

PROCEDURAL NORMS FOR THE LAICIZATION OF CLERICS

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The Sacrament of Sacred Ordination confers an indelible character. A man validly ordained cannot cease to be a cleric, but he can lose the clerical state. The author exposes and explains the various ways of losing the clerical state; treats the meaning of the law and the values underlying the canons (CIC cc. 290-293 and CCEO cc. 394-398), and investigates the practical implementation of these canonical procedures from the time of the promulgation of the Latin and Eastern Code. As per the norms of the Church "laicization" can be defined as an act by the legitimate authority that takes away from a cleric the lawful use, except for emergencies, of the power of orders; deprives him of his rights, privileges, and clerical status; and renders him juridically equivalent to a layperson.

Introduction

Through the Sacred Ordination one is perpetually marked with an indelible character and definitively incorporated in the clerical state.¹ Both the sacramental and juridical effects of sacred ordination are

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¹ CCEO c. 743.

meant to last throughout the life time of the cleric. Whereas the sacramental character can never be lost, the juridical status of a cleric can be lost through death or through the procedures mentioned in the law. In the matter of dispensation from clerical celibacy, practically the same law is applied in the Latin Church and the Eastern Catholic Churches. The Apostolic See of Rome has issued clear and precise norms regarding the *amissio status clericalis*. They have been condensed and codified in four canons in CIC and five canons in CCEO.² Except for the limited power granted to the patriarch in CCEO c. 397³, the five canons of CCEO and the four canons of CIC are substantially the same. Hence practically the same norms govern the canonical institution of the loss of the clerical state in the whole Catholic Church.

Church law points out that the loss of the clerical state in no way affects the power of orders, not even those that are clearly of ecclesiastical origin; rather, the action touches on the lawful use of the power of orders. There are three ways in which a cleric loses the clerical state: (a) by judicial sentence or administrative decree that declares the invalidity of sacred ordination; (b) by a penalty of dismissal legitimately imposed for some crime specified in church law; or (c) by a rescript or letter of the Apostolic See - for an example, the priest who desires to leave the active ministry and live as a layperson, either with or without marriage.⁴ Although the declaration of the invalidity of orders is theoretically possible, it has been the practice of the Holy See to discourage petitions for invalidity. The Holy See recommends instead that the petitioner follow the process leading to a dispensation from the obligations of priesthood and celibacy. For practical reasons, then, the third possibility, commonly called "laicization" is the subject of this article. Besides explaining the meaning of the law and the values underlying the canons, this article will investigate the practical implementation of these canonical procedures from the time of the promulgation of the Latin Code and Eastern Code.

1. Legislation Regarding the Loss of the Clerical State

Historically, the Catholic Church divided the clergy into major and minor clerics. The first category consisted of *sacerdotes*, that is, bishops

² See CIC cc. 290-293 and CCEO cc. 394-398.

³ The provisions of this canon would also apply to the major archbishop of major archiepiscopal Churches *sui iuris*, following the provisions of CCEO c. 152.

⁴ See CIC c. 290 and CCEO c. 394.

and priests, along with deacons; the second category comprised those tonsured clerics receiving the minor orders of porter, acolyte, lector, and exorcist. Since 1972, laicization applies only to deacons, presbyters, and bishops. Examples of laicization occurred more frequently in history among those with minor orders. A minor cleric who freely married, or joined the military without permission, or without legitimate cause ceased to wear ecclesiastical dress and tonsure and did not resume them within a month after warning, automatically incurred laicization. Likewise, religious minor clerics automatically incurred laicization if dismissed from their institute. Church law provided that laicization be imposed in the case of a minor cleric guilty of external carnal sins and the religious minor cleric whose profession is declared invalid due to fraud. Voluntary instances of laicization took place when the minor cleric informed his ordinary that he wished to return to the lay state, and the decree of the same ordinary ordering the return of a cleric whom he judged unsuitable for advancement to major orders.

Ecclesiastical law did not envision the voluntary departure from active ministry by major clerics, for example, priests. Involuntary departure as a penalty, however, appeared in church history and law. The distinction between deposition and degradation may be found in the Decretals of Gregory IX.⁵ In either case, the focus of the penalty was upon the use of an individual's power through ordination.

Laicization is connected in canon law with the theological principle that once Holy Orders have been validly received, they constitute an indelible character on that person that can never be invalidated. The loss of the juridical status of a cleric does not mean that a person becomes "unordained," but rather that he loses the right to the lawful exercise of orders and he loses all the privileges and obligations (except that of celibacy) of a cleric. The most significant effect of the loss of the clerical state is the prohibition from exercising the power of orders and the subsequent deprivation of all offices, functions, and any delegated power.

1.1. 1917 Code of Canon Law.

There were no commonly known procedures for voluntary departure or laicization in the 1917 code. One reason may be that dispensations from the priestly vow of celibacy were not granted. Before 1970, the law and the practice for a laicized priest were that he retains his

⁵ *Decretales Greg. IX, c. 27, De verborum significatione, lib. V, tit. 40.*

obligation to celibacy. For example, a decree dated April 18, 1936, from the Sacred Penitentiary stated that for the Latin Church "dispensation from "sacred celibacy", in past times, was hardly ever granted, and according to the present discipline is never given, even in danger of death."⁶ From 1939 to 1963, such dispensations were granted in 315 instances. Since that time, the number of requests for dispensation rose to thousands. When such a dispensation from celibacy is requested and granted by the supreme authority of the Church, it always includes the loss of the clerical state and significantly restricts the person's ability to participate in public church functions.

The 1917 code contained procedures for involuntary loss of the clerical state. The distinction between the two penalties of deposition and degradation found expression in CIC 1917 cc. 2303 and 2305. Both penalties could be inflicted only for offences specified as punishable by these penalties under the law of the code. In addition to the case mentioned in canon 2305 §2, the CIC 1917 lists five others in which the law warrants the imposition of the penalty of degradation.⁷ Deposition, while leaving in effect the obligations arising from the reception of sacred orders, carried a suspension from offices and ineligibility for offices and positions in the Church. Degradation includes deposition, perpetual deprivation of the right to wear ecclesiastical garb and the reduction of the cleric to the lay state whereby the cleric was relieved of the obligations of the clerical state, except that of observing celibacy.

Changes were introduced in the wake of Vatican Council II. The first may be classified as terminological while the second concerns the development of procedures governing voluntary departures and later involuntary departures from the clerical state. The major moments of this change may be marked by the norms issued by the Holy See, especially those of 1980; the revision of church law in 1983; the norms issued in 1988 by *Pastor bonus* and subsequent directives.

1.2. Vatican Council II

The Church altered its view of the clerical state as a result of the insistence of the Second Vatican Council on the fundamental equality of all the People of God. The change is clear concerning membership. Entrance into the clerical state, according to the 1917 Code of Canon Law, came about with the reception of tonsure followed by the minor

⁶ AAS 28 [1936] 242.

⁷ See canons 2314 §1, 3°; 2343 §1, 3°; 2354 §2; 2368; and 2388 §1).

orders. With the suppression of both of these entrance rites in 1972 by the *motu proprio Ministeria Quaedam*⁸, ordination to the diaconate marked one as a cleric. Therefore, the present discipline on the loss of the clerical state applies only to deacons, presbyters, and bishops. The change is equally clear concerning the loss of the clerical state. The material on the loss of the clerical state in the 1917 code was entitled "The Reduction of Clerics to the Lay State," which implied the inferiority of the laity. The use of "loss of the clerical state" and "return to the lay state" more accurately reflects the conciliar emphasis on equality, which became one of the principles guiding the revision of the code. Vatican II deliberations pointed to the difference between involuntary and voluntary loss of the clerical state but left the implementation to the Holy See.

At the request of many bishops at Vatican Council II, Pope Paul VI launched a twofold approach to the question of procedures for voluntary departure from active ministry. On one hand, church teaching would continue to explore the great value placed on priestly celibacy in the Latin Church. On the other hand, a special 18 member commission was formed in the Congregation for the Doctrine of the Faith. They set forth on February 02, 1964, an instruction announcing their exclusive competence to deal with petitions for the return of priests to lay status, dispensed from all obligations of the clerical state, including celibacy.⁹

The Congregation for the Doctrine of the Faith instituted in 1964 a procedure whereby the gathering of information with respect to a petition takes place by a strictly judicial process through ecclesiastical court authorities under the local ordinary. Each dispensation request, after examination by the special commission, was reserved to the pope. The policy required two items: the dispensed priest lives outside the area of his previous priestly ministry and any celebration of canonical marriage was to be privately celebrated and witnessed by the ordinary. The same congregation replaced this first procedure on January 13, 1971. Preparation of a petition no longer required judicial procedure, which was replaced by an administrative and pastoral procedure of data gathering. Presentation of a petition to Rome needs no longer be made necessarily by the local ordinary. Instead, the responsible agent was the petitioner's personal superior— the bishop in the case of his diocesan priest, the major superior in the case of a

⁸ AAS 64 [1972] 529-534.

⁹ AAS 63 [1971]: 303-312 or CLD 7: 117-121; CLD 7:92-95; 1002-1015.

religious priest. The new norms required that the laicized priest refrains not only from strictly priestly functions, but also from certain specified functions often associated with the priestly ministry, e.g., the function of homilist and the office of rector, spiritual director, or professor in seminaries, theology faculties, and similar institutes. Further, he should not hold the position of a religious teacher or the office of the principal of a Catholic school. Restrictions on the externals of a marriage ceremony of the laicized priest were generally retained as in the instruction of 1964.¹⁰

Eighteen months later the congregation gave authentic clarification to some doubts arising in the 1971 norms in a circular letter of June 26, 1972. Laicization should never be the first, but only the last resort in salvaging a disintegrated priestly commitment; and ordinaries are encouraged to use every means to help prevent a priest from seeking a dispensation on impulse, in a state of depression, or without truly mature and solid motivation. Once dispensed and canonically married, the former priest may never be readmitted to the exercise of orders, but the dispensed priest, if unmarried and convinced that he mistakenly sought laicization may apply to the Holy See and seek the recession of his laicization. The circular letter reminded bishops that they may not resort to the emergency powers granted them by canon 81 of CIC 1917 to dispense a priest from celibacy since the office of priesthood involves the public order and the common good; a priest is not free to set it aside at his own discretion once he has freely accepted it.

1.3. Procedures and Norms after 1980

On October 14, 1980, the Congregation for the Doctrine of the Faith issued a letter to all local ordinaries and moderator generals of clerical religious institutes "on the mode of procedure in the examination and resolution of petitions which look to a dispensation from celibacy."¹¹ Appended to the letter were eight procedural norms to be followed in the instruction of each case.

The norms adopt a position that a dispensation is a relaxation of the law in a particular case and should never be viewed as a right; that is, a dispensation from priestly celibacy is anything but an inevitable, almost automatic, result of an administrative process. The norms presumed that before applying, each petitioner already has used all

¹⁰ AAS 64 [1972] 641 or CLD 7: 121-124.

¹¹ AAS 64 [1972]: 1132 or CLD 9: 92-96.

the resources available to solve his problems, i.e., the help of priestly brothers, friends and relatives as well as counselling by spiritual and psychological experts. The norms attempt to stress the individuality of each case and the need to develop an approach that addresses the uniqueness of the petition being prepared. Therefore, the norms must always be interpreted in the light of guidance found in the congregation's letter. Paragraph five of that letter, for example, speaks of cases of priests who long abandoned the priestly life, cannot withdraw from their present state and wish to sanate it; cases of those who should not have received priestly ordination because they lacked a due sense of freedom or responsibility, or because the competent superiors were not able, at the proper time, to judge in a prudent and sufficiently suitable manner whether the candidate was really fit to live his life perpetually in celibacy, dedicated to God.

1.3.1. Code of Canon Law (CIC 1983)

The 1983 Code of Canon Law identifies three ways by which a member of the clergy can lose his juridical status as a cleric and thus be returned to the lay state. Canon 290 states that a cleric loses the clerical state by: (1) a juridical decision or administrative decree that declares the invalidity of sacred ordination; (2) the legitimate infliction of the penalty of dismissal; and (3) a rescript of the Apostolic See that is granted to deacons for serious reasons only and to presbyters for only the most serious reasons. Except for the case of the declaration of the invalidity of sacred ordination (c. 290) laicization does not entail, and is distinguished from, a dispensation from the obligation of celibacy (c. 291).

The theology of orders determines that which is necessary for the validity mentioned in canon 291, namely requirements of the minister, candidate, their intentions, and liturgical form. Procedures for claiming the invalidity of orders are found in canons 1708-1712. The loss of the clerical state by the imposition of the penalty of dismissal (c. 291) requires a careful procedure as outlined in canons 1717-1731 and can be imposed only for reasons identified in the law. Similar to the 1917 code, the new code cites six instances: cc. 1364 §2; 1367; 1370 §1; 1387; 1394 §1; and 1395. Such an imposed penalty is considered an expiatory one, that is, it is meant to repair or compensate for the damage done to the ecclesial community. It can never be inflicted automatically or by decree but must be imposed.

1.3.2. Pastor Bonus (1988)

Pope John Paul II transferred competence for dispensation requests to the Congregation for Divine Worship and the Discipline of the Sacraments under articles 63 and 68 of the Apostolic Constitution on the Roman Curia, *Pastor Bonus*, of June 28, 1988. Competences for cases submitted prior to this date were retained by the Congregation for the Doctrine of the Faith. The competency called for by *Pastor Bonus* was confirmed in a letter of February 08, 1989.¹² All petitions of secular and religious clerics in Latin or other Churches *sui iuris* in common law or mission territories come to this congregation. Further clarification on competency occurred in a July 25, 1989, letter to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life regarding dispensations from the obligations arising from the ordination to the diaconate by religious men.¹³ Since *Pastor Bonus*, several practical instructions on processing laicization petitions became available. "Documents Necessary for the Instruction of a Case for the Dispensation from the Obligations of Priestly Celibacy" was issued by the Congregation for Divine Worship and Discipline of the Sacraments in April 1991.¹⁴ The next year the congregation issued "Loss of the Clerical State by a Deacon and a Dispensation from All the Obligations of Ordination" through Archbishop Daniel Pilarczyk, May 11, 1992.¹⁵ Finally, a circular letter was sent on June 6, 1997, to all ordinaries and superiors concerning the laicization of priests and deacons.¹⁶

1.3.3. Code of Canons of the Eastern Churches (CCEO)

For the better understanding of CCEO cc. 394-398 we may start with two propositions, one theological and other the canonical.¹⁷ The theological propositions, developed in the western sacramental

¹² *Notitiae* 25 [1989] 485.

¹³ *Notitiae* 26 [1991] 53-54.

¹⁴ *CLSA Roman Replies & Advisory Opinions* [1991] 2-4.

¹⁵ *CLSA Roman Replies & Advisory Opinions* [1992] 6-11.

¹⁶ *Origins* 27/11 [Aug. 28, 1997] 169, 170-172.

¹⁷ For other canonical commentaries on these canons see Lynch, in *CLSA Com*, 229-238; L. Chiappetta, in L. Chiappetta, *Il Codice di diritto canonico: commento giuridico-pastorale*, 2 Vols. (Naples: Dehoniane, 1988) 406-409; A. McGrath, in *CLSGBI* 166-168; T. Rincon Perez, in *Pamplona ComEir*, 239-242; D. Hynous, in *Clergy Procedural Handbook* (cited hereafter as *CPH*), ed. R. Calvo and N. Klinger (Washington, D.C.: CLSA, 1992) 238-275; W. Becket Soule, "The Loss of Clerical State," *A Practical Commentary to the Code of Canons of the Eastern Churches*, vol. 1, (Saint Maron Publications, USA) pp. 806-823.

theology, are that sacred ordination confers an indelible "character" which is never lost and does not permit re-ordination. And the canonical *status* of clerics can be dissociated from the being (*esse*) of clerics, the form

er consisting in a complex of clerical rights and obligations. Normally the clerical state is lost only with death, but a cleric can lose it (ontologically). Though there are canonical procedures to remove from a cleric his clerical status, there is no canonical procedure to make him cease to be a cleric. In other words, a cleric cannot be "declericalised," he can only be "defrocked." This is what is entailed in the statement of in CCEO c. 394 and CIC c. 290: "sacred ordination, once validly received, never becomes invalid; a cleric, however, loses the clerical state..."

2. Basic Norms and Criteria

The basic norms for handling petitions for dispensation from the obligations of either the diaconate or the priesthood are to be found in the document entitled *Substantial and Procedural Norms*, issued by the Congregation for the Doctrine of the Faith (CDF) on 14 October 1980¹⁸, and modified by subsequent instructions. The usual mode of the loss of the clerical state continues to be the rescript of the Apostolic See. This is so-called "laicization" which not only results in a rescript allowing the cleric to return to the lay state but also includes a dispensation from the obligation of celibacy. In 1980 the same congregation published a letter which contained norms governing the procedure. These norms are still in effect. Since the promulgation of the CIC 1983 and CCEO, there have been a number of practical changes and improvements in these petitions for both priests and deacons. In 1988, a significant development occurred with the reorganization of the papal curia. Pastor bonus assigned competence for "laicizations" of priests and deacons to the Congregation for Divine Worship and Discipline of the Sacraments (art. 68). All cases presented after March 1, 1989, were to be handled by this dicastery. The CDF reviewed all cases that were pending at that time and contacted bishops and superiors who had submitted cases and yet had not received a decision. They were asked to update the files with new details about the cases in order to bring them to closure. The CDF

¹⁸ Source material for implementation of these Norms can be found in "Substantial and Procedural Norms," 14 October 1980, Congregation for the Doctrine of the Faith, preceded by the letter of Franciscus Cardinal Seper, AAS 72 (1980) pp. 1132-1137.

retains competence for cases which were submitted to it before the aforementioned date. The competency of the Congregation for Divine Worship and Discipline of the Sacraments was confirmed in a February 08, 1989 letter of the Secretary of State, indicating that the 1980 norms are still to be employed in processing laicization. This includes all petitions of secular and religious clerics in Latin or other Churches *sui iuris* in common law or mission territories.¹⁹

On July 25, 1989, letter of the Secretary of State reconfirming this competency replied to an inquiry of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life regarding competency for processing dispensations from the obligations connected with the diaconate ordinations of religious men. Since 1989, practical instructions on laicization petitions have been issued by the Congregation for Divine Worship and Discipline of the Sacraments. The "Documents Necessary for the Instruction of a Case for the Dispensation from the Obligations of Priestly Celibacy" contains a checklist of documents necessary for the proper instruction of a case. This was distributed to ordinaries in 1991 through the NCCB.²⁰

The following year a similar document was distributed concerning the laicization of deacons. Finally, on June 06, 1997, a circular letter was sent to all ordinaries and superiors concerning the laicization of priests and deacons." These documents will be integrated into the following explanations of the laicization processes.²¹

The laicization procedures currently followed for deacons and priests will be examined separately, but some common issues can be examined at this point. Canon 290, 3^o explicitly includes deacons and

¹⁹ The following are the post-conciliar sources for the current law: CDF Norms, January 3, 1971, CLD 7, 110-117; CDF Circular Letter, Jan-13, 1971, CLD 7, 119; CDF Declaration, June 26, CLD 7, 121-124; CDF Letter, October 14, 1980: 1. D 9, 92-96. For an excellent summary of such sources, see, Rine & Perez, in *Pamplona ComEng*, 240; John E. Lynch, in *CLSA Com*, 232-234.

²⁰ "Msgr. Robert E. Lynch, "Memo to All Bishops," April 19, 1991. The aforementioned set of instructions was presented to the president and vice president of the NCCB during their visit to the Holy See in April 1991. Also in RRAO 1991, 2-4.

²¹ "Loss of the Clerical State by a Deacon and a Dispensation from all the Obligations of Ordination," attached to the "Memo to All Bishops" of Daniel E. Pilarczyk, May 11, 1992. Protocol number 263/97: Origins 27/11 (August 28, 1997) 169, 170-172. 29 See M. O'Reilly, "Recent Developments in the Laicization of Priests," *Jurist* 52 (1992) 684-696. For examples of processing petitions see RR 1981: 7-8; 1982: 37-38.

priests (presbyteris). The congregation still follows the practice that it will not recommend a laicization for a bishop or a superior general or former superior general of a religious institute.²²

Cardinal Seper's letter accompanying the 1980 Norms lists criteria for consideration of petitions for dispensation: 1) Cases of priests, who long ago abandoned the priestly life, cannot withdraw from their state and wish to sanate it; 2) Cases of those who should not have received priestly ordination, i.e., because: a) They lacked the due sense of freedom or responsibility, b) Competent superiors were not able, at the proper time, to judge whether the candidate was truly fit to live a celibate life. Additional criteria are presently being studied by the Congregation for Divine Worship and the Discipline of the Sacraments for future implementation. Several criteria currently in force have come under the review. Some of these are pertinent to those preparing cases: 1) the manner of handling the cases of paedophiles and those guilty of other sexual offenses are under study. The established procedures of the 1980 Norms may not be adequate for these cases as well as for priests in this category who refuse to seek a spontaneous departure from the clerical state. 2) For those applying who are under the age of 40, it may be possible to present these cases to the Holy Father when there is exceptional motivation present, such as: a) The presence of habitual, permanent and grave faults, moral or psychophysical which may be antecedent, concomitant, or subsequent to the ordination. These faults need to be verified by special experts; b) Scandalous cohabitation with women, either habitual, temporary, or occasional; c) Formal, public, and habitual disputes with the ecclesiastical authorities. 3) The Congregation wishes to follow the established practice of receiving petitions only after a prolonged absence from active ministry, e.g., from ten to fifteen years. Exceptions are made in this category. To secure the completeness of inquiry, especially when there are exceptions as noted above, the Congregation for the Divine Worship and the Discipline of the Sacraments has issued a List of Documents added to the already-existing norms. This list is reproduced in the following pages, as are samples of some of the documents required.²³

²² See M. O'Reilly, "Recent Developments in the Laicization of Priests," *Jurist* 52 (1992) 691.

²³ ¹Source material for implementation of these Norms can be found in the following publications: 1. "Substantial and Procedural Norms," 14 October 1980, Congregation for the Doctrine of the Faith, preceded by the letter of Franciscus Cardinal Seper, AAS 72 (1980) 1132-1137. 2. *CLSA Commentary*,

2.1. Who can Process a Petition for Dispensation

The rescript of laicization is a "favour" of the Holy See; it is never to be construed as a right of the cleric. Therefore, a spirit of humility and penance is always the spirit in which the favour is sought; it is never to be seen as a "simple expedient."²⁴ The bishop or superior of the ascription of the religious institute is competent to accept a petition and offers his votum on the merits of the case. However, the local ordinary of the place of domicile of the petitioner can be delegated. The Holy See must authorize any other ordinary.

The canon does not make explicit who must petition the Apostolic See—the cleric or the bishop or superior without the consent, or knowledge of the cleric (ex officio petition). The 1980 norms do not contain the provision for the ex officio laicization procedure found in the 1971 norms, according to which "the ordinary petitioned the Holy Father without the consent or at times the knowledge of the cleric. Whereas ex officio petitions had been accepted in the past, they are only rarely accepted now."²⁵

3. Procedural Norms for the Laicization of Deacons

Canon 290, 3° gives little detail on the procedure for laicization of deacons. It states simply that the Apostolic See grants laicization to deacons "only for grave causes" (*ob graves tantum causas*). A frequent "grave cause" accepted by the congregation had been to permit the remarriage of permanent deacons who had been widowed after ordination and who wished to remarry. It was the practice of the Holy See to insist that the deacon be returned to the lay state and dispensed from the obligation of celibacy. However, a statement of June 06, 1997 admitted, "For some time it has become evident that because of this prohibition, grave difficulties have arisen for those who have been

229-238. The three modes (invalidity of Orders, penalty of dismissal, and rescript of laicization) are discussed in the commentary on cc. 290-293. 3. "Normae Substantivae ac Procedurales Nunc Vigentes in Pertractandis Causis de Dispensatione a Coelibatu Sacerdotali," Vincenzo Ferrara, *Apollinaris* 62 (1989) 513-540.

²⁴ Private reply of the Congregation for Divine Worship and the Discipline of the Sacraments, RR 1995, 7.

²⁵ The CDWDS stated that the deacon who will not ask for laicization must be dismissed according to the judicial process, thus implying that it will not accept an ex officio petition (1992 Protocol, n. 2).

widowed after ordination but are desirous of remaining in the diaconal ministry."²⁶

To carry out the process needed for the dispensation of deacons, the Congregation for Divine Worship and the Discipline of the Sacraments has established a simple five-step procedure for the laicization of a transitional or permanent deacon: (1) The deacon makes an explicit request in writing to the Holy Father for the favour of a return to the lay state and the dispensation from celibacy. In the letter he is to state briefly the reasons for the petition, e.g., a transitional deacon wishes to marry. (2) A *curriculum vitae* is prepared, including an explanation of the seriousness of the reasons for the request, the development of events which led to the crisis, and the responsibility for the said crisis. (3) The *votum* of the bishop of incardination, which includes his endorsement of the petition, is needed. (4) Various testimonies are submitted, e.g., from superiors, professors, colleagues during the time of formation and during diaconal ministry. It may be appropriate to include the testimony of wife or family members. (5) Finally, the pertinent documentation from the time of formation and the *scrutinia* for admission to orders to be collected and included. The protocol does not call for a table of contents or the numbering of pages, nor does it indicate the number of copies to be sent to the Holy See. However, it is helpful to follow the procedure for priests' laicizations for the good ordering of the case and its being expedited once it reaches Rome.

The habitual faculty to laicize deacons was granted to the cardinal prefect in 1989 by means of the special faculty granted to him by the Holy Father. Such a procedure is valid only for those cases in which a spontaneous request is made by the deacon. Whenever the deacon refuses to ask for a dispensation by way of a favour, the ordinary may consider the processes for dismissal from the clerical state, provided an offense has been committed warranting such a penalty.

4. Procedural Norms for the Dispensation from the Obligations Connected to the Priesthood

Whereas the procedure for laicizing deacons is rather simple, the case is very different for priests. The reason is obvious: the favour of the rescript for a return to the lay state for a priest is granted only for the most serious reasons (*ob gravissimas causas*). The ordained ministry of the priest is a full time, involves the full care of souls, and entails the

²⁶ Circular letter, June 6, 1997, n. 7 (Origins 27/11 [August 28, 1997] 171).

carrying out of all the rights and obligations of the clerical state with none of the exceptions granted to deacons (CIC 1983 c. 288).

The high profile nature of the priest's life and ministry demands that very serious reasons motivate his petition. These reasons must be firmly documented and supported in the *vota* called for by the current protocol. The purpose of the rescript is to regularize the status of the priest who has left the active ministry, and to allow him to participate fully in the sacramental life of the Church, always attentive to the good of the community and the avoidance of scandal or confusion regarding a man's status.

The gravest reasons for laicization accepted by the dicastery continue to be those in the 1980 norms and those followed by the CDF; i.e., a priest who has long ago left the active ministry, has married, and now wishes to reconcile with the Church; one who should not have been ordained because he lacked a due sense of freedom or responsibility, or because, during the time of formation, his competent superiors were not able to judge if he was able to live a celibate life." A change has occurred in granting the request of a priest under the age of forty. The CDF had the custom of not granting such a petition; the Congregation for Divine Worship and Discipline of the Sacraments was at first open to such a petition should an exceptional motivation be present. By 1995, John Paul II suspended action in these cases in order to give bishops and superiors more time to exhaust every means of persuading the priest to re-turn to the active ministry. However, the 1997 circular letter has reintroduced these motives as a possibility, though they are exceptional in nature. They are to be used when the priest's motives for defection go beyond the ordinary reasons and when the grave scandal is present. In other words "there existed in the petitioner, previous to and concomitant with his Sacred Ordination, a psychological or physical condition ...not taken into serious consideration by those entrusted with formation." Because of the serious nature of the danger of scandal to the Church in these cases, the dicastery has accepted and approved cases which do not include the ordinary process of interviewing witnesses.

4.1. Different Steps of the Process.²⁷

An attentive following of the 1991 "list of documents" provided by the Congregation for Divine Worship and Discipline of the Sacraments has

²⁷ For more detailed presentations see Hynous, 238-276, and O'Reilly, 684-696. 44. See sample documents in CPH, 249-281.

proven to be a straight forward way to instruct the case." The process should not begin unless the bishop or superior has made every attempt to persuade the priest to return to the active ministry. Since the rescript entails a permanent loss of the clerical state, there should be no doubt that the petitioner wishes permanently to return to the lay state. These efforts at clarifying the mind of the petitioner should be documented and placed into the acts of the case.

4.1.1. Opening the Process

The petitioner first submits a signed petition to the Holy Father. The letter is written in a spirit of humility and penance and must explicitly include the two requests for a return to the lay state and a dispensation from the obligations of celibacy. The letter of the priest must summarize the principal reasons that have led him to leave the priesthood and any other reasons which make it impossible to return to the sacred ministry. He must sign personally and it must be submitted to the ordinary along with the curriculum vitae.

The Congregation for Divine Worship and Discipline of the Sacraments calls the curriculum vitae with the libellus and this document presents a "detailed description" of the reasons for leaving the priesthood and why such a decision is irrevocable. It succinctly states significant dates and provides information on the education and assignments of the priest. The ordinary is to summarize the "pastoral attempts" made to dissuade the petitioner from submitting the request and to include a document of "suspension" of faculties. This is not the penalty of suspension (CCEO c. 1432; CIC cc. 1333-1334) but the "withdrawal" of faculties done as a consequence of the decision to petition for a return to the lay state. However, the suspension is incurred *latae sententiae* by an attempted civil marriage (CIC c. 1394 § 1; CCEO c. 1453).

4.1.2. Ordinary's Review and Action

Although the ordinary may decide to instruct the case himself, usually a priest familiar with the process handles most of the work of the case. A canonical degree is helpful but not required. The priest instructor's decree of appointment is included in the acts of the case, with the "explicit statement" that the 1980 norms are to be followed. Worth noting is the shifting role of the priest instructor in light of curial praxis. In addition to gathering data and documents, the priest instructor must also provide his *votum* (his personal opinion) about the merits of the case. Because he is familiar with many facets of the case and details of the "story" of the petitioner, his *votum* can be very

helpful in assisting the Holy See to assess sometimes convoluted turns in the petitioner's history. He can offer a thorough synthesis of the interview, testimonies, and psychological reports of the case, especially in light of the petitioner's well-being and the good of the Church. Thus, the ordinary's *votum* is simpler. Besides summarizing his recommendation for the granting of the petition, it must contain the explicit statement that the ordinary is certain no scandal will be taken. Should the petitioner live outside his proper ordinary's jurisdiction, a second *votum* of the ordinary of that place is necessary with the same explicit statement. The Congregation for Divine Worship and Discipline of the Sacraments offers a list of testimonies to be gathered. The list, which is not taxative, includes: interrogations or depositions of witnesses (those indicated by the petitioner or chosen by the instructor), parents and relatives, superiors, companions, priest friends, co-workers, physicians, therapists, psychologists, etc. These testimonies may be submitted in writing and should be notarized. The petitioner's written consent to release confidential information is required. The petitioner is interviewed under oath by the instructor in the presence of a notary. Prepared questions are helpful. While the priest instructor will probe areas which the petitioner has given as the reasons for the petition, the former is free to gather narrative details he has deemed crucial in light of the testimony of those in formation, as well as any professionals involved in assisting the petitioner to discern his decision to petition the Holy Father. During the interview, the petitioner should feel free to add any details not covered by the instructor's questions, and ample room should be given the former to "tell his story."

The interview of the petitioner is taken under oath by the instructor in the presence of the notary with prepared and pertinent questions detailing, above all: a) the time of formation prior to ordination; b) with a deeper inquiry into the reasons given by the petitioner for the crisis, defection, and irreversibility of his choice.

The *votum* of the instructor concerning the merits of the case explains whether it is recommended or deemed inadvisable to grant the dispensation and the reasons for this determination by taking into consideration: the reasons set forth in the instruction; the personal well-being of the petitioner; the universal good of the Church, diocese, religious institute as a whole, as well as the souls formerly entrusted to the ministry of the petitioner.

4.1.3. Other Documents

Other documentation is required: the *scrutinia* (CCEO cc. 769, 771; CIC 1983 c. 1051), any pertinent documentation from the seminary or house of formation, civil marriage certificate if such a marriage has been attempted, sacramental certificates of spouse and children are to be included. The *votum* of the instructor concerning the merits of the case explains whether it is recommended or deemed inadvisable to grant the dispensation and the reasons for this determination by taking into consideration.

The *votum* of the ordinary is formulated upon the merit of the case as presented in the acts prepared by the instructor. It states whether or not it is deemed opportune to grant the dispensation and must include an explicit statement assuring that no scandal will be caused if the dispensation is given.

As has been noted by several commentators in the past, each petition is unique to the petitioner's set of circumstances. The norms ask that the inquiry surface the issues that relate to the lack of freedom on the part of the petitioner, the lack of responsibility (maturity) on his part, the inability of the competent superiors to judge in a prudent and sufficiently fitting manner whether the petitioner was suited for a life of celibacy dedicated to God through the priesthood and the onset of the crisis, the resignation from ministry, and the irreversibility of the decision. The *votum* should address those aspects that played an important role in the formation of the priest: the family background, the stability of the family, the practice of the faith, the origins of the inspiration to become a priest and the family reaction to entering the seminary. It also includes seminary formation: the status of the seminary's priestly formation program, any interruptions in the petitioner's advancement to orders, the presence of any moral problems that were potential obstacles to the reception of orders and any undue pressure placed upon the petitioner to be ordained. It includes also the onset of problems following ordination and/or assignment: what was the nature of the difficulties? What steps were taken to remedy the situation? What led to the decision to resign from the active priesthood? Were fellow priests, psychologists, the ordinary informed and consulted before the final decision? Is the decision considered to be irrevocable? If the petitioner lives in another diocese, the *votum* of the ordinary of residence should assure that no scandal will be caused if the dispensation is given.

The case must also include official copies of: Certificates of attempted civil marriage or declarations of nullity of marriage or civil divorce for the petitioner or woman. In preparing the documentation for transmittal to the Congregation: three copies of these documents should be sent to the Holy See (if the petitioner is under forty years of age, five copies of the complete acts are to be sent); they are to be bound in an orderly manner, the pages are numbered in sequence and authenticated by the notary, photocopies well made must be clearly legible, handwritten pages which are illegible must be accompanied by a typewritten transcription. The apostolic nunciature is the best way to ensure that the case is sent expeditiously to Rome.²⁸

At times, the Congregation for Divine Worship and Discipline of the Sacraments requests additional documentation so that the acts of the case can be completed. The petition could be denied because of inadequate motivation. Should the petition be denied, recourse to the congregation is possible, and more convincing evidence can be offered. The petition can be submitted as many times as the priest desires.

5. Laicization of Bishops

The canons of the Eastern Code and Latin Code, as well as the circular of 1980 are silent about the possibility for the laicization of Bishops. While rare, such cases have been addressed over the fifty years, typically in a penal context, although in some cases bishops have requested a release from the clerical state and this has been granted.²⁹

6. Effects of the Loss of the Clerical State

The loss of the clerical state takes effects when the cleric has been intimated or served the judicial sentence, administrative decree or

²⁸ For details on the praxis of the dicastery once it receives case, see N 27 (1991) 53-57 and O'Reilly, 690-695.

²⁹ For more details see practical commentary pp.814-815. Pope Francis, in his apostolic letter *motu proprio come una madre amorevole* (4 June 2016) established procedure for disciplining diocesan and eparchial bishops and major superiors of religious institutes and societies of apostolic life of pontifical right for the negligence of a bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults. The only punishment described in his letter, however is removal from office; since the norms are subject to a strict interpretation as a penal matter, deposition or dismissal from the clerical state would not appear to be possible as a result of these procedures. See Pope Francis, *Apostolic letter motu proprio come una madre amorevole* (4 June 2016), art. 1-5.

rescript of the apostolic see of Rome or the rescript of the patriarch. The loss of the clerical state has a number of consequences, which pertain, for the most part, to all three modes of loss, i.e., invalidity, dismissal, and laicization." Because he is no longer a member of the clerical state, he is no longer bound by its obligations nor does he enjoy any of its rights (cc. 273-289).³⁰

With the loss of the clerical state, cleric loses the following: he loses all the rights proper to the clerical state; he is deprived *ipso iure* of all offices, ministries, functions, and whatever delegated power he may have had. He loses all the obligations of the clerical state, except the obligation of celibacy in case of declaration of invalidity of ordination or if he is dispensed by the Roman Pontiff. In case of penal deposition, in addition to the above, he has no right to remuneration. He is deprived of ecclesiastical pensions and becomes unqualified to have them as well as those mentioned in (2) above. He is forbidden to exercise the power of orders, save for cc. 396 and 725. He cannot be promoted to higher sacred orders; and he is put on a par with laypeople as regards canonical effects (c. 1433 §2). But for his support the rights arising from social security, as well as health and other insurances (for him and his family, if he is married) are not affected and are in place, while if he is still in need, it is for his hierarch to provide in the best possible way (c. 1410). Except in the case of the declaration of invalidity of ordination, a priest who has lost his clerical state, however, remains a priest and is not deprived of the faculty to hear the sacramental confession of the dying person, even if another priest with faculty is present (c. 725); indeed, he is obliged to do so if no other priest present (c. 735 § 2); he may also administer the sacrament of the sick (c. 739). A laicized cleric is not to wear the clerical dress or ecclesiastical habit.

The rescript served to the cleric normally spells out some details: for example, that he is not to deliver a homily or serve as special minister of the Eucharist or exercise any function in a seminary or house of formation, or catholic college, or university or ecclesiastical faculty. Even elsewhere he is not to teach sacred sciences or catechesis without dispensation by the local bishop. If he has also been dispensed from

³⁰ "However, like any lay person, he too is encouraged to pray the liturgy of the hours (c. 1174, §2) and employ all the pertinent means he chooses to foster his spiritual life. These may indeed be very similar to the means he used as a priest or deacon, e.g., daily Mass, scripture meditation, rosary, etc." (see c. 276).

the obligation of celibacy and marries, the hierarch is directed to it that there is no “pomp and outward display.” But he is no outcast and can live fully liturgical life like any layman, be reader, singer, choirmaster, and share reflections like others in the celebration of the word, serve in the pastoral council.

7. Readmission to the Clerical State

One who lost his clerical state may be readmitted to the same status as a cleric. There is, of course, no question of re-ordination since he never ceased to be a cleric except the case of one whose ordination was declared invalid. This later, though never really cleric, was in the clerical status and maybe readmitted to it through ordination allowed by a rescript. If the loss was effected by a penal sanction, readmission is possible, provided the cleric is properly rehabilitated and all scandal has been removed. According to CIC in the Latin Church readmission is effected through a rescript of the apostolic see (CIC c. 293). That was the norm also in CICO, although with the permission of the same see the patriarch could also readmit (CS c. 156 §§2-3), but with the consent of the permanent synod (CS c. 260 §1 n 2^o). In CCEO there is further decentralization: the patriarch may readmit one who got rescript from him but he need not any longer obtain the permission of Rome, while for a cleric who lost his clerical state by a rescript of the Roman apostolic see, recourse is to be had to the same see for a rescript.

In practice, however, readmission is not simply a matter of issuing a rescript but involves a process. The hierarch who is concerned must fully investigate the situation of the petitioner, prepare a dossier of documentation (petition of the candidate, certificates, testimonies of witnesses, willingness of a hierarch to incardinate, how the expenses of formation lasting at least six months is foreseen, the *voluntatem* of the hierarch). The dossier is sent to the authority whose rescript is needed, and if it is from Rome to the same Roman congregation that granted the rescript for the loss of the clerical state. After a favourable reply, the formation takes place, possibly in a religious house, monastery, retreat house, pastoral centre under proper supervision and spiritual direction. In default of some such centre, a seminary could be considered. The competent authority, informed of the satisfactory outcome by the hierarch, issues the rescript (in essence a *nihil obstat*), which needs to be executed by a bishop, even as it is through ordination by a bishop that one becomes a cleric (c. 358). Thereby the cleric is ascribed as a cleric according to the norms of c. 357.

Conclusion

The concern of the Church to respect the dignity of all persons is implemented in a unique way through the processes outlined above. The deacon who seeks to be returned to the lay state retains the right to privacy and a good reputation. The Congregation for Divine Worship and Discipline of the Sacraments has shown special sensitivity through the protocol and list of required documents circulated for the use of ordinaries. Not only do these procedures protect the Church's right to examine carefully each case and reach an appropriate decision as to its disposition, but they also provide a clear and reasonable description of what the cleric can expect during the process. Like the annulment process, these procedures, too, can provide healing and new life for those who have struggled with vocational questions and wish to participate fully in the sacramental life of the Church. Because of the unpredictability of international mail routes as well as the workload of the dicastery, no "timeline" can or should be given to the cleric regarding the disposition of his petition with the exception of the cleric in danger of death.

The Sacrament of Sacred Ordination confers an indelible character. A man validly ordained cannot cease to be a cleric, but he can lose the clerical state. The first way mentioned in the canon whereby he can lose the clerical state is by a judicial sentence or administrative decree which declares that his ordination was invalid in the first place, that he never truly was ordained. The second way is penal dismissal. The penalty can only be imposed after a judicial trial before a collegiate tribunal of three judges. The third way that the clerical state is lost is by a rescript of the Apostolic See. Known as 'laicization', this is a favour that may or may not be granted by the Apostolic See, depending on the cleric's condition, age, and reasons for requesting laicization. As per the norms of the Church "laicization" can be defined as an act by the legitimate authority that takes away from a cleric the lawful use, except for emergencies, of the power of orders; deprives him of his rights, privileges, and clerical status; and renders him juridically equivalent to a layperson.

If a man's ordination has been declared invalid, he is free to marry in the Church. However, the other two ways of losing the clerical state by penal dismissal or by laicization do not in themselves dispense from the obligation of celibacy. That requires a dispensation especially reserved to the Pope. Even in danger of death or other emergencies, this dispensation is restricted by law to the Pope.

One who loses the clerical state can no longer function as a cleric. He loses his rights as a cleric and is no longer bound to clerical obligations except celibacy, unless he receives a dispensation from the pope. However, the law itself supplies him the faculty to hear the confession of a person in danger of death. A cleric who has lost the clerical state is unable again to be enrolled among the clergy except by rescript of the Apostolic See. Although a declaration of the invalidity of orders is theoretically possible, it has been the practice of the Holy See to discourage petitions for invalidity. The Holy See recommends instead that the petitioner follow the process leading to a dispensation from the obligations of priesthood and celibacy.