

CIVIL LAW ISSUES FOR NEW MEMBERS OF RELIGIOUS ORDERS

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This article will discuss various legal issues that arise when religious orders¹ accept new members. It will explore civil law issues, while a companion article in this issue of *Legal Bulletin* will discuss the canonical issues of new members.

A panoply of legal issues arises when women and men seek membership in religious orders in this twenty first century. Those joining religious orders today are a diverse group; they come from many age groups, with a rich diversity of life experience and professional credentials, they have varied assets from bank accounts to portfolios to real estate, they have assorted liabilities from education loans to credit card debt to pending litigation, they come from across the globe and speak a multitude of languages, they may be healthy or handicapped or may be living with diseases unknown a century ago, etc. These factors demonstrate both the richness of new members and the challenge of bringing them into membership.

1 The term *religious order* is used here to refer to Religious Institutes and in some cases to Societies of Apostolic Life. The sections on income and assets may or may not apply to Societies or may apply with some modifications. The term religious order will also be used for the particular person or persons that generally relate to the candidate, novice or temporary professed in resolving legal issues. Often those who serve in vocation, formation, leadership and finance positions will develop policies and help to articulate the order's position on an issue, while only one of them actually discusses these issues with the candidate, novice or temporary professed.

INTRODUCTION

At the outset, it is important to clarify a few issues regarding the nature of the religious order and its relationship to members in general, and particularly to candidates and novices and temporary professed.² The religious order is distinct from the order's civil law corporation. Members of the religious order are not generally members of the civil corporation, and new members do not join a corporation.³ The order itself is a nonprofit voluntary religious association under civil law. Membership in an association is governed by the association's internal documents, in this case, by canon law and the order's Constitutions. The relationship of members to the order is defined by these documents, and not by civil law nor is it an employer-employee relationship governed by

2 The terms *candidate*, *novice* and *temporary professed* will refer to those seeking membership in a religious order: the term candidate will refer to those in the first stage of joining the order, and the term novice will refer to those in the novitiate according to the order's requirements and temporary professed will be used for those who have made first vows, but not final vows. Orders differ in when they consider someone a member, and in the degree of legal and financial assimilation in various stages of the integration process. Response to an actual case depends on the actual situation of the individual in a particular order.

3 Some orders' corporations were established in such a way that members of the orders are members of the religious corporation with the rights and responsibilities laid out in the articles and bylaws of the corporation. In these cases, generally membership in the corporation is limited to the finally professed members of the order.

antidiscrimination laws that apply in the workplace. The U.S. Constitution⁴ protects the right of the order to screen candidates according to its own criteria and protects the freedom of candidates to seek admission into the order. Civil law has not been effectively invoked to protest adverse decisions by a religious order regarding a candidate for membership.

Legal issues of candidates, novices and temporary professed are like many other issues they encounter. Each issue is part of a larger life story and vocational journey. Few issues are absolute bars to entry, but some may be obstacles to pursuit of membership and some can only be overcome with creativity, patience and flexibility. Candidates, novices and temporary professed come to a religious order through a process of inquiry followed by gradual introduction to the life of the order referred to here as integration.⁵ This gradual introduction to religious life is divided into several steps or stages stretching over many years. Because the integration process is lengthy and gradual, the civil law issues that arise during the process can be resolved gradually as the process advances. In fact, resolving legal issues prematurely may compromise a candidate's legal or financial interests, e.g. cashing out 401(k), should the candidate leave before becoming a full member.

The legal issues for each candidate should be identified in the process of discerning a vocation. Options for resolving issues should be identified, and potential time lines may be proposed. It may be helpful to identify certain milestones, e.g. the order may require that a loan be paid off, or that a certain immigration status be attained; the order may condition admission to a given step on the meeting of these requirements.

4 United States Constitution, Amendment 1: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

5 The term integration or integration process will be used for the process of joining the order, often referred to as formation or the incorporation process.

Setting these time lines or milestones should take several points into consideration:

- ◆ A realistic assessment of the legal issues to be resolved is an important first step in resolving them. Candidates should be helped to understand the requirements of religious life and to identify specific legal issues that must be addressed in the integration process. Resources listed at the end of this article may help in this process of legal audit.
- ◆ Not all legal issues are the same. Some may be resolved easily or after careful consideration may be disregarded, e.g. potential liability with a low risk of materializing. Some issues may require creative resolution to enable a candidate to pursue a religious vocation, e.g. some business or financial matters. Other issues may give rise to liability for the order if not properly resolved e.g. accusation of sexual abuse. Certain legal issues must be resolved before full membership in the order, e.g. an pending criminal charge.
- ◆ Not all resolutions are the same. Resolution of an issue may completely eliminate the issue, e.g. paying off a loan; or it may provide for alternative management, e.g. turning assets over to a family member or professional financial manager; or it may provide for creatively managing the issue through the integration process, e.g. immigration status.
- ◆ The goal of this process is to give the candidate, novice or temporary professed the freedom necessary to pursue a religious vocation and enter into the integration process unhampered by legal concerns. This freedom will be afforded to the person by carefully considering and resolving or planning a timetable for resolution of each issue.

This discussion will now examine specific legal issues to be resolved by the order and the candidate, novice or temporary professed member.

Property

When a candidate enters an order, the candidate is gradually introduced into religious life and the order progressively assumes financial responsibility for the person. A candidate has independent personal assets and liabilities and begins the process of joining a religious order that practices the vow of poverty and holds all things in common. The process of moving from independence to interdependence is an important part of the integration program. The process is gradual and depends both on the candidate and on the order and its particular flavor of religious life and the vow of poverty. The order and the candidate should develop an inventory of the candidate's assets and have a clear and frank discussion on these matters. A written record of these conversations will be helpful to ensure understanding and to help the candidate and the order's leadership and formation directors remember what was agreed upon. It is also important to make sure that the candidate understands that while it is necessary to begin the gradual process of disposing of assets and resolving liabilities, this does not guarantee that the candidate will become a member.

The discussion of assets should include:

- ◆ what can be kept, used or disposed of,
- ◆ who is responsible for management and/or upkeep of asset, and
- ◆ a time line for the disposition of these matters.

Some personal property may be used by the candidate, for example, clothes. Other assets may be brought to the order for use by the candidate and others depending on the order and the stage of formation, e.g. a computer, professional books or TV.

Still other assets may be disposed of, e.g. a house or second car. Before determining that assets should be disposed of, one should consider how a candidate's future is compromised by disposing of the asset during the integration process. It may be unwise to 'sell all' before entrance into the initial stages of the integration process. For example, a candidate's interests may be unduly compromised by selling a house if the



Few issues are absolute bars to entry, but some may be obstacles ...

candidate should subsequently leave the order. However, if the house is retained for a time, plans must be made for its management until later in the integration process when it is sold. The house can be used or rented, its insurance, taxes and upkeep must be provided for. If it is to be eventually sold, the time line and arrangements for this should be considered. In addition the candidate should retain the proceeds of the sale until final vows.

Finally, some assets will be retained, and will become patrimony if the candidate becomes a full member, e.g. bank accounts and other financial assets or investment property. At least by first vows the individual will sign a power of attorney and/or cession of administration document giving the administration of the assets to someone of their choosing.

Agreement regarding the disposition of all assets should be in writing. If the assets to be retained are more complex or require more administration, the candidate may need independent professional help in formulating a plan for the assets. The plan should be developed by legal and financial counsel that understands religious life. The plan should address management of the assets in the initial steps toward membership with an understanding that the candidate is in a provisional status that may lead to membership, requiring complete relinquishment of the administration of the assets. On the other hand, the plan should address the fact that the candidate may leave the order and reacquire control of the assets.

The goal is to arrange for interim management of the assets and give the person the freedom to pursue a vocation to religious life, hampered neither by concern over the ongoing management

Liabilities have been encountered for candidates from other sources: from civil lawsuits, from tax liabilities and from child support responsibilities.



of the assets, nor by the concern that there is nothing to return to if the person should leave the order. To accomplish this, the management must be carefully planned and may be entrusted to competent professionals.

Debts and Liabilities

A significant number of candidates come to religious orders with assets and even with sizable holdings and complex estates. On the other hand, many candidates come with debts and liabilities and some of these are substantial. Debts and liabilities must be identified and resolved in the course of transitioning into membership in a religious order. In addition to resolving the actual debts and liabilities, care should be taken to identify their underlying source. Student loans and mortgages are understandable; yet debt may also arise from addictive behaviors such as excessive credit card use, gambling or substance abuse. These underlying causes should be identified and addressed. An order is justified in asking for information, including tax returns, bank statements and credit card statements in order to vet the source of debts and determine the candidate's financial maturity.

As a person moves into the order, he/she will

be challenged by the requirements of the order's style of accountability. While there is no cause for excessive prying, investigation of liabilities can provide the opportunity to discuss the candidate's expectations in this regard and can help in acquiring a fuller profile of the candidate. Candidates have been known to cover up the true source of debt, providing convincing reasons for it.

Generally prior to novitiate, arrangements should be made for payments of debts.⁶ Once a person's financial situation is known, a plan can be made for debts. Depending on the nature and extent of debts, a person may begin the process of entering the order while continuing to pay down debts.

Student loans are viewed by some orders as a distinct category of debt particularly if the education prepared the candidate for ministry. Religious orders often educate their candidate, novices, and professed members for ministry; some orders are willing to take on a candidate's student loan in lieu of that education. It is recommended that the order write down the understanding with the candidate, e.g., providing that:

- ◆ the candidate continue to service the loan while he/she is financially independent,
- ◆ when the candidate ceases to have a personal income, the order should service the loan, resisting the allure of paying off the loan to avoid interest expenses,
- ◆ if the candidate should leave he/she will still have primary responsibility for paying off the loan.

Some orders have entered into agreements to pay off student loans completely, with the proviso that should the candidate leave, he/she will have to pay off a portion of the debt. This agreement is cautionary in nature, reminding the candidate of the moral obligation of paying the debt. However, this note is generally uncollectible, due to the costs of enforcing it, and its repayment depends largely on the good will of the person leaving. For this reason, making monthly payments while the person continues in the order is a better practice than paying off the loan. An order may choose to completely pay off a loan after final vows or after

⁶ See Rody, Christine, *Canon Law Issues for New Members of Roman Catholic Religious Institutes*, LRCR Legal Bulletin #79, Spring 2005.

a period in final vows.

Some student loans have payment plans based on the student's income or payment plans that give credit for certain types of public service, e.g. teaching in economically depressed areas. The specific terms of these provisions should be researched to determine whether the person qualifies for this type of relief.

Liabilities have been encountered for candidates from other sources: from civil lawsuits, from tax liabilities and from child support responsibilities. Civil lawsuits may involve settlements, court judgments, pending litigation or latent claims. Settlements and court judgments requiring payment by the candidate can be handled like other debts as discussed above. Pending litigation can be costly and time consuming and the results are unpredictable. For this reason, litigation should generally be resolved before a candidate enters the order or in the early stages of integration. Latent claims are those situations which have not yet been the cause of a lawsuit, but which may give rise to a lawsuit in the future. It is important to determine whether a candidate knows of any likely future litigation, e.g. a recent unresolved auto accident or failed business transaction. Discussing these issues will help to ascertain whether a lawsuit may arise in the near future which would compromise a person's ability to continue in the integration program. Naturally the underlying causes of the lawsuit should be investigated as well.⁷

7 Current litigation or prosecution should be identified and resolved prior to entrance. The existence of such issues should be discussed with the candidate as part of the screening process. The underlying causes should be well understood, since a candidate who has been prosecuted or sued may be a poor candidate. An order that accepts a candidate who has been subject to legal action must understand that it does so at its own risk. If the underlying behavior gives rise to foreseeable subsequent malfeasance, the order may find itself named in legal action. The nature of the claim, civil or criminal, its status and resolution, the candidate's assessment of the claim, and independent fact finding will help the order to determine the effect of the claim on the candidate's request for membership.

Another source of liability is tax liability. A candidate may have failed to file and pay taxes in a timely manner; this is encountered most often in the context of war tax resistance. War tax resistance is the refusal to pay some or all of federal taxes that pay for war. While the social consciousness and passion of a war tax resister may be laudable, the resulting liability is a concern for the order. As an individual, a candidate may choose to accept the risks of war tax resistance, including prosecution by the IRS, garnishment of wages and possible imprisonment. However, as a member of religious orders living in interdependence decisions to accept risk must be made in dialog with the order. Tax liability will require time and money to resolve, and if an individual refuses to pay, they may risk imprisonment; for these reasons, a time line for resolution of these liabilities should be established.⁸

If a person has ongoing child support responsibilities, these should be identified and a plan should be made for meeting these responsibilities. The amount and duration of the responsibilities should be specified, together with any assets or income that may be used in meeting the responsibilities. Under civil law parents cannot be released from obligations for care of minor children except by declaration of a court; agreement between parents is not sufficient. Marriage will be discussed below.

Taxes

Taxation changes as a person moves through the integration process. Initially, the tax situation for candidates and novices is the same as it was before they began the process. All their income is taxable and they are required to file a return on all their personal income, if they meet certain mini-

8 The issues involved in permitting a member to unlawfully resist payment of income tax are similar to those involved in other forms of civil disobedience, except that members of religious orders may lawfully avoid the payment of taxes. Discussion of these issues is outside the scope of this article. See, e.g. Hereford, Amy *War Tax Resistance by Members of Catholic Religious Institutes* found at www.lrcr.org.

mum filing requirements. This is true even if their compensation is turned over to the order, or even if it is paid directly to the order because they have not yet made the vow of poverty. Depending on circumstances when candidates first enter, there may be a partial year of income before entrance, then a partial year of paid or volunteer ministry.⁹ At a minimum the order may wish to see a copy of the candidate's tax return to ensure that it was filed and that income is correctly handled. An order may choose to use the same procedure for preparing and filing the return as it uses for its own members with the candidate or novice personally paying any tax due, or receiving the refund. The candidate or novice is entitled to any applicable deductions or credits.

As the integration program advances, generally on entrance into novitiate, the order will take responsibility for the person's expenses as the person experiences growing interdependence. Until first vows, income remains taxable even if the candidate or novice is working for a Catholic employer. When the candidate or novice gives all his/her income to the order and receives his/her personal support from the order, the income is taxable, but the candidate or novice may take a charitable contribution deduction up to 50% of his/her adjusted gross income¹⁰ There may be a full year of income, and a partial year of contribution to the order. The contribution should be carefully documented by the order and a substantiation letter should be issued for tax purposes. Since the order is receiving the person's income and is responsible for expenses, any taxes due would have to be paid by the order, and any refund received would be turned over to the order. The person is entitled to any applicable deductions or credits.

When the person takes the vow of poverty, his/her tax situation will be like other vowed

members. If the newly vowed member is working for a Catholic employer and turning all his/her compensation over to the order, that compensation is exempt from taxation. If the newly vowed member works for a non-Church employer, his/her compensation is fully taxable, even if it is turned over to the order in accord with the requirements of the vow of poverty. In addition, if the order participates in the social security program, the order should begin paying FICA taxes on the new member at this point. There is no difference between the tax treatment of a new member in temporary profession and a member in final profession. In the year of first profession, the new member may have a partial year of taxable income; a return should be filed if the income meets filing minimums.

Throughout the process of integration, the individual retains title to his/her personal assets as discussed above in the section on property. As long as the person retains title to assets, the income from these goods is taxable to him/her, even if the income is given to the order or to a third party. This income should be added to any other taxable income in preparing and filing the tax return.

Personal Income

A person in the integration process may have income from wages. There should be a written policy regarding who receives this income at each stage between entrance and first vows, and who is responsible for living expenses. At least by first vows, all wages will go to the order and all living expenses will be borne by the order. Income from personal assets is retained by the individual during the period of integration. Income from personal property remains taxable so long as the person retains ownership. After final vows the Constitutions may require this income, or even the asset to be given to the order. An agreement should be made regarding income from personal property up until final vows.

A candidate or novice may have income from other sources. For instance, a candidate or novice may have present or future income from retire-

9 If any compensation is received for 'volunteer' ministry, this is taxable whether it is paid to the order or paid to the candidate or novice.

10 Adjusted Gross Income is the sum of taxable income before deductions and exclusions.

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ment benefits, government benefits, income from a trust, royalties, commissions or legal claims, or may have income or benefits from a former spouse.

Generally, if title to sources of income was acquired before entrance into the order, canonists agree that the individual retains personal title to these assets.¹¹ However, retirement benefits, or government benefits, or legal settlements given for the care of a disabled person are in a separate class since they are given for the care of person. They may remain the property of the person and the order may engage in dialog about the use of these funds for the person's care. Alternatively, the constitutions may provide that these benefits be used for the member. Under either scenario, a person may turn these benefits over to the order, either by cashing in the benefit, or by agreeing to turn the benefit over once received. It may be impossible to sign over future benefits in a civilly effective manner. Nevertheless, any such discussion and agreement about sources of income should be clearly documented in writing.

Other personal income from activities before entrance, e.g. royalties or commissions, will remain the property of the individual and will be

taxable to him/her, even if this income is given to the order. These sources of income should be identified and the disposition of the income should be agreed upon in writing. If the income generating asset is given away, then the income becomes income of the recipient, e.g. if the asset is given to the order, the income becomes income of the order and is exempt from taxation. If the person has debts, the income may be used to continue to pay down the debts.

Professional and Financial Obligations

This section will treat the various professional and financial obligations that a candidate, novice or temporary professed may have. As with other legal issues, these matters should be identified and managed as the person moves through the integration program. The agreement regarding these obligations should be in writing.

Many candidates will come with professional credentials, licenses. A determination should be made regarding the need and requirements for maintaining these through the integration program, particularly if the person will be practicing his/her profession in ministry. Even if the person is not expected to use his/her professional background, the order should discuss methods for retaining professional credentials through at least the initial stages of integration. In this way, there remains appropriate freedom for the person in the integration process to leave and re-enter the professional world if that is necessary. If the candidate or novice will be practicing a profession, the order should discuss how the practice and the income will be handled through the integration process, in addition to responsibility for maintaining licensing and insurance. At least at first profession, all expenses will be the responsibility of the order and the income will go to the order.


Candidates may come with fiduciary obligations. For example, candidates for membership may be corporate directors, trustees, sponsors of immigrants, guardians for family members or others, executors of estates or representative payees or healthcare or financial agents. These

¹¹ See Rody, *Canon Law Issues for New Members of Roman Catholic Religious Institutes*.

fiduciary obligations should be identified and their consistency with the responsibilities of religious life and the integration process should be reviewed. Generally, they will be relinquished or assigned to others, unless they are performed or will be completed in the initial stages of incorporation. The nature of the obligation, the responsibilities and time commitment involved as well as the duration of the obligation and others who could perform the service should be considered.

Any business ownership or obligations under a business or partnership agreement should be identified and considered. Generally the management of these obligations should be relinquished or transferred to another.

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There should be clear understanding about health insurance, how long the candidate or novice will be responsible for the premiums, and when the order will take over this responsibility.

Employment or contractual obligations should be identified and generally these should be resolved prior to entrance. Any ongoing commitments should be discussed.

If the candidate is involved in suing another party, the litigation should be discussed and resolved prior to entrance because litigation can be expensive and time consuming, and its outcome uncertain.

Screening

There are many types of screening that an order should do with candidates, including health and psychological screening, background checks,

and life history assessment. It should be noted here that anti-discrimination laws¹² do not apply because the person is not an employee of the order. No candidate would prevail against an order for failing to admit the candidate; likewise, there is not a civil law requirement for equality in the screening process. For example, based on circumstances one candidate may be required to undergo screening not generally required. A policy or a general sense of equity may urge differences to be justified, but there is no civil law requirement for equality of treatment.

The order must decide what to include in screening, e.g. screening for HIV, substance abuse or potential sexual abuse. Health and psychological assessments also raise issues of privacy and confidentiality. Privacy laws, including HIPAA, have made it increasingly difficult for orders to obtain health and psychological records of members as well as those in the integration process. In addition to requiring the assessment, orders should require candidates to ensure that the actual records be released to the appropriate person in the order with attention to confidentiality. A sample release form to be signed by the candidate is included at the end of this article.

Background checks are increasingly becoming a standard part of screening of candidates for religious life. This is largely because of the sexual abuse crisis. As it becomes common practice for religious orders to screen evidence of prior criminal conduct, all orders will be held to a basic standard of screening. An order will accept a candidate with a known criminal background at its own risk. For example, if an order accepts a candidate with a record of sexual abuse, that order is probably accepting legal responsibility for any future abuse by that candidate. However, if the order accepts a candidate who was screened, yet showed no history of abuse, and no signs of propensity for abuse, that order may argue that it acted reasonably, so it should not be held legally responsible for conduct it could not have foreseen

12 E.g. Americans with Disability Act, Age Discrimination in Employment Act, Civil Rights Act.

or prevented.

Regarding sexual abuse screening, religious orders should keep abreast of developments in the field of screening candidates. Although there is no absolute guarantee, the order should do all in its power to ensure proper screening of candidates.

Background checks include criminal record checks in all the jurisdictions where the candidate has lived or a national FBI background check and credit record checks. Although some of this information is publicly available, it is good practice to let the candidate know that the order will be running these checks, and obtain written consent. This may encourage the candidate to self-disclose information and afford the opportunity for a candid conversation about adverse information that may be found.

Candidates who are not forthright in providing information to the religious order may be hard to detect. However, the order should take reasonable efforts to get a picture of the life history of the candidate. Gaps in life history or work history as well as conflicting information should be investigated. Most of these gaps and conflicts will be easily explained, but there may be skeletons that the candidate would rather not have uncovered. If these relate to dubious behavior, it is better to uncover this before, rather than after entrance.

Family Ties

The family ties that may require legal attention include prior marriage or other exclusive relationship, children or other dependents and the need for care for a parent or other relative.

If there has been a marriage or other civil union, civil documents relating to the relationship should be obtained, e.g. the marriage certificate, divorce papers and any related property settlement. If there are other residual benefits or liabilities from the marriage or civil union, these should be identified and resolved as well.

Children or other dependents should be identified, along with any ongoing child support requirements, and arrangements for meeting these obligations. Likewise the order should identify

parents or other relatives who depend on the person in the integration process for support, care, guardianship or financial or healthcare power of attorney. Provision should be made for these ongoing responsibilities and a written document should be prepared.¹³

Immigration

With an increasing number of foreign born men and women seeking membership in religious orders today, the order should determine candidate's citizenship or immigration status. The order should obtain a copy of the birth certificate or naturalization papers of a candidate who is a U.S. citizen, or the pertinent documents for an immigrant (a lawful permanent resident).

If the candidate is not a citizen or an immigrant, care should be taken to determine their current immigration status and to obtain the applicable documents evidencing the status. The person may be undocumented, i.e. in the U.S. without government authorization, and may be subject to deportation.

Since immigration law is complex and frequently changing, it is recommended that the non-immigrant or undocumented person seek counsel knowledgeable in immigration for religious.¹⁴ It is important to explore the immigration options open to the candidate and devise a time line for meeting the requirements of immigration law within the parameters of the integration process of the order. As with other areas of law it is much easier to plan ahead than to remedy an immigration problem after it occurs.

Issues that Arise after Entrance

Despite the best laid plans and preparation, issues will arise during the integration process that were not foreseen or provided for, e.g. a person

¹³ See above for discussion on care of family members at the end of the section on *Debts and Liabilities*.

¹⁴ For assistance with immigration issues, contact Catholic Legal Immigration Network, Inc. (CLINIC); McCormick Pavilion 415 Michigan Avenue NE; Washington D.C. 20017; 202-635-2556 www.ClinicLegal.org.

may receive an inheritance, may be sued or accused of a crime, or may lose their immigration status. When this happens the order and the person may be able to resolve the issue as discussed above or may have to decide whether the issue can be resolved while the person continues in the integration program with allowances for settling the issue, or whether the person must leave¹⁵ and resolve the issue, with or without the possibility of re-entering at a later date. Generally this determination will be made based on:

- ◆ the issue and its underlying causes,
- ◆ how the issue and its causes might reflect on the person's suitability for continuing in the integration process
- ◆ how the issue and its causes might affect the person's ability to continue in the integration process and
- ◆ the time and resources required to resolve the issue
- ◆ Note: if the person has made first vows, consideration must be given to how the person can be released from vows if he/she must leave.

If the person continues in the order and is still financially independent, he/she should use personal funds to resolve the issue. If the person has no income or assets, or is contributing his/her income to the order, the order must supply any needed funds for professional counsel, etc.

The person has complete legal and financial responsibility for issues arising out of events that occurred before he/she entered the order. For example, if there was an accident before entrance and the person is sued after entrance, that person is completely responsible for the case and his/her insurance will cover it. If the issue arises because of events after the person enters the order, the facts of the situation, the current relationship between the person and the order, and any agreement between the person and the order will have to be examined to determine responsibility.

15 If the person has made first vows, consideration must be given to how the person can be released from vows if he/she must leave.

Afterthought: Records Management

Obtaining the information outlined above and working out plans for settling assets and time lines for relinquishing outside responsibilities and resolving pending legal problems requires patience and creativity. Each issue should be considered, resolved and documented. At the end of the process, an extensive record will have been created. This record itself gives rise to legal issues. It is helpful to identify four stages in record management and to establish policies regarding each step:¹⁶

- ◆ Record creation: consideration should be given to what documents should be created or obtained from the person in the integration process. There are resources and worksheets available to help individuals and religious orders identify and work through legal and financial issues.¹⁷ It is important to have policies on legal and financial matters that are generally applicable. When a person's situation requires a departure from the policy or a special arrangement, it is helpful to document this arrangement for the sake of clarity. Discussions and verbal agreements can be ambiguous and misunderstood, whereas written documents tend to ensure that points have been discussed and understood. However, using too many documents can be confusing and counterproductive.
- ◆ Record use: consideration should be given to who will use the records and for what purpose, who has access to the documents, and what steps are taken to ensure the confidentiality of the information. In addition to leadership and formation personnel, the policy should discuss whether candidates, novices or temporary professed members may have access to the record or discuss its content.

16 Hereford, Amy *Record Retention Policy for Congregational Members*, Legal Bulletin #74, Spring 2003.

17 Religious Formation Conference *Resource Manual, Volume I: Financial and Legal Issues, Canon Law Issues, Immigration Issues*, www.relforcon.org.

◆ ... working out plans for settling assets and time lines for relinquishing outside responsibilities and resolving pending legal problems requires patience and creativity.

- ◆ Record retention: consideration should be given to what will be done with the records after their stated purpose has passed. Although a document is no longer needed for its original purpose, there may remain a reason for retaining the document, e.g. for information or archival purposes. Some records should be maintained through the integration process, some should be maintained through the life of the member, and others should be maintained permanently. Provision should also be made for what records should be kept if a person in the integration process leaves the order, and for what information can be shared from these records, e.g. there is no civil bar on sharing the information with another order where the former candidate is seeking entrance (except for health information), but there would be the usual civil caveats if a potential employer was seeking information. Some record describing the person's time in the order should be retained, but many of the underlying documents will no longer be needed.
- ◆ Record destruction: finally, provision should be made for the destruction of documents that are no longer required.

CONCLUSION

Religious life and the religious vocation is a mystery; it is much larger than this article would suggest. This article has simply attempted to discuss some of the civil law issues that may arise when people decide to embark on the journey of religious life. Before religious life, a person lives independently and makes decisions about finances, and business and professional relationships. Even then a person often makes these decisions in relationship with others, with family and friends who will be effected by the decision, and who can help evaluate choices. On entering religious life, a person moves from independence to interdependence within the religious order. This movement requires careful consideration of legal relationships and responsibilities with a view toward adjusting these to fit a new lifestyle. The process of working through these legal issues can help the order and the person articulate their understandings and expectations. The objective facts involved in legal issues can bring into focus some of the values of religious life and give an opportunity for the order and the individual to discuss the practical living of those values.

Resources

Resource Manual, Volume I: Financial and Legal Issues, Canon Law Issues, Immigration Issues, Resource List, Religious Formation Conference

Catholic Legal Immigration Network, Inc.; McCormick Pavilion 415 Michigan Avenue NE; Washington D.C. 20017; 202-635-2556
www.ClinicLegal.org

National Religious Vocation Conference; 5420 S. Cornell Avenue; Chicago IL 60615-5604; 773-363-5454; www.nrv.net

Religious Formation Conference; 8820 Cameron Street; Silver Spring, MD 20910; (301) 588-4938; www.relforcon.org

Appendix: Release of Health Information

I understand that as part of my healthcare, healthcare providers and others originate and maintain health records describing my health history, symptoms, examination and test results, diagnoses, treatment, and any plans for future care or treatment. I understand that I have the right to object to the use of my health information for other purposes. I understand that I have the right to request restrictions as to how my health information may be used or disclosed to carry out treatment, payment, or healthcare operations and that the organization is not required to agree to the restrictions requested. I understand that I may revoke this consent in writing, except to the extent that the organization has already taken action in reliance thereon.

Notwithstanding the above, I hereby consent to the release to _____ [name of vocational, formation and/or leadership personnel who will have access] in the religious order to which I am applying for membership, [name of the order], all information including supporting records relating to:

_____ my physical examination and my physical health including HIV and substance abuse screening.

_____ my psychological assessment and results.

Signature of Patient: Date:

Witness: Date: