is a profound and indissoluble unity between the knowledge of reason and the knowledge of faith” (Encyclical Letter *Fides et Ratio*, n. 16). Therefore, the more distant he or she is from the perspective of faith, the more “the human being runs the risk of failure and ends up in the condition of ‘the fool’”. For the Bible, in this foolishness there lies a threat to life. The fool thinks that he knows many things, but really he is incapable of fixing his gaze on the things that truly matter. Therefore he can neither order his mind (cf. Prov 1:7) nor assume a correct attitude to himself or to the world around him. And so when he claims that ‘God does not exist’ (cf. Ps 14:1), he shows with absolute clarity just how deficient his knowledge is and just how far he is from the full truth of things, their origin and their destiny” (*ibid.*, n. 18).

For his part, Pope Benedict XVI, in his Final Address to you, recalled that “it is only in opening oneself to God’s truth ... that it is possible to understand and achieve in the concrete reality of both conjugal and family life the truth of men and women as his children, regenerated by Baptism.... The rejection of the divine proposal, in fact, leads to a profound imbalance in all human relations ..., including matrimonial relations” (26 January 2013, n. 2). It is ever more necessary to deepen the relationship between *love and truth*. “Love requires truth. Only to the extent that love is grounded in truth