

Information and comments on the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* and the canonical process for imposing penalties

The information and comments presented here are not intended to be an exhaustive commentary on the penal trial process. They are merely a highlight of some points that are good to keep in mind. The respective codes of canons – Code of Canons of the Eastern Churches (CCEO) and Code of Canon Law (CIC) – are the primary sources. Secondly, full commentary is provided in such volumes as the Canon Law Society of America’s The Code of Canon Law: A Text and Commentary.

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Some information for accused deacons and priests and their advocates

First, remember that the *Norms* require bishops to report to civil authorities. Be cautious in what you say to the bishop or other curial staff member (such as protosyncellus or vicar general). If your bishop or other curial staff member tells you you are to meet with the bishop, find out, first, what the meeting concerns and who will be present at the meeting. Do not agree to any meeting without knowing this. If the meeting concerns any type of allegations of a sexual nature, whether with a minor or not, have a canon lawyer, or at least a trusted friend, go with you. This will at least provide you with a witness to what takes place at the meeting. If the meeting is not supposed to be about such a matter but, when you arrive, the topic of some allegations is raised, terminate the meeting, telling the bishop you will contact him to reschedule when you have secured canonical advocacy. Sign no documents and make no resignations until you have had sufficient time to consider the action when not under the pressure of being in the bishop's office.

Everyone of the Christian faithful has the right to due process. This is a fundamental right of the natural law. It does not derive from merely ecclesiastical law. In addition, everyone is presumed innocent until proven guilty. Cardinal Re, in his letter of notification of *recognitio* of the *Norms*, wrote:

At the same time, by ensuring that the true facts are ascertained, the approved *Norms* protect inviolable human rights – including the right to defend oneself – and guarantee respect for the dignity of all those involved, beginning with the victims. Moreover, they uphold the principle, fundamental in all just systems of law, that a person is considered innocent until either a regular process or his own spontaneous admission proves him guilty. (8 Dec., 2002, Prot. N. 612/02, page 2)

The burden of proof is on the accuser and the judge must have moral certitude to render a sentence finding the accused guilty.

It is not unreasonable to expect the eparchy/diocese to pay legal fees for both the canonical advocate and the

secular attorney. The canons (CCEO canon 192, §4, §5; CIC canon 384) describe the special relation between bishop and priest and state the bishop's obligation to protect the rights of priests. Very few priests have the financial means to pay advocate and attorney fees.

Since the norms require implementing the measures of CCEO canon 1473 or CIC canon 1722 at the time the Congregation for the Doctrine of the Faith is notified, after the prior investigation has shown that the accusations seem credible, it would seem essential that the hierarch/ordinary be very sure that the evidence is sufficiently compelling that it will show that the person is guilty. Otherwise the person's reputation would be irreparably harmed by his summary and unexplained removal from parish ministry. Even though the trial would find him innocent of the accusations, people would always have doubt in their minds. Nor is it realistic to think that he, being innocent, could go to another eparchy/diocese. It is doubtful that any bishop would risk accepting a cleric who had been accused but found innocent. He would undoubtedly think that there could, nevertheless, be truth in the accusations and would not want to risk that possibility.

In conducting the prior investigation (CCEO canon 1468; CIC canon 1717) it seems that the hierarch/ordinary still must appoint a specific person for this and issue that in writing. The investigator, then, could utilize the services of one or all members of the review board. Ultimately, the hierarch/ordinary must make the decision about whether to proceed. It is not a matter of a decision by vote of the review board; the board is only consultative and advisory, not deliberative. Before making the decision, a hierarch must hear the one accused and the promoter of justice, and, perhaps, two judges or other experts in the law (This applies only to the Eastern churches – CCEO canon 1469). Latin ordinaries may consult two judges or other legal experts (CIC canon 1718). The Eastern code clearly accords a right of defense to the accused even at this point of the matter. The accused, then must have a suitable period of time to prepare a defense and should also have canonical advocacy in doing so. The suitable period of time would be the decision of the hierarch. Ten days or 30 days are frequently mentioned in the code as periods of time for action.

Neither in the canons nor in the *Norms* does it appear that the accused must be notified before the prior investigation is completed.

Look carefully at the matter of prescription in light of when the act (or if a series of acts, the last one) is said to have taken place. The Canon Law Society of America's paper on the *Norms* is a good guide in this matter (issued 2 Sept., 2002, over the name of The Rev. Kevin McKenna, J.C.D., President of the Canon Law Society of America).

Remember that the accused is not bound to confess the offense and cannot be asked to take an oath (CCEO canon 1471 §2; CIC canon 1728 §2). This is important in the light of norm 7 of the *Norms*, which notes that the alleged offender may be requested to seek, and may be urged voluntarily to comply with, an appropriate medical and psychological evaluation at a facility mutually acceptable to the eparchy/diocese and to the accused. The Holy See has made it clear in the past that a person accused cannot be forced to get psychiatric or other medical evaluation the results of which will be released to the bishop. That could be tantamount to a forced confession. The Holy See has also stated that this would be an unlawful violation of the canonical right to privacy.

The accused may be inclined to agree to this or to a resignation from office or leave of absence because his bishop is pressuring him. While an agreement or resignation may not be done through physical force or fear, it could still be an invalid act on the part of the accused due to reverential fear. Since reverential fear has been admitted as sufficient grounds to give rise to nullity of marriage (May 17, 1996, Coram Pompedda (88, 398-400)), it should certainly nullify a juridical act. The same would be true for a resignation from office offered by the accused in similar circumstances (CCEO canons 932 §2; 968; CIC canons 125 §2; 188).

If a cleric, especially a priest, is brought to trial and the provisions of CCEO canon 1473 or CIC canon 1722 are employed in accord with norm 6 of the *Norms*, the eparchy/diocese is obliged to take care of providing the means of a decent livelihood, even if it mean providing a larger cash payment than the cleric would receive were he still engaged in ministry and living in a rectory. The usual context of, especially a priest, is in

a rectory with utilities and food provided. If he must rent an apartment and pay his own utilities, food costs and any other needs that would normally be provided he must then receive, not only his normal income, but the additional amount to compensate for the loss of the other means of a decent livelihood. The advocate must insist that this is done.

During the trial:

In the matter of witnesses, the parties must know the names of all witnesses before the witnesses are examined (CCEO canon 1235; CIC canon 1554). A single witness does not normally provide full proof (CCEO canon 1254; CIC canon 1573). The accused also has the right to request exclusion of one or more witnesses before the witness is examined (CCEO canon 1236; CIC canon 1555).

Since imputability is necessary for there to be a delict, the testimony of experts in the fields of psychology and moral theology may be helpful (Preamble to the *Norms*, fourth paragraph with its footnote number 2). The names of private experts must be approved by the judge (CCEO canon 1262; CIC canon 1581 §1).

If the priest or deacon be found guilty and the penalties of the *Norms* are imposed, bear in mind that the accused cleric does not lose his right to the means of a decent livelihood (CCEO canons, 390 §1, §2; 1410; CIC canons 281, §1, §2; 1350 §1, §2).

Several outcomes may result from the whole matter:

If the accused be found guilty or if he has confessed, he will be removed from ministry and may be returned to the lay state. If returned to the lay state he may need the assistance mentioned in the canons for further education and support while he obtains the means for employment outside the church. The advocate will want to work with the confessed in arranging these matters with both justice and equity.

If only removed from ministry but not returned to the lay state, the eparchy/diocese still has the obligation of providing for the means of a decent livelihood, as detailed above.

Since it has happened that priests have been falsely accused, it is good to take cognizance of the fact that making a false accusation is a delict subject to penalty. (CCEO canon 1451; CIC canon 1390 §2). The same for one who harms another's good name. (CCEO canon 1452; CIC canon 1390 §2). This person could even be the hierarch/ordinary whose negligence caused harm to the person's good name.

Some information for bishops, chancellors and promoters of justice

The canons (CCEO canon 259; CIC canon 489 §2) require an annual review of both the general archives and the secret archives of the chancery. The acts of penal cases against clerics are to be kept in the secret archive (CCEO canon 1470; CIC canon 1719). Each year the procedural acts for inflicting penalties in matters of morals are to be destroyed in which the guilty party has died, or in which 10 years have elapsed, retaining a brief summary of the facts and the text of the definitive sentence or decree (CCEO canon 259 §2; CIC canon 489 §2). Had dioceses done this there would have been very little information for prosecutors to subpoena. Bishops and chancellors need to remember that they can be punished for misuse of power, office, ministry or other function in the church by action or omission; as well as if they have, out of culpable negligence, unlawfully placed or omitted an act of ecclesiastical authority, office, ministry or other function in the church, causing harm to another (CCEO canon 1464; CIC canon 1389). Also, note that anyone who unlawfully inflicts damage upon someone by a juridic act, or any act placed with malice or culpability, is obliged to compensate for the damage inflicted (CCEO canon 935; CIC canon 128).

Besides the secular attorney that works for the diocese, a competent canon lawyer should assist the bishop. Secular attorneys are not automatically qualified to give advice about canonical matters. The bishop needs to steer a straight course between both bodies of law.

Neither in the canons nor in the *Norms* does it appear that the accused should be notified before the prior investigation is completed.

In conducting the prior investigation (CCEO canon 1468; CIC canon 1717) it seems that the hierarch/ordinary still must appoint a specific person for this and issue that in writing. The investigator, then, could utilize the services of one or all members of the review board. Ultimately, the hierarch/ordinary must make the decision about whether to proceed. It is not a matter of a decision by vote of the review board; the board is only consultative and advisory, not deliberative. Before making the decision, a hierarch (This applies only to the Eastern churches – CCEO canon 1469) must hear the one accused and the promoter of justice, and, perhaps, two judges or other experts in the law. The Eastern code clearly accords a right of defense to the accused even at this point of the matter. Latin ordinaries may consult two judges or other legal experts (CIC canon 1718). The accused, then must have a suitable period of time to prepare a defense and must also have canonical advocacy in doing so. The suitable period of time would be the decision of the hierarch/ordinary. Ten days or 30 days are frequently mentioned in the code as periods of time for action.

Hierarchs/ordinaries should be very careful in addressing norm 7 of the *Norms*. This concerns psychological and other medical evaluation. Because of a priest's respect for the authority of the bishop he may agree to these evaluations out of reverential fear. While the accused's agreement may not be made through physical force or fear, it could still be an invalid act on the part of the accused due to reverential fear. Since reverential fear has been admitted as sufficient to give rise to nullity of marriage (May 17, 1996, *Coram Pompedda* (88, 398-400)), it should certainly be sufficient to nullify a juridical act. The same would be true for a resignation from office offered by the accused in similar circumstances (CCEO canons 932 §2; 968; CIC canons 125 §2; 188).

As regards the review board, it must conduct its work with confidentiality. The members must take the oath of confidentiality (CCEO canon 244; CIC canon 470).

The review board should make sure that action is not prescribed. Look carefully at the matter of prescription in light of when the act (or if a series of acts, the last

one) is said to have taken place. The Canon Law Society of America's paper on the *Norms* is a good guide in this matter (letter of 2 Sept., 2002, over the name of The Rev. Kevin McKenna, J.C.D., president of the Canon Law Society of America).

Should the measures of CCEO canon 1473 or CIC canon 1722 be employed in accord with norm 6 of the *Norms*, the eparchy/diocese is obliged to provide for the means of a decent livelihood, especially for a priest, even if it mean providing a larger cash payment than he would receive were he still engaged in ministry and living in a rectory. The usual context of, especially a priest, is in a rectory with utilities and food provided. If he must rent an apartment and pay his own utilities, food costs and any others that would normally be provided he must then receive, not only his normal income, but the additional amount to compensate for the loss of the other means of a decent livelihood. Also his health insurance and pension plan payments need to be continued, either by the parish or the eparchy/diocese, depending on how these payments are normally made.

Some information about the action to be taken

The accused could confess, submit resignation from office and request return to the lay state. If he be guilty, this may be in the best interests of all involved. It would eliminate the need for a trial that could be to the detriment of all parties involved and the common good.

The accused could confess but not submit resignation from office nor request return to the lay state. In that case the hierarch/ordinary should proceed to removal and, possibly, returning him to the lay state, all in accord with the norms of the law.

The accused could deny the truth of the allegations. In this case, since, if he be found guilty of even one offense, he will "be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state ..." (norm 8), the administrative process cannot be followed. The penalty threatened is a permanent one (CCEO canon 1402 §2; CIC canon 1342 §2. These two canons differ somewhat).

The hierarch/ordinary makes the decision to move to a judicial process (trial). He must issue the decree. Although he has listened to the investigator and the review board, it is to him and to him alone that this obligation falls (CCEO canon 1469; CIC 1718).

The acts of the investigation and the decrees must be put in the secret archive if they are not necessary for the procedure of imposing penalties (CCEO canon 1469; CIC canon 1719).

This is the point at which the C.D.F. is to be notified and the measures of CCEO canon 1473; CIC canon 1722 are to be employed. They cannot be employed before this point. This is to be done by administrative decree of the hierarch/ordinary in accordance with the requirements of law for administrative decrees (CCEO canons 1514, 1519; CIC canons 37, 51).

Bear in mind that the accused cleric does not lose his right to the means of a decent livelihood (CCEO canons, 390 §1, §2; 1410; CIC canons 281, §1, §2; 1350 §1, §2). The eparchy/diocese is obliged to take care of this, even if it mean providing a larger cash payment than the cleric would receive were he still engaged in ministry and living in a rectory. The usual context of, especially a priest, is in a rectory with utilities and food provided. If he must rent an apartment and pay his own utilities, food costs and any others that would normally be provided, he must then receive, not only his normal income, but the additional amount to compensate for the loss of the other means of a decent livelihood. This also includes health insurance and payments into the pension plan fund.

It appears that, at this stage, one must wait for a response from the C.D.F.. The congregation will either call the case to itself or notify the bishop/eparch how to proceed (norm 8A). The word, *how*, is an addition to the revised text from the Nov., 2002 USCCB meeting. It suggests that the C.D.F. may require a process that differs in some respects from that currently found in the two codes. In the light of this, ordinaries/hierarchs, judges, promoters of justice and advocates should all look at any communication from the C.D.F. very carefully.

Some information about the trial process

When the prior investigation shows that there is substance to the accusation, the bishop issues the decree that a trial shall take place.

The promoter of justice prepares and submits the libellus (CCEO canon 1472; CIC canon 1721).

At this point, the accused will already have an advocate. Should he not, then he must select one.

The vicar judicial (or the eparch/bishop) constitutes the tribunal. This is to be a collegiate tribunal of three judges (CCEO canon 1084 §1, 3^o; CIC 1425 §1, 2^o). It is also possible that the bishop (Latin Church only) would decide that a tribunal of five judges be appointed (CIC canon 1425 §2).

The presiding judge issues the decree accepting the libellus and cites the respondent for the *litis contestatio*. The judge is to make sure that the accused has a canonical advocate. (CCEO canon 1139, §2, 1474; CIC canon 1481 §2, 1723). The accused is free to appoint any qualified person as his advocate (CCEO canon 1141; CIC canon 1483). He must appoint the advocate with a valid and authentic mandate. (CCEO canon 1142 §1; CIC canon 1484 §1) The bishop/eparch must issue a decree accepting an advocate if he has not already been accepted to serve before the tribunal hearing the case. The bishop/eparch should not refuse this acceptance except for grave cause (refer to “Code of Professional Standards”, Canon Law Society of America, courtesy #2).

The *litis contestatio* takes place in accordance with CCEO canons 1195-1198; CIC canons 1513- 1516.

Once the *litis contestatio* has occurred the accused must be given adequate time to present and complete proofs (CCEO canon 1198, 1207-1210; CIC canon 1516, 1526-1529).

A caution about the judicial confession (CCEO canon 1217; CIC canon 1535). If made, it must be clear that it is not from force or fear, even reverential fear. Even this confession, because the case is a matter of the pub-

lic good, does not necessarily end the probative stage (CCEO canon 1217; CIC canon 1536).

In the matter of witnesses, the parties must know the names of all witnesses before the witnesses are examined (CCEO canon 1235; CIC canon 1554). A single witness does not normally provide full proof (CCEO canon 1254; CIC canon 1573). The accused also has the right to request exclusion of one or more witnesses before the witness is examined (CCEO canon 1236; CIC canon 1555).

Expert witnesses may be needed in regard to the presumption of imputability.

Besides written evidence, in a penal trial in any of the Eastern churches, there must be an oral discussion (CCEO canon 1476) in which the promoter of justice, the accused and the advocate for the accused, an injured party and that party’s advocate (if the injured party has intervened in accord with canons 1483-1485) take part (CCEO canon 1477). If the discussion indicates that new proofs must be gathered, the decision is delayed (CCEO canon 1479 §2).

The judges must have moral certitude in rendering the sentence. The promoter of justice has the burden of proof.

Once the sentence is rendered, the accused (as well as the promoter of justice) can appeal. The appeal suspends execution of the sentence. (CCEO canon 1481 §1, §2; CIC canon 1727 §1, §2).

If the sentence be not guilty, either at the first instance sentence or upon appeal, the one who had been accused must be returned to active ministry, even in the office of pastor if he held that office prior to the accusation. Every effort must be made to restore his good name, even though that may be difficult. He may also want to take measures in the tribunal against the person who falsely accused him. Eparchial/diocesan officials should not be surprised if this take place. Refer to CCEO canon 1451; CIC canon 1390 §2 and CCEO canon 1452; CIC canon 1390 §2.

The Trial Process

The following observations are for cases in which the judicial penal process found in the respective codes is to be followed. If the C.D.F. makes exceptions then what is given here should be observed mutatis mutandis.

Outline of the process

	CCEO	CIC
I. Pre-trial		
A. Eparch/bishop receives accusation	c. 1468 §1	c. 1717 §1
1. cannot act on anonymous accusations		
B. Eparch/bishop issues decree appointing the investigator and ordering the prior investigation	c. 1468 §1, §2, §3	c. 1717 §1, §2, §3
1. investigation takes place		
2. may utilize the review board's expertise and assistance		
3. care not to harm the accused's good name	c. 1468 §2	c. 1717 §2
C. Accusation does not seem to have merit	c. 1469 §1	c. 1718 §1, 1°, §2
1. the matter ends		
2. eparch/bishop issues decree closing the investigation	c. 1469 §1	c. 1718 §2
3. the accused does not need to be informed that an accusation was made		
4. the acts of the investigation, eparch's/bishop's decrees, all matters preceding the investigation are placed in the secret archives of the eparchial/diocesan curia. (except those needed for the penal process).	cc. 1470, 259 §2	cc. 1719, 489 §1 & §2
D. Accusation seems to have merit		
1. hearing		
a. Eastern churches: must hear accused and promoter of justice, may also hear two judges or experts in the law	c. 1469 §3	xxx
b. Latin Church: may hear two judges	xxx	c. 1718 §3

	CCEO	CIC
2. eparch/bishop issues decree that a trial is to take place	c. 1469 §1	c. 1718 §1, 3°
3. Congregation for the Doctrine of the Faith is informed (<i>Norms</i> , #6)		
4. measures of CCEO canon 1472 or CIC canon 1721 are decreed by the eparch/bishop		

II. Trial

A. C.D.F. responds ordering the trial to begin. The response might give special instructions about the process

1. promoter of justice prepares and submits the libellus	cc. 1472, 1185, 1187	cc. 1721, 1502, 1504
2. appointment of those who will serve on the tribunal for the case	refer to c. 1084 §1, 3°	refer to c. 1425 §1, 2°, §2
3. decree issued accepting the libellus and citing the accused	cc. 1188, 1190 §1	cc. 1505 §1
4. accused must have an advocate	cc. 1139 §2, 1484	cc. 1481 §2, 1723
5. <i>litis contestatio</i> (sometimes called joinder of the issue) takes place	cc. 1195-1198	cc. 1513-1516

B. Probative stage takes place

1. time allotted to the accused to prepare his defense	c. 1198 and cc. 1207-1210	c. 1516 and cc. 1526-1529
2. accused is given names of witnesses who will be called	c. 1235	c. 1554
3. proofs, names of witnesses and questions for them submitted to the judges	cc. 1220, 1223 §1, §2	cc. 1539, 1552 §1, §2
4. promoter of justice, the accused and his advocate have opportunity to review acts not yet known to them	c. 1281 §1	c. 1598 §1
5. parties can propose additional proofs. These may also be reviewed by the parties	c. 1281 §2	c. 1598 §2

C. Conclusion and sentencing

1. ponens issues decree of conclusion	c. 1282 §1, §2, §3	c. 1599 §1, §2, §3
2. time allotted for preparation of briefs	c. 1284	c. 1601
a. Eastern churches only – oral discussion must take place	c. 1476	xxx

b. additional proofs gathered, if needed, and made available to the parties	c. 1479 §2	xxx
3. opportunity for rejoinder briefs	c. 1286 §1, §2, §3	c. 1603 §1, §2, §3
4. judges render sentence	cc. 1290-1292	cc. 1607-1609
a. Eastern churches only – dispositive part normally published immediately	c.1480	xxx
b. formal publication of sentence takes place within a month	c. 1480	xxx
5. sentence is published	c. 1480	c. 1614

D. Appeals

1. promoter of justice and respondent both have the right to appeal	c. 1481 §1, §2	c. 1727 §1, §2
a. appeal can be nullity of sentence	c. 1302 <i>ff</i>	c.1619 <i>ff</i>
b. appeal can be the decision itself	c. 1481 §1, §2	c. 1727 §1, §2
2. appeal is made to second instance tribunal or directly to the Holy See	cc. 1064 §1, 1059	cc. 1438, 1417 §1

III. Post-trial

A. Execution of sentence

1. executed immediately if no appeal	c. 1337 <i>ff</i>	c. 1650 <i>ff</i>
2. any appeal suspends execution of sentence	c. 1319	c. 1638

B. If first instance sentence is upheld upon appeal, sentence is executed

c. 1337 <i>ff</i>	c. 1650 <i>ff</i>
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C. All acts from the trial are placed in the secret archive of the eparchial/diocesan curia

1. must be destroyed after ten years have elapsed	c. 259 §1	c. 489 §1
2. must be destroyed if the guilty party has died	c. 259 §2	c. 489 §2
3. archives must be reviewed annually	c. 259 §2	c. 489 §2