

# Removal of Pastor

The process for the removal of a pastor (Canons 1740-1747) is not a penal process. The focus of a penal process is the illicit and personally culpable acts performed by an individual that demand legal retribution as a remedy. The penal process is used to correct a wayward priest. In contrast, the process for removal of a pastor focuses on whether the presence of the particular pastor seriously harms the spiritual or temporal welfare of the parish or is ineffective, even at no fault of his own (Canon 1740).

Nonetheless, the removal of a pastor involves a deprivation of rights licitly acquired. The removal could also prejudice his natural right to a good reputation. Recognizing that a transition period always follows the appointment of a new pastor, the removal of a pastor and the appointment of another priest will naturally cause unrest and extend the transition period. Thus, the process itself prejudices harmony in a parish. For these reasons, the removal of a pastor should take place only as a last resort in a series of attempts to correct a perceived problem.

The available remedies for serious harm caused by a particular priest in his pastoral assignment are varied and depend on the situation identified. Nonetheless, the obligations of pastoral solicitude and Christian charity, the natural law, and positive ecclesiastical law demand that all other remedies be exhausted before initiating a removal process. And, these same sources require an objective process of removal directed toward achieving the primary objective, a reasonable harmony in the parish.

The Council of Trent did not suggest the removal of ineffective pastors unless they lived shameful lives and did not respond to corrective measures (Session 21, c. 6, *de Ref.*). In such case, the removal was a penalty. For merely ineffective pastors the Council Fathers required that other remedies take place. However, they cautioned that a bishop should not intervene except on rare occasions and only if a clear and persistent manner of acting occurred that caused harm to the common good. While the current law derives its foundation from the Council of Trent, it obtained its structure from the decree *Maxima cura* issued on 20 August 1910 by the Sacred Consistorial Congregation and the subsequent canons (2147-2156) from the 1917 Pio-Benedictine code. These laws and the jurisprudence of the Roman Curia assist us in applying the norms of the *ius vigens* on this issue.

## *A: Required Process for Removal of Pastor*

The first step in any canonical process is to exhaust non-contentious and informal methods of avoiding a process in law. Regarding the removal of a priest, “It is certainly appropriate that the bishop warn the pastor of problematic behavior or his deficiencies prior to invoking the canonical process. Moreover, the bishop will take care to provide remedial assistance to the priest if such assistance will likely enable the priest to overcome the deficiencies which point to a cause for removal” (eds. Calvo and Klinger, *Clergy Procedural Handbook* (Canon Law Society of America, Washington, D.C.), 1992, p. 124). Remedial assistance could include, but is not limited to, educational and formation programs, the appointment of a parochial administrator, or both. The appointment of a parochial administrator should be a temporary measure with the administrator being given limited authority in areas where the pastor is ineffective (eg: administration of school

or parish patrimony). This arrangement must end when one of two possibilities occur: (1) the pastor improves, or (2) the pastor is legitimately removed because he does not improve over a reasonable period of time. These remedial steps apply Christian charity and pastoral solicitude to the heart of the issue in attempt to establish reasonable harmony in the parish. Such an approach reflects the mind of the Church as expressed in the Council of Trent, *Maxima cura*, the 1917 Code, and recent jurisprudence from the Holy See.

The second step is to establish that a grave cause exists after remedial efforts have failed. This is done through a preliminary investigation referred to in Canon 1742§1. Though not explicitly stated, this inquiry should take a form similar to the inquiry required in Canon 1717. Certainly, if the bishop has delegated someone to complete this inquiry, that person has the powers of an auditor. When completed, a document summarizing the investigation, the proof attained, and recommendations made should be drawn up and notarized (Canon 483§1) to authenticate that this first step in the formal process has taken place. This document should carefully note the grave reasons for which the pastor could be removed.

If the removal process continues, the bishop is to discuss the situation with two pastors selected by him from a group established by the presbyteral council for this purpose (Canon 1742§1). A summary of that discussion should also be preserved and notarized for the acts of the case. It should be noted that the choice of pastors for this step should be carefully made. Use of those who have a bias against the pastor for personal reasons should not be used lest the pastor's good name and reputation be wrongly injured and the objectivity of the process compromised.

“If the bishop then judges that removal must take place, he paternally is to persuade the pastor to resign within fifteen days, after having explain, for validity, the cause and arguments for the removal” (Canon 1742§1). This fourth step is of great importance as regards both pastoral solicitude and due process. “He paternally is to persuade” implies that a meeting between the bishop and the priest take place at this stage of the process. Because of the vague and broad manner Canon 1741 uses to suggest causes for removal, Canon 1742§1 requires the bishop to explain to the pastor both the immediate cause and an argument for the process. A letter quoting from Canon 1741 and suggesting the pastor resign under threat of removal does not constitute an effort of pastoral persuasion explaining cause and argument. Interestingly, the validity of the process depends on this step. The meeting should be carefully documented with an accurate representation of the dialogue put in writing and witnessed by a notary. This becomes part of the acts of the case.

Considering the wording of Canons 1742-1745, there are four ways a pastor can respond to the pastoral persuasion offered by his bishop: (1) He can accept the invitation and resign freely; (2) He can resign conditionally; (3) He can choose not to respond; or (4) He can openly oppose the process.

We note that there are many ways to oppose the removal process, and offering a conditioned resignation is one way. It is entirely possible that a pastor opposes the removal process because circumstances of the process illicitly harm his ministry as a priest, but he is willing to resign conditionally. In this way, with a pastor's heart he can attempt to address the circumstances that would harm his vocation but also provide for the common good of the parish. In short, the conditions of his resignation could remedy his concerns and those of the parish.

Canon 1745 provides the final steps in the removal process if a pastor opposes the process of removal. If the reasons for his opposition “seem insufficient to the bishop, the bishop, in order to act validly, is to invite the pastor to organize his objections in a written report after he has inspected the acts, and offer any proofs he has to the contrary” (Canon 1745.1). If the pastor is not afforded his opportunity-to submit a defense brief-the decree of removal is invalid.

On this point, if the pastor submits a conditioned resignation and the bishop rejects it, the bishop must allow the pastor to review material and submit his objections to the process. The conditioned resignation does not constitute a written objection as required by Canon 1745.1 (cf: Congregation for the Clergy, 27 August 2007, Prot. No.: 20062792).

After receiving the defense brief, the bishop is to discuss the matter again with the two pastors previously noted, or two others if the first two are unavailable. This consultation should be carefully documented in the same manner as the first, and is expressly required for validity.

The final step of the removal process is for the bishop to prudently and prayerfully decide to remove the pastor, provide some other remedy, or simply allow him to remain without any change. The bishop is obligated to issue a decree stating his decision. As is the case for all decrees, it must express proper motivation and a clear decision. Because the removal of the pastor requires a grave reason, the motivation would include the grave reason, provide a summary of evidence, the names of those consulted, and the response of the pastor to the process. The decree should also include the ways in which it can be challenged, be duly notarized and properly communicated to the pastor.

### *B: Causes for Removal*

As the process for removal does infringe on rights acquired, the norm of Canon 18 must be applied in the application of these canons. The proof must be clear and convincing. As such, it is important to note that when weighing evidence, the local ordinary must use reasonable and objective criteria. Canons 1526-1586 provide a list of the type of proofs and how to weigh them for veracity and use. This section of the law relies on natural law principles and common sense applicable in any ecclesiastical process. It would be burdensome to address all the points relevant to our case here, but suffice to quote from Calvo and Klinger a second time, as they provide a good summary: “The bishop needs concrete facts stated objectively. In discerning whether there is probable cause for removal, the bishop will carefully assess the nature and source of complaints received” (p. 124).

Three common causes used by bishops to remove a pastor are discussed below.

#### **(1) Canon 1741.1: A manner of acting which brings grave detriment or disturbance to ecclesiastical communion.**

This cause has strong roots in the Council of Trent and subsequent documents already cited. There are three points to this canon.

(a) “A manner of acting...” refers to habits of the pastor’s behavior. He must exhibit consistent behavior that is the direct cause of a grave detriment or disturbance. The cause cannot originate from another person or source, but rather from him alone. This requires the bishop to consider the dispositions and attitudes of those in opposition to the pastor. It is not uncommon that

a detractor blows a mildly disturbing habit out of proportion. The bishop must make certain that the habitual behavior of the pastor is the immediate and direct cause of the disturbance.

(b) The detriment or disturbance caused by the priest must be grave. It is not enough that a few people get upset over a decision. It is common that someone in authority is criticized for decisions and actions in the discharge of duties. This happens to presidents and popes, governor and bishops, supervisors and pastors. This fact of life does not constitute a grave cause for removal. Rather, to determine if the detriment or disturbance is grave the bishop must consider the alleged harm proportionate to the good achieved in the manner of acting as a whole.

(c) Finally, the habitual behaviors must gravely disturb ecclesiastical communion; that is, the communal nature of the parish, diocese, or universal Church is disrupted. Again, it is not enough that a few people complain about the pastor and perhaps even leave the parish. It is a common occurrence for some Catholics to “parish hop”, looking for a pastor and a parish that meets their spiritual needs. Rather, it must be shown that the communal nature of the Church is disrupted. Examples of such habitual behavior that would cause such disturbance would include, but are not limited to, public participation in partisan politics that causes division in the parish, an obstinate and public opposition to decisions of ecclesiastical authority, and active encouragement of dissension between groups in the parish.

**(2) Canon 1741.3: Loss of a good reputation among upright and responsible parishioners or an aversion to the pastor which it appears will not cease in a brief time.**

This cause for removal is mentioned in the Pio-Benedictine Cod, Canon 2147§2.2. It is commonly referred to as *odium populi*. While the current code has substituted the term “*aversio*” for the previous code’s use of “*odium*”, the meaning and application of the jurisprudence is the same. That is, “One or two families, or a few individuals should not cause alarm if the parish is of any size.... For this hatred is supposed to impede the useful exercise of the sacred ministry and to be of some duration” (A Commentary on the New Cod of Canon Law, Augustine, O.S.B., D.D., Rev. Charles P. (B. Herder Book Co., St. Louis) 1923, vol VII, p.416).

Most Reverend Thomas Paprocki, JCD, Auxiliary Bishop of Chicago, provides an excellent summary of this cause for removal in his commentary on this Canon. He writes,

*“Loss of a good reputation” by and “aversion” to the pastor are not absolutes. It is not sufficient that the pastor has lost his good reputation in the eyes of some parishioners or even of parishioners in general. Rather, these are factors to be considered only to the extent that they take place among “upright and responsible parishioners.” This is an important distinction because of the need to protect the prophetic witness which a pastor may be called upon to give from time to time. For example, it may not be popular to preach against racism, abortion, or capital punishment, and a pastor who does so may become the object of scorn among some parishioner. Presumably, though, “upright and responsible parishioner” would not object if the pastor were teaching the authentic doctrine of the Church. Also, it must be apparent that the difficulty will not cease in a brief time. This means that the bishop must carefully discern whether the problem is an enduring one or merely a passing tension in the parish (New Commentary on the Code of Canon Law, eds. Beal, Coriden, Green [Canon Law Society*

of America, Washington D.C. ] 2000, p. 1839).

**(3) Canon 1741.5: Poor administration of temporal affairs with grave damage to the Church whenever another remedy to this harm cannot be found.**

This cause has four points:

- (a) It involves administration of temporal affairs, not spiritual or moral issues. The latter are addressed in other causes.
- (b) The administration must be “*mala*.” A more proper rendering of the Latin would be “bad” with the clear implication that it is a serious problem due to the pastor’s actions or negligence. For example, it’s not good enough to show several years of an unbalanced budget with the continued loss of income. A number of circumstances can cause such an occurrence with no fault or minimal fault of the pastor. There must be proof that the pastor is to blame.
- (c) There must be grave damage to the Church. The bad administration is not enough; grave damage must result from the bad administration. An example of grave damage would include causing a debt that will be difficult to repay in a reasonable amount of time.
- (d) Finally, there must be no other remedy available but to remove the pastor. The Canon implies that all reasonable remedies have failed. At very least it demands that if a reasonable remedy exists it must be attempted in lieu of removing the pastor.

*C: Illegitimate Use of Ecclesiastical Power*

**Canon 128: Whoever illegitimately inflicts damage upon someone by a juridic act or by any other act placed with malice or negligence is obliged to repair the damage inflicted.**

The law presumes good faith on the part of those acting on behalf of the Church. It also presumes that those in authority have the requisite knowledge and necessary virtue to perform their duties reasonably well and without malice or negligence. If malice or negligence results in harm to another person, the one acting has an obligation to repair that harm. If the person refuses to cease the illegitimate acts or repair the harm, their refusal gives rise to the right to restitution both morally and legally.

For a person to be culpable for wrongdoing, four conditions must be present:

- (1) There must be an evil effect due to the act.
- (2) The effect could have been foreseen in some way, even if it wasn’t.
- (3) The act would naturally cause the effect, or at least accidentally cause the effect such that having foreseen it, the effect could be avoided.
- (4) The agent of the act could have refrained from acting, stopped acting, or at least modified his actions in such a way as to stop the bad effect.

Culpable negligence occurs when:

- (1) The person with responsibility does not use his power as intended in law.
- (2) He was not hindered in any way from using it.

(3) Someone was harmed, even a third party.

To obtain relief for damages due to negligence of duty or malice in acting, the harmed party must prove these conditions present. If proven, the offender has an obligation in justice to remedy the harm. If he refuses to repair harm, higher authority has an obligation to provide remedy.

*D: Exoneration of Pastor*

It is also important to note that if reasonable arguments exist in law and fact against the proposed grave reasons for removal, the bishop has an obligation to decree in favor of the pastor staying. This not only protects the rights of the pastor, it also protects the common good. Such a decision avoids the difficulties in a parish that would ensue following the removal of a pastor and a transition with a new priest. And, it should be promulgated in such a way to encourage collaboration between contentious parties to resolve existing conflicts or concerns.

*E: A Final and Most Important Note*

Most important, we cannot underestimate the importance of prayer and the pursuit of virtue by all involved in the situation. When conflict and stress develop high levels of tension, it becomes more difficult for us to collaborate effectively or remain objective. This often leads to a conflict reaching such a level that differing parties hire counsel or make complaints to higher authorities. However, the presence of counsel and the intervention by higher authorities should not be viewed as a cause for immediate, formal pursuit of a contentious process in law. Rather, counsel and higher authority should first encourage prayer, personal reflection, and renewed attempts at effective collaboration and authentic dialogue. By authentic dialogue, I do not mean the exchange of letters. I mean sitting down across a table and making effort to understand the other's point of view and find a mutually agreeable resolution. Our Church expects this from secular leaders, shouldn't she expect it from her own? Most important, Our Lord expects nothing less.

On a few rare occasions, I have been ridiculed and openly criticized for my continued insistence on prayerful reflection and authentic dialogue. Nonetheless, I always encourage my clients to pray, especially the rosary. I value the grace received from doing penance and frequenting the Holy Eucharist and Confession. I make every effort to keep these elements as visible, immediate sources of resolution. They remain indispensable means of encouraging charity and equity, and advancing authentic dialogue in pursuit of a meaningful resolution. Without these elements, the Spirit that breathes life through the law is hindered from His work. When this happens, the law becomes a lifeless means of resolving an immediate, legal contention. Such expression lacks the foresight of spiritual maturity and insight into the human condition. As a result, it fails to achieve its true purpose in the salvation of souls.