

Diocesan Archives

Canonical and Civil Law Issues



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Presentation III
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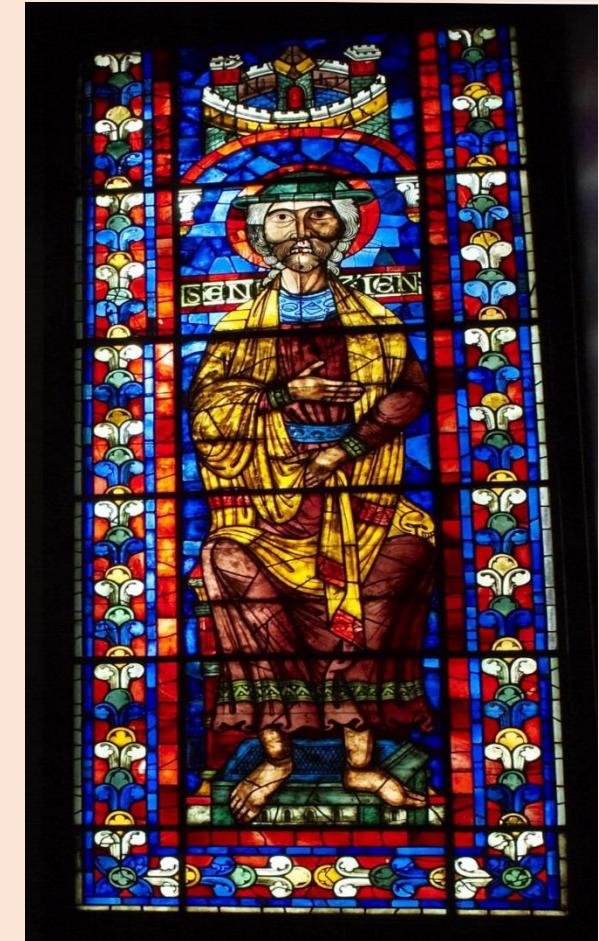
Jesus the Law Giver

**Metropolitan Museum of Art
New York City**



Clergy Personnel Records

- Subject to the Most Civil Litigation
- May Relate to Investigations Kept in the Secret Archives
- Legal Requirements Vary from State to State
- Need to Have Proper Record Retention Policy in Place to Safeguard All



Clergy Personnel Records



- Policy Consideration – 100 year records
- Will these be made public?
- What Files Will Be Covered?
- One File Rule to Apply

Clergy Personnel Records

Who Should Be Covered?

- Diocesan Clergy Records
 - Priests
 - Deacons
 - Religious Clergy (from Diocesan Perspective)
 - Seminarians
 - Sponsored by the Diocese
 - In residence because of presence of local seminary



Clergy Personnel Records

- What should be in a policy?
- Should cover all aspects of file creation, destruction and retention
 - Creation
 - Destruction
 - Retention
- Should any file be separate?
 - (i.e., I-9 or Special Investigations - so can give part of file for Federal review if necessary)



Clergy Personnel Records



Where and how maintained (who is responsible for what)

- Clerical Assistant
- Archivist
- Others

Who may copy and for what purpose

- Youth and Child Protection
- Laicization Requests

Clergy Personnel Records



Levels of confidentiality (if any) Access

- By the cleric who is the subject of the file
- By others (chancellor, moderator of the curia, bishop, vicar for clergy, administrative assistant, canonist for cleric)

Risk Management Review of Files

- Should be done regularly since law change

Clergy Personnel Records

**What is ordinarily kept in the file
and how is it organized?**

- **Suitability Statements**
- **Vocation Records**
- **Seminary Records**
- **Profession of Faith**
- **Assignment Letters**
- **Complaints/Compliments**



Clergy Personnel Records



- Special Investigations (canonical and otherwise)
- Photos
- Psychological Records (HIPAA requirements)
- I-9
- Immigration Records
- Benefit Records (HR software, etc.)
- Emails – other copies of on-line communication – blogs, sites visited if problematic, etc.)
- Publicity Items (media stories about the man, etc.)

Clergy Personnel Records



Release of Information Beyond the Diocese

- To Whom and under what circumstances (subpoena, request, family request after death)
- What is done with the file after the death of the priest?

Clergy Personnel Records

Destruction of items from Clergy Personnel Files

- Should this be done?



Document Retention and Destruction

The practical need:

- In ordinary course of business, files and records need to be reviewed and retired and destroyed since otherwise they will overwhelm the organization;
- Question surrounds the ROUTINE destruction of unneeded organizational records and the intentional spoilage of evidence in an attempt to avoid legal liability.



Document Retention and Destruction



General rule:

- The destruction of records pursuant to an existing record and destruction policy is defensible where litigation that would involve those documents is **NOT** currently pending reasonably foreseeable, **OR** where the documents in question would clearly not be discoverable in the litigation process in any event (this is often very difficult to prove and is certainly risky);
- Applies to both written and electronic records in all their formats

Document Retention and Destruction

Basic Guidelines:

- If there is an actual notice of litigation and the documents in question are foreseeably discoverable, then the documents should not be destroyed;
- If it is reasonably foreseeable that litigation WILL occur in the future (though it has not yet) AND that the documents in question may be discoverable, then the documents ought not to be destroyed.



Document Retention and Destruction

Basic Guidelines:

- Where it is not generally likely (reasonably foreseeable) that litigation will take place, or it is not reasonably foreseeable that the records in question would be found to be discoverable, or both, then the documents probably may be destroyed under the application of a document retention/destruction policy that is properly administered.



Electronic Records



Varied Practices Across the Country

- Do you keep it all?
- Do you only keep what is required by civil law guidelines?

Electronic Records



Considerations:

- Costs to maintain – In the cloud? Dedicated cloud server?
- Real Ownership Rights
- Targeted User Retention?

Questions?

