

**Trials According to
the Canon Law of the
Roman Catholic Church**



**Archdiocese of Milwaukee
Metropolitan Tribunal
414-769-3300**

TRIALS ACCORDING TO THE CANON LAW OF THE ROMAN CATHOLIC CHURCH

The Church bears a responsibility for helping the victims and survivors of sexual abuse and ensures that offenders face justice. The purpose of this pamphlet is to explain the process the Roman Catholic Church uses to judge cases of alleged criminal acts against Church law by clergy accused of sexual abuse of minors. This information is meant to be helpful to victim/survivors, others called to testify as witnesses, and any interested parties. This booklet has also been created for use by pastors and others in pastoral ministry positions.

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? How long will it take (my appearance and the whole trial)? **GENERALLY, NO MORE THAN A FEW HOURS for your deposition. UNKNOWN for the whole trial.**

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? Will this cost me anything? **NO.**

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? What are the various ways that an accused cleric might be dealt with?

There are five options that can be exercised when dealing with the status of a cleric against whom there are substantiated reports of sexual abuse of minors:

1. The cleric voluntarily requests laicization from the pope.
2. The pope can decide to dismiss the cleric from the clerical state. The pope's decision is not subject to appeal or review.
3. A bishop or the Holy See can impose a penalty on the cleric using an administrative penal process (described in canon 1720 of the Code of Canon Law) without going through a church trial. If the bishop decides that the penalty is permanent dismissal from the clerical state, he needs approval from the Vatican's doctrinal congregation; if he decides on a lesser penalty, he can decree it on his own authority. The accused cleric may appeal this action.
4. A trial of the accused cleric can be conducted, typically by diocesan tribunals. These are church trials, as opposed to civil trials that may carry jail terms or other penalties. The decisions and penalties of the diocesan court can be appealed by the cleric to the Vatican's Congregation of the Doctrine of the Faith. The diocesan Promoter of Justice can also appeal the local decision, for example, if he believes a conviction was warranted for a cleric who was not found guilty.
5. In cases where a cleric known to have been abusive cannot be prosecuted under church law for technical reasons, a disciplinary action can still be imposed on him – such as limiting or removing him from direct ministry or, after consulting with psychological experts, declaring him impeded from the exercise of ministry.

? Who might face a trial in the Tribunal of the Archdiocese of Milwaukee?

When dealing with an allegation of sexual abuse of a minor by a cleric, it is important to note that only those clerics (ordained priests or deacons) who are incardinated in the Archdiocese of Milwaukee will be put on trial here. Clerics from other dioceses, or those who are members of religious orders, would face judicial processes in other venues.

In cases where an allegation is directed at a lay employee of a Church institution, judicial review of the accusation(s) is solely the purview of secular courts, whether in a criminal or civil trial.

? Why would my abuser not be immediately laicized while others have been?

In cases where there is no admission of guilt, or incontrovertible evidence, a trial is usually needed to establish guilt, or impose a penalty. Often details, facts, and circumstances must be carefully brought to light, studied, reconciled, and judged. This does not mean that the harm done by one abusive cleric's actions is less grievous than that of others. It means that in some cases the Church needs to devote greater effort to hear the voices of the injured and to protect the rights of all members of the faithful.

? What is a Church Tribunal?

Church law (also referred to as canon law) requires every diocese in the Catholic Church to have a tribunal. In the Archdiocese of Milwaukee, the Metropolitan Tribunal is the agency that handles judicial matters, specifically the application of canon law and the protection of rights. It is a responsibility of tribunals to conduct penal trials when it is believed that, under canon law, crimes might have been committed.

? What are the basic rights of a person who has been victimized and the Church's responsibility to respond to this injury?

(Adapted from "Guide to the Implementation of the U.S. Bishop's Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons" by the Canon Law Society of America)

The Right to be Heard

A number of principles in Church law address the right of individuals to bring their needs and concerns to the attention of the Church and to receive appropriate assistance in safeguarding the public good. Certainly one who has been victimized by a cleric first and foremost has the right to file a report with the civil authorities.

Canon law provides an individual with the right to bring an allegation of this nature to the attention of Church authorities for the express purpose of initiating a process that will lead to healing, reconciliation, a just resolution of the harm which has been suffered, and to prevent any further harm from occurring.

The Charter for the Protection of Children and Young People and Essential Norms for Diocesan Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons specifically address allegations of abuse perpetrated by the clergy.

The first obligation of a diocesan bishop, within the context of a preliminary investigation of an allegation of the sexual abuse of a minor by a cleric, is to determine whether a crime may have been committed which might require action in civil or canon law and to address the injuries suffered by the victim/survivor and the community as a whole and to determine how best these damages might be repaired. A penal trial is one of a number of ways by which the Church can work to determine facts, restore justice and healing for victims and prospectively protect the larger community.

Outside of a penal trial, canon law provides various approaches through which the diocesan bishop can address the needs of individual victims through canonical methods, including the use of processes such as mediation.

The Rights of Reputation and Privacy

Throughout any contact with the diocese during formal or informal processes, victim/survivors have a right to expect that their reputation and privacy will be respected. The principle of confidentiality in canon law derives from the ancient understanding that all are entitled to a good reputation. Canon law also states that “no one is permitted to harm illegitimately the good reputation which a person possesses or to injure the right to protect his or her own privacy.” Confidentiality is viewed as essential to affirming and protecting any person’s legitimate reputation, whether victim/survivor or accused.

Victim/survivors have the right to expect that their names will not be made public to the greater Church community, whether their allegation leads to a canonical trial or not. This includes any reference by the accused to his friends or colleagues. Indeed, the accused, who himself enjoys the same right and expectation of privacy, must clearly understand that he is required to respect the victim/survivor’s right in this regard and must limit any communication of information regarding the victim/survivor only to those who might be assisting him with a particular canonical process. Any persons involved with the investigation of the accusations must also be admonished to refrain from speaking to any unauthorized persons about the case for the protection of all the parties involved.

? How do I know if I should participate in a penal trial of a cleric?

Penal, or criminal law in the Church exists not only to protect individuals from infringements upon their rights, but also to protect the integrity of the Church as a community of faith, service, and hope. When the issue before the tribunal is one of sexual abuse by a cleric, a full discovery and investigation of facts is a great service in and of itself. It is on the basis of such an investigation that effective remedial and, where warranted, punitive action can be taken. The participation of victim/survivors, or other appropriate witnesses, in the gathering of facts will serve to give them a voice and to allow the judicial process to work as successfully as possible.

? Who is involved in a Church trial?

The outcome of a penal trial rests largely on the testimony of affected parties and witnesses. Much like criminal trials in secular law, the parties to the canonical trial are specifically:

1. the accused cleric as a defendant with his own canonical advocate (a defense lawyer);
2. the Promoter of Justice as the prosecutor (similar to a District Attorney); and
3. a panel of three judges;
4. a notary (an official recorder of the information).

In canon law, the process places the burden of proving the case not on the shoulders of the victim/survivor, but on the Promoter of Justice. The victim/survivor will be the most conclusive source of information and any first-hand “witness” testimony that will be heard by the court. But be assured that a victim/survivor, and any witnesses who might need to be deposed, will offer their testimony in a very safe, preferably neutral, setting. Those present are strictly limited and neither victim/survivors, nor witnesses, will likely ever have to confront, or be confronted by, the accused cleric.

? What is meant by evidence?

Witnesses are important for the kind of objective evaluation that a penal trial demands. The process works best when specific information and details can be gathered to establish the factual basis of an allegation. The best witnesses are those who can provide facts regarding events and circumstances central to the allegations. Witnesses are not aggressively cross-examined in order to obtain facts. They may be asked to offer a

deposition, or, in certain circumstances, asked to fill out a written questionnaire detailing their knowledge of the circumstances surrounding the allegations. Any other information that might be helpful in proving a case, such as statements from therapists, counselors, or other professionals consulted by victim/survivors can also be offered into evidence if the Promoter of Justice sees it as useful, and the judges approve. If this is done the victim/survivor signs a waiver of confidentiality for the therapist, counselor, or other professional. (Any interaction bound by the seal of confession will be excluded.)

What happens in a deposition?

The deposition is the only part of the process that requires personal interaction between a victim/survivor, or a witness, and tribunal personnel. Contrary to popular belief, this is not done in a courtroom with a full jury box and gallery where the public is allowed to sit and listen. The party being deposed meets with at least one of the three judges assigned to the case. That judge will take the lead in asking questions. The Promoter of Justice and an advocate for the accused cleric will also be present. That advocate does not cross-examine the individual but can request that the judge ask specific questions that are relevant to the pursuit of the truth. Lastly, a notary charged with recording the information gathered will be present. A deposition normally takes up to a few hours of time.

When the person being deposed is a victim/survivor, and with the prior approval of the judges, a personal support person designated in advance by the victim/survivor, or a professional charged with assisting the person being deposed to understand the process that is occurring, can also be present. If a testifying party is a minor, a parent, guardian, or guardian *ad litem* must be present.

It is intended that a deposition be the only time that a witness needs to interact with the Tribunal. After the testimony is taken, if they wish, the witness can be sent a transcript of their testimony to review and, if necessary, add, amend, or qualify what was recorded. If there is need for further questions from the judges, the Promoter of Justice, or the advocate, a second personal interview would be best, but it might be possible that this could be done in writing with the approval of the judges.

Who are the judges in these cases?

The three ecclesiastical judges assigned to each trial are persons qualified by training and practice in canon law, and are appointed on a case by case basis by the Archbishop.

The judges need not all come from within the territory of the Archdiocese of Milwaukee, although to best assist the progress of the trial it is likely that at least one judge will be a local resident. The judges are asked to evaluate impartially all the evidence that has been gathered to determine if it is sufficient to prove with moral certitude (see description below) that a delict, that is to say a crime, was committed by the accused cleric. The judges' decision is based on the evidence gathered plus the weighing of the observations of the advocate and the promoter of justice.

Who is the Promoter of Justice?

Much like the role of a district attorney in secular, criminal courts, it is the responsibility of the Promoter of Justice to safeguard the public good. This is done by initiating, on behalf of the Church in general or specific injured parties, various legal procedures that might result in determinations of guilt or innocence and to seek the application of penalties. While not solely an advocate for specific victim/survivors, the Promoter of Justice will rely first and foremost on the testimony of victim/survivors in the process of safeguarding the public good and making a case against an accused cleric.

Who else might be involved in a penal trial?

While judges, the promoter of justice, and an advocate for the accused are stable and consistent throughout a trial, at certain times notaries (record keepers), experts and auditors (professionals appointed by the judges to assist in the gathering of information) might be used. All personnel who are involved on a canonical trial are bound to a very strict obligation of confidentiality in order to protect the right to privacy of all parties.

How does the Tribunal handle the information it gathers in a case?

We recognize the sensitive and personal nature of the information gathered in this judicial process. To protect the privacy of all involved parties we do not share this information with anyone not directly involved in processing the case. However, canon law guarantees the right of the accused to know the allegations leveled against him as well as the nature of the witness testimony. This right is observed primarily by allowing the cleric's advocate the opportunity to propose questions to be asked of witnesses, to review acts from the case, and to receive the final decision. If there are unique circumstances in a case which warrant restrictions on access by the accused to certain information, such as the identity of

witnesses who may ask the judge to consider sealing certain testimony for the protection of the process or of the people participating, the judges may do this. However, the action of sealing certain parts of the testimony cannot harm the accused cleric's right of defense.

Be assured that it is a responsibility of all participating personnel to ensure that no party is defamed during the process. While this type of confidentiality restricts what victim/survivors or witnesses can discuss with persons not involved in the process during the trial, it is not a "gag order" that would prevent a person who testifies from processing the general feelings of their experience with trusted family, friends, or counselors. Lastly, all parties are instructed that the information gathered in this process cannot be used in any other forum either during or after the trial in question.

How does the Tribunal arrive at its decision?

Once the trial has begun it does not cease unless the Promoter of Justice formally withdraws the case, or other circumstances (such as the death of the accused) render the need for the process moot.

The judges ask for depositions from all appropriate witnesses. Statements are taken from each, separately, and for the record. Then the testimony of witnesses in written form and other supporting evidence is gathered. Supporting evidence often takes the form of public documents gathered in secular civil or criminal procedures; police reports; properly released medical or mental health reports; or third-party accounts, such as news articles that provide background, or substantiating information.

When the evidence gathered is deemed sufficient, the Promoter of Justice prepares for the judges a brief, or report, that summarizes the evidence and recommends a decision and a penalty. The advocate for the accused cleric also prepares a brief in response to the document prepared by the Promoter of Justice. In certain cases, the judges may consult outside experts for authoritative opinions about details or situations contained in the testimony. The judges study the collected testimony, documents, and the briefs filed and together they write a decision. The decision is based on canon law and the facts of the case. A written decision is composed which explains the decision and how its conclusion is in keeping with canon law and the testimony and evidence at hand. The standard required for a judge to determine that a delict (crime) has been committed is referred to as "moral certitude."

When completed, the written decision is provided to the Archbishop of Milwaukee; the Promoter of Justice; the advocate for the cleric on trial; and a copy is sent to the Congregation for the Doctrine of the Faith in Rome. At that time and at the discretion of the Judges, the outcome of the decision can be communicated to appropriately interested parties by either the judges themselves, the Promoter of Justice, or other personnel of the Archdiocese of Milwaukee. If this is to be done, it is appropriate that reasonable attempts be made to make such notification prior to any notification of the trial's outcome to the general public.

What is meant by “moral certitude”?

If you watch television courtroom dramas, or follow high-profile trials, you undoubtedly have heard the term “beyond a reasonable doubt.” This is one of three standards of proof that are used in civil law for determining a legal consequence. Beyond a reasonable doubt is the standard for determining that someone is guilty of a criminal act. One way to understand this is to say that when all of the facts are assembled, there is no other way for a reasonable person to assemble those facts than to show that the crime was committed by the person on trial. The other two standards in civil law proceedings are “clear and convincing evidence,” where there might be another explanation, but only one stands out as likely to a reasonable person. This is often the standard for civil lawsuits. Lastly, there is “preponderance of evidence.” This is the lowest standard in civil law and used only in the most basic of civil cases. It would mean that a party will win a case if they can show that it is more likely than not that the allegation is true.

Drawing from canon law, the varied steps of dealing with allegations of clergy sexual abuse of minors has settled on standards of proof that may be slightly different than those in civil law. When an allegation is first presented, the preliminary investigation can begin if there is simply credibility on its face. That is to say, would a reasonable person believe that what is alleged could actually have happened?

The Archdiocese of Milwaukee Review Board, assigned the responsibility of advising the Archbishop regarding a cleric's fitness for ministry, uses a standard of “preponderance of evidence.” This standard means it is more likely than not that what has been reported is true.

When a case goes to trial in an ecclesiastical, or Church, court, the judges seek to reach moral certitude about what has been alleged. Probably closest to what is considered “clear and

convincing” in civil law, moral certitude is defined as “the firm and unwavering assent of the mind.” While there may well be other ways to attempt to explain the evidence gathered, none is sufficient to cause a judge to waver in the belief that one explanation stands out and should be accepted.

? How long does the penal trial take?

Due to the rarity of these types of cases in recent years, and the desire to execute them with great attention to procedural details and the unanticipated needs of all involved parties, an exact time cannot be specified. Quite candidly, there is no way to predict how these cases will unfold once they have begun.

? What happens after an affirmative decision?

An affirmative decision means that the judges find, with moral certitude, that the allegations put forth by the Promotor of Justice are proven. Some might say that it is a verdict of guilty. Because of the gravity of the crimes that are at issue here, and the significance of a case where the penalty might be a dismissal from the clerical state, an initial affirmative decision finding moral certitude that a delict (crime) has been committed and imposing a penalty, must be transmitted to the Congregation of the Doctrine of the Faith in Rome for their final indication that the penalty can be applied. Only after this final review would it be reasonable to call a case “closed.” With no track record to evaluate, the timeline for this review cannot be predicted at this time.

? Can anything be done in the event of a negative decision?

With all of the intake, screening, and investigative steps presently applied in these cases, the tribunal hesitates to begin a trial unless it has reasonable grounds to do so. If anything is lacking at the outset, every effort will be made to establish what is lacking before trial.

It may be hard to understand a negative decision in a matter like this, especially when parties are hurt and seeking healing and reconciliation with the Church. The Tribunal is charged with the task of applying and upholding Church law in every instance based upon the facts, the evidence and the law as it applies in each case. In some cases the facts simply may not be clear enough, or the evidence strong enough, to allow the judges to conclude with moral certitude that the crime of which the cleric is accused has been committed by him.

If it is felt that the decision did not properly interpret the facts

offered into evidence, or properly interpret the Church's jurisprudence for handling these cases, the decision of the panel of judges can be appealed by the Promoter of Justice to the Congregation of the Doctrine of the Faith in the Vatican.

? Can the Church prosecute a case that was not pursued by civil authorities or where the accused was found “not guilty” in a secular court?

As in secular criminal law, the Church does have a statute of limitations for prosecuting canonical crimes. In our system of laws this period to act is referred to as the time of prescription. If someone has been approached by the Tribunal to provide testimony in this type of case it means that because of the gravity of the accusation, the Holy Father, through the Congregation of the Doctrine of the Faith in Rome, has derogated, that is to say overridden, that law about prescription specifically so that a trial could be held. American civil law has no way to override the restrictions of a statute of limitations. Furthermore, as alluded to above in explaining moral certitude, the rules of evidence in Church law are different than those in American civil and criminal law. Taken together, these two significant areas of difference mean that the outcome of a trial under canon law might have different results than a criminal or civil trial in a secular court.

? Will I have to pay anything for this process to occur?

No. Operating a tribunal is the responsibility of the Archdiocese of Milwaukee. Funding for the Metropolitan Tribunal is supported by the Archbishop and all of the parishes and institutions of the Archdiocese. During a specific trial it is even possible that certain expenses incurred by the witness can be reimbursed if they desire to request it.

For Further Information:

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The following list provides contact information for programs in communities throughout the Archdiocese of Milwaukee that provide sexual abuse awareness education and free services to sexual abuse survivors.

Victim Assistance Coordinator of the Archdiocese of Milwaukee: 414-758-2232

The following agencies in the 10 counties of the Archdiocese of Milwaukee offer free services to victims/survivors of sexual abuse:

Dodge County

People Against
a Violent Environment 920-344-0123 or 800-775-3785

Fond du Lac County

Catholic Charities 920-923-2550
ASTOP 920-926-5395

Kenosha County

Catholic Charities 262-658-2088
Women's and Children's Horizons/
Pathways of Courage 1-800-594-5272 or
24 hour hot line 1-262-657-5272

Milwaukee County

Catholic Charities 414-771-2881
The Healing Center 414-671-4325 (HEAL)
Sexual Assault Treatment Center 414-219-5555
The Counseling Center of Milwaukee 24 Hour Sexual Abuse line:
414-271-9523 or 866-212-7233

Ozaukee County

Advocates of Ozaukee 262-284-3577 or 877-375-4034

Racine County

Catholic Charities 262-619-1634
Crisis Line 262-637-7233
Sexual Assault Services 262-619-1634

Sheboygan County

Catholic Charities 920-458-5726
Safe Harbor 920-452-8611
Crisis Line 920-452-7640

Walworth County

Association for the Prevention of Family Violence 262-723-4653

Washington County

Friends of Abused Families 262-334-5598, x103

Waukesha County

Catholic Charities 262-547-2463

Women's Center 262-542-3828 or 888-542-3828

Statewide

Wisconsin Coalition Against Sexual Assault 608-257-1516

Catholic Charities Green Bay 920-272-8234

Catholic Charities La Crosse 608-782-0710

Catholic Charities Madison 608-826-8000

Catholic Charities Superior 715-394-6617



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