



## DECREE

On October 26, 2004, the Bishops of Region XII of the United States Conference of Catholic Bishops met in Anchorage, Alaska. While there, the attached *Region XII Policy for Canonical Counsel and Advocacy in Non-Matrimonial Cases* was discussed. It was unanimously decided that the attached policy indeed fosters cooperation and common pastoral action in the region (cf. c. 434), and that it should be approved by individual bishops as particular law in their own archdiocese and/or diocese.

Therefore, this policy is hereby approved as particular law in the Diocese of Great Falls/Billings by the Most Reverend Anthony M. Milone, D.D., and is to become effective immediately. In accord with canons 7 and 8, it is hereby ordered that this policy be promulgated by distribution to every priest, deacon, pastoral administrator, pastoral associate, and curial official in the Diocese of Great Falls/Billings.

Given at Great Falls, Montana, this 13<sup>th</sup> day of December 2004.

+ Anthony M. Milone  
Most Reverend Anthony M. Milone, D.D.

Sister Mary Murray O.P.  
Chancellor

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**REGION XII POLICY  
FOR CANONICAL COUNSEL AND ADVOCACY  
IN NON-MATRIMONIAL CASES**

**Introduction:**

The Code of Canon Law, as a reflection of the Second Vatican Council, recognizes that every human being possesses certain rights. Some of these rights are based in the basic human dignity of all persons. Others are rooted in baptism and incorporation into the Body of Christ. In the Church, other rights may flow from a person's state in life, whether lay, cleric or a member of an institute of consecrated life. The dioceses of Region XII recognize these rights and strive to protect them for all persons, as best they can.

It must always be kept in mind that the resolution of any sort of dispute must be conducted in a nonadversarial way - remembering Christ's command to love one another. In the Church, resolving conflicts is not a matter of winning or losing, of bishop against priest, or lay person against cleric or authority against subject. Conflicts must be resolved in a spirit of authentic Christian charity, always remembering the dignity of individual persons and the integrity of the Church in its ministry to the world. Indeed, in the spirit of the Gospel, the faithful are first asked to make every effort to resolve the controversy informally before attempting to vindicate rights through the legal system of the Church (cc. 1446, 1713, 1733).

Unfortunately, there may be times when disputes or controversies arise within the Church. Regardless of where these disputes originate, all the faithful have the right to vindicate their rights in accord with the norms of canon law (c. 221). Flowing from that right is the right to adequate canonical representation.

Realizing the important role canonical advocacy can play in the resolution of disputes, a group of diocesan canonists from Region XII of the USCCB have developed the following policy regarding canonical advocacy in non-matrimonial cases. These include both judicial and extra-judicial penal proceedings as found in the Code of Canon Law (cc. 1717-1731 & 1341-1353), as well as in those cases of administrative recourse (cc.1732-1739) or during any other matter in which one may feel his or her rights have been violated (e.g., removal and/or transfer of a parish priest, loss of ecclesiastical office, the alleged violation of one's good reputation).

**NOTE:**

Until such time that a penal judicial process is initiated (cf. c. 1721), any person providing canonical advice to another (such as during a preliminary investigation as found in c. 1717), is considered to be a canonical advisor or canonical consultant, and not an advocate in the strict sense of the law (cf. cc. 1481-1490). Only a canonical advocate, approved by the diocesan bishop, can take part in a penal process, and has those rights and obligations found in the law connected to the office. The bishop may, for the sake of justice, and if he sees fit, allow canonical advisors or consultants, to take part in those proceedings that may lead up to a penal judicial process. In these instances, the qualifications and subsequent approval of such an advisor will also fall under the norms of this policy.

## Policy

Canonical Advocates must be approved (c. 1483) by the diocesan bishop before representing any client in canonical matters. Advocates (either cleric or lay) will be approved by the appropriate bishop provided that:

1. they have a degree in canon law (JCL or JCD) from a recognized pontifical faculty;
2. the advocate not labor under any ecclesiastical penalty and, if either a cleric or member of an institute of consecrated life, society of apostolic life or secular institute, that the advocate is in good standing in his or her diocese and/or community;
3. by representing their client or clients, the services of the advocate/advisor would create no appearance of conflict or conflict with their own bishop/ordinary; (e.g., when the canonist is a cleric, he would not represent a client in a dispute with his own bishop or religious superior of incardination. When the advocate is a lay person who is also an agent of his or her diocesan bishop, they would not represent a client in a dispute with that same bishop; nor would the canonist take on a role in which he/she would hold two or more offices which are incompatible, such as Tribunal judge and advocate [cf., c. 152]);
4. the advocate presents a notarized mandate from the client (c. 1484), clearly delineating the advocate's role, whether the advocate also serves as procurator for the client, and clearly specifying any limitations of the procurator/advocate's ability to function;
5. even if not a member of the Canon Law Society of America, the advocate agrees to operate under the provisions of the *Code of Professional Responsibility and the Statement Concerning Professional Courtesies* of the CLSA( attached as Appendix A and B), and has not previously been found out of compliance with those standards by the Committee on Professional Responsibility of the CLSA;
6. the advocate be willing to swear an oath of secrecy in accord with canon 1455, §3; as well as agree not to copy or distribute any of the testimony or documentary proof connected with the case, using such materials only in the canonical process at issue.

A list of canonists from Region XII has been compiled and is available to any person seeking canonical advocacy or counsel. These canonists have agreed to be placed on this list for the purpose of acting as advocates in non-matrimonial canonical cases. This list may be obtained from either the Offices of the Chancellor, Vicar General or the Tribunal in the individual dioceses of Region XII. The advocates found on this list always retain the right to decline taking on a particular case, as they see fit. Those seeking canonical advice or advocacy services are not bound to use any of the canonists on the list, and may use any other qualified canonist that is approved by the diocesan bishop. Likewise, the inclusion of an individual canonist on this list does not bind any bishop to give his approval for the canonist to take part in a particular case.

Once recognized by the bishop and admitted as a representative of a client, the advocate's or advisor's service strives to facilitate a remedy to the dispute that respects the rights of all parties involved, sees to the observance of the universal law of the Church as well as any relevant particular law, and pursues the good of the Church. To accomplish this, it is vital that:

1. the advocate is expected to advise the client to the best of his or her ability and in accord with all applicable canonical norms and principles of canonical equity;
2. in accord with canons 1446 and 1713, the advocate seeks reconciliation and collaboration to negotiate equitable solutions such that canonical trials and formal administrative processes can be avoided whenever possible.

### **Advocacy - Fee and Expense Reimbursement**

Advocates and their clients are to refer to individual diocesan policies regarding the reimbursement of fees associated with canonical counsel and advocacy.

### **Pro Bono Service**

In the service of justice and as an aspect of professional responsibility, a canonist should be willing to provide a certain amount of advocacy on a *pro bono* basis.

## APPENDIX A

# CODE OF PROFESSIONAL RESPONSIBILITY

## Canon Law Society of America

(permission to reprint granted by the CLSA, September 28, 2004)

First Adopted October, 1983

*The following Code of Professional Responsibility was adopted at the 41st Annual General Meeting of the Canon Law Society of America in October of 1983 for an experimental period of three years. It was revised at the conclusion of that time, and the following revised version was adopted at the 45th Annual General Meeting of the Society in October of 1987.*

### **Prologue: The Canonist in the Contemporary Church**

The Church, the people of God, is a community of persons bound together by faith, hope and charity, equal in dignity and freedom, for whom the whole law is fulfilled in one word, "You shall love your neighbor as yourself" (Gal. 5:14). As a community, the Church is a public and visible society, serving the world by witnessing the Good News of salvation. Divine in origin and spirit, the Church is also thoroughly human, sinful as well as virtuous. Because love can be illusory without justice, and justice cruel without love, the members of this pilgrim people commit themselves to constant growth in communion through love and justice.

To promote the unity and mission of this people, God gives charisms of service as gifts to the Church. Among these is the charism of the canonical vocation. This charism is to be exercised in mutual collaboration with all members of the Church, including apostolic leadership, so that God's gracious design may be accomplished. Thus canonists, like the law they are skilled in, serve a limited but important function in the Church--to foster and to promote justice and love in the public life of the Church.

### **I. The Ideals to Which the Canonist Aspires**

#### ***A. The Characteristics of the Canonist***

1. Since the legal system of the Church exists within and promotes the pastoral mission of the Church, the canonist is a person firmly committed to Christ and the Church. Through regular prayer, service to the people of God, study and reflection, coupled with openness to the Holy Spirit, canonists strive to deepen their appreciation of the revealed mysteries and transcendent values which are the foundation of the canonist's ministry and to which the canonist gives witness in the public life of the Church. The canonist seeks to grow in Christian virtue so that personal defects may not interfere with the course of justice.

2. The canonist is marked by a zeal for justice in the Church, aware that while each individual must sacrifice for the common good, true communion is advanced only when the dignity and fundamental rights of each person are held inviolable. The canonist takes as a solemn obligation fidelity to the cause of justice and to the competent fulfillment of one's office, even in the face of misunderstanding or opposition.
3. As servants of the whole Church, Canonists are marked by integrity in the pursuit of justice and the fulfillment of their office, scrupulously avoiding partiality-- except where a canonist has expressly undertaken to act for a party--and heedless of attempts, from whatever source, to influence them improperly. Moreover, because all offices within the Church exist for the sake of faithful service to God's people, no canonist should ever be swayed by self-interest or egotistical ambition.
4. The canonist is mindful that the integral pursuit of justice must be governed by the spirit of equity. Realizing that the law--a limited human instrument--has no other purpose but to manifest and to serve the life of the Holy Spirit in the Church, the canonist tempers the rigor of the law according to the demands of that Spirit of love in each situation. Since the laws of the Church are to be interpreted and administered in the spirit of justice and equity, issuing in charity, the Canonist strives to be a person of compassion, emotional balance and sound judgment, committed to the pastoral care of the people of God.
5. Because compassion without competence can be a cruel hoax, the canonist should take most seriously the obligation to acquire and to develop professional competence. Canonists ought to have a substantive background in Sacred Scripture, theology and church history, and be thoroughly knowledgeable in the law, jurisprudence and the social sciences, particularly within their own areas of specialization. Canonists should further the advance of their knowledge and skills through private study, participation in professional programs, and utilization of existing channels of communication. Furthermore, canonists should support and encourage the efforts of their peers in achieving this purpose.

### *B. Concerns of the Canonist*

1. In order that members of the Church may be aware of their rights and duties, the canonist has a responsibility to educate and to advise the members of the Church as to the substance and procedures of church law, and should make every reasonable effort to correct misinformation. Their dealings with all members of the Church ought to be marked by honesty, integrity and unselfishness. Should the situation seem to call for it, a contractual arrangement between the canonist and the local Church could clarify rights and expectations.

2. In order to advance the protection of human and ecclesial rights in the Church, the canonist has a responsibility to assist in and to support the improvement and development of church law and procedure. Hearing the needs and concerns of the Christian faithful, especially within the local church wherein they live and minister, canonists bring their particular expertise as skilled servants to the articulation and protection of the rights of all.
3. In order to respond more effectively to the above concerns, and to promote the canonist's own professional development, the canonist should be a member of a professional society of canonists and support its corporate efforts whenever occasion and conscience permit.
4. In order to serve the Christian community most fully, the canonist should cooperate in the pastoral care of persons involved in canonical cases and administrative procedures to the fullest extent consistent with the other provisions of this Code. While the same person should not ordinarily try to serve as pastoral counselor and a canonist in the same matter, the canonist should make known both to pastoral counselors and to concerned parties the pastoral options available under the law in a given case, and should encourage those involved to seek the counseling they need.

Recognizing the import of these aspirations for canonists, we, the Canon Law Society of America, adopt this Code of Professional Responsibility as a guide to ethical judgments, an instrument for individual and mutual professional evaluation, and a standard for accountability of canonists, whether their professional tasks be administrative, executive, judicial or educational.

## **II. THE DUTIES OF THE CANONIST**

### **Canon One**

the scope of this code

This Code shall apply to all members of the Canon Law Society of America, and is proposed as a guide to canonists who are not members. The duties delineated in this Code are not a complete list of the responsibilities of the canonists. This Code does, however, identify the principal obligations for which the canonist may be held accountable.

### **Canon Two**

responsibilities to represented parties

The canonist who undertakes to represent or to advise a party is obliged to investigate carefully and to represent and protect with diligence the rights and remedies to which the party is legally entitled. The canonist is further obliged to avoid undue delays, to seek appropriate consultation as needed, and to employ only such means as are consistent with

truth and honor. Furthermore, the canonist is to refrain from unduly influencing the party represented to accept a compromise or informal solution in lieu of the enforcement of legal rights. Pastoral sensitivity to the actual situation and the persons concerned is the best guide in delicate matters.

### **Canon Three**

#### responsibilities in the judicial process

Canonists who undertake the duties of ecclesiastical judges should uphold the integrity of the judiciary, avoid impropriety and perform the duties of their office impartially and diligently. Canonists charged with rendering a decision or recommendation in a case must do so promptly, in accordance with their best professional judgment of the law and the facts, or, if the matter is committed to the canonist's discretion, in accordance with his or her own prudential judgment of how the matter should be disposed of. The canonist should not be deferred from this duty by any personal, pastoral or other consideration extraneous to the applicable law and facts in the case, or by the influence of any person, even one's religious or canonical superior.

### **Canon Four**

#### confidentiality

The canonist should exercise mature professional judgment with respect to confidentiality, exercising due care that any information obtained in the course of any canonical investigation or proceeding is disclosed only to appropriate persons. When a doubt exists as to whether certain information should be disclosed to a specific person, the canonist ought to engage in appropriate consultation to resolve that doubt before revealing such information. This consultation should include the person who has provided the information in question. Furthermore, canonists are not to reveal anything communicated to them in confidence by persons seeking representation or advice except to the extent necessary to prevent the commission of a crime or serious injustice, or to avoid grave public harm. .

### **Canon Five**

#### responsibilities as an educator

- a. When requested to do so or when representing a party, the canonist has the obligation of advising as fully as possible the interested parties as to their rights and remedies under the law.
- b. The canonist has a continuing duty to advise the ordinary about canonical matters, particularly when the ordinary makes such a request, when the ordinary's action is required, or when the ordinary's view are sought by other authorities in the Church.
- c. When assisted by persons who are not professionally trained canonists, the canonist is responsible for their education and supervision.



- d. The canonist has a duty to advise all engaged in pastoral ministry about canonical matters which protect the rights of persons, and also those concerned with the good order necessary in the administration of the Church, in matters both spiritual and temporal.
- e. Furthermore, canonists have an ongoing obligation to raise the consciousness of others in the Church concerning possible areas of injustice or inequitable practice.
- f. Canonists bear a special responsibility for the education of all the Christian faithful concerning their rights and responsibilities in the life and mission of the Church.

### **Canon Six**

#### evaluative responsibility

Canonists have a responsibility to cooperate with reasonable requests from appropriate parties to use their professional expertise in the valuation of canonical and quasi-canonical agencies or structures within the Church, as regards either the design or the functioning of these agencies or structures.

### **Canon Seven**

#### responsibilities to the canonical profession

In order to promote greater understanding of the developmental character of church law, the canonist should cooperate with professional colleagues by sharing insights and experiential knowledge gained as church lawyers, always safeguarding confidentiality in this process. Active participation in interdisciplinary projects with other professionals is another aspect of this responsibility. The canonist should never refuse to respond to reasonable requests for information or for legal opinions, but should so respond only when informed as fully as possible concerning the pertinent law and the facts of the matter.

### **Canon Eight**

#### evaluation of compliance with professional standards

Canonists should meet regularly with colleagues to evaluate their own performance in regard to the professional standards expressed in this Code of Professional Responsibility, and should periodically seek evaluations from those who have used their services. Since the canonical ministry is an enabling one for the life of the Christian faithful, canonists are responsible to them corporately as well as individually.

## Canon Nine

### enforcement of this code

- a. Canonists are accountable as regards professional competence performance to their respective ordinaries and to those who share in the ordinary's pastoral ministry within the local church, to their superiors and communities if they are members of a religious institute, to their professional colleagues, and to individuals or groups whom they advise or represent.
- b. Should a complaint be made to the Canon Law Society of America by one of the parties to whom a member-canonist is accountable, that the member-canonist has violated duties enumerated in Part II of this Code, that canonist has the right and the duty to submit to a fair hearing by professional peers.
- c.
  - (i) The three senior consultants of the Canon Law Society of America's Board of Governors shall constitute a standing Committee on Professional Responsibility.
  - (ii) The Board of Governors shall appoint three members of the Society to serve staggered three year terms as Hearing Officers to deal with complaints arising under this Code. Such service may be renewed by consent of the Board of Governors.
  - (iii) The Board of Governors, by majority vote, shall designate on an *ad hoc* basis at least three of their number to serve as an Appellate Review Panel in any case where a party seeks review of a determination of the Hearing Officer.
- d.
  - (i) The Functions of the Committee on Professional Responsibility shall be to receive complaints of any party aggrieved with respect to provisions of this Code, to make an initial finding that the complaint is not frivolous, and in the event that a majority of the Committee considers the complaint to be serious in character, to refer the matter to one of the Hearing Officers.

The Committee on Professional Responsibility may issue advisory opinions on the application of this Code or on other questions concerning the professional responsibility of canonists. .

The Committee may publish to the members of the Society and to other interested persons those opinions and decisions it considers helpful in developing a general understanding of the professional responsibility of canonists. Except where a public reprimand has been ordered, names and identifying circumstances shall be withheld so as to protect privacy and reputations.

(ii) The functions of the Hearing Officer shall be to attempt wherever possible informal disposition of the complaint by appropriate means of conciliation and mediation, and in the event that informal resolution of the dispute proves unsuccessful, to gather evidence and to conduct hearings, following standard principles and procedures of due process, and to enter appropriate findings of fact.

Among the possible options available to the Hearing Officer are the following:

1. If the Hearing Officer determines that it has not been established by clear and convincing evidence that a canonist has failed to act in accord with the standards of this Code, the Hearing Officer shall issue a statement to that effect to the parties concerned.
2. If the Hearing Officer determines that it has been established by clear and convincing evidence that a canonist, although acting in good faith, has failed to act in accord with the standards of this Code, the Hearing Officer shall issue a statement to that effect to the parties concerned. The statement shall explain the nature of the violation of this Code. The Hearing Officer may also, in appropriate cases, require the canonist to make good any harm done to individuals, albeit unwittingly, by the violation of this Code.
3. If the Hearing Officer determines that it has been established beyond a reasonable doubt that a canonist has knowingly and willfully violated this Code of Professional Responsibility, the Hearing Officer shall issue an appropriate reprimand. If the violation is extremely grave, bringing into disrepute the canonical profession, the Hearing Officer may recommend to the Board of Governors a penalty as serious as expulsion from the Society. This penalty shall be imposed only by a majority vote of the Board of Governors.

The Hearing Officer may also recommend appropriate remedial actions, and the Board of Governors may require the offender to comply with the recommendations under the sanction of possible expulsion, when fundamental rights of persons require this.

**APPENDIX B**

**STATEMENT CONCERNING PROFESSIONAL  
COURTESIES**

**Canon Law Society of America**

(Permission to reprint granted by the CLSA, September 28, 2004)

First Adopted October 1993

*The following Statement Concerning Professional Courtesies was adopted at the 55th Annual General Meeting of the Canon Law Society of America in October 1993 for an experimental period of three years. It was revised at the conclusion of that time, and the following revised version was adopted at the 58th Annual General Meeting of the Society.*

**PART I**

**PRINCIPLES OF REPRESENTATION**

**PRINCIPLE ONE**

Each party to a canonical dispute has a right to canonical representation whether of a procurator (proxy) or of an advocate (defender).

**PRINCIPLE TWO**

Each party is free to appoint representatives whether procurators or advocates. In cases where advocates are required by law, an advocate must be assigned by the court or church authority if a party has failed to select one personally.

**PRINCIPLE THREE**

Canonical representatives exercise a function of assisting in the resolution of disputes by clarifying and properly interpreting the facts, representing the interests and concerns of the party they represent, and thereby facilitating the functioning of the Church's system of justice and equity.

**PRINCIPLE FOUR**

Communication between a party and the person's canonical representative and the work product of a canonical representative are privileged.

## PART II

### PROFESSIONAL COURTESIES

In light of the principles of representation, this *Statement Concerning Professional Courtesies* is adopted as a guide to canonists who are involved in a canonical dispute whether as a party or as a canonical representative.

#### COURTESY ONE

Communication between the parties to a dispute should always be marked with professional and personal courtesy and respect. The purpose for such communication is to try to resolve the dispute, not worsen it.

#### COURTESY TWO

If a party chooses a canonical representative who is not already on a list of advocates approved for the diocese, religious institute or comparable entity, the right to represent the party for the case is extended to the canonical representative if competency is evident.

#### COURTESY THREE

The canonical representative of a party shall have access to all communications about the dispute which are available to the party being represented.

#### COURTESY FOUR

A party may request from the other party or parties to a dispute copies of all acts and proofs in their possession relevant to the dispute.

Copies of the requested documents shall be provided unless a party claims a document is not relevant to the dispute, or that it was intended as confidential and is not intended to be used as proof. If a document is withheld, care must always be taken that the right of defense always remain intact.

Expenses for the reproduction and delivery of copies shall be paid by the party who requests them.

#### COURTESY FIVE

Unless it is clear that all parties to a dispute have received a copy of a communication bearing on the dispute from a court, administrative body, or person involved in the resolution of the dispute, the party receiving this communication shall provide copies to all other parties to the dispute.

#### COURTESY SIX

While using all canonical and just means to protect the rights and interests, a party or canonical representative should not use the canonical process to delay justice or to hinder the resolution of a dispute within an appropriate time.

## PART III

### APPLICABILITY

1. This Statement Concerning Professional Courtesies is adopted as a guide to canonists who are involved in a canonical dispute whether as a party or as a canonical representative.
2. The courtesies enumerated in this Statement are not a complete list of all the standards of expected behavior, but they are designed to provide a basis for establishing a working relationship between the parties to a dispute.
3. These courtesies are applicable to canonical disputes whether the dispute follows the judicial, the administrative, the investigatory, or an informal dispute resolution process.

### RESOLUTION OF COMMITMENT

We, the members of the Canon Law Society of America, adopt this *Statement of Professional Courtesies* and commit ourselves to observe the principles and courtesies enumerated herein insofar as possible.

*Adopted:*

*Canon Law Society of America  
58th Annual Business Meeting  
St. Louis, Missouri  
October 9, 1996*