

such an arrangement with the priest there may be a reason to determine such an impediment to an office exists, but then again, if there were a psychological impediment, then one may be impeded from the exercise of orders already received (cf. c. 1044 §2, 2°).

The bishop should be aware and supportive of the vocations and needs of the priests of his diocese. However, the membership in an association does not prevail over true pastoral need should it arise (cf. c. 383 §§1-4). Other solutions can be sought within the compass of the law and keeping in mind the morale of the entire presbyterate. Should such an arrangement be entered into of quasi-stability as a result of a free association, there may be some resentment among the other secular clergy.

Should the bishop choose to incardinate these priests and deacons and then determine that the seminarian is suitable for orders, it should be for the good of the diocese (cf. c. 269, 1°). The statutes of the private association which these five men form should reflect the realities of the expectations of the secular clergy and the needs of the diocese. There should be mutual understanding between the members of the association and the diocesan bishop that both the good of their vocations and the needs of the diocese are considered. Depending on the needs of the local church, it seems that both could be adequately met with such an arrangement, which would not inordinately prejudice the ability of subsequent bishops to meet the pastoral needs of the diocese.

Michael R. Hartge, JCL

CANON 221

RIGHTS AND OBLIGATIONS OF ACCUSED CLERICS

We have all heard many terrible stories of victims having brought their complaints of sexual abuse to bishops and religious superiors and frequently the victims were not believed, ignored or even threatened. Today the pendulum has swung to the opposite extreme in some places. E.g. I recently heard of a priest being accused of sexual abuse, and the first he knew about it was when he received a call from a church official who told him, "You have been accused of sexual abuse. You are to be out of the presbytery by 5 pm today when the locks will be changed." These approaches to victims and priests seem completely wrong and not in accord with canon law. Some church officials act as if canon law does not apply to them and they seem to think they can do whatever they like. What are rights of the accused cleric in this situation and others of similar occurrence?

OPINION

Rights of the Accused

1) Right to Presumption of innocence

It is a fundamental principle in canon law that the accused is considered innocent until proven guilty. Canon 1321 states, "§1: Anyone is deemed innocent until the contrary is proved."¹ Juan Arias and Juan Arrieta explain:

the intention is to set out the general principle of penal law that the accused person is presumed innocent, to safeguard his or her integrity. This implies the need for evidence to demonstrate the guilt of the accused and to enable those who must impose a penalty to form moral certainty (c.1608). It also means that those who have to judge should set aside any prejudice, and evaluate the circumstances of each case in an impartial and objective manner."²

The Dicastery for Legislative Texts explains "the presumption of innocence of the accused person is a general principle of every system of law, aimed at protecting the image of people in the face of any attempts to illegitimately tarnish their good reputation."³ This means that assessments of cases of alleged abuse

¹ All English translations of the Code of Canon Law 1983 are from by the Canon Law Society of American, *Code of Canon Law: Latin-English Edition. New English Translation*, 4th printing (Washington, DC: CLSA, 2023).

² Juan Arias and Juan Arrieta, commentary on c. 1321, in Juan Arrieta, ed., *Code of Canon Law Annotated*, 4th ed. (Montreal: Wilson & Lafleur, 2022) 1026-1027.

³ Dicastery for Legislative Texts, *Penal Sanctions in the Church: User Guide for Book VI of the Code of Canon Law*, 2023, 7; <https://tinyurl.com/322hzsuu> (accessed on 4 August 2025).

have to start from this perspective of eliminating prejudice, so the judge is impartial. However, when criminal reports are received by church authorities, precautionary measures are often necessary to ensure justice is achieved and potential victims are protected. Therefore, the accused cleric may be prohibited to exercise sacred ministry and may be required to live at a particular place etc. (cf. c. 1722) The church authorities must still always protect the presumption of innocence.⁴

2) Right to have his good name protected during the investigation

The right to a good reputation arises from natural law. A person's right to a good reputation is enshrined in canon 220: "No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy."

During an investigation, canon 1717 §2 recalls the duty in justice to protect the good name of the persons involved (cf. c. 220), whether they are the alleged victim(s) or the accused himself. These principles mean that all those involved must be careful what they say to others and in particular what is stated to the media. The Dicastery for Legislative Texts pointed out:

Canon 220 establishes a general principle prohibiting slander and defamation (see also paragraphs 2477-2479 in the CCC), declaring that "it is not lawful for anyone to illegitimately injure the reputation one enjoys." . . . Thus, it does not seem permissible to justify the publication of such news for alleged reasons of transparency or reparation . . . In conclusion, having as an undeniable legal foundation the statement of the Supreme Pontiff Francis that "it is necessary to prevent the publication of lists of the accused, even by dioceses, before the prior investigation and final condemnation," the answer can only be negative with respect to divulging occult news concerning anyone, all the more so when it concerns deceased persons.⁵

3) Right to a civil and a canonical advocate/procurator

The accused cleric must have an advocate (cf. c. 1723 §1). The judge or delegate must advise the accused cleric of his right to have an advocate. This

advocate could also be a procurator so that he is able to act on behalf of the accused cleric (cf. c. 1481 §1). The Dicastery for the Doctrine of the Faith explains this right:

With the new *Norms* promulgated in 2021 (cf. art. 20 § 7 SST), it is explicitly stipulated by the law for the case of an extrajudicial process in matters reserved to the DDF that the accused, in accordance with the prescriptions of canons 1723 and 1481 §§ 1-2 *CIC*, be assisted by an advocate and/or procurator, either of his own choice or, otherwise, appointed *ex officio*. The Ordinary (or his delegate) must be informed of the appointment of the advocate and/or procurator by means of a suitable and authentic procuratorial mandate in accordance with canon 1484 § 1 *CIC*, prior to the session in which the accusations and proofs are made known, in order to verify that the requirements of canon 1483 *CIC* have been met.⁶

To be properly advised, both the accused and the advocate performing his/her role, must know the details of the accusation, unless the sacrament of Penance and the seal of confession is involved. Then the complainant has the right to anonymity.

Financing the advocate is frequently an issue. A religious institute must finance the canon or civil lawyer to advise their member. An accused diocesan priest must negotiate with his local Ordinary, normally a diocesan bishop, about the provision of civil and canonical advice. The diocesan bishop is obliged to defend the rights of his priests (cf. c. 384). Therefore, the diocese would be obliged to ensure that the accused priest appoints a canon lawyer or has one assigned for him. The provision of a civil lawyer is another matter (cf. c. 1464). If a priest is also facing civil charges, he would be entitled to legal aid in many countries.

The diocese paying for lawyers is a sensitive issue. When a priest has stolen a substantial sum from the diocese and parishes, it is upsetting for parishioners to discover that the accused priest is getting one of the most expensive lawyers at diocesan expense to get his sentence reduced as much as possible. A diocese may have a policy for example that a priest provides his own civil lawyer (cf. c. 1649

⁴ Ibid., 191. Moreover, in adopting such measures, one cannot fail to take into account the fact that the new canon 1321 §1 calls for the presumption of innocence to be protected at all times (cf. n. 17).

⁵ Dicastery for Legislative Texts, Reply concerning the publication of names of clerics allegedly guilty of sexual abuse, 5 September 2024, N. 18316/2024 (internal citation omitted); original Italian text <https://tinyurl.com/yhz8erns> (accessed on 4 August 2025); see page 16 herein for an English translation of the DLT's response.

⁶ Dicastery for the Doctrine of the Faith, *Vademecum: On Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, 5 June 2022, Ver. 2, 98; https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html (accessed on 4 August 2025)

§1, nn. 1, 3) on the understanding that if he is found not guilty, the diocese will refund his legal expenses.

4) Right to remuneration and support

All clergy dedicated to ecclesiastical ministry have a right to remuneration as found in canon 281 §1. Canon 281 expresses the right of clergy who work or have worked in sacred ministry, to receive adequate remuneration, and social assistance in sickness and old age. The right to remuneration is linked to the diocese, personal prelature, or religious institute of incardination. The remuneration is not a stipend for work performed but the ordinary can take in account income from other sources such as military pensions.⁷ Since clerics dedicate themselves to ecclesiastical ministry, they deserve remuneration. The Dicastery for the Doctrine of the Faith explains this right in its *Vademecum* (cf. *Vademecum* 98).

Apart from the loss of the clerical state,⁸ which includes loss of all rights as a cleric, a suspended cleric, or a cleric prohibited from the exercise of public ministry has a right to remuneration (cf. c. 1350 §1). Clerics dismissed from the clerical state cannot be employed by the ordinary in any capacity (cf. c. 1350 §2). The remuneration granted to a clergy who is not in active ministry may be less than what a cleric in active ministry receives. However, as the canon states “provision must always be made so that he does not lack those things necessary for his decent support” (c. 1350 §1).

5) Right to a decision based on moral certitude

When decisions are made about compensating victims, the standard of proof is often probability that the person was abused. This may be the case especially when the accused cleric is deceased, or when the Church must fulfill the requirements of civil law. However, the standard or proof for finding a person guilty of a crime in a church penal process is the standard of moral certainty (cf. cc. 1608; 1342; 1343 §3). Judith Hahn explains that the standard of beyond reasonable doubt is practically the same as moral certainty.⁹

⁷ Pontifical Council for Legislative Texts, decree, April 29, 2000, *Communicationes* 32 (2000) 162-167.

⁸ See commentary on c. 1350, *Code of Canon Law Annotated*, 1058. The remuneration is not a stipend for work performed but the ordinary can consider other sources of income, such as military pensions.

⁹ See Judith Hahn, “What does it mean to be ‘morally certain’? How secular standards of proof help to understand canonical decision making,” *The Canonist* 11/2 (2020) 242, and Judith Hahn, “Moral Certitude: Merits and Demerits of the Standard of Proof Applied in Roman Catholic Jurisprudence,” *Oxford Journal of Law and Religion* 8 (2019) 324.

6) Right to be judged according to the provisions of canon law

All the Christian faithful and not only clergy, possess the rights enshrined in Canon 221 §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.” The diocesan bishop can only dispense from disciplinary within the limits of his competence. He cannot dispense from penal law or penal procedures (cf. c. 87 §1). All procedures and protocols of dioceses and the bishops conference must comply with universal law (cf. c. 135 §2). If the protocol document for investigating abuse complaints in a diocese or a territory has provisions contrary to the universal law of the Church, the accused cleric can seek recourse against the investigation to the competent dicastery. Canon 221 §3 states that “The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.” Therefore, accused clergy have the right to be judged with justice and with canonical legal safeguards.

There are many procedural rights including: the right to know and deny the accusation (cf. c. 1620); the right to recourse against the process chosen and the personnel involved who may have a conflict of interest (cf. cc. 1448, 1449); the right not take an oath and the right to remain silent and not incriminate oneself (cf. c. 1728); the right to know the punishment proposed including if a dismissal is being sought (cf. c. 1720); the right to actively participate in the instruction of the case and to suggest witnesses (cf. c. 1720); the right to see the acts (cf. c. 1598); the right to submit written arguments or briefs (cf. c. 1603); the right to speak last (cf. c. 1725); the right to have the most favourable law applied (cf. c. 1313); the right to a proportionate penalty (cf. c. 1349); the right reject the renunciation of the trial (cf. c. 1724); the right to be acquitted if he is innocent (cf. c. 1726); the right to see the sentence cf. (cc. 1614, 1615); the right to challenge the decision or sentence (cf. c. 1734); the right to a suspension of the judgment upon appeal cf. (c. 1353).

Obligations of the Accused

The Dicastery for the Doctrine of the Faith’s *Vademecum* enables a bishop to use canon 1722 from the beginning of the preliminary investigation concerning an alleged more grave crime:

To defend the good name of the persons involved and to protect the public good, as well as to avoid other factors (for example, the rise of scandal, the risk of concealment of future evidence, the presence of threats or other conduct meant to dissuade the alleged victim from exercising his or her rights, the protection of other possible victims), in accordance with art. 10 § 2 *SST*, the Ordinary or Hierarch has the right,

from the outset of the preliminary investigation, to impose the precautionary measures listed in canons 1722 *CIC* and 1473 *CCEO*.¹⁰

The Dicastery for Legislative Texts explains that a bishop can use those same measures from the beginning of the preliminary investigation in allegations of other crimes:

However, during the preliminary investigation, with just cause and on the basis of the ordinary attributions that are proper to it (cf. can. 392), the ecclesiastical Authority can adopt by Decree (cf. Appendix 3) adequate disciplinary measures, proportional, and reasonably limited in time: for example, by limiting the exercise of the pastoral ministry or ecclesiastical office of the subject under investigation, even in cases not reserved to the Dicastery for the Doctrine of the Faith.¹¹

Therefore, the bishop can prohibit the exercise of sacred ministry, require the accused to live in a particular place, etc while canonical processes are in action. A bishop might write something like this:

Because of the seriousness of the allegations against you, and to respond to the spiritual and pastoral needs of the Church community and for your own good and the good the Church, in accord with the provisions of canons 49 and 1339 § 1, I hereby admonish and warn you:

1. To avoid any contact whatsoever and in any other manner, either at your initiative or from their own initiative, with persons under the age of 18 years unless in the presence of an adult.
2. To avoid any contact whatsoever and in any manner, either from your own initiative or from their own initiative, with the person who has lodged the above referenced complaint against you.
3. Not to interfere with the process including by distributing information about the accuser in any manner or means.
4. To avoid any contact whatsoever and in any manner, either from your own initiative or from their own initiative, with the family members or friends of the person who has lodged the above referenced complaint against you.
5. To avoid physical presence in the parish of.....and town of.....which is where the allegation arose.
6. To avoid persons or situations that could endanger your continence or any conduct that might cause scandal to the faithful or that would receive publicity in the media.

¹⁰ *Vademecum*, 58.

¹¹ *Penal Law User Guide*, 191.

I require you to live at _____. You require my prior written permission to stay overnight anywhere else.

The provisions of this precept are necessary and prudent precautions as a pastoral measure to protect the rights and reputations of all involved and to safeguard the salvation of souls.

The gravity of this matter requires me to state further that failing to observe the provisions of this precept shall be deemed a violation of canon 1371 §1, which can result in further disciplinary action against you, and which may render you liable to additional canonical penalties. Accordingly, this precept itself stands as a canonical warning concerning these matters.

Yours sincerely in Christ,

Bishop _____

Conclusion

Accused clerics have many rights enshrined in canon law, either in the Code of Canon Law or in other documents. The accused cleric also has obligations to enable justice to be achieved in a case. In summary:

Rights of the Accused:

1. Right to presumption of innocence
2. Right to have his good name protected during the investigation
3. Right to a civil and a canonical advocate/procurator
4. Right to remuneration and support
5. Right to a decision based on moral certitude
6. Right to be judged according to the provisions of canon law
7. Right to deny the accusation
8. Right to recourse against the process chosen and the personnel involved
9. Right not take an oath
10. Right not to incriminate himself i.e. to remain silent and not to admit the offence
11. Right to know the accusation and the punishment proposed including if a dismissal is being sought (an accuser in a case involving the sacrament of Penance has a right to anonymity)
12. Right to actively participate in the instruction of the case
13. Right to see the acts
14. Right to submit written arguments or briefs
15. Right to speak last

16. Right to have the most favourable law applied
17. Right to a proportionate penalty
18. Right to reject the renunciation of the trial
19. Right to be acquitted if he is innocent
20. Right to see the sentence
21. Right to challenge the decision or sentence
22. Right to a suspension of the judgment upon appeal

Obligations of the Accused

1. Not to interfere with any canonical or civil process, including, e.g., by not getting parishioners to sign a petition he is innocent or by distributing information about the accuser in any manner or means.
2. To avoid any contact whatsoever and in any manner with the person who has lodged the complaint against him.
3. To avoid any contact whatsoever and in any manner with the family and friends of the person who has lodged the complaint against him.
4. To observe any precepts or requirements imposed by the diocesan bishop or ordinary that may include the following provisions:
 - 4.1 To avoid any contact whatsoever and in any other manner with persons under the age of 18 years, either at the cleric's initiative or from the minor's own initiative, unless in the presence of an adult.
 - 4.2 To avoid physical presence in the parish and town where the allegation arose.
 - 4.3 To avoid persons or situations that could endanger his continence or any conduct that might cause scandal to the faithful or that would receive publicity in the media.
 - 4.4 To live at a particular address.

Msgr. Brendan Daly

CANONS 312; 579

CANONICAL STATUS OF A COMMUNITY OF SISTERS

Within the last few years, I was appointed as Bishop of the Diocese of X. After having extensive conversations with the Superior General of a group of sisters whose motherhouse is located in this diocese, I am concerned about them. In 197_ they were erected as a pious union. Throughout the years they have done marvelous work in this diocese and have expanded to other dioceses. Therefore, they appear to be a religious institute. Would you bring clarity to their current status and my role?

OPINION

In preparing this response I have reviewed the following documents: a) the decree of erection as a pious union, b) letters from various Vatican officials over the years, c) the constitutions and secondary handbooks of this community, d) formation of candidates, novices, temporary professed, and ongoing formation, e) their financial situation, and f) the status of each individual prior to 197_ and at the current time. I was also invited to spend five days with the sisters at their motherhouse. I interviewed each sister privately, joined them in their daily schedule, and visited some of their apostolates.

Canon 707 in the 1917 Code of Canon Law stated that pious unions could be erected for the exercise of some charitable work and/or promoting a more perfect Christian life among their members.¹ Since they were considered to be ecclesiastical organizations, they were subject to the jurisdiction of the local ordinary in all their actions. In accordance with canon 689 their statutes were to be examined and approved by him. They also acquired juridic personality in accordance with canon 687. Therefore, they were considered to be different from other groups of Catholics who simply gathered together but were not carefully examined.² Additionally, the 1917 code states that pious unions were distinct from the "religious state of life" and a "society" as indicated in canons 487-681. Both of these classifications were considered stable forms of life. While canon 488 §2

¹ The author is using the English translation by Edward Peters, *The 1917 Pio-Benedictine Code of Canon Law*, (San Francisco: Ignatius Press, 2001) 266. References to this code will be cited as *CIC/17*.

² *Sacred Congregation of the Council, "Corrienten. Iurisdictionis,"* November 13, 1920: *AAS* 13 (1920) 135-144. This decision concerned the St. Vincent de Paul Society, Diocese of Corrientes, Argentina. It was ruled that since it was not an ecclesiastical society in the strict sense, the local ordinary did not have authority over it like he did by virtue of canon 707.

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ROMAN REPLIES
&
CLSA ADVISORY
OPINIONS

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