Standing Commission on Constitution And Canons

MEMBERSHIP

The Rt. Rev. John C. Buchanan (West Missouri) *2000, vice chair*
The Rt. Rev. Joe M. Doss (New Jersey) *2000*
The Rt. Rev. Catherine M. Waynick (Indianapolis) *2003*
The Rev. Herschel R. Atkinson (Atlanta) *2000, secretary*
The Rev. Canon George W. Brandt (New York) *2003*
The Rev. Carol Cole Flanagan (Ohio) *2003*
Paul E. Cooney, Esq. (Washington) *2003*
Joseph L. Delafield III, Esq. (Maine) *2000, chair*
Richard J. Hoskins, Esq. (Chicago) *2003*
Stephen H. Hutchinson, Esq. (Utah) *2000*
Sally A. Johnson, Esq. (Minnesota) *2000*
D. Rebecca Snow, Esq. (Alaska) *2003*
The Hon. James Bradberry (Virginia) *Executive Council liaison*
All the members concur in this report.

Representatives of the Commission at General Convention

The Rt. Rev. John Buchanan and Deputy Joseph L. Delafield III, Esq. are authorized to receive non-substantive amendments to this report.

SUMMARY OF THE COMMISSION'S WORK

The Standing Commission on Constitution and Canons (hereafter, "the Commission") met in San Antonio, Texas, in January, 1998; Minneapolis, Minnesota, in March 1998; Atlanta, Georgia, in February 1999, and Park City, Utah, in July 1999. It also met by conference call on three occasions. At its organizational meeting the Commission elected officers. In subsequent meetings, the Commission continued to review the experience of the church under Title IV of the Canons and received and took action on additional referrals.

UPDATE OF "WHITE AND DYKMAN" COMMENTARY

The Commission appointed a subcommittee to oversee the development of an update to the 1981 edition of the *Annotated Constitution and Canons for the Government of the Protestant Episcopal Church in the United States of America, otherwise known as the Episcopal Church*, commonly referred to as "White and Dykman." The most recent supplement to White and Dykman was prepared in 1991 by the Commission and published by the Domestic and Foreign Missionary Society. The 1991 supplement incorporates legislative developments through the General Convention held that year.

Substantial and important revisions were made to the Constitution and Canons of The Episcopal Church by the General Convention in 1994 and 1997. Among these revisions is the new disciplinary process in Title IV of the Canons adopted in 1994 and further modi-

fied in 1997. The Commission believes that there is urgent need for a supplement to White and Dykman that reflects these changes.

Robert C. Royce, Esq., a member of the subcommittee of the Commission that prepared the 1991 supplement, expressed willingness to prepare a draft supplement, under the oversight of the White and Dykman Subcommittee of the Commission, that would include revisions to the Constitution and Canons approved by the 71st and 72nd General Conventions. Work on this project is ongoing. The Commission anticipates that a preliminary version of the 1997 Supplement will be submitted to the Commission for review before the opening of the 73rd General Convention.

ALTERNATIVE MODELS FOR CLERGY DISCIPLINE

The Commission considered information received from various dioceses regarding their respective experience with the current disciplinary processes prescribed by Title IV. A summary of the information received is attached to this report as an appendix.

While some reports expressed a high level of satisfaction with the current model, others suggested significant concerns that (1) the current model, based on the Uniform Code of Military Justice, is seen as unduly punitive, as well as intimidating for respondents, complainants, and other affected persons; and (2) the costs attendant to a fully developed Title IV proceeding under the current model are believed to be beyond the means of dioceses without substantial financial resources and personally financially devastating to respondent clergy of limited means.

The Commission was asked by the Committee on Sexual Exploitation to co-sponsor, along with the Standing Commission on Ministry Development, a resolution for the appointment of a task force to conduct a review of Title IV with consideration of alternate models, such as the professional discipline systems used for medical, legal, or other professions. The Commission is supportive of such a review. The co-sponsored resolution appears as Resolution A028 below.

72nd General Convention Resolution B037-Proposed New Canon III.20-Of Regulations Affecting Matters of Doctrine

The Commission received Resolution B037 of the 72nd General Convention (Journal, pages 740f), by referral and gave it careful consideration at three separate meetings and one conference call. A subcommittee of the Commission conferred with the sponsor of the resolution and with the House of Bishops Theology Committee. The Commission understands that the Theology Committee has submitted a substitute resolution to the House of Bishops that voted to refer it back to the Committee for further study. The Commission makes no recommendation for action by the 73rd General Convention.

Review of By-laws of Executive Council and D&FMS

Title I, Canon 1(n)(3)(iii) requires the Commission, on the basis of its continuing comprehensive review of the Constitution and Canons, to suggest to the Executive Council and the Domestic and Foreign Missionary Society such amendments to their respective by-laws as in the opinion of the Commission are necessary or desirable in order to conform the same to the Constitution and Canons of the Church. The Commission has reviewed the by-laws of the Executive Council and the Domestic and Foreign Missionary Society and

has determined that no amendments are necessary to conform them to the Constitution and Canons of the Church.

Costs of Defense Counsel in Title IV Procedures.

The Commission reviewed the practices of a number of dioceses with respect to provision for the cost of defense to respondent clergy in Title IV proceedings. The issue is a difficult one because, while all agree that assistance of counsel for a respondent person is a worthy objective, the potential financial impact on a diocese of making an open-ended supporting commitment is daunting. For some dioceses, it may be impossible.

The Commission decided that it would be inappropriate and unworkable to propose a canonical mandate imposing on each diocese the obligation of paying for legal assistance.

Nevertheless, the Commission strongly encourages each diocese to look at the issue conscientiously and take the steps it reasonably can to make at least partial provision for legal assistance to the respondent (and, where possible, to others in the Title IV process who could use such assistance). Some dioceses have enlisted a corps of volunteer Episcopal attorneys who commit to providing legal service, when requested, on a pro bono or reduced-fee basis. Other dioceses might be able to budget and commit to a fixed dollar amount of support for the legal assistance of an accused, thus determining and limiting the financial exposure. For these and other possible or partial solutions, we urge chancellors and other interested persons to meet and share ideas within a province or other convenient grouping of dioceses. Some dioceses may have more resources than others and may be willing to share, at a minimum, experience and ideas.

Compliance with Canon I.2.2.(n)(2)

The Commission continues to refrain from judicial interpretation of the body of church law in accord with the limitations expressed in its authority and duties assigned by Canon I.2.2.(n)(2).

FINANCIAL REPORT FOR THE 1998-2000 TRIENNIUM

	1998	**1999**	**2000**
Budget Total	13,000	15,000	13,060
Expenses			
Meetings	3,896	24,204	
Total	**3,896**	**24,204**	

BUDGET APPROPRIATION

	2001	**2002**	**2003**		
Travel & Meetings	5,685	24,482	25,656	=	55,823
Consultants & Publications			7,000		
Total for Triennium			**62,823**		

RESOLUTIONS

Resolution A022 Standing Commission on Constitution and Canons Budget Appropriation

Resolved, the House of_____ concurring, That the sum of $62,823 be appropriated for the work of the Standing Commission on Constitution and Canons during the next triennium.

Resolution A023 Amend Article II, Section 2, of the Constitution, First Reading

Resolved, the House of _____ concurring, That the first sentence of Article II, Section 2 of the Constitution is hereby amended to read as follows:

Section 2. No one shall be ordained and consecrated Bishop until the attainment of thirty years of age: nor without the consent of a majority of the Standing Committees of all the Dioceses and the consent of a majority of the Bishops ~~of this Church exercising jurisdiction~~ Diocesan, Coadjutor, and Suffragan of this Church. [Remainder of Section 2 unchanged.]

Explanation

The proposed amendment clarifies that in all instances consent to election or appointment of Bishops, a responsibility previously restricted to Bishops exercising jurisdiction (Bishops Diocesan), will also be exercised by Bishops Coadjutor and Bishops Suffragan.

Resolution A024 Amend Canons III.22.3(d), III.22.4(a), III.22.6, and III.26.l(b)

Resolved, the House of_____ concurring, That Canon III.22.3(d), the second sentence of Canon III.22.4(a), the first sentence of Canon III.22.6 and Canon III.26.1(b) are hereby amended by deleting therefrom the words "or delegated oversight" so that they read, in pertinent part, as follows:

Canon III.22.3(d): (d) If a majority of the Bishops of this Church exercising jurisdiction ~~or delegated oversight~~ consent to the ordination, the Presiding Bishop shall, without delay, notify the Standing Committee of the Diocese electing and the Bishop-elect of the consent.

Canon III.22.4(a), second sentence: (a) … The Presiding Bishop, without delay, shall notify every Bishop of this Church exercising jurisdiction ~~or delegated oversight~~ of the Presiding Bishop's receipt of the certificates mentioned in this Section and request a statement of consent or withholding of consent.

Canon III.22.6, first sentence: Sec. 6. … or in case a majority of all the Bishops exercising jurisdiction ~~or delegated oversight~~ do not consent…[remainder unchanged.]

Canon III.26.1(b): (b) Before the election of a Bishop Suffragan in a Diocese, the consent of the General Convention or, if General Convention is not in session, the consent of a majority of the Bishops exercising jurisdiction ~~or delegated oversight~~ and of the several Standing Committees must be obtained.

Explanation

In 1997 the 72nd General Convention adopted several canonical amendments expanding the categories of bishops who are asked to consent to the election of a bishop. These changes are, however, inconsistent with Article II, Sec. 2 of the Constitution, which was

not amended. At this time, only "Bishops exercising jurisdiction" may consent under the Constitution. Whether this term includes Bishops Coadjutor has been a matter of debate over the years. It does not include Bishops Suffragan. The changes offered here eliminate an inconsistency between the Constitution and the Canons created by the 1997 amendments. If the amendment to Article II, Sec. 2 of the Constitution proposed by the Commission in the preceding resolution is adopted by the 73rd General Convention on first reading, the Commission will present appropriate canonical amendments for consideration by the 74th General Convention, conditioned upon second reading approval of the Constitutional amendment. Meanwhile, the Canons must be made consistent with the Constitution.

Resolution A025 Amend Article IX of the Constitution, First Reading

Resolved, the House of _____concurring, That the first paragraph of Article IX of the Constitution be amended to read as follows:

The General Convention may, by Canon, establish ~~a Court~~ Courts for the Trial of Bishops, which ~~shall~~ may be composed of Bishops only~~;~~ or of Bishops, Priests, and adult lay persons.

Explanation

The Commission is proposing a constitutional amendment to the provision governing the establishment of Courts for the Trial of Bishops by General Convention. This amendment would do two things. It would allow (but not require) General Convention to establish, by Canon, more than one court for the Trial of Bishops, and it would permit (but not require) the Court(s) to be composed of Bishops, Priests, and lay persons. The current provision allows only one Court and requires that the Court be composed of Bishops only.

This Constitutional amendment was proposed by the Commission in 1997 as part of its comprehensive revision to the discipline of bishops. The proposal would make the composition of courts for the trial of bishops more closely resemble that for the trial of priests and deacons, which presently include priests, deacons, and lay persons. This proposal was adopted with amendment by the House of Deputies in 1997 but was not acted on by the House of Bishops.

If the amendment is adopted at this General Convention, it is the present intention of the Commission to propose additional amendments to the Canons for consideration at the 74th General Convention (assuming the constitutional amendment is adopted by that General Convention also). The Commission may propose the creation of a Court for the Trial of a Bishop on Doctrine to be composed of nine Bishops. It may also propose that the Court for the Trial of a Bishop (for the trial of all Offenses other than those involving Doctrine) be composed of Bishops elected by the House of Bishops and Priests and lay persons elected by the House of Deputies.

Resolution A026 Amend Canon I.7.

Resolved, the House of _____concurring, That Canon I.7 is hereby amended by adding thereto a new Section 1 to read as follows:

Sec. 1. The financial statements of the Domestic and Foreign Missionary Society shall be subject to an annual audit conducted by a regionally or nationally recognized firm of independent Certified Public Accountants in accordance with generally accepted auditing standards. The financial statements of the Domestic

and Foreign Missionary Society shall include all accounts, funds, discretionary funds, trust funds, whether held in beneficial or legal interest, and monies of whatever kind or character of the General Convention and Executive Council of the Protestant Episcopal Church in the United States of America as well as those of the Domestic and Foreign Missionary Society.

Explanation

The 72nd General Convention adopted Resolution D078 which, in pertinent part, "… direct[ed] the Standing Commission on Constitution and Canons, after consultation with appropriate legal and accounting authorities, to prepare and propose for consideration of the 73rd General Convention such changes to the Canons as shall be required to place the Domestic & Foreign Missionary Society and its directors, officers, and agents under standards of financial and fiduciary accountability as are applicable to similar religious and charitable entities and which are consistent with standards imposed by Canon upon Dioceses and Congregations of this Church." In response to its charge, the Commission reviewed the laws of the State of New York governing and regulating charitable organizations. These laws apply to the Domestic & Foreign Missionary Society and are some of the most stringent charitable organization laws in the country. The Commission also reviewed the Canons applicable to dioceses and congregations. Based on its review, the Commission proposed the addition of a new Section to Title I, Canon 7 On Business Methods in Church Affairs which would place all funds of the national church, including the Domestic and Foreign Missionary Society, Executive Council, and General Convention under audit requirements placed on dioceses and congregations. The Commission has concluded that, together with the requirements of New York state law, the proposed Canon will place the Domestic and Foreign Missionary Society under standards of fiduciary accounting at least as stringent as are applicable to similar religious and charitable entities.

Resolution A027 Amend Canon 1.17

Resolved, the House of _____ concurring, That Canon I.17 is hereby amended by adding thereto a new Section 8 to read as follows:

Sec.8. Any person accepting any office in this Church shall well and faithfully perform the duties of that office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised.

Explanation

In 1997, The House of Deputies referred Resolution C018, which addressed the question of canonical compliance generally, to an Interim Body. The Commission is responding to that referral by submitting this resolution.

The proposed amendment is intended to make explicit an expectation of good faith and diligent performance of duties which attend various offices of the church, whether lay persons or clergy. The Commission acknowledges the diversity of diocesan structures and canons that guide or influence the duties of a particular office and the predominantly voluntary nature of service in such offices by lay persons. The Commission believes it is preferable to provide a standard of performance rather than to adopt a disciplinary process for lay persons who fail or refuse to perform the duties of such offices.

Resolution A028 Establish Task Force on Disciplinary Policy and Procedure

Resolved, the House of _____concurring, That the General Convention establish, pursuant to Joint Rule 23, a Task Force of not less than 6 or more than 12 persons, of whom one-half shall be appointed by the Standing Commission on Ministry Development and one-half shall be appointed by the Standing Commission on Constitution and Canons; and, that in light of the Church's theology and the Church's experience, the Task Force: (1) assess the present models of church discipline, as reflected both in the policies and procedures addressing allegations of clergy misconduct and in Title IV of the national canons of the Episcopal Church; (2) study and explore other models for addressing misconduct, such as the disciplinary models used by physicians, professors, lawyers and other professionals; and (3) at or before the 74th General Convention, deliver a report of its findings and recommendations to the Standing Commission on Ministry Development, the Standing Commission on Constitution and Canons, and the Committee on Sexual Exploitation, and the 74th General Convention; and (4) at or before the 75th General Convention, deliver its final report of such findings and recommendations to the same bodies; and be it further

Resolved, That the sum of $_____be appropriated for the work of the Task Force.

Explanation

Given approximately six years of use, there is now sufficient experience to assess Title IV canons governing clergy misconduct. Such an assessment, moreover, requires the study and assessment of models of accountability and discipline. This may enable further work that would provide for greater congruence between Title III and Title IV of the national canons.

Since 1991, the church has successfully developed policies and procedures addressing sexual misconduct of clergy and laity. These policies and procedures have been implemented in nearly all dioceses. The vast majority of allegations against clergy have subsequently been addressed by pastoral procedures that have sought to be sensitive to the needs of complainants, fair to respondents, and responsive to the needs of affected families and congregations. These procedures, however, have been separated from the disciplinary procedures specified in Title IV of the national canons of the Episcopal Church. Disciplinary procedures have become time-consuming, expensive, and often overly adversarial. A review of models for addressing misconduct would enable the church to discern how it should best proceed.

In presenting this resolution for exploration, the sponsoring bodies in no way challenge the canonical legitimacy and authority of the present Title IV. This has provided the church with a uniform system of accountability and discipline for ordained ministers.

Resolution A029 Amend Canon III.21.8(b)

Resolved, the House of ____ concurring, That Canon III.21.8(b) is hereby amended to read as follows:

Sec. 8(b). In the course of proceedings under this Canon, if a charge is made by the Vestry against the Rector that could give rise to a disciplinary proceed-

ing under Canon IV.1, the Bishop may suspend all proceedings under this Canon with respect to such charge ~~shall be suspended~~ until the Charge has been resolved or withdrawn.

Explanation

Currently, a Charge under Title IV by the Vestry against the Rector can interrupt dissolution proceedings. Circumstances may arise where dissolution proceedings should continue while disciplinary matters are being resolved. The proposed amendment gives the Bishop discretion in suspending dissolution proceedings rather than making such suspension mandatory.

Resolution A030 Amend Canons III.22.3(a), III.23.6(a), III.23.6(b)

Resolved, the House of _____ concurring, That Canon III.22.3(a), Canon III.23.6(a), and the first sentence of Canon III.23.6(b) are hereby amended by deleting therefrom the words, "three months" and inserting in place thereof, "120 days," so that they read, in pertinent part, as follows:

Canon III.22.3(a): (a) When a Diocese desires the ordination of a Bishop-elect, if the date of the election occurs within ~~three months~~ 120 days before a meeting of the General Convention, the Standing Committee of the Diocese shall, by its President or by some person or persons specially appointed, forward to the Secretary of the House of Deputies evidence of the election of the Bishop-elect by the Convention of the Diocese. . . [remainder unchanged].

Canon III.23.6(a): (a) When a Diocese, entitled to the choice of a Bishop, shall elect as its Bishop Diocesan, or as its Bishop Coadjutor, or as a Bishop Suffragan, a Missionary Bishop of this Church, if such election shall have taken place within ~~three months~~ 120 days before a meeting of the General Convention, evidence thereof shall be laid before each House of the General Convention, . . . [remainder unchanged].

Canon III.23.6(b): (b) If the said election has taken place more than ~~three months~~ 120days before a meeting of the General Convention, the above process may be adopted, or the following instead thereof, . . .[remainder unchanged].

Explanation

These amendments correct discrepancies among the Canons regarding obtaining consent to the election of a Bishop when the election is held shortly before a meeting of the General Convention. Canon III.22.4 requires consent by a majority of the Standing Committees of the several Dioceses if the election is more than 120 days before a meeting of the General Convention, while Canon III.22.3 and Canon III.23.6(a) and (b) require the consent of the House of Deputies if the election occurs within three months before a meeting of the General Convention. Thus no guidance is given for elections occurring between 91 and 119 days before a meeting of the General Convention. Experience has shown that it takes 120 days to get all the consents returned.

Resolution A031 Amend Certain Canons in Title IV

Resolved, the House of _____concurring, That the following Canons are hereby amended as follows:

Canon IV.1.1(h)(1): the second sentence thereof is amended to read: (1) . . . Unless the Charge by the Bishop and the Presentment by the ~~Standing Committee~~ Diocesan Review Committee comply with the foregoing provisions, no finding of a violation based on an act of disregarding a Pastoral Direction or of failing to obey the Bishop having authority over the person charged may be made.

Canon IV.1.2(d) is amended to read: (d) Any Priest or Deacon against whom a Temporary Inhibition has been issued, modified, or extended may request a hearing concerning the Temporary Inhibition before the ~~Standing Committee~~ Diocesan Review Committee, which shall hear the same at the earliest possible time, but not later than fourteen days after the date of receipt of the request. The ~~Standing Committee~~ Diocesan Review Committee by a two-thirds vote may dissolve or modify the Temporary Inhibition. The Bishop and the Church Attorney shall be given notice of such hearing and shall be permitted to attend and be heard or to designate a representative to attend and be heard.

Canon IV.1.2(f) is amended to read: (f) A Temporary Inhibition shall continue in force and effect until the earlier of (i) the issuance of an Inhibition as otherwise permitted by this Title, (ii) the withdrawal of the Charge or the allegations, (iii) the refusal of the ~~Standing Committee~~ Diocesan Review Committee to make a Presentment on the Charges alleged, (iv) dissolution of the Temporary Inhibition, (v) imposition of Sentence following a voluntary submission to discipline under Canon IV.2, or (vi) a period of ninety days measured from the date of service of the Temporary Inhibition; *Provided, however*, the ninety day period may be extended by the Bishop for additional ninety day periods upon good cause.

Canon IV.1.3 is amended by deleting therefrom the words, "Standing Committee" and inserting in place thereof the words, "Diocesan Review Committee", so that it reads, in pertinent part: Sec 3. If a Presentment has been made by the ~~Standing Committee~~ Diocesan Review Committee against a Priest or Deacon . . . [remainder unchanged]

Canon IV.3.1 is amended to read: Sec 1. In each Diocese there shall be a Diocesan Review Committee, and it shall be the duty of each Diocese to provide by Canon for the establishment of such Diocesan Review Committee. The Canon of a Diocese establishing the Diocesan Review Committee shall provide that the Diocesan Review Committee shall (i) include lay persons and Priests or Deacons, the majority of the Committee to be Priests or Deacons (but by no more than one), and (ii) annually elect from its members a Presiding Officer within two months following the Diocesan Convention. A Presentment to the Ecclesiastical Trial Court may be issued only by the ~~Standing Committee~~ Diocesan Review Committee as provided in this Canon.

Canon IV.3.2 is amended to read: Sec 2. A Charge against a Priest or Deacon shall be in writing, verified and addressed to the ~~Standing Committee~~

Diocesan Review Committee of the Diocese wherein the Priest or Deacon is canonically resident, except as otherwise expressly provided in this Title. It shall concisely and clearly inform as to the nature of and facts surrounding each alleged Offense.

Canon IV.3.5 is amended to read: Sec 5. Whenever the Bishop has sufficient reason to believe that any Priest or Deacon canonically resident in that Diocese has committed an Offense and the interests and good order and discipline of the Church require investigation by the ~~Standing Committee~~ Diocesan Review Committee, the Bishop shall concisely and clearly inform the ~~Standing Committee~~ Diocesan Review Committee in writing as to the nature of and facts surrounding each alleged Offense but without judgment or comment upon the allegations, and the ~~Standing Committee~~ Diocesan Review Committee shall proceed as if a Charge had been filed.

Canon IV.3.8 is amended to read: Sec. 8 Any Charge against a Priest or Deacon shall be promptly filed with the ~~President of the Standing Committee~~ Presiding Officer of the Diocesan Review Committee.

Canon IV.3.9 is amended to read: Sec 9. Upon the filing of a Charge with the ~~Standing Committee~~ Diocesan Review Committee, the Committee shall promptly communicate the same to the Bishop and the Respondent.

Canon IV.3.10 is amended to read: Sec 10. In a case of a Priest or Deacon convicted in a criminal Court of Record in a cause involving immorality, or against whom a judgment has been entered in a civil Court of Record in a cause involving ~~Immorality~~ immorality, the Priest or Deacon shall notify the Ecclesiastical Authority of the Diocese in which the Priest or Deacon is canonically resident, in writing, of such conviction or entry of judgment, within thirty days thereof, whether or not any time for appeal has expired. It shall be the duty of the Ecclesiastical Authority to give notice of the conviction or entry of judgment to the ~~Standing Committee~~ Diocesan Review Committee of the Diocese in which the Priest or Deacon is canonically resident in which case, or if the ~~Standing Committee~~ Diocesan Review Committee shall otherwise have knowledge of such conviction or judgment, it shall be the duty of the ~~Standing Committee~~ Diocesan Review Committee to institute an inquiry into the matter. If the conviction or judgment be established, the ~~Standing Committee~~ Diocesan Review Committee shall issue a Presentment against the Priest or Deacon for Trial. The time periods specified in Canon IV.14.4 shall be tolled until the Priest or Deacon provides the required notification to the Ecclesiastical Authority. Nothing in this section shall prevent Charges from being filed against the Priest or Deacon based on the conviction, judgment, or underlying acts pursuant to Sections 3 or 4.

Canon IV.3.11 is amended to read: Sec 11. Within thirty days after the filing of a Charge, other than a Charge alleging a conviction in a criminal Court of Record in a cause involving immorality or alleging the entry of a judgment in a civil Court of Record in a cause involving immorality, the ~~Standing Committee~~ Diocesan Review Committee shall convene to consider the Charge. If after such

consideration the ~~Standing Committee~~ Diocesan Review Committee determines that an Offense may have occurred if the facts alleged be true, the ~~Standing Committee~~ Diocesan Review Committee shall prepare a written general statement of the Charge and the facts alleged to support the Charge and transmit the same to the Church Attorney.

Canon IV. 3.13 is amended to read: Sec. 13. Within sixty days after receipt of the statement from the ~~Standing Committee,~~ Diocesan Review Committee, unless delayed for good and sufficient cause stated, the Church Attorney shall render a confidential Report to the ~~Standing Committee~~ Diocesan Review Committee of the findings of that investigation and as to whether or not an Offense may have been committed if the facts disclosed by the investigation be found to be true upon Trial, and with a recommendation as to the matter in the interest of justice and the good order and discipline of this Church and based upon such other matters as shall be pertinent. The report of the Church Attorney shall be confidential for all purposes as between the Church Attorney and the ~~Standing Committee~~ Diocesan Review Committee, *Provided, however*, the ~~Standing Committee~~ Diocesan Review Committee shall share the report of the Church Attorney with the Bishop of the Diocese.

Canon IV.3.14 (a), (b), and (c) are amended to read: (a) Within thirty days after the receipt of the report of the Church Attorney, the ~~Standing Committee~~ Diocesan Review Committee shall convene to consider the report and whether or not a Presentment shall issue.

(b) In its deliberations, the ~~Standing Committee~~ Diocesan Review Committee may consider the Church Attorney's report, responsible writings or sworn statements pertaining to the matter, including experts' statements, whether or not submitted by the Church Attorney. To assist in its deliberations, the ~~Standing Committee~~ Diocesan Review Committee may itself, or through a subcommittee of its members or others appointed by the ~~Standing Committee~~ Diocesan Review Committee, provide an opportunity to be heard to the Respondent, the alleged Victim, the Complainant or other persons and receive additional evidence which it in its sole discretion deems appropriate.

(c) The ~~Standing Committee~~ Diocesan Review Committee may issue a Presentment for an Offense when the information before it, if proved at Trial, provides Reasonable Cause to believe that (i) an Offense was committed, and (ii) the Respondent committed the Offense.

Canon IV.3.15 is amended to read: Sec. 15 (a) The vote of a majority of All the Members of the ~~Standing Committee~~ Diocesan Review Committee shall be required to issue a Presentment. If the provisions of Canon IV.7.1 apply, the consent of a majority of All the Members of the ~~Standing Committee~~ Diocesan Review Committee of the Diocese in which the Offense is alleged to have occurred must be obtained. No member shall disclose his or her vote or the vote of any member to any person not a member of the ~~Standing Committee~~ Diocesan Review Committee.

(b) In the event that, due to members who have been excused or vacancies in office, the ~~Standing Committee~~ Diocesan Review Committee does not have sufficient voting members to meet the requirements of Sec. 15(a), the action of the ~~Standing Committee~~ Diocesan Review Committee shall be postponed until such time as there are sufficient members in office to fulfill the voting requirements of this Section.

Canon IV.3.16 is amended to read: Sec. 16. If a Presentment be issued, it shall be in writing, dated, and signed by the President or the Secretary of the ~~Standing Committee~~ Diocesan Review Committee on behalf of the ~~Standing Committee~~ Diocesan Review Committee, whether or not that officer voted in favor of the Presentment. In the event that there be no President or Secretary, or they be absent, a member of the ~~Standing Committee~~ Diocesan Review Committee appointed for that purpose shall sign the Presentment. The Presentment also shall contain (i) a separate accusation addressed to each Offense, if there be more than one, and (ii) a plain and concise factual statement of each separate accusation sufficient to clearly apprise the Respondent of the conduct which is the subject of the Presentment.

Canon IV.3.17 is amended to read: Sec. 17. Promptly after the issuance of a Presentment, the ~~Standing Committee~~ Diocesan Review Committee shall cause the original to be filed with the President of the Ecclesiastical Trial Court with a true copy thereof served upon the Bishop, the Respondent, the Church Attorney and each Complainant, and, unless waived in writing, the alleged Victim, and the Ecclesiastical Authority of the Diocese in which the Respondent is canonically resident, in which the Respondent is licensed, and in which the Respondent resides.

Canon IV.3.18 is amended to read: Sec. 18. If the ~~Standing Committee~~ Diocesan Review Committee votes not to issue a Presentment, then that decision shall be in writing and shall include an explanation. A copy shall be served upon the Bishop who shall file it with the Secretary of the Convention of the Diocese, the Respondent, the Church Attorney, each Complainant, and, unless waived in writing, the alleged Victim.

Canon IV.4.17 is amended to read: Sec 17. In all Ecclesiastical Trials, the Church Attorney shall appear on behalf of the ~~Standing Committee~~ Diocese, which shall then be considered the party on one side and the Respondent the party on the other. Each Complainant and alleged Victim shall be entitled to be present throughout and observe the Trial, and each may be accompanied by counsel and another person of his or her own choosing.

Canon IV.4.18 is amended to read: Sec. 18. Before a vote is taken on the findings and in the presence of the Respondent and counsel, counsel for the parties may submit requested proposed instructions. The Presiding Judge of the Ecclesiastical Trial Court, after consultation with the Lay Assessors, shall declare which of the proposed instructions shall be issued and shall instruct the members of the Court as to the elements of the Offense and charge them (i) that the Respondent must be presumed not to have committed the Offense alleged until

established by Clear and Convincing evidence, and unless such standard of proof be met the Presentment must be dismissed, and (ii) that the burden of proof to establish the Respondent's commission of the Offense is upon the Church Attorney in the name of the ~~Standing Committee~~ Diocese.

Canon IV.4.39 is amended to read: Sec. 39. The Presiding Judge of the Court of Review of the Province having jurisdiction, within ninety days but not less than sixty days after having received the Record on Appeal, shall appoint a time and place within such Province for the hearing of the appeal. At least thirty days prior to the day appointed, the Presiding Judge shall give written notice of such time and place to the other members of the Court, and also to the Respondent, and to the Bishop and ~~Standing Committee~~ Diocesan Review Committee of the Diocese in which the Ecclesiastical Trial was held.

Canon IV.4.41 is amended to read: Sec 41. The ~~Standing Committee~~ Diocesan Review Committee of the Diocese which issued the Presentment shall be deemed to be the opposite party for the purpose of this appeal.

Canon IV.4.51 is amended to read: Sec 51. The concurrence of five members of a Court of Review shall be necessary to pronounce a judgment. The judgment or decision of the Court shall be in writing, signed by the members of the Court concurring therein, and shall distinctly specify the grounds of the decision and shall be attached to the record. If the concurrence of five of the members cannot be obtained, that fact shall be stated in the record, and the determination or Judgment of the Trial Court shall stand as affirmed except as to any reversal in part in which there has been concurrence. Immediately after the determination of the appeal, the Presiding Judge of the Court shall give notice thereof in writing to the appellant and appellee and to the Bishop and the ~~Standing Committee~~ Diocesan Review Committee of the Diocese in which the Trial was had. Upon the determination of the appeal, the original record upon which the appeal was heard, together with the record of the Court of Review, certified by the Presiding Judge and the Secretary or Clerk, shall be remitted to the Bishop or the ~~Standing Committee~~ Diocesan Review Committee of the jurisdiction in which the Trial was had and to the Archives of The Episcopal Church. All records remitted as herein provided shall be deposited and be preserved among the Archives of the jurisdiction to which they are sent.

Canon IV.11.1 is amended to read: Sec. 1. If a Priest or Deacon has engaged in any secular calling or business without the consent of the Bishop of the Diocese in which the Priest or Deacon is canonically resident as provided in Canon III.15, it shall be the duty of the ~~Standing Committee~~ Diocesan Review Committee of the Diocese, upon the case being brought to ~~their~~ its attention by the written statement of the Bishop, to institute an inquiry into the matter. If in the judgment of the ~~Standing Committee~~ Diocesan Review Committee there is sufficient reason for further proceedings, it shall be the duty of the ~~Standing Committee~~ Diocesan Review Committee to Present the offending Priest or Deacon for Trial for violation of Ordination vows and these Canons.

Canon IV.11.2 is amended to read: Sec 2. If a Priest or Deacon has substantially and materially abandoned the work of the ministry of this Church and the exercise of the office to which ordained without having given reasons satisfactory to the Bishop of the Diocese wherein the Priest or Deacon is canonically resident, or without renouncing the ministry as provided in Canon III.18 or without seeking to be released from the obligations of the office pursuant to Canon III.14.4(c), it shall be the duty of the ~~Standing Committee~~ Diocesan Review Committee of the Diocese, upon the case being brought to ~~their~~ its attention by the written statement of the Bishop, to institute an inquiry into the matter. If in the judgment of the ~~Standing Committee~~ Diocesan Review Committee there is sufficient reason for further proceedings, it shall be the duty of the ~~Standing Committee~~ Diocesan Review Committee to Present the offending Priest or Deacon for Trial for violation of Ordination vows and these Canons.

Canon IV.11.3(a) is amended to read: (a) Whenever a Priest or Deacon of this Church shall have been absent from the Diocese for a period of more than two years and has failed to make the annual report required by Canon I.6.1, the Bishop shall bring the case to the attention of the ~~Standing Committee~~ Diocesan Review Committee by written statement, whereupon the ~~Standing Committee~~ Diocesan Review Committee may institute an inquiry into the matter. If in the judgment of the ~~Standing Committee~~ Diocesan Review Committee there is sufficient reason for further proceedings, the ~~Standing Committee~~ Diocesan Review Committee shall Present the offending Priest or Deacon for Trial for violation of Ordination vows and these Canons.

Canon IV.14.4 is amended by deleting the words, "Standing Committee" and inserting in place thereof the words, " Diocesan Review Committee" so that it read, in pertinent part, as follows: Sec. 4. Limitations of Actions.

(a)(1) No Presentment shall be made for any Offense that constitutes Crime, ~~Immorality,~~ immorality, or Conduct Unbecoming a Member of the Clergy, unless the Offense was committed within, or continued up to, ten years immediately preceding the time of receipt of a Charge by the ~~Standing Committee~~ Diocesan Review Committee or the Presiding Bishop except:

(i) [unchanged]

(ii) [unchanged]

(iii) [unchanged]

(iv) if the Offense is not discovered or its effects realized during the ten years immediately following the date of the Offense, the time within which the Charge shall be received by the ~~Standing Committee~~ Diocesan Review Committee shall be extended to two years after the disability ceases or the alleged Victim discovers or realizes the effects of the occurrence of the Offense; *Provided, however*, in the case of clauses (iii) or (iv) above, the time within which the Charge shall be received by the ~~Standing Committee~~ Diocesan Review Committee shall not be extended beyond fifteen years from the date the Offense was committed or continued.

(2) [unchanged].

(3) [unchanged]

(4) [unchanged]

(b) No Presentment shall issue for any Offense specified in Canon IV.1.1(c), (d), (e), (f), (g), (h) and (i) unless the Offense was committed within, or continued up to, two years immediately preceding the time the Charge is filed with the ~~Standing Committee~~ Diocesan Review Committee.

(c) Unchanged.

(d) Unchanged.

Canon IV.14.5 is amended to read: Sec. 5. Materiality. In order for the Offenses specified in Canon IV.1.1(d), (e), (f) and (g) to be considered for Presentment, the Offense complained of must be intentional, material and meaningful as determined by the ~~Standing Committee~~ Diocesan Review Committee or Review Committee.

Canon IV.14.7 is amended to read: Sec. 7. Quorum. In all cases in this Title where a Canon directs a duty to be performed or a power to be exercised, by a ~~Standing Committee,~~ Diocesan Review Committee, ~~by the~~ Review Committee, ~~by a~~ Trial Court, or ~~by~~ any other body consisting of several members, a majority of the members, the whole having been duly cited to meet, shall be a quorum; and a majority of the members present when a quorum exists shall be competent to act, unless otherwise expressly required by Canon.

Canon IV.14.9 is amended to read: Sec. 9. Influencing proceedings. No person subject to the authority of this Church may attempt to coerce or by any other means improperly influence, directly or indirectly, the actions of a ~~Standing Committee,~~ Diocesan Review Committee, ~~the~~ Review Committee, ~~an~~ Ecclesiastical Trial Court, any other Court provided for in these Canons, or any member thereof, or any person involved in such proceedings in reaching the issuance of any Presentment or the findings, Judgment or Sentence of any Trial Court or any review thereof. The foregoing provisions shall not apply with respect to (i) statements and instructions given by the Church Attorney, the Respondent, or counsel for a Respondent to the ~~Standing Committee~~ Diocesan Review Committee prior to Presentment or to the Ecclesiastical Trial Court, or by Lay Assessors of any Court, (ii) sworn testimony or instruments submitted by witnesses or experts during the course of any disciplinary proceedings, or (iii) statements given by Complainants, alleged Victims or their Advocates as provided for in this Title.

Canon IV.14.13 is amended to read: Sec. 13. Relationship to parties. Any member of any ~~Standing Committee~~ Diocesan Review Committee, Review Committee or any Court provided for in this Title (i) who is related to the Respondent by blood or marriage, (ii) who has knowledge of essential facts involved in the matter, (iii) who has a close personal or professional relationship with the Respondent, any alleged Victim, or any witness in the matter, or (iv) who reasonably believes himself or herself unable to render a fair and independent judgment, shall be disqualified and excused from service in connection with the matter.

Canon IV.14.16 is amended to read: Sec 16. Burden of Proof. The burden of proof to establish an Offense by a Respondent is upon the Church in the Case of Bishops and the ~~Standing Committee~~ Diocesan Review Committee in the Case of Priests or Deacons.

Canon IV. 14.17 is amended to read: Sec. 17. Duty to Appear, Respond and Give Testimony. Except as otherwise provided in this Title, it shall be the duty of all Members of this Church to appear and testify or respond when duly served with a Notice or Citation by a ~~Standing Committee,~~ Diocesan Review Committee, Review Committee, or Ecclesiastical Trial Court in any matter arising under this Title.

Canon IV.14.20 is amended by deleting the words, "Standing Committee" and inserting in place thereof the words "Diocesan Review Committee", so that it reads, in pertinent part, as follows: Sec 20. Service of Notices and Citations.

(a) A Notice or Citation permitted by any law of the Church to any Member to appear, at a certain time and place for the investigation of a Charge before a ~~Standing Committee~~ Diocesan Review Committee or Review Committee, for deposition in an Ecclesiastical Trial Court, or for a Trial of an Offense, shall be deemed to be duly served if a copy thereof be delivered to the person to be served, be left at the person's usual place of abode within the United States as to Members of the Clergy Canonically resident in the United States and non-Clergy Members resident in the United States, or as to Members of the Clergy Canonically resident or non-Clergy Members resident in countries or territories other than the United States at the place of abode within the country or territory of Canonical residence or residence, as the case may be, with a person of suitable age and discretion, or be mailed by certified mail return receipt requested to the person's usual place of abode within the United States or by similar mail service if mailed in a country other than the United States, at least sixty days before the day of appearance named therein, and in case the Member of the Clergy or non-Clergy Member has departed from the United States or other country or territory of Canonical residence or residence, as the case may be, and has not been duly served, if a copy of the Citation be published once a week for four successive weeks in such newspaper printed in the jurisdiction in which the Member of the Clergy or non-Clergy Member is cited to appear as the ~~Standing Committee,~~ Diocesan Review Committee, Review Committee or Ecclesiastical Court shall designate, the last publication to be three months before the day of appearance. Acceptance of service will render unnecessary any further process of Citation.

(b) [unchanged]

(c) A notice or Citation to appear may be issued by a ~~Standing Committee~~ Diocesan Review Committee, Review Committee or Ecclesiastical Court.

Canon IV.14.22 is amended to read: Sec 22. Alternate Ecclesiastical Trial Court. In the event that a Diocese cannot convene an Ecclesiastical Trial Court due to vacancies, declinations to act, absences, resignations, challenges or otherwise or due to the determination by the ~~Standing Committee~~ Diocesan Review Committee for good cause shown that change in venue is needed, the Eccle-

siastical Authority shall arrange for the Trial to be held by an Ecclesiastical Trial Court of another Diocese of that Province reasonably convenient for the parties. The reasonable expenses of the alternate Ecclesiastical Trial Court shall be the responsibility of the Diocese from which the Presentment has issued. If the person against whom the Charge or Complaint is made is a Member of the Diocesan Review Committee or if the Diocesan Review Committee is not able to consider a Charge or a Complaint, the Ecclesiastical Authority shall arrange to have the Charge or Complaint reviewed by the Diocesan Review Committee of another Diocese of that Province reasonably convenient to both parties.

The definitions of Church Attorney, Citation, Limitation of Actions and Presentment in Canon IV. 15 are amended to read as follows:

Church Attorney shall mean (i) as to proceedings concerning Priests and Deacons, a duly licensed attorney, appointed to investigate matters of ecclesiastical discipline on behalf of the ~~Standing Committee~~ Diocesan Review Committee, to represent the Church in the prosecution of Presentments against Priests and Deacons and to represent the Church in an appeal to the Court of Review of a Trial of a Priest or Deacon; (ii) as to proceedings concerning Bishops, a duly licensed attorney, appointed to investigate matters of ecclesiastical discipline on behalf of the Review Committee, to represent the Church in the prosecution of Presentments against Bishops and to represent the Church in an appeal to the Court of Review of a Trial of a Bishop pursuant to Canon IV.5.9, and appointed by the Presenters pursuant to Canon IV.5.13. The Church Attorney need not reside in or be a member of the Diocese proceeding under this Title.

Citation shall mean a written direction from a ~~Standing Committee~~ Diocesan Review Committee, Review Committee or Ecclesiastical Court to a member of this Church or person subject to the jurisdiction of this Church to appear and respond to a ~~Standing Committee~~ Diocesan Review Committee or Review Committee or give testimony before an Ecclesiastical Court.

Limitations of Actions shall mean the time within which a Charge must be filed with a ~~Standing Committee~~ Diocesan Review Committee in a matter concerning a Priest or Deacon or filed with the Presiding Bishop in a matter concerning a Bishop as provided for in Canon IV.14.4.

Presentment shall mean the writing under Canon IV.3.21(c) or of a ~~Standing Committee~~ Diocesan Review Committee or Review Committee to an Ecclesiastical Trial Court that there are reasonable grounds to believe (i) an Offense has been committed which is triable, and (ii) the person named therein has committed it.

Explanation

The proposed amendments to Title IV that establish a "Diocesan Review Committee" harmonize the Canons pertaining to the discipline of Priests and Deacons with those for the discipline of Bishops. The amendments would give the "Diocesan Review Committee" a similar role and responsibility regarding the discipline of Priests and Deacons as the Review Committee has with respect to the discipline of Bishops. The Standing Committee of a Diocese will be freed to exercise its fundamental role as the Council of Advice

without apprehension of a conflict of interests or of having to refuse the advisory role in disciplinary matters. The role of the Standing Committee in Title IV remains unchanged when it is acting as the Ecclesiastical Authority in a Diocese without a Bishop (e.g., Canon IV.5.28(a)) and when the Standing Committee is acting in its Constitutional role as advisor to the Bishop (e.g., Canon IV.13.2).

Resolution A032 Amend Certain Canons in Title IV

Resolved, the House of _____ concurring, That the following Canons are hereby amended as follows:

Canon IV.3.14(d): Change ~~Canon 1V.1.2(a)~~ to Canon IV.3.2 in line 1.

Canon IV.4.46: Strike Federal from line 1.

Canon IV.6.13: Strike Federal from line l.

Canon IV.12.1(c)(3): Delete in toto

Comments: These are technical amendments to the cited Canons. Canon IV.12.1(c)(3) is deleted because it duplicates Canon IV.2.6. The other changes are self-explanatory.

Canon IV.3.42 is amended to read: Sec. 42. Within ~~sixty~~ one hundred twenty days after receipt of the statement of the Review Committee, unless delayed for good and sufficient cause stated, the Church Attorney shall render a confidential report to the Review Committee of the findings of that investigation and as to whether or not an Offense may have been committed, . . .[Remainder of section unchanged].

Comment: Given the necessity of a full and impartial investigation of a Charge, experience has shown that sixty days is not sufficient time.

Canon IV.3 is amended by adding thereto a new Section 51 to read as follows:

Sec 51. The necessary expenses of the Review Committee, including but not limited to, the necessary fees, costs, disbursements and expenses of the Members, Clerks, Church Attorney, Lay Assessors and Reports shall be charged upon the General Convention and shall be paid by the Treasurer of General Convention upon the order of the President of the Review Committee. The Review Committee shall have the authority to contract for and bind the General Convention to payment of these expenses.

Canon IV.6 is amended by adding thereto a new Section 22 to read as follows:

Sec 22. The necessary expense of the Court of Review of the Trial of a Bishop, including but not limited to the necessary fees, costs, disbursements and expenses of the Judges, Church Attorneys, Clerks, Reporters and Lay Assessors, shall be charged upon the General Convention and shall be paid by the Treasurer of General Convention upon the order of the Presiding Judge of the Court. The

Court shall have the authority to contract for and bind the General Convention to payment of these expenses.

Comment: These additions provide clarification of the process for ensuring reimbursement for the work of the Review Committee and Court of Review that is currently missing from the Canons.

Canon IV.3.17 is amended by adding a sentence at the end of the present Section 17 to read as follows: The proceeding commences with the filing of the Presentment with the President of the Ecclesiastical Trial Court.

Canon IV.3.47 is amended to read: Sec. 47. Promptly after issuance of a Presentment, the Review Committee shall cause the original to be filed with the Presiding Judge of the Court for the Trial of a Bishop ~~Presiding Bishop~~ with a true copy thereof served upon the Presiding Bishop, the Respondent, each Complainant, and, unless waived in writing, the alleged Victim. The proceeding commences with the filing of the Presentment with the Presiding Judge of the Court for the Trial of a Bishop.

Canon IV.3.48 is deleted and the number reserved: Sec. 48. ~~When a Presentment is filed with the Presiding Bishop, the Presiding Bishop shall at once transmit the Presentment to the Presiding Judge of the Court for the Trial of a Bishop.~~ [reserved]

Comment: The Canons at present do not specify the point in time at which a "proceeding" commences. Since this point triggers certain responsibilities, it is important to be precise about the commencement of a proceeding. The Resolution clarifies that a proceeding commences with the filing of the Presentment with the President of the Ecclesiastical Trial Court in the case of a Priest or Deacon, and with the Presiding Judge of the Court for the Trial of a Bishop in the case of a Bishop.

Canon IV.14.12 is amended to read: Sec. 12. ~~Former jeopardy. No Member of the Clergy may be Presented or tried a second time under this Title for the same Offense, or after Waiver and Voluntary Submission to discipline upon which a Sentence has been imposed and pronounced, or as to any matters expressly set forth in the agreed upon report of a Conciliator under IV.16.4 without the Member of the Clergy's consent.~~

Effect of Prior Proceedings. A Member of the Clergy shall be liable for Presentment and Trial for an Offense set out in Canon IV.1.1. unless the specific accusation or Charge has previously been included in a Presentment against that Member of the Clergy or has been expressly set forth in the Member of the Clergy's Waiver and Voluntary Submission to Discipline upon which a Sentence has been imposed and pronounced or in the report of a Conciliator under Canon IV.16.4.

Comment: This Section has been rewritten to read in the affirmative to clarify how one may determine whether an accused Member of the Clergy who was once charged with an Offense may again be charged with similar conduct.

The definitions of Advocate, Clerk of the Court, Church Attorney, Conciliator, Consultant, Lay Assessor and Reporter in Canon IV.15 are amended to read as follows:

Advocate shall mean a person, lay or clergy, designated to support and assist a Complainant or an alleged Victim in any proceeding contemplated by this Title. The Advocate need not reside in or be a member of the Diocese proceeding under this Title or of the Diocese of the person or body designating the person as Advocate.

Clerk of the Court shall mean that person appointed by an Ecclesiastical Court to keep the account of the proceedings of the Court. The Clerk of the Court need not reside in or be a member of the Diocese or Province of the Ecclesiastical Court appointing the Clerk of the Court.

Church Attorney shall mean (i) as to proceedings concerning Priests and Deacons, a duly licensed attorney, appointed to investigate matters of ecclesiastical discipline on behalf of the Standing Committee, to represent the Church in the prosecution of Presentments against Priest and Deacons and to represent the Church in an appeal to the Court of Review of a Trial of a Priest or Deacon; (ii) as to proceedings concerning Bishops, a duly licensed attorney, appointed to investigate matters of ecclesiastical discipline on behalf of the Review Committee to represent the Church in the prosecution of Presentments against Bishops and to represent the Church in an appeal to the Court of Review of a Trial of a Bishop pursuant to Canon IV.5.9, and appointed by the Presenters pursuant to Canon IV.5.13. The Church Attorney need not reside in or be a member of the Diocese proceeding under this Title.

Conciliator shall mean an adult person~~, lay or clergy,~~ appointed to seek the conciliation under Canon IV.16. The Conciliator need not reside in or be a member of the Diocese proceeding under Canon IV.16.

Consultant shall mean a priest, pastoral counselor, chaplain, an attorney-at-law or other person familiar with the procedures, alternatives, requirements and consequences of this Title and who is made available to a Member of the Clergy pursuant to Canon IV.14.8. The Consultant need not reside in or be a member of the Diocese proceeding under Canon IV.14.8.

Lay Assessor shall mean a duly licensed attorney to advise in matters of law, procedure and evidence affecting a Court or Review Committee in its proceedings. The Lay Assessor need not reside in or be a member of the Diocese or Province of the Court the Lay Assessor advises.

Reporter shall mean that person charged with the responsibility of taking the recording of the proceedings. The Reporter need not reside in or be a member of the Diocese or Province in which proceedings are held under this Title.

Comment: The purpose of the proposed revisions to Canon IV.15 is to clarify that certain roles in a Title IV proceeding may be filled by persons outside the diocese in which the Title IV proceeding is taking place. The roles for which the clarification is being proposed are Advocate, Church Attorney, Clerk of the Court, Conciliator, Consultant, Lay Assessor and Reporter. Many dioceses are concerned that they do not have people with the necessary background, experiences, perceived objectivity and availability to fill all these roles. In addition, it may not be necessary for each diocese to go through the effort and expense of recruiting and training a full cadre of Title IV personnel if regional, provincial or even national rosters can be used to supply them when the need arises. The Commission therefore encourages people to serve in these roles in dioceses other than their own. The Commission also encourages provincial or other regional recruitment, training and sharing of personnel for Title IV matters. The Commission also suggests the establishment of regional, provincial and national rosters of trained and experienced personnel. These steps should reduce the overall burden of recruitment, training and maintenance of personnel for Title IV matters and increase the competency of persons serving in these roles.

APPENDIX: REPORT ON TITLE IV SURVEY

Background and Purpose of Survey

The new Title IV became effective on January 1, 1996. While it has received a great deal of attention from many parts of the church, no comprehensive record keeping has been attempted concerning its use and impact. The Standing Commission on Constitution and Canons decided in early 1999 to survey the church to determine how much use is being made of Title IV and its various parts, how much effort was being put into preparation for Title IV proceedings, and whether the Bishops and Chancellors of the various dioceses perceived Title IV as working well or not.

Methodology

Questionnaires were mailed to each of the 105 Bishops Diocesan and diocesan Chancellors in early August, 1999. The survey asked for information only since January 1, 1999.

Responses were received from 53 Bishops Diocesan, representing 50% of the total, and from 30 Chancellors, representing 29% of the total. Both the Bishop and the Chancellor responded in the case of 16 dioceses, so the total number of dioceses from which at least one response was received was 67, or 64% of all dioceses.

Because Title IV uses ordinary words in carefully defined ways—Charges, Offenses, Temporary Inhibition, Voluntary Submission, and many others are precise terms of art in Title IV, we cannot be certain that all of the respondents were using the terms in their technical sense. In addition, it is apparent from some of the responses that not all of the procedural niceties of Title IV were present in the minds of the respondents as they completed the questionnaires. For example, several respondents listed matters in which a Voluntary

Submission to Discipline had been made, but the questionnaire indicated that no Sentence had been pronounced by the Bishop. While possible, this situation is unlikely. What is more likely is that the respondent thought of the pronouncement of sentence as part of a court proceeding, and that a Voluntary Submission, being a negotiated outcome, somehow does not involve the pronouncement of a sentence.

It should also be noted that in many cases reported matters were ongoing, so that the later stages of the proceedings—presentment, trial, sentence—were not known because the matters had not progressed that far.

Because of these technical questions, it would be well not to take the survey results as accurate in any accounting or auditing sense, but rather as an indication of the general magnitude of Title IV usage.

Title IV Usage

General. Twenty-three dioceses (34% of those responding) reported with evident relief that they had not had occasion to use Title IV in any disciplinary matters. Of the 45 dioceses that did report Title IV matters, eight (12% of the total) reported four or more matters in the time period covered. The remaining 41 dioceses reported from one to three separate matters.

A total of 104 separate Title IV matters were reported. Of these, 60 (or 58%) never had Charges asserted.

Offenses Alleged. Because only 42% of the total number of matters reported involved the making of a Charge in the technical sense, it is difficult to categorize the offenses alleged. Respondents were asked to do so, however, and in most cases they did. Most matters described involved allegations of more than one offense. A total of 146 allegations of offenses were described, although this number must be taken as unreliable. With respect to each matter, respondents were asked only to categorize the kind of offense alleged, not the number of offenses; consequently, if a matter involved three separate occasions of Violations of Ordination Vows, for example, the survey would only show one offense—Violation of Ordination Vows—as being involved.

Of the 146 offenses identified in the 104 matters reported, the following is the breakdown among the various offenses chargeable under Title IV:

Offense	**Number of Matters**
Crime	7
Immorality	48
Doctrine	1
Rubrics	2
Violation of Ordination Vows	22
Violation of Canons	3
Neglect of Office	1
Conduct Unbecoming	58
Unspecified	4

Temporary Inhibitions. Temporary Inhibitions were reported to have been issued in 51 of the matters reported (49%). In 24 of those matters, no charges are reported to have been made, indicating that the Temporary Inhibition was issued in at least that many instances in the absence of formal Charges.

Voluntary Submissions. Seventy matters—a full 67% of all matters reported—ended in a Voluntary Submission to Discipline. Most of these (50) were matters in which formal charges were not made. Since only 60 matters in total were reported in which formal charges were not made, it appears that 83% of them (50) were resolved by Voluntary Submission. In those matters (44) reported in which Charges were made, only 20, or 45%, resulted in Voluntary Submissions.

Trials. In 27 matters, a Church Attorney's investigation and report took place, and in 19 matters the Standing Committee issued a presentment. It appears that some 41 offenses were included in the 19 presentments, broken down as follows:

Offense	**Number of Presentments**
Crime	4
Immorality	15
Doctrine	1
Rubrics	1
Violation of Ordination Vows	5
Violation of Canons	2
Conduct Unbecoming	13

Ten trials were reported. All of them resulted in persons being found to have committed offenses, although there seems to have been some confusion by those responding to the survey as to whether this item was limited to the results of trials or not. As a result, the number of offenses indicated in response to this item exceeds the number presented. In any event, the trial outcomes reported were:

Offense	**Number of Times**
Crime	3
Immorality	16
Doctrine	1
Rubrics	1
Violation of Ordination Vows	10
Violation of Canons	2
Conduct Unbecoming	15

Sentences. Sentences imposed by Courts were reported as follows:

Sentence	**Number of Times**
Admonition	0
Suspension	2
Deposition	7
Unspecified	1

Sentences pronounced by Bishops was intended to include not only the results of trials, but also voluntary submissions and renunciations. It is not clear that all respondents understood this. The reported sentences as pronounced by Bishops were:

Sentence	**Number of Times**
Admonition	16
Suspension	20
Deposition	31
Unspecified	4

The above indicates that 70% of court sentences were depositions, and 44% of sentences imposed by Bishops were depositions. Admonition was not used at all by the reported courts, and in only 23% of the cases by Bishops.

Appeals. Only one appeal was reported, and it is in progress so no details were reported.

Preparedness

Title IV Personnel. Each diocese was asked to indicate which of the various players under Title IV it had in place and ready to act. Of the 67 dioceses responding, the following are their responses:

Position	In Place		Not in Place	
	No.	%	No.	%
Church Attorney	48	72	17	25
Ecclesiastical Trial Court	64	96	1	1
Lay Assessors	25	37	38	57
Consultants	38	57	26	39
Advocates	37	55	26	39
Conciliators	21	31	41	61
Defense Counsel	12	18	51	78

With respect to defense counsel, the survey was not clear that a positive response was requested only if defense counsel were provided at diocesan expense; consequently, it may be that some of the 12 dioceses indicating that defense counsel were in place only meant that they were available, but not necessarily at diocesan expense.

Training. Twenty-three dioceses (34%) indicated that they had training programs for at least some of the Title IV positions. The responses indicated, however, that many of these were *ad hoc* training efforts on an individual, as needed basis or were generalized training sessions such as the more common sexual misconduct sessions generally available, or information sessions on Title IV generally that have been made available over the past few years. At best, it appears that most dioceses have no training programs in place.

Budgets. Only 18 dioceses (27%) responded affirmatively to the question of whether they have a budget line item for Title IV matters. Several of these indicated that the budget item in question was actually for broader purposes, such as pastoral care of clergy, but could be used for Title IV expenses. Many respondents indicated an awareness that a Title IV proceeding could have disastrous financial consequences for the diocese. Annual budgeted amounts ranged from $1,000 to $40,000 among the 18 dioceses.

Evaluation of Title IV

Each respondent was asked whether he or she thought Title IV worked well, and to explain the response. Each was also asked if they had recommended changes for Title IV.

Bishops Diocesan. Fifteen of the responding Bishops indicated that they had no experience with Title IV and so could not comment. Of those with experience, 20 (38% of the total Bishops responding and 53% of the experienced Bishops responding) said they thought Title IV worked well. Ten (19% of the overall number and 26% of the experienced Bishops) thought it did not work well. Three Bishops gave ambiguous answers, three declined to express an opinion, and one said it was too soon to tell.

The Bishops who expressed the opinion that Title IV has worked well cited the following in support of that opinion: 1) that the process is clear and appropriate, 2) that it is fair, 3) that it establishes boundaries and definitions, 4) that the Bishop, Canon to the Ordinary and Chancellor can handle many situations informally, and that the temporary inhibition process promotes a pastoral resolution, and 5) that it has helped the church to focus on what is acceptable behavior.

The Bishops who said that Title IV had not worked well most often cited an inability to respond pastorally because of Title IV responsibilities. In addition, they said that Title IV 1) is too complicated and "muddy", 2) is difficult, expensive, judicial and cumbersome, 3) is too legalistic, 4) is oriented to conflict, not reconciliation, and 5) does not provide for effective aftercare to congregations. One Bishop felt that some of the title IV appointments (Consultants, Advocates etc.) should be made *ad hoc* rather than be standing positions. One expressed an interpretive problem relating to renunciations.

The following comments were made in response to a request for recommendations for changes to Title IV:

- Title IV needs an articulated theological foundation
- It should be put aside and start over
- Change from a criminal to a licensing model; have hearings, not trials
- Adopt a corporate disciplinary process, with clearly defined violations and penalties; have nothing resembling a court
- Bishop should have more opportunity to react pastorally and quickly
- Most clergy are not equipped to preside at trials
- Pretrial mediation guides would be helpful
- Authority to inhibit is too limited
- Need a procedural flow chart to help understand the process
- There is a problem relating to convening a court to try a Priest who is in prison far from the diocese.

Chancellors. Of the 30 Chancellors who responded, 14 said they had no experience and could not voice an opinion. Eleven (37% of the total and 78% of those voicing an opinion) said Title IV worked well. Three (10% of the total and 22% of those expressing an opinion) said it did not work well. The other two did not express an opinion.

Among the Chancellors who felt Title IV has worked well, the following explanations were given: 1) there is a clear sense of due process, and 2) the threat of Title IV proceeding encourages Voluntary Submission to Discipline.

Those Chancellors who felt Title IV has not worked well cited the following: 1) the Bishop's role is unclear, and not pastoral, 2) there are too many "advocates" requiring too much *pro bono* legal work for the church, 3) there is confusion and consternation among the clergy, 4) Title IV is based on the wrong model, and 5) appeal proceedings and *pro se* proceedings take too long and are very difficult and unclear.

The responding Chancellors made the following recommendations for changes:

- Chancellors to prosecute actions
- Title IV should be completely reworked
- More definite rules of procedure would be helpful
- Separate the provisions of Title IV into 1)Priest & Deacons, 2)Bishops and 3) appeals, with procedural and evidentiary matters in a separate place.

- Make time limits shorter, with sanctions
- Local rules can be adopted to improve the process.
- Bishop needs broader discretion to act before forwarding charges to Standing Committee
- Deal with the cost of defense counsel
- Bishop's role should be clarified
- Rewrite completely based on a professional discipline model such as lawyers and doctors have
- Require each diocese to train and pay for the services of all required personnel
- One memorandum received made specific recommendations with respect to confidentiality/public disclosure, pro se proceedings, the duty to appear and give testimony, permissible sentences, and involuntary statements, all arising out a particular proceeding.