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Canon law blends religion with modern legal needs

by Tom McCann

The big firms don't have many lawyers like Sister Margaret Mary Modde.

She doesn't hold a civil law degree, conducts much of her work in Latin and travels to the Vatican to represent her clients.

"She's on a plane to Rome more often than I go to New York," said Monte I. Dube, head of the health law department at McDermott, Will & Emery, where Modde has been employed for the last 15 years. "Sister Margaret Mary is a key player on many of our deals."

Modde is a canon lawyer, assigned to help McDermott's attorneys navigate the complex and ancient legal code of the Roman Catholic Church.

"In Chicago, we have a lot of church-affiliated business. Every time a Catholic hospital does a merger or a Catholic university starts a joint venture, both a canon lawyer and a civil lawyer need to be consulted," Modde said. "Church law can get complicated, so I work here as an added in-house service to our clients."

Catholic canon law is a collection of 1,752 individual laws, or canons, which make up a book of about 500 pages. The canons deal mostly with religious issues from baptism to excommunication, but the laws also regulate the church in its more earthly role as a multi-national company with property, parishes and business ventures around the world.

Whether they are representing Catholic institutions or secular companies seeking to do business with the church, attorneys often find they need to brush up on canon law or hire a canon lawyer when working on deals, according to canon law experts.

"The Catholic church is a hierarchy and has a very large bureaucracy. Our canons function mainly like a corporation's policies and management procedures. The canon lawyers serve as our corporate transactional lawyers,"

said Bishop Thomas J. Paprocki, a local expert on canon law who also has a civil law degree from DePaul University College of Law. "There are many aspects of a contemporary civil lawyer's practice that may involve issues requiring some familiarity with current canon law."

There are more than 1,600 practicing canon lawyers in the United States, according to the Canon Law Society of America.

Paprocki, one of the eight bishops under Cardinal Francis George in the Archdiocese of Chicago, also teaches a

changed canon law to lengthen the statute of limitations on sexual abuse allegations and increased the age of adulthood from 16 to 18. In 2002, the U.S. Conference of Bishops adopted a 'zero-tolerance' policy under which any priest proven to have committed one act of sexual abuse, no matter how long ago, would be permanently removed from the ministry.

This American charter was later approved by the Vatican. However, the zero-tolerance measure does not currently apply to overall canon law or churches outside the United States.

Big business

McDermott hired Modde because the firm handles billion-dollar hospital deals with the Catholic Church, and an expertise in canon law gives them an advantage on the competition, Dube said.

"There are 5,000 hospitals in the United States, and more than 10 percent are sponsored by the Catholic Church. Catholic health care is not only a huge area of stewardship, but it's also very big business," Dube said. "Modde's expertise in canon law is absolutely essential to implementing many big-ticket transactions, the mergers and acquisitions in particular. Getting Vatican approval of the health-care deal is just as necessary as getting state regulatory approval.

"As I like to say, 'You don't leave Rome without it,'" Dube said.

Modde is a member of the Order of St. Francis and received her doctorate in canon law from the Catholic University of America in Washington, D.C., one of only two schools in North America that offer such a degree. Before joining McDermott, Modde was general counsel for her order and associate vice president of the Catholic Health Association.

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primer course on canon law at Loyola University Chicago School of Law.

"The course is not for clergy but for regular law students. As an attorney, you never know when you need some canon law knowledge. Estate lawyers, tax lawyers, immigration lawyers all will run into this law in their practices," Paprocki said. "Most modern-day canon law deals with marriage annulments, so divorce law has a lot of interaction with the canon code. But businesses encounter canon law, too."

One current debate raging among these canon lawyers also has implications for criminal law, as allegations of sexual abuse of minors by Catholic priests continue. In response, church law is trying to balance justice for victims with rights of the accused, and civil lawyers representing a party in abuse allegations should know the current changes to church law, Paprocki said.

In the last decade, the Vatican has

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Margaret Mary Modde



Thomas J. Paprocki



Todd M. Young

tremendously interesting. Church businesses really need to operate under two legal systems. They have to be in concert, not in conflict,” Modde said. “If a Catholic institution is going to buy or sell or mortgage a property in any way over \$5 million, we have to get permission from Rome in addition to the regular legal work. You have to get the appraisals together and a thorough description of how the property will be used after the deal takes place. With canon law, there’s a whole other set of legal papers and legal framework to take care of.”

Modde has taken the lead role in dozens of Catholic hospital mergers throughout the U.S. as well as in Eastern Europe and Australia, she said. Current canon law provides specific corporate structures for when non-Catholic hospitals or lay business groups want to operate Catholic hospital systems, Modde said. They are called public juridic persons and private juridic persons.

“The juridic person is the structure the Vatican has created to help Catholic businesses become more competitive in the capitalist market place, to bring them into the future,” Modde said. “With a public juridic person, the property is still owned by the Catholic Church, but the business is often run by a lay CEO and board of directors. With a private juridic person, the property is no longer church property, but the church still has guidance over general policies of the business.”

The public and private juridic persons each have their own

requirements that involve setting up bylaws and accountability procedures. In a hospital merger, the new entity must not condone sterilization, abortion procedures or euthanasia, Modde said. Hospitals also must be just to its employees and have a priest on staff and a dedication to pastoral care, Modde said.

“If a non-Catholic hospital group is buying a Catholic hospital, we have to make sure they know exactly what they need to do under the arrangement,” Modde said. “The hospitals have to be set up under the religion’s core beliefs. They often have to send yearly reports to Rome on their operations or get reviewed by the local bishop on certain things. Often they need a lesson on their duties and obligations under canon law.”

Modde said she has been to the Vatican three times in the last nine months.

“The differences can get very complex,” Modde said, “and that is when you have to go to Rome to sort things out. I go there to ask for what is called an indult, approval for the proposed transaction. If you have the correct information properly laid out and there is good reason to make the move, Rome is usually most cooperative.”

Modde said there are dozens of experienced canon lawyers in the Chicago area, but she’s the only one she knows of who is employed by a corporate firm. Other firms also call her for consultation on cases, she said.

Dube said he knows of only one other firm that has a canon lawyer on staff, a small firm in Pennsylvania.

“Frankly, I’m amazed more firms

haven’t caught on. Maybe our firm hasn’t spread the word on just how useful a canon lawyer is,” Dube said. “She just has a unique skill set that makes our firm very attractive to health-care clients. In Catholic/non-Catholic mergers, people often don’t speak the same language, and parties can be talking past one another. She bridges the cultural and religious gaps. She makes the church law understandable.”

The Council of Nicea

Canon law is a code-based legal system with its roots in ancient Roman law. It does not rely on precedent like English and American common law but on concrete statutes, much like the Napoleonic Code and legal systems in continental Europe. In the United States, Louisiana still bases its state law on canon law and still calls its counties “parishes.”

The first formal canon law in the church goes as far back as the Council of Nicea in 325 A.D., when some of the since outdated rules included that clergy could not be loan sharks and that certain eunuchs were forbidden from the priesthood.

According to one early canon, “If anyone in sickness has undergone surgery at the hands of physicians or has been castrated by barbarians, let him remain among the clergy. But if anyone in good health has castrated himself, he should be suspended, and in future no such man be promoted.”

Special rules under canon law also

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have been created to determine the death of a pope and to begin the succession process. Until 1903 and possibly as late as the 1960s, those provisions included the Vatican master of ceremonies striking the deceased pope on the forehead with a silver hammer and calling out his birth name to make sure he isn't just sleeping, according to church historians.

Despite its ancient beginnings, the current canon law is a thoroughly modern document and can be revised by the Vatican at any time. The law has been completely revamped twice in the past century, first in 1917 and again in 1983.

"Canon law students have to study not only legal theory but also philosophy, church history and theology. Canon law was the first place to introduce due process and the concept of innocent until proven guilty," said the Rev. Patrick Lagges, judicial vicar for the Archdiocese of Chicago, the diocese's top canon lawyer. "Throughout the Middle Ages, a lot of legal matters were handled by ecclesiastical courts with clerics as judges. That's why judges still wear black robes. They mimic a cleric's religious gowns."

Other denominations, such as the Episcopal Church and the Greek and Russian Orthodox churches, have their own systems of canon law. However, those churches' canons are not nearly as large and all-encompassing as the Roman Catholic church's code, which has by far the largest bureaucracy, Lagges said. Most other protestant denominations are organized by congregation, and therefore have little or no need for a hierarchy or legal system.

Todd M. Young is a partner in transactional law at Hinshaw & Culbertson. For the last year, he has been chancellor of the Episcopal Diocese of Chicago. He said the Episcopal Church remains similar to the Catholic Church in terms of organization.

"But our canon law is only maybe 90 pages long, certainly not 500," Young said. "However, the church does need someone who is both knowledgeable in canon law and civil law to handle its affairs. Any type of corporate deal or restructuring would need to go through administrative channels within the church. When we have to hire an outside lawyer, I make sure the civil and canon law correspond."

Paprocki said probate lawyers need

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to know canon law because certain bequests to the church need to be resolved under canon law. Immigration lawyers need to know canon law because the church has employees around the world, and in addition to proper visa papers, members of the clergy or a religious order need proper documentation from their bishop or the diocese bringing them in.

Education lawyers and tax lawyers need to know a bit about the canons because of the church's involvement in school systems, from preschool to university, and its extensive charities and tax-exempt businesses, Paprocki said.

"The church as a business is so ingrained in American society that if you're going to deal with the church in business, you have to know the church's legal system," Lagges said. "Mostly it is the equivalent of business law, but we do

have a court system, too."

That system has mostly to do with marriage annulments, and it is quite different from a civil trial. Only an ecclesiastical judge has the right to question parties and witnesses. The petitioner for the annulment has an advocate, and a canon lawyer on the other side serves as the 'defender of the bond' of marriage, Lagges explained.

The Catholic annulment process is completely independent of the civil annulment, he said.

"You have to tell your clients to come to the church after the civil divorce is taken care of," Lagges said. "Since Vatican II, the reasons for granting an annulment have widened. Parties can argue for an annulment if they can prove they did not have their mental faculties at the time of marriage; if it was a shotgun wedding, so to speak; if the person felt forced or was tricked or a whole host of other arguments.

"We try to look at the true basis of the marriage to see if there was ever anything there," he said.

Lagges' office goes through hundreds of marriage annulments per year. "They realize quickly that canon proceedings are a bit different."

Modde said canon lawyers specialize just like civil lawyers.

"I like to handle health-care and religious property issues. I wouldn't even know how to do a marriage annulment," Modde said. "That's what makes canon law so interesting. There are so many applications and so many ways in which it interacts with the state legal system. One of the main canons states that church law must at all times comply with the state law in the country the diocese resides, and that is difficult sometimes.

"Some civil lawyers should know a few things about canon law, but they shouldn't be interpreting canon law," Modde said. "It's more complex than people realize."★