



## CONGREGATIO PRO CLERICIS

**DECREE**

Prot. N. 20082142

**FACTISPECIES:**

1. On May 1, 2007, Mr. John Clinton, Mr. Carl Austin, Ms. Colleen LaTray and Mr. Chris Prozak, wrote to the Congregation for the Clergy wishing to file an Hierarchical Recourse against their Ordinary's decision to "close St. Mary's Parish and Church". No documentation was presented at that time and the Congregation was advised that the parties were contacting a canon lawyer to assist them in the process;
2. the single page letter was responded to by letter of 4<sup>th</sup> June 2007, (Prot.N. 20071311), advising the parties that any hierarchical recourse must be presented in accord with the law and within the time frames dictated by the Code of Canon Law. At the same time, they were advised that at present, no hierarchical recourse was operative. No authentic copy of an administrative act of the Ordinary was attached at this time;
3. on the date of May 26, 2007, an hierarchical recourse was presented against the decision of the Ordinary of Syracuse, New York, (USA), His Excellency James M Moynihan, to suppress the parish in question "...since the parish of St. Mary's Jamesville was never lawfully suppressed in the letter of May 25, 2006..."..and later "...we respectfully request that the Congregation issue a decree declaring the Decree imposed by Bishop Moynihan dated 4-27-07 to be null and void and of no juridical effect or otherwise reverse, rescind or revoke the Decree for lack of adherence to the norms of the Code of Canon Law and in that it lacked basis in law and in fact...";
4. this document bears the non-authenticated signatures (photocopied version) of individuals among whom is one of the original correspondents with the Dicastery on the matter, one Colleen K. LaTray, (to whom correspondence is to be directed);
5. many subsequent updates have arrived with new signatories attached to the list of potential recurrences.

## IN IURE:

Can. 57. – § 1. Quoties lex iubeat decretum ferri vel ab eo, cuius interest, petitio vel recursus ad decretum obtinendum legitime proponatur, auctoritas competens intra tres menses a recepta petitione vel recursu provideat, nisi alius terminus lege praescribatur.

§ 2. Hoc termino transacto, si decretum nondum datum fuerit, responsum praesumitur negativum, ad propositionem ulterioris recursus quod attinet.

§ 3. Responsum negativum praesumptum non eximit competentem auctoritatem ab obligatione decretum ferendi, immo et damnum forte illatum, ad normam Can. 128, reparandi.

Can. 515. – § 1. Paroecia est certa communitas christifidelium in Ecclesia particulari stabiliter constituta, cuius cura pastoralis, sub auctoritate Episcopi dioecesanani, committitur parochi, qua proprio eiusdem pastori.

§ 2. Paroecias erigere, suppressere aut eas innovare unius est Episcopi dioecesanani, qui paroecias ne erigat aut suppressat, neve eas notabiliter innovet, nisi audito consilio presbyterali.

§ 3. Paroecia legitime erecta personalitate iuridica ipso iure gaudet.

Can. 1212. – Dedicationem vel benedictionem amittunt loca sacra, si magna ex parte destructa fuerint, vel ad usus profanos permanentiter decreto competentis Ordinarii vel de facto reducta.

Can. 1222. – § 1. Si qua ecclesia nullo modo ad cultum divinum adhiberi queat et possibilitas non detur eam reficiendi, in usum profanum non sordidum ab Episcopo dioecesanano redigi potest.

§ 2. Ubi aliae graves causae suadeant ut aliqua ecclesia ad divinum cultum amplius non adhibeatur, eam Episcopus dioecesanus, audito consilio presbyterali, in usum profanum non sordidum redigere potest, de consensu eorum qui iure in eadem sibi legitime vindicent, et dummodo animarum bonum nullum inde detrimentum capiat.

Can. 1734. – § 1. Antequam quis recursum proponat, debet decreti revocationem vel emendationem scripto ab ipsius auctore petere; qua petitione proposita, etiam suspensio executionis eo ipso petita intellegitur.

§ 2. Petitio fieri debet intra peremptorium terminum decem dierum utilium a decreto legitime intimato.

§ 3. Normae §§ 1 et 2 non valent:

1° de recursu proponendo ad Episcopum adversus decreta lata ab auctoritatibus, quae ei subsunt;

2° de recursu proponendo adversus decretum, quo recursus hierarchicus deciditur, nisi decisio dat sit ab Episcopo;

3° de recursibus proponendis ad normam cann. 57 et 1735.

Can. 1737. – § 1. Qui se decreto gravatum esse contendit, potest ad Superiorem hierarchicum eius, qui decretum tulit, propter quodlibet iustum motivum recurrere; recursus proponi potest coram ipso decreti auctore, qui eum statim ad competentem Superiorem hierarchicum transmittere debet.

§ 2. Recursus proponendus est intra peremptorium terminum quindecim dierum utilium, qui in casibus de quibus in Can. 1734, § 3 decurrunt ex die quo decretum intimatum est, in ceteris autem casibus decurrunt ad normam Can. 1735.

§ 3. Etiam in casibus, in quibus recursus non suspendit ipso iure decreti executionem neque suspensio ad normam Can. 1736, § 2 decreta est, potest tamen gravi de causa Superior iubere ut executio suspendatur, cauto tamen ne quid salus animarum detrimenti capiat.

## **IN FACTO:**

6. in accord with canon 57, §3, the Dicastery issues this disposition, already indicated by its silence;
7. as to the matter of lack of their canonical expertise as an excuse for not following the time frames dictated by the law or following proper legal procedures, posed by some recurrences in their submission of May 29, 2007, this is not admissible as an argument in a canonical process, as it is the responsibility of those who seek recourse according to canon law, to ensure that such is presented in a canonical fashion. In fact, it is indicated in the letter of May 1, 2007 that the recurrences are seeking canonical advice and such is referred to elsewhere in the voluminous material presented by them;
8. the lack of canonical clarity as to the specific object of the recourse, as to who precisely the recurrences are and what their status at law is, has made this particular recourse very difficult to deal with. Indeed it has been necessary for the Dicastery to fix certain points so that the matter can be evaluated;
9. furthermore, no group lacking juridical personality, has standing in law to present a recourse, as indicated in the response of the Pontifical Council for Legislative Texts of 29 April 1987, [AAS 80 (1988) 1818];
10. thus the Dicastery chooses Ms. LaTray et alia, as the recurrences, always with the presumption that the "alia" are residents within the territory under discussion, if they are not, but their names were affixed to non-authenticated lists, then they have no standing in law regarding this recourse;
11. as to the matter of the suppression of the Parish in question and the modification of its juridical status, this cannot be questioned a year after the fact, as is clear from the law, so there is no need to dwell further on this point;
12. neither is there evidence that the requirements of canon 1734 were followed in any timely fashion;
13. as to the awareness of persons as to what occurred, it is clear, from the Acta that it was known by all concerned that what was once a Parish was now a "Mission" of another Parish and that since 2001, due to the changing demographics, shortage of clergy and other reasons, the pastoral configuration of the whole area was under study with a view to streamlining it to fit the resources available, human and otherwise;
14. from the Acta it is clear that extensive consultation had taken place, the Presbyteral Council had been consulted as to any modifications to the pastoral alignment of territory. As this was being implemented over time, the Ordinary communicated the closure of St. Mary's Mission in Jamesville by letter of April 27, 2007, with effect on 1 July 2007. The Bishop indicated, at least in summary fashion, the reasons for his actions, and they are sufficient;
15. on May 5, 2007, a group composed, supposedly, of individual parishioners, wrote asking the Bishop to reconsider his decision;
16. on May 26, 2007, in what is a very confusing canonical action, a document, with identical text, is sent simultaneously to the Ordinary of the Diocese and this Congregation requesting recourse as indicated in #3 above;

17. from its examination of the entire voluminous file on this issue, the Dicastery must first of all state that due to the confusion regarding the nature of hierarchical recourse and the procedures necessary for it, exhibited in this presentation, certainty is difficult to attain, however,
18. it is clear that the recourse with regard to the suppression of the parish in question is well outside of the time limits required by law for its licit presentation;
19. the recourse regarding the disposition of the Ordinary in closing the Mission of St. Mary's has not respected the time limits imposed by the law for the Bishop's response and further confused the issue by the simultaneous presentation to the Congregation for the Clergy and the Bishop of a request for hierarchical recourse on the same date, (May 29, 2007), and thus has not respected the procedures outlined in the Code of Canon Law,

therefore, the Congregation for the Clergy

**Decrees**

that the recourse presented against the dispositions of the Ordinary of Syracuse (USA), the Most Rev. James M. Moynihan, regarding his suppression of the Parish of St. Mary and the subsequent closing of the Mission Church, is hereby

**rejected**

in law and in fact. The action of the Ordinary is upheld *in procedendo et in decernendo*.

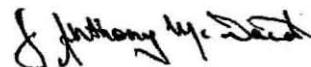
Given at the Seat of  
The Congregation for the Clergy  
Vatican City

5<sup>th</sup> August 2008.



✠Mauro Piacenza

Titular Archbishop of Vittoriana  
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