



SAINT LUKE INSTITUTE

August 27, 1986

Your Excellency:

Since you received the copy of the CONFIDENTIAL guidelines which I sent to you in December of 1985, two revisions have been made. The changes, as you will see on the enclosed pages, involve a change from recommending suspension to the use of "administrative leave" (Canon 1722). I thought it important to get this to you as soon as possible.

Please be assured of my prayers for you and all the good work you do in Christ's Church.

Your brother in Christ,

(Rev.) Michael R. Peterson, M.D.
President/Executive Medical Director

Enclosures: 2 (two)

(3) Immediate Action of the Ordinary

If the cleric admits to any kind of sexual misconduct, the Ordinary should "reward" him with his support and reinforce the important and "sacred relationship" which we believe exists between the Ordinary and his clerics.

If the cleric does not admit to any type of sexual misconduct to his Ordinary it is my suggestion that the Ordinary tell him of his obligation to support and try to help him. However, he should remind him of the "spiritual bond" and other aspects of the relationship of Ordinary and cleric that we believe exist in grace and exist in Canon Law.

*** IT IS MY PERSONAL OPINION that in either case, the Ordinary, if convinced initially by his "trusted" Chancery interviewer of the parent(s) that the allegation has any possible merit or truth, should suspend immediately the cleric. This may be done without a trial and by means of an extra-judicial decree (Canon 1342).

The purpose of this "temporary suspension" is to indicate clearly that the Ordinary in his relationship with his cleric believes that an investigation of the accusations are warranted and that the cleric must have a psychiatric evaluation in the near future. This is a form of "protection" for the Ordinary and the Diocese. For example, if the Ordinary is called to the witness stand and asked what he did when he learned of the sexual allegation against that eight-year-old boy made by a responsible parent, the Ordinary may point to the procedure in the Code of Canon Law and state that he did the first responsible action that the Code allows. Namely, he formally informed the cleric that he could not function as his representative in the diocesan assignment until an investigation revealed his guilt or innocence; this is done to protect the Diocese and to protect the general public, especially the family or families that had the courage to come forward and inform the Ordinary of the possible misconduct.

I would next suggest that the cleric be moved IMMEDIATELY from the parish rectory and into a retreat house, monastery, Bishop's residence and not allowed to function in any priestly capacity in that domicile until the next steps of investigation, legal inquiry with a civil attorney, and

*** See Canonical Revision, pp. 61-62, 7-28-86.

The preferred method of applying appropriate canonical penalties in such cases would be by way of administrative decree, issued by the Bishop. The penalty referred to is suspension of the priest from all sacred functions, ecclesiastical offices and duties.

*** a. Administrative Leave: after the initial report has been made and the Ordinary has decided that an investigation is justified, he should proceed according to cc. 1717-1719. The accused is simply that...his guilt has not yet been determined. The canons provide for a kind of "administrative leave" (canon 1722) whereby the priest or deacon may be asked to leave his residence and cease all public ministerial functions. This type of action by the bishop is not only advisable but should be routine. **AT THIS POINT THE PRIEST OF DEACON SHOULD NOT BE SUSPENDED.** Suspension is a canonical penalty which leads to a presumption of guilt. This could be misconstrued in civil courts and used to the disadvantage of the church. The priest or deacon has been accused of a delict which is actually a manifestation or result of a highly compulsive disorder. Although the actual effects of invoking canon 1722 may be similar to a suspension, the act whereby these effects take place is not a suspension. There is no process required beyond that mentioned in the canon. It would be well to explain to the accused that such action is for his benefit.

Suspension as a canonical penalty may be imposed by decree for a period of time, following the procedures outlined in the Code, or it may be imposed perpetually but not by decree. A perpetual or indefinite suspension can be imposed only after a canonical trial. In any case, suspension should only be used after the priest or deacon's guilt has been determined. If the accused is convicted and imprisoned, he could well be suspended for the duration of his incarceration. Such action might be advisable to avoid the appearance of tolerating the actions of pedophiles (but at the same time treating them with compassion). If it is determined, in conjunction with clinical advisors, that a priest or deacon can and should not exercise the ministry again because of the nature of his affliction or its severity, then laicization must be seriously considered. In the meantime it would be well to suspend the priest or deacon.

b. Removal from office: Although removal from office (associate, pastor, etc.) or transfer is not a penal procedure but an administrative procedure, the law provides for such actions if the ordinary believes that he has sufficient reason and that it redounds to the good of the faithful. Canons 1740-1752 set out in detail this procedure as well as the recourse against a decree or removal or transfer.

The ordinary, upon encountering a case of sexual misconduct, might give consideration to invoking the canons regarding removal in conjunction with those pertaining to penal procedures.

Nevertheless it is imperative to clearly understand that transfer or removal isolated from any other action is far from adequate and could in fact lead to a presumption of irresponsibility or even liability of the diocesan authorities by civil courts. In short, those presumed to be guilty of sexual misconduct, especially if it involves child molestation, must never be transferred to another parish or post as the isolated remedy for the situation.

c. Laicization: Canon 290 states that although sacred ordination, once validly received never becomes invalid, a cleric (priest, deacon or even bishop) loses the clerical state in three instances:

- when a judgement of a court or administrative decree declares the ordination to be invalid
- when laicization is lawfully imposed as a penalty
- when laicization is imposed by rescript of the Holy See.

Declaration of the invalidity of ordination is extremely rare and quite difficult to prove since it involves the intentionality of both the recipient of holy orders and that of the ordaining prelate. Allegations of lack of fitness for celibacy would not constitute solid basis to pursue such a matter.

Although the law includes dismissal from the clerical state (laicization) as a possible penalty for the offenses mentioned in canons 1387 and 1395, this penalty may not always be imposed on those guilty of sexual crimes not excluding pedophilia. Canon 1324, 1, 1^o, 2^o, 3^o indicates that the penalty prescribed by law or precept must be diminished if the culprit had only imperfect use of reason; lacked use of reason because of culpable drunkenness or other mental disturbances of a similar kind; acted in the heat of passion which, while serious, nevertheless did not precede or hinder all mental deliberation and consent of the will, provided that the passion itself was not deliberately stimulated.

As is obvious from the above paragraph, it is possible to dismiss a cleric from the clerical state if he committed canonical crimes involving sexual misconduct. Yet if he acted under the influence of one or more of the conditions mentioned in canon 1324 it is not possible to impose the extreme penalty allowed, namely dismissal.

Dismissal may be prudently considered when it is obvious that the cleric in question will not be able to fulfill the duties of the clerical state and sacred orders, even to a minimal degree, because of his compulsion for illicit sexual activity. In such cases this course of action might prove to be the most beneficial for the person and for the church. It would effectively lighten the liability and responsibility of church authorities for the actions of a cleric who is proven to be completely incorrigible. The decision to proceed toward dismissal should be made in conjunction with expert canonical counsel as well as well-founded clinical advice on the man's suitability for the clerical state.

It may happen that situations arise when dismissal is seen to be the only viable course of action but when, at the same time, a court process is ill-advised or impossible. In such cases only the Holy See has the power to issue a rescript whereby a priest or deacon is reduced from the clerical state. It is possible for the Holy Father to ex officio laicize a man when it appears that no other course of action is advised. In such cases the cleric's local ordinary should prepare the petition for laicization and send it, together with all pertinent material, to the Congregation for the Doctrine of the Faith. The relative urgency of the case will determine the alacrity with which the case is handled in Rome. *** Laicization requests arising from pedophilia will be given serious consideration by the Congregation for the Doctrine of the Faith (for priests) and the Congregation for the Sacraments (for deacons).

*** Canonical Revision 7-28-86.