

Ministerial Liability
of Deacons

By Deacon Joseph B. McGrath, J.D., J.C.L.

The Nature of Liability
and Liability Under
Canon Law and Common Law

Alt Publishing Co.
P.O. Box 400 Green Bay, WI 54305

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I. The Nature of Liability

The word "liability" is a broad term which covers a wide range of meanings — mostly legal, but sometimes not. For example, it includes almost every kind of hazard or responsibility, absolute or contingent. It has been defined by courts to mean debts and obligations of all kinds and the condition of being absolutely or potentially subject to an obligation.

Liability includes being responsible for a possible or actual loss, and the condition which creates a duty to perform an action immediately or sometime in the future. It can also mean a duty to pay over some money or to perform a service for someone. The word can in-

clude exposure to a probable penalty, an evil, a danger, an expense or a burden, usually of an unpleasant nature.

Of broad significance in the law, liability also means responsibility for torts. Torts are private, civil (as opposed to criminal) wrongs or injuries caused by someone who has a legal duty to a person, who fails to carry out that duty or is negligent in carrying it out, and as a proximate result causes damage to that person. Liability also indicates the state of being legally bound in law or equity to do, pay or make good on something. A legal liability is one which courts will recognize and enforce in a civil action.

II. Liability Under Canon Law

Under the revised *Code of Canon Law* promulgated in 1983 there are a series of canons which impose duties and liabilities in the sense of obligations upon clerics and all the Catholic faithful. This discussion, however, is confined solely to those liabilities which directly affect deacons in their ministerial role and functions. Not all such duties are covered, only the principal ones about which deacons must be especially observant.

Obedience and Reverence.

Permanent deacons, like all clerics, are bound by a special obligation to show obedience and reverence to the pope and to their diocesan bishops. Further, unless excused by a legitimate impediment, a deacon is bound to undertake and faithfully execute any duty which is entrusted to him by his bishop. These obligations are embodied in the juridic norms of the Church (cc. 273 and 274.2). They also stem from the lifelong promise of obedience made at the time of diaconal ordination and from the shared ministry which comes with the sacrament of Holy Orders.

The authority of a bishop to enforce canonical obedience is clear. He also has the right to interpret the law in accordance with local circumstances (cc. 381.1, 391, 1419.1). He can act personally or through his vicars. He is bound to promote the common good, the discipline of the Church and the observance of all ec-

clesiastical laws (cc. 383-384). He must also be watchful against any abuses of ecclesiastical discipline, especially concerning the ministry of the word, the sacraments, the worship of God, devotion to the saints and the administration of property (c. 392). As the principal teacher of the diocese, the bishop must also safeguard the integrity and unity of the faith within the diocese (c. 386).

In light of the above, a deacon certainly could be-



Deacon Joseph McGrath is a Washington, DC deacon who practiced law for forty years and serves as a judge on the Archdiocese of Washington Tribunal. This article originally appeared in *Deacon Digest* magazine. (Catholic Standard photo by Michael Alexander)

come liable under canon law to disciplinary action by his bishop should he transgress in a serious manner the mandates of the Church or act persistently in a way considered to be disobedient or irreverent towards Church doctrine or the bishop, or both. It is worth noting, at the outset, that the Church claims sole authority to judge and impose ecclesiastical penalties in cases involving spiritual matters and violations of ecclesiastical laws (c. 1401).

Holiness of Life.

All the Christian faithful, and especially deacons, are bound to make an effort to live a holy life and to promote the growth and sanctification of the Church (c. 210). It is not a matter of discretion or choice for deacons as to whether they will follow papal and bishops' admonitions to live a holy life following their ordination. "In leading their lives clerics are especially bound to pursue holiness because they are consecrated to God by a new title in the reception of orders . . ." (c. 276.1). Canon law prescribes specifically the following norms for which all clerics are liable (c. 276.2):

- (1) They are faithfully and untiringly to fulfill their duties of pastoral ministry.
- (2) They are to nourish their spiritual life from sacred Scripture and the Eucharist. Deacons are encouraged to participate in Mass daily.
- (3) Permanent deacons are encouraged to pray the Liturgy of the Hours daily, at least morning and evening prayer (c. 276.2, 3^o). In 1985 the NCCB Bishops' Committee on the Permanent Diaconate stated:
 "Although they are not bound by universal church law to say the whole of this prayer every day, permanent deacons should not hold themselves lightly excused from the obligation they have to recite morning and evening prayer." (*Complementary Norms to the 1983 Code of Canon Law*, 1991, p. 3; Bishops' Committee on the Permanent Diaconate, NCCB, *Permanent Deacons in the United States: Guidelines on Their Formation and Ministry*, 1984 Revision, n. 97.)
- (4) They are obliged to make a spiritual retreat in accordance with the rules of each diocese (usually once a year).
- (5) They are to devote time regularly to mental prayer; to approach the sacrament of Penance frequently; to cultivate a special devotion to the Virgin Mother of God; and to use other general and special means to holiness. A daily examination of conscience is also recommended.

As noted above, deacons must always remember that the sacrament of Holy Orders confers, in addition to grace, an indelible, sacramental character or "seal" by which they share in the priesthood of Christ and carry out their functions in the Church. The new *Catechism of the Catholic Church* (USCC, Inc. — Libreria Editrice Vaticana, 1994) puts it this way (N. 1570):

"Deacons share in Christ's mission and grace in a special way. The sacrament of Holy Orders marks them with an imprint ("character") which cannot be removed and which configures them to Christ who made himself the 'deacon' or servant of all." (Mk 10:45; Lk 22:27)

Residence and Incardination.

As a matter of courtesy and protocol, permanent deacons should let their pastors know when they will be out of town, on vacation or away from the parish. In addition, if you will be absent for a considerable time

from your diocese, but not permanently, you should make sure that your chancery knows about it. This is so that it will be clear that you have "at least the presumed permission" of your proper ordinary (c. 283.1). Also, if you are moving permanently to another diocese, your chancery or Office of Permanent Diaconate should be notified in advance, for reasons which are discussed below.

The Church in times past and in countries other than the United States has had considerable trouble with bishops and pastors who have been continuously absent from their sees and parishes. As a result the canons and rules governing the residence and incardination of clerics are comprehensive and quite precise. They are also both legal and spiritual bonds, binding together the clergy of a diocese.

Permanent deacons as well as priests must observe them. A person who violates gravely the obligation of residence to which he is bound by reason of ecclesiastical office (usually a bishop, priest or parochial vicar) is liable to be punished with a "just penalty," which could include deprivation of office after a warning (c. 1396).

No Wandering Deacons.

In general the Church sharply disapproves of "wandering" clerics whose domicile or superior cannot be pinned down. Every cleric without exception must be incardinated in a particular church (diocese) or religious society; acephalous or unattached clergy are not allowed at all (c. 265). Incardination assures that there is always at least one bishop or equivalent Church official who has primary responsibility for the conduct and welfare of each ordained deacon.

A permanent deacon is incardinated in a particular diocese or its equivalent in the process of his ordination (c. 266.1). Moreover, this is intended to be a permanent affiliation. It cannot be changed except in accordance with the law, and deacons are liable for compliance with the pertinent canons on this (cc. 267-270).

You cannot "resign" from your diocese, nor can you lose incardination except by death or loss of your clerical status. Thus, even if you must move temporarily and live for an extended period of time outside of your diocese, you still remain incardinated in your home diocese. Even when living away, however, you should always maintain contact with your home diocese because its records must be kept current on the location of all its deacons.

Excarnation / Incardination.

If you have to leave your diocese permanently, you must obtain a letter of excarnation signed by your presiding diocesan bishop. The matter is regarded as so important that no one of lesser authority will do. In your new diocese you must obtain a letter of incardination signed by your new diocesan bishop (c. 267.2). But note, your letter of excarnation does not take effect until you are fully incardinated into your new diocese (c. 267.2). Thus the two acts of excarnation and

incardination become, in effect, one juridical act. This is what confers canonical validity upon your move.

The purpose of this system is to benefit the people of God with the service of a familiar and stable clergy. It also gives the Church some control over the equitable distribution and remuneration of clergy and assures at least minimum financial and spiritual support of clerics whatever their circumstances may be. Therefore, a deacon who does not follow these juridical rules but unilaterally walks away from his church of ordination forfeits his right to diaconal ministry. After all, your diaconate has meaning only in an ecclesial context; it is not a personal gift which you can carry with you wherever you go.

Moving to a New Diocese.

Your bishop usually cannot prevent you from moving out of your diocese, nor would he normally wish to do so. By law bishops are authorized to grant excardination only for a “just reason,” but this can encompass “the good of the cleric” and “the advantage of the Church.” It usually has liberal application, and the “good” of a deacon could include his physical or mental health, his spiritual welfare, or some related cause. Excardination cannot be refused “unless grave reasons exist,” and these are subject to challenge (c. 270).

Keep in mind also that while your bishop cannot prevent you from applying for incardination into a new diocese, he can undoubtedly influence the response of your prospective new bishop. Thus, you could be refused a letter of incardination in your new diocese. In that case your letter of excardination never becomes effective and you remain on the rolls of your old diocese.

By law a bishop is **not** to incardinate a cleric who requests it **unless**: (a) this meets a need or is otherwise to the advantage of his diocese; (b) there is provision for decent support of the cleric; (c) the bishop knows for sure that a letter of excardination has been granted; (d) he has obtained from the excardinating bishop (confidentially, if necessary) appropriate testimonials concerning the cleric’s life, morals and studies; and, (e) the cleric declares in writing to his new bishop his desire to enter the service of the Church in this new diocese in accordance with the norms of law, including whatever rules or conditions his new bishop may impose (c. 269).

The Five-Year Rule.

If you move from your diocese to another, however, it is possible by virtue of the law itself (**ipso iure**) for you to become incardinated in your new diocese after five years. This can occur **provided**: (1) you have declared your intention to be incardinated in writing to both the bishop of your new diocese and to your former bishop; and (2) neither of the two bishops has indicated opposition in writing within four months of receiving your written request (c. 268.1).

The bishop of your new diocese, of course, can re-

fuse your request or set conditions on his consent, such as a period of probationary service. Your request for incardination, however, does not necessarily have to precede the entire five year waiting period. It could be made after you have lived for a while in your new diocese or even after you have lived there for five years.

An Involuntary Move.

For permanent deacons who are required to move to another diocese because of a job change, work retirement, health or similar reason, the excardination/incardination process must still be followed. The NCCB Bishops’ Committee *Guidelines* state (n. 120):

“A deacon who moves from one diocese to another will ordinarily be admitted by the bishop into the diaconal ministry of his new diocese, at least after a period of time sufficient for the new diocese to become acquainted with the deacon and for him to become acquainted with the order of deacons already at work there. If the new diocese has not implemented the diaconate, the deacon will not exercise his ministry without the permission of the bishop.”

Other Aspects of Life.

Deacons are to be conscious of their role in life as a result of their ordination. To the extent they can, they are to follow a simple way of life and avoid anything that suggests worldliness and vanity (c. 282.1). Canon 285.1 states that clerics are to shun completely “everything that is unbecoming to their state.” A companion canon (c. 285.2) says, further, that clerics are to avoid whatever is foreign to their state, i.e., those things which, although not unseemly or unbecoming, are nevertheless alien to the clerical state.

These canons follow the example of St. Polycarp of Smyrna (c. 69-c. 155) who exhorted his deacons “to be moderate in all things.” In short, an ordained deacon is set apart in some way in the midst of the people of God and is expected to maintain a position of relative dignity and modesty in the eyes of the faithful. In the past and even today it has not been uncommon for priests to be liable for punishment for violating this canonical standard of conduct. Deacons, too, must therefore be wary of these pitfalls especially since, unlike priests, permanent deacons must constantly wend their way along the common pathways of life.

Liability of the Church.

In a recent commentary on the conduct of permanent deacons, Sr. Carolyn Roeber, O.P., a canonical author, noted that there is a moral and legal liability of the Church for the actions of a deacon both in his ministry and in his secular occupation. While different than for a priest’s, the liability of the Church is nevertheless similar in terms of spiritual and pastoral implications, and this puts a special responsibility on deacons. She stressed this point in the following words:

“Because of his ordination the deacon has been placed in a special relationship of trust and status in the community. He is obliged to avoid all behavior unbecoming or alien to his ordained state (c. 285, 1-2). If his behavior, even though

not in the course of his formal ministerial activity, undermines that trust, causes scandal to the faithful, reduces the appeal of the Gospel message itself, and prevents him from ministering effectively, action must be taken to limit his ministry and to repair the damage his action has caused in the church community.” (“Code of Conduct for Permanent Deacons in Counseling Situations,” Carolyn A. Roeber, O.P., *Roman Replies and CLSA Advisory Opinions, 1994*; CLSA, pp. 89-93.)

Specific Exemptions?

Deacons are specifically exempted from some of the other restrictions on clerics (c. 288). Nevertheless, a diocesan bishop through a local ruling can authorize or prohibit any specific activity of a deacon or deacons as he sees fit. For example, the Apostolic Letter of Pope Paul VI, *Sacrum Diaconatus Ordinem*, issued motu proprio June 18, 1967, which restored the permanent diaconate, warned (n. 7): “. . . care should be taken that deacons do not carry on a profession or trade which will interfere with the fruitful exercise of the sacred office.”

In addition, the NCCB Bishops’ Committee *Guidelines* state (n. 131): “While the Code of Canon Law permits permanent deacons to hold political office, a deacon should consult with his bishop before seeking or accepting such an office. In particular cases, the bishop may forbid such an undertaking.” Therefore in all doubtful situations, it is a good idea to check first with your chancery. When in doubt — ask!

In cases involving **military service** and some other types of civil service, deacons are not excused but are bound as are all clerics. However, you may not volunteer for military service without the approval of your ordinary (c. 289.1). If you are already in the reserves and are called up for active duty, it would appear that your military obligations are an acquired right (c. 4). Nevertheless, you should still consult with your chancery.

With respect to **jury duty**, if in your city or state there is an exemption available to you because of your clerical status, you are obliged to take the exemption (c. 289.2). Otherwise, you must obey court orders and your local law.

Celibacy and Continence.

There are other key canonical norms which are also applicable to the life of permanent deacons. For example, all clerics “are to conduct themselves with due prudence in associating with persons [male or female] whose company could endanger their obligation to observe continence or could cause scandal for the faithful” (c. 277.2). Here also the diocesan bishop has the competence to pass judgement in particular cases and, if he sees fit, to issue more specific norms (c. 277.3).

Obviously permanent deacons, single and married, as well as priests, could easily become liable to disciplinary action should they violate the observance of canon 277.2. Note the double edged nature of this canon: either possible endangerment to the obligation of continence or the possibility of public scandal, or both, can get you in trouble.

“Continence” means abstinence from sexual relations; “celibacy” means being unmarried. Married permanent deacons, of course, are bound by the sacrament of matrimony to continence outside of their marriage. Priests (and unmarried permanent deacons) are bound by a vow of celibacy to remain unmarried. This is a principal means of helping them to preserve their canonical obligation to perfect and perpetual continence. Both deacons and priests, like all people of God, are also bound to the virtue of chastity and to the standards of conduct related to that virtue.

Married men who become permanent deacons are not bound to clerical celibacy because their marriage is, in law, a prior acquired right (c. 4) and thus takes precedence over the clerical obligation to celibacy (cf., c. 1042,1^o). Should a permanent deacon’s wife die or otherwise be lost to him, as in a divorce, the traditional discipline of the Church is that he may not remarry. (Apostolic Letter of Pope Paul VI, *Ad Pascendum*, issued motu proprio August 15, 1972, Norm VI.)

Holy orders is a diriment impediment barring him from remarriage (c. 1087). Thereafter, like a priest, he is bound to both celibacy and permanent continence. Only a dispensation from the Apostolic See will permit a widowed deacon to remarry (cc. 291; 1078.2, 1), and in that event Rome would probably also want a petition for laicization (c. 290.3). Please note, however, and be sure to tell your wives: there is nothing in canon law, tradition or Church custom to prevent the widow of a deceased deacon from remarrying after the death of her husband.

No Civil Remarriages.

A widowed deacon who attempts remarriage civilly is removed from office by the law itself (c. 194.1, 3^o). He also incurs an automatic suspension (c. 1394.1). This is called a **latae sententiae** penalty, which means it is automatically incurred on committing the offense without the intervention of a bishop or judge.

If the deacon is given a formal warning (by his chancery or bishop) and does not have a change of heart but continues to give scandal, i.e., he does not or cannot break off his new relationship, he is liable to increasingly severe **ferendae sententiae** penalties. These are penalties usually imposed by a bishop and can include dismissal from the clerical state (c. 1394.1). It is also possible for the new spouse of a deacon to incur a **latae sententiae** penalty for complicity in his offense (c. 1329.2).

Offenses Against Chastity.

A permanent deacon could become liable for suspension and gradually more severe penalties, including dismissal from the clerical state, for other offenses against chastity. These are concubinage (an ongoing non-marital cohabitation or sexual relationship, male or female) and other habitual sexual offenses that involve scandal (c. 1395.1).

Just penalties, including dismissal, can also be imposed for a single violation of the sixth commandment

(adultery) if done with force or threats, or publicly, or with a minor below the age of eighteen (cc. 97.1; 1395.2). Keep in mind that in the tradition of the Church, the sixth commandment has been understood as encompassing the whole of human sexuality (*Catechism*, N. 2336).

Crimes and Penalties.

There are ecclesiastical crimes just as there are crimes at common law, and the Church asserts an inherent right to impose penal sanctions on the Christian faithful (c. 1311). Prudence and common sense should keep most deacons from any liabilities in this direction. You must be aware, however, that there are very specific canons covering six broad categories of particular offenses:

- (1) Offenses against Religion and the Unity of the Church; (cc. 1364-1369);
- (2) Offenses against Ecclesiastical Authorities and the Freedom of the Church (cc. 1370-1377);
- (3) Usurpation of Ecclesiastical Functions and Offenses in their Exercise (cc. 1378-1389);
- (4) The Crime of Falsehood (cc. 1390-1391);
- (5) Offenses against Particular Obligations (cc. 1392-1396);
- (6) Offenses against Human Life and Freedom (cc. 1397-1398).

In addition there is a general norm (c. 1399) which provides that when there is an external violation of divine or ecclesiastical law which is particularly serious, and there is an urgent need to preclude or repair scandal, it can be punished by a just penalty.

Of the offenses included in the above listed categories, because of the nature of some diaconal duties, permanent deacons should be especially on guard against becoming potentially liable for selling church goods or disposing of church property without fully adequate permission; administering a sacrament without sufficient authority; using or composing a false ecclesiastical document or asserting something false in a public ecclesiastical document.

Fortunately, before you can be found guilty of an ecclesiastical crime and punished, it must be clear that the offense is gravely imputable to you because of malice or culpability. If the violation was due to a lack of due diligence (carelessness) on your part, you are not penalized unless the law requires it. Also if you were unaware of violating a law, or did so through inadvertence or error, you are not subject to a penalty (cc. 1321, 1323). All laws with penalties must be interpreted strictly (c. 18) i.e., in a limiting manner.

A Person's Good Name.

Under the new Code of Canon Law, there has been a special effort to provide legal rights for everyone in the Church, and in particular a right to protect a person's good name. Thus no one may unlawfully harm the good reputation which a person enjoys, or violate the right of any person to protect his or her privacy (c. 220).

Even when a bishop receives information about an offense which requires an investigation, he is admonished by the law that: "Care must be taken lest anyone's good name be endangered by this investigation" (c. 1717.2). Also, all the Christian faithful (including clerics) are granted by law a right to vindicate and defend themselves in a competent Church forum (c. 221.1).

Deacons must be vigilant, therefore, in everything they do or say to observe the purposes of canon 220, to protect the privacy and good name of their parishioners and colleagues in ministry. Violations of reputation in the nature of calumny or slander are considered an ecclesiastical crime in some circumstances (c. 1390). They can also result in a suit for damages for defamation of character.

The new Code of Canon Law was written *inter alia* in a spirit of charity, temperance, humaneness, and moderation — and these are the qualities that should guide all deacons in fulfilling their ministerial functions . . . and avoiding canonical liabilities.

III. Liabilities at Common Law

The good news is that despite a rising tide of litigation involving churches, there are very few cases to date that would seriously impact permanent deacons. The bad news is that you cannot prevent anyone from suing you if they want to, and any suit involving religion or a church is apt to have a vindictive litigant at one end of it.

Note: No attempt is made here to cover potential liabilities under state and Federal criminal laws. All clerics are subject to prosecution for criminal violations and the crime may be punishable under both canon and public laws.

Most of the cases in civil courts in the United States involve disputes over church property; conflicts over

who should be pastor of a particular church; arguments over the disposition of church funds; refusals to accept the disciplinary actions of pastors or church trustees; and disagreements as to whether a church can expel a member or group of members from its congregation. Generally the churches involved are independent Protestant establishments or, occasionally, Greek, Serbian or Russian Orthodox congregations.

In many cases the courts simply refuse to get involved on the ground that to do so would inevitably entangle the court in settling an internal religious dispute in violation of the First Amendment to the Constitution of the United States, and sometimes also pertinent state constitutional provisions.

The courts have held that they have no jurisdiction

over, and no concern with, purely ecclesiastical questions and controversies. They will take jurisdiction only in cases which involve civil, contract or property rights which arise from or are involved in a church related controversy.

The courts hold universally that a church which is governed by its own laws is within its rights to settle disputes according to its own rules. These rules must be adhered to strictly and not used in an arbitrary or capricious manner, nor can they be contrary to civil law or the Constitution.

The voluntary act of joining a denomination binds members of a congregation to the laws and judicial discipline of that church insofar as the rights and obligations of members are concerned. The courts have also made it clear, however, that any member of a church has the right under the Constitution to withdraw unilaterally from membership in that church and thus escape the church's discipline. (This would **not** be true for ordained deacons and priests.)

Church Funds.

A deacon who is put in charge of church funds is legally liable to the church for any unauthorized diversion of those funds. He occupies a fiduciary relationship to the church. When requested to do so by church authorities, he must be willing and able to account for the funds. This may seem obvious, but there are court cases to show that it is not always done.

If there are contributors to a special purpose fund of the church for which a deacon is responsible, and the money is diverted and used for some other purpose, the contributors can demand the return of their contributions. Further, the deacon could be charged with fraud and/or held personally liable for the diverted funds.

In that event, do not count on your diocese necessarily to provide you with legal assistance or to pay your legal fees. A deacon, like other clerics, depending on the circumstances, may or may not be aided by the legal counsel for a diocese whose prime responsibility is to protect the interests of the diocese itself. In tortious or criminal cases involving clerics, the diocese has a duty to protect itself first; the cleric's fate is often solely his own to rescue, if he can, with whatever legal talent he can afford.

Access to Church.

A minister of a church such as a deacon will ordinarily always have a legal right to enter the church for religious services. No one except a religious superior can legally block this access. The courts have held that the church is private (not public) property and the right of access is in the hands of whoever controls the church property, usually the pastor and his associates.

On the other hand, those in control of the church may properly and legally remove from it, by force if necessary, any person who is disturbing a church service in violation of church rules. The person who does the removing will not be held liable for damages on an assault and battery charge. Nevertheless, for most dea-

cons it is probably better to dial the police and, in the interim, to use persuasion rather than force. A deacon, after all, is not usually in quite the same legal position as his pastor.

If a deacon should be placed in control of a piece of church property, he does not acquire any right to the property no matter how long it is the deacon's responsibility. He always holds the property as a trustee for the church. (This question is likely to arise more in a Protestant setting than in a Catholic Church.)

Administering Sacraments.

Two century-old common law cases involve priests and the sacraments. They would apply equally to deacons. In the first case, the court held (in 1916) that a Protestant Episcopal priest and his bishop were **not** subject to liability in a civil court for refusing to give communion to a parishioner. (The priest passed her by at the altar rail after first giving her a written warning prior to the service.)

The court also held that there had been no defamation of character by the priest since nothing was said publicly, even though the Episcopal rubric for refusal of communion was pretty much the same as in the Catholic Church. The same court held that no action lay against the priest for subsequently refusing the plaintiff admission to the church. In both instances the court found that the priest acted fully within his authority as granted under Episcopal rules (**Carter v. Papineau**, 222 Mass. 464; 111 N.E. 358).

Contrary to the above, however, another court held (in 1878) that a Catholic priest, while attempting to hear the confession and give communion to a sick inmate of an almshouse, at her request, had no legal authority to eject forcibly from the room a person who was lawfully there. (The wife of the proprietor of the almshouse refused to leave the room when asked to do so.)

In such a case, the court held that the person injured thereby, had a right to sue the priest, his bishop and the Archdiocese for the tort of assault and battery. The court took notice of the mandatory secrecy of confession but nevertheless held the priest liable for his action and the damages consequent thereto (**Cooper v. McKenna**, 124 Mass. 284). Deacons, of course, being generally mild mannered persons, are not likely to get themselves into an assault situation of this nature. But in any event, don't do it!

Special Canonical Note:

With reference to the two civil law cases described above, deacons should be aware that the 1983 Code of Canon Law provides (c. 843): "The sacred ministers cannot refuse the sacraments to those who ask for them at appropriate times, are properly disposed and are not prohibited by law from receiving them."

This canon establishes a presumption in favor of the Christian person. Because of the fundamental dignity and equality of human persons (c. 208), there is also a general presumption that those who approach the sacraments do so for the right reasons.

With respect to receiving communion, the Code states

(c. 912): "Any baptized person who is not prohibited by law can and must be admitted to Holy Communion." This is in accord with canon 213, which says: "The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments."

The Code prohibits giving the Eucharist to grave sinners, in these words (c. 915): "Those who are excommunicated or interdicted after the imposition or declaration of the penalty and others who obstinately manifest grave sin are not to be admitted to Holy Communion." The categories of manifest and grave sins, however, are not neatly discernible. Thus the CLSA commentary on this canon states: "Any prudent doubt about either the gravity or the public nature of the sin should be resolved in favor of the person who approaches the sacrament" (*The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden et al. (New York/Mahwah: Paulist Press, 1985), p. 653).

Contracts.

Civil courts, as noted above, will sometimes take jurisdiction over contract and property disputes which arise from internal church controversies. Deacons must be wary, therefore, of becoming enmeshed in a church related contractual dispute.

To begin with, individual church members and ministers, even a deacon in all his vestments, cannot legally bind a church corporation by anything they do or say unless fully and properly authorized to do so. This is unlikely to happen in the Catholic Church where pastors and bishops hold the reins of authority. There is no implied contract authority which goes with being ordained a deacon or becoming a pastor's aide. You are not the legal agent of your pastor or bishop even though you are subject to their ecclesiastical control.

If you are ever asked to sign a contract of any kind on behalf of your parish church, or for an unincorporated parish organization, be sure to get your authorization in writing in advance. And make sure that you act only and strictly within the boundaries of your authority. Otherwise you may become personally and legally liable for the contract. In the case of an unincorporated parish society, you must also be sure that it actually does have the power to contract. If not, you could find yourself individually liable on the contract.

Counseling.

Deacons may sometimes find themselves in pastoral counseling situations with parishioners. When this happens, you must be very careful to explain at the outset that you are not a professional therapist, that you are listening and giving advice only as part of your pastoral ministry.

One of the more publicized cases in recent years involved the issue of how far the liability of counseling goes. In this case, **Nally v. Grace Community Church of the Valley**, 253 Cal.Rptr. 97; 763 P.2d 948, the California Supreme Court in 1988 decided unanimously that four Protestant ministers were not liable to the

Catholic parents of a young man who committed suicide. The Court refused to impose a legal duty upon the ministers (and other non-therapist counselors) to refer persons to licensed mental health professionals once suicide became a foreseeable risk.

The parents alleged clergy malpractice against the church and its ministers. They accused them of negligence and outrageous conduct in failing to prevent the suicide of their son, who had converted to the defendant church from Roman Catholicism. At the time of the trial, the church was the largest in Los Angeles County, with about 10,000 parishioners and some 30 nonprofessional counselors.

While it publicized its church counseling program as being helpful with emotional and spiritual problems, the evidence was clear that the counseling was for pastoral purposes only. It was done through prayer sessions, bible study and instruction and spiritual mentoring programs called "discipleships." At no time did the church pretend that its counseling program was for professional therapy or that its counselors were licensed psycho-therapists.

Since 1988, however, the **Nally** case has been the focus of intense debate and scholarly legal articles as to the extent of a pastoral counselor's responsibilities and liability. There is a body of opinion, as you might expect, which supports the view that church counselors do have a responsibility to take positive action on behalf of a parishioner whose emotional problems give evidence of possible suicide. It is not at all clear that future courts in other states will follow the decision of the California Supreme Court.

In cases where a counselor's client, even in a totally confidential setting (but not a priest's confessional), gives indications of wanting to commit homicide (murder), the courts have held that the counselor has a duty to notify the police and, if possible, the intended victim. Also, where a patient is in a controlled situation like a hospital, courts have held counselors and physicians responsible for not getting psychiatric help for a suicidally-inclined person.

The lesson of the **Nally** case, therefore, is: **limit your exposure in all counseling situations.** You should make it clear at the beginning, especially with persons who seem to have severe emotional problems or possibly serious depression, that you are not a professional therapist but only a pastoral counselor. You should suggest, if it seems appropriate, that they seek the immediate help of their physician and/or a licensed psycho-therapist, a psychiatrist or a psychologist. For your own protection, you might also want to keep a private personal record of any advice you found it necessary to give in such a situation.

In addition, should a person come to you for counsel and advice during your working day, in a secular setting, make it clear that you are **not** then functioning as a minister of the Church but rather as a friend. Don't let confusion arise as to your role. While you are always a deacon, your ministerial responsibilities and liabilities are bounded by your specific diaconal mission or job description. Only within those boundaries are you authorized to act in the name of the Church. ■