

Diocesan Archives

Canonical and Civil Law Issues



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Presentation I

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Plan for Today's Presentations

- **Presentation 1**

- The Archives and Canon Law

- **Presentation 2**

- The Archives and Legal Discovery

- **Presentation 3**

- Clergy Personnel Policies
 - Questions



What Is Canon Law?

The canon law governing church records can generally be of two types:

- **Universal law**, binding on all Catholics; and
- **Particular law**, relating to territory, such as diocese or the territory of the Conference of Bishops.



Diocesan Archives - Canons

- **Bishop's Responsibility – Canon 491**
- §1. **A diocesan bishop** is to take care that the acts and documents of the archives of cathedral, collegiate, parochial, and other churches in his territory are also diligently preserved and that inventories or catalogs are made in duplicate, one of which is to be preserved in the archive of the church and the other in the diocesan archive.
- §2. **A diocesan bishop** is also to take care that there is an historical archive in the diocese and that documents having historical value are diligently protected and systematically ordered in it.
- §3. In order to inspect or remove the acts and documents mentioned in §§1 and 2, the norms established by the **diocesan bishop are to be observed.**



Chancellors and their Role



- **Role is to oversee archives under canon law** – may have this responsibility along with many others under the current US method of using Chancellors;
- **Chancellors can be canonists, lawyers, religious, lay, ordained** and be responsible for the entire diocesan curia or simply several things specifically assigned by the Bishop;

The Chancellor Under Canon Law

- **Can. 482 §1.** In every curia a chancellor is to be appointed whose principal function, unless particular law establishes otherwise, is to take care that acts of the curia are gathered, arranged, and safeguarded in the archive of the curia.
- §2. If it seems necessary, the chancellor can be given an assistant whose title is to be vice-chancellor.
- §3. By reason of being chancellor and vice-chancellor they are notaries and secretaries of the curia.



The Chancellor Under Canon Law



- Can. 483 §1. Besides the chancellor, other notaries can be appointed whose writing or signature establishes authenticity for any acts, for judicial acts only, or for acts of a certain case or affair only.
- §2. The chancellor and notaries must be of unimpaired reputation and above all suspicion. In cases in which the reputation of a priest can be called into question, the notary must be a priest.

Chancellor As Notary

- Can. 484 It is the duty of notaries:
- 1º to draw up the acts and instruments regarding decrees, dispositions, obligations, or other things which require their action;
- 2º to record faithfully in writing what has taken place and to sign it with a notation of the place, day, month, and year;
- 3º having observed what is required, to furnish acts or instruments to one who legitimately requests them from the records and to declare copies of them to be in conformity with the original.



Diocesan Archives - Canons

Canon 487

- §1. The archive must be locked and only the bishop and chancellor are to have its key. No one is permitted to enter except with the permission either of the bishop or of both the moderator of the curia and the chancellor.
- §2. Interested parties have the right to obtain personally or through a proxy an authentic written copy or photocopy of documents which by their nature are public and which pertain to their personal status.



Diocesan Archives - Canons



Canon 488

It is not permitted to remove documents from the archive except for a brief time only and with the consent either of the bishop or of both the moderator of the curia and the chancellor.

Diocesan Particular Law

Common Local Policies address:

- Sacramental Records
- Financial Records
- Limits on Spending
- Human Resource Issues
- Sacramental Preparation
- Contractual Issues
- Other Local or State related Issues



Role of Diocesan Archivists



- Role is to archivists are the professionals who assess, collect, organize, preserve, and provide access to those records created by the diocese or its subordinate agencies or entities.
- Bring a professional training and expertise to record management
- Work collaboratively with Chancellors and other Diocesan Officials

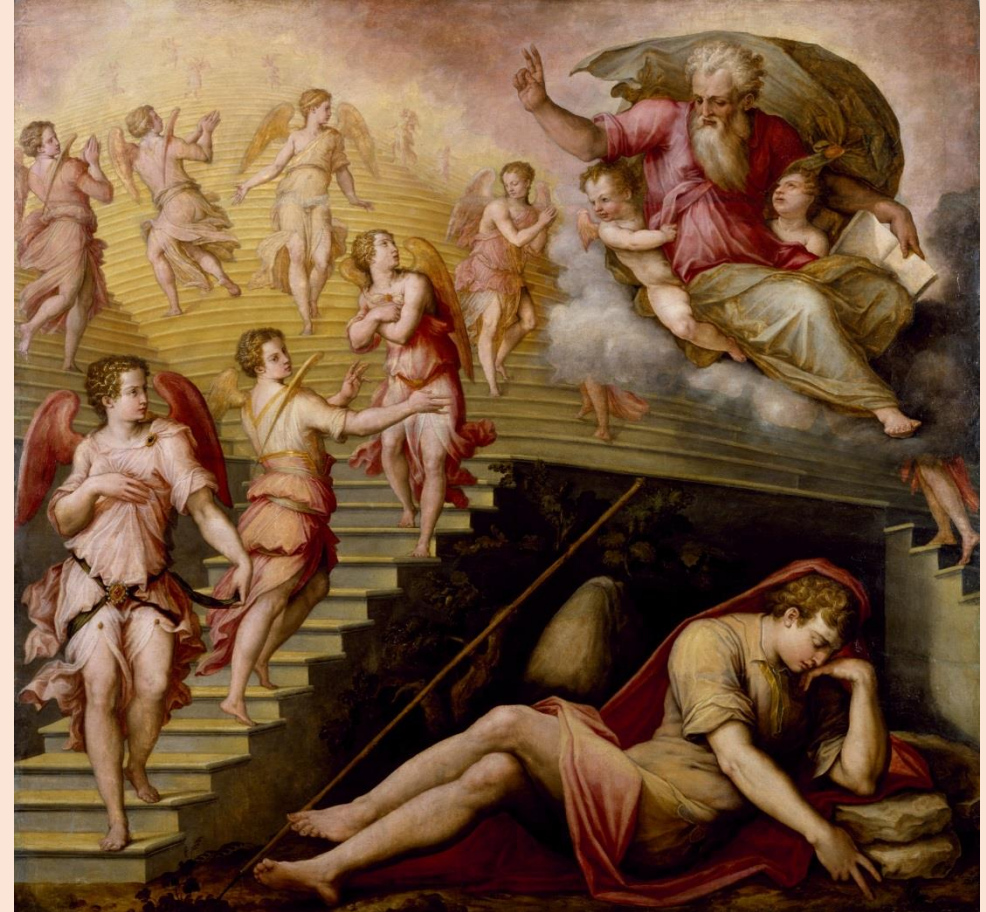
Diocesan Archives - Sacramental Records



- **Sacramental Records**
 - Governed by Canon law (both Universal and Particular)

Diocesan Archives – Sacramental Records

- Sacramental Records Policy
- Records Retention Policy
- Relationship with the Mormons Regarding Record Keeping



Diocesan Archives - Financial Records

- **Financial Records**
 - Governed by Federal and State Law



Canon Law – Financial Records

Administration

Canon 1283

Before administrators begin their function:

- 2º they are to prepare and sign an accurate and clear inventory of immovable property, movable objects, whether precious or of some cultural value, or other goods, with their description and appraisal; any inventory already done is to be reviewed;
- 3º one copy of this inventory is to be preserved in the archive of the administration and another in the archive of the curia; any change which the patrimony happens to undergo is to be noted in each copy.



Canon Law – Financial Records



Canon 1284

- §1. All administrators are bound to fulfill their function with the diligence of a good householder.
- §2. Consequently they must: 9º organize correctly and protect in a suitable and proper archive the documents and records on which the property rights of the Church or the institute are based, and deposit authentic copies of them in the archive of the curia when it can be done conveniently.

Diocesan Archives – Legal Records

- Legal Records
(Contracts, Statutes of Limitations)
 - Governed by Federal, State and Canon law



Canon Law – Legal Records

Foundations

Canon 1306

- §1. Foundations, even if made orally, are to be put in writing.
- §2. One copy of the charter is to be preserved safely in the archive of the curia and another copy in the archive of the juridic person to which the foundation belongs.



Diocesan Archives – Lay Records

Personnel Files for Laity

- Can include contracts, wage statements, tax receipts, discipline records, etc.
- Governed by Federal, State and sometimes local law (City)



Diocesan Archives – Clergy Records

- **Personnel Files for Clergy**
 - Can include canonical items such as Profession of Faith, Sacramental Information;
 - Common Personnel Information;
 - Governed by Federal, State and sometimes local law



Diocesan Archives - Correspondence

- **Correspondence**

- Bishops Papers
- May Include correspondence of Other Officials (Chancellor, Auxiliary Bishops, Moderator of the Curia, etc.)
- Governed by Canon Law, Federal and State law



Diocesan Archives – Membership Records



- **Membership Records**
 - Can include all kinds of lists of donors, members, parishioners
 - May be more commonly kept in software programs such as Parishsoft, etc.
 - Governed by Canon law (both Universal and Particular)

Diocesan Archives – Secret Archives

Canon 490

- §1. Only the bishop is to have the key to the secret archive.
- §2. When a see is vacant, the secret archive or safe is not to be opened except in a case of true necessity by the diocesan administrator himself.
- §3. Documents are not to be removed from the secret archive or safe.



Secret Archives

- Governed by Canon law and Civil law
- Items to be kept in this Secret Archive are:
 - Acts of criminal cases that concern matters of morals;
 - The register of secret marriages;
 - Matrimonial dispensations in the non-sacramental internal forum;
 - Dispensations from impediments to orders;



Secret Archives



- Documents concerning loss of the clerical state;
- Decrees of dismissal from religious institutes; and
- Documents selected by the bishop in order to prevent scandal or damage to someone's good name (including priest personnel files).

Canon Law and Civil Law



- Canon Law “canonizes” some aspects of civil law (contracts, some property law, employment law)
- Means canon law in these areas will be unique to the place
- Exists independently of civil law

Civil Law View of Canon Law

- **US gives some deference to church decisions** in under Supreme Court interpretations of the First Amendment (Freedom of Religion and the Establishment Clause) and the Fourteenth Amendment



Civil Law View of Canon Law

Serbian Orthodox v. Diocese v. Milivojevic held:

- According to the First Amendment as described in the Establishment and Free Exercise Clauses, decisions made by the church must be accepted as binding by civil courts.



Civil Law View of Canon Law



- Civil courts may only regard the issue of property, and not the underlying religious doctrine pertaining to church property where the potential for entanglement of the secular courts and religious bodies may occur.

Civil Law View of Canon Law



- The Establishment Clause clearly prohibits civil courts from interpreting canon law to resolve intra-church disputes.
- Civil courts must defer to hierarchical tribunals to avoid civil interpretation of, and subsequent entanglement in ecclesiastical law and politics
- Although courts may examine doctrinal documents, the review and use of said documents may not place the courts in the position to resolve religious controversy

Questions?



