

WHAT IS POSTULATION?

There are many unexplored canons in the *Code of Canon Law*, which, if used properly, can help us resolve situations that appear to be without an easy answer. One of these is canon 180 on postulation. The canon provides that “if a canonical impediment from which a dispensation can be and customarily is granted prevents the election of a person whom the electors believe to be more suitable and whom they prefer, by their votes they can postulate that person from the competent authority unless the law provides otherwise.”



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The institution of postulation exists for elections, but not for appointments to offices. It consists in a vote by an electoral body for someone who is subject to a canonical impediment, thus making that person ineligible for election at that time.

What are some of the canonical impediments that could arise in an election and for which a dispensation would be required? Probably the most common one is a limitation on the number of consecutive terms of office a person may hold. For instance, the bylaws of many of our health care public juridic persons (PJPs) and the constitutions of numerous religious institutes state that, after having served for two (or more) consecutive terms, a person is not eligible for another immediate term. Yet, what happens if that person would be essential at this moment? This is where the institution of postulation could be helpful.

Other canonical impediments for which dispensation customarily is granted would concern the age of the person being elected, or the number of years of membership in a religious institute. There could also be certain academic requirements (such as possessing a doctorate) in the case of an educational institution.

With some PJPs moving to an internal election system, a case could arise, for instance, in which the person the members wish to elect is not in full communion with the Catholic Church. Yet, the PJP statutes make this a condition for eligibil-

ity. However, since, for some PJPs, their statutes require that only a “majority” of the members be Catholics, this is the type of case where a dispensation might be possible, since the practice exists in other PJPs. But the possibility would have to be provided for somehow in the statutes.

Some instances in which a dispensation would rarely, if ever, be granted would be if a religious institute of men wished to elect a woman as superior general (or vice versa), or to elect to this office someone who was not a member of the institute, or even a Catholic.

In some cases, a dispensation simply will not be granted. For instance, canon 129 provides that if the office under consideration has a role in the church’s power of governance, only those in sacred orders may be considered for it. The fact of having received orders is almost constitutive of the office.

If we are dealing with a situation in which a dispensation is possible, who then can grant the postulation?

For religious institutes, we often find a clause in the constitutions that reads something like this:

The General Chapter and the Superior General may dispense individuals and communities from disciplinary prescriptions of the Constitutions and Rules for an indefinite period; other Major Superiors may do the same for a limited period for those under their jurisdiction. Superiors of local communities may occasionally dispense individuals or the community itself. Nevertheless, neither the General Chapter nor Superiors

can dispense from constitutive laws, especially those which pertain to the structures of government of the Congregation, unless an exception is expressly stated.

If the constitutions do not contain a similar clause, and the institute is of pontifical right, then the request would have to be addressed to the Holy See and its response awaited. The same would apply to pontifical PJPs if a member's election had to be confirmed before that person assumed office, or if the person were ineligible. In the case of a diocesan institute or PJP, then it would be the diocesan bishop of the place where the institute or PJP is headquartered who grants the dispensation.

If the constitutions had limited the number of consecutive terms, the general chapter could dispense from that disciplinary rule, since it is not a general norm of canon law. In this way, realizing the need for an exception, it would allow the person to be re-elected.

This is an example of law being at the service of the community, rather than the opposite way around.

However, we should keep in mind that postulation is not automatic. The electors must know that they are voting for someone who is ineligible for the office at this time. Therefore, canon 181 requires that the words "I postulate" (or something similar) be inserted by the elector on the ballot. Then, there is a further condition: for although many elections require only an absolute majority of the votes of those present and voting, for a postulation, a two-thirds majority is required. Some groups also limit the possibility of a postulation to the first or second ballot. The *Code of Canon Law* itself makes no reference to this last requirement.

The reason for this exception in relation to the required majority is rather

straightforward: a postulation contains an exception to the law, and it is to be presumed that the law, in the first place, was reasonable and duly intended by those drafting it. Not surprisingly then, according to canon 180, laws which contain an exception are to be interpreted strictly. In this way, the common good order is respected, but allowance is made for legitimate exceptions because of particular circumstances.

It follows that, in the case of a postulation, as distinct from an ordinary election, the person who is being postulated has no right to the office, and the person who is to dispense from the impediment is under no obligation to do so. If, in a given case, the dispensation is not granted, then the election process begins anew at the first ballot. Once the dispensation has been granted, then the person in question is to be asked whether he or she accepts the election. If the response is affirmative, then that person immediately assumes the office.

There are some other provisions in the *Code of Canon Law* in relation to postulation. For this reason, it would be important to consult the canons before proceeding with a postulation.

At a time when certain PJPs are considering amalgamating with another one, and the governing documents have to be adjusted, this might be a good occasion to insert in their statutes provisions for postulation and eventual dispensation, determining clearly who has the right to grant such a dispensation. The same could be said for religious institutes that are holding general chapters and looking at their constitutions.

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We are the people of Catholic health care, a ministry of the church continuing Jesus' mission of love and healing today. As provider, employer, advocate, citizen—bringing together people of diverse faiths and backgrounds—our ministry is an enduring sign of health care rooted in our belief that every person is a treasure, every life a sacred gift, every human being a unity of body, mind, and spirit.

We work to bring alive the Gospel vision of justice and peace. We answer God's call to foster healing, act with compassion, and promote wellness for all persons and communities, with special attention to our neighbors who are poor, underserved, and most vulnerable. By our service, we strive to transform hurt into hope. 🕊

As the church's ministry of health care, we commit to:

- Promote and Defend Human Dignity
- Attend to the Whole Person
- Care for Poor and Vulnerable Persons
- Promote the Common Good
- Act on Behalf of Justice
- Steward Resources
- Act in Communion with the Church

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