

Tribunal of the Catholic Church

(for N.S.W. and A.C.T.)

CTJH.400.40003.1652

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Ref.:

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22nd July, 1991.

Most Rev.K.M.Manning D.D.,
Bishop of Armidale,
Bishop's House,
ARMIDALE. N.S.W. 2350.

Dear Bishop Manning,

RE: A WAY OF PROCEEDING WHERE, BECAUSE OF POSSIBLE SCANDAL
AND HARM TO THE CHURCH, A PRIEST IS TO BE RESTRICTED IN THE
EXERCISE OF MINISTRY

Through the use of a singular decree, a Bishop may issue a precept by which an obligation is imposed on a particular person to do something or not to do something. (Canon 49)

Before issuing such a decree, the Bishop is to seek the necessary information and proof that warrants the precept. (Canon 50)

The decree should be in writing and the reasons for the decision should be contained in the decree at least in summary form. (Canon 51)

The decree should be notarised. (Canon 474)

Such a decree obliges a person everywhere unless it is otherwise made clear in the decree itself. (Canon 52)

A precept communicated by singular decree ceases when it is revoked by the competent authority. (Canon 58)

To this decree may be attached a threat of a penalty if the precept is disobeyed. The threatened penalty may not be perpetual nor may the penalty be *latae sententiae* (i.e. automatic) except in outstanding and malicious cases. (Canons 1319 and 1318)

If the precept is disobeyed, the Bishop may then move to impose the threatened penalty.

A possible penalty in the event of a precept being disobeyed could be the threat of suspension. Suspension is a penalty that is exclusive to clerics. Suspension can prohibit some or all of the acts of the power of order; some or all of the acts of the power of governance; some or all of the rights attached to an office. (Canon 1333 §1))

The extent of the suspension can be defined in the decree that communicates the precept; or it can be defined by a decree whereby the penalty is imposed after the precept is disobeyed. (Canon 1334)

If a suspension prohibits the celebration of the sacraments, the suspension itself is suspended whenever the celebration of the sacraments is necessary to provide for the faithful who are *in the danger of death*. (Canon 1335)

Even though not directly dealing with this subject, the canons that deal with the removal of a Parish Priest give some insight into the mind of the legislator in a situation where the good of souls and advantage of the Church could be harmed.

A Parish Priest can be removed from his parish when his ministry has become *harmful* or at least *ineffective* even though this occurs *without any serious fault on his part*. (Canon 1740)

Some of the specific reasons given by the law for removal include: -

a manner of acting which causes grave harm or disturbance to the ecclesiastical communion

the loss of the priest's good name among upright and serious minded parishioners; aversion to the priest when it can be foreseen that these factors will not quickly come to an end. (Canon 1741)

It may be that a priest who is restricted by a precept issued through a singular administrative decree might consider himself unjustly treated. He may initiate recourse against the decree. He may disobey the precept then consider himself unjustly treated when the threatened penalty is imposed, and seek recourse against that. This would probably be done on the grounds that the original precept with attached threatened penalty was unjust.

Where a matter becomes contentious, the law encourages a solution be sought through consultation and conciliation. (Canon 1733)

If this fails, canons 1734 - 1739 legislate the procedure to be followed by all concerned.

1. Before having recourse a person must seek *in writing* a revocation or amendment of the decree. (Canon 1734 §1)
2. This petition must be lodged within *ten canonical days* from the time the decree was lawfully notified. (Canon 1734 §2) If the petition is against a penalty which has been imposed (e.g. suspension of part or all of the acts of the power of order), the petition itself has a suspensive effect on the penalty. (Canon 1353). However, the petition does not suspend a precept with attached threatened penalty.

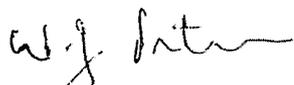
3. The Bishop has thirty days from receipt of the petition to respond to it. He may confirm his original decision or change his original decision. A response should be made by the Bishop within thirty days and this should be done by means of a new decree. (Canon 1735)
4. If the priest wishes to have further recourse to the Congregation of the Clergy of the Holy See, he has fifteen days to do so and this fifteen days is calculated from the date of the Bishop's new decree. (Canon 1737 §2)
5. The Congregation of the Holy See will give a decision. If the decision confirms the Bishop's decree, the priest may have recourse to the Second Section of the Apostolic Signatura. This must be done within thirty days of the decree from the Congregation. If the decision of the Congregation changes the Bishop's decree, the Bishop may have recourse to the Second Section of the Apostolic Signatura within thirty days of the decree of the Congregation. The decision of the Apostolic Signatura is final.

Taking all of this into consideration, I have attached a possible format of a precept contained within a singular administrative decree.

I have also attached a copy of the relevant canons associated with this opinion.

With best wishes,

Yours sincerely,



(Rev. W.J.Peters)