

ECCLESIASTICAL TRIAL COURT
EPISCOPAL DIOCESE OF CENTRAL NEW YORK

In the Matter of

The Episcopal Diocese of Central New York

Presentment against

The Rev. David G. Bollinger

ANSWER TO PRESENTMENT

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**ANSWER TO
PRESENTMENT**

The Respondent Rev. David G. Bollinger, for his Answer to the Presentment in the above-captioned proceeding, through his attorneys Levene Gouldin & Thompson, LLP, herein states:

Denies each and every allegation set forth in the Presentment, including claimed violations of the following Canons of the Episcopal Church:

Title IV, Canon 1.1(a) - Crime

Title IV, Canon 1.1(b) - Immorality

Title IV, Canon 1.1(e) - Violation of the Constitution and Canon of the General Convention

Title IV, Canon 1.1(f) - Violation of the Constitution or Canons of the Diocese in which the person is canonically resident

Title IV, Canon 1.1(h)(1) and (2) - Any act which involves a violation of ordination vows

Title IV, Canon 1.1(j) - Conduct unbecoming a Member of the clergy

Title I, Canon 7 - Business methods in church Affairs have been violated

Title III, Canon 9.5(b)(6) - Improper use of Discretionary Funds entrusted to the Rector of St. Paul's Parish

Title IV, Canon 14.2 - Inappropriate resort to secular courts

AS AND FOR A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE ALLEGATIONS SET FORTH IN THE PRESENTMENT, THE RESPONDENT HEREIN ALLEGES:

1. The alleged offenses fail to contain the factual specificity required by Title IV of the Canons, and in particular Section 45, which requires both a separate accusation addressed to each offense and 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.

AS AND FOR A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THE RESPONDENT HEREIN ALLEGES:

2. Upon information and belief, all monies expended by the respondent from the funds of the St. Paul's parish, including any monies which were for the benefit of the respondent, were spent with the knowledge and consent of the leadership of his parish consistent with opinions previously offered by the Comptroller of the Diocese, the Bishop himself, and the attorney involved in creating the trust which underwrote these "discretionary" expenses.

AS AND FOR A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, THE RESPONDENT HEREIN ALLEGES:

3. The respondent and his wife have never been charged by the Internal Revenue Service with any underpayment of taxes and have had communications with the Internal Revenue Service in the past confirming that their reporting of income was consistent with Internal Revenue Service regulations.

**AS AND FOR A FOURTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE, THE RESPONDENT
HEREIN ALLEGES:**

4. Although the Presentment asserts claimed violations of law on the part of the respondent, the respondent has at no time been charged with any violation of the law, notwithstanding efforts on the part of the Diocese to seek prosecution of the unsubstantiated and unwarranted claims set forth in the Presentment.

**AS AND FOR A FIFTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE, THE RESPONDENT
HEREIN ALLEGES:**

5. Upon information and belief, the Diocese has chosen to disregard clear evidence from the leadership at St. Paul's Church including, but not limited to, the letter from its Vestry dated 9/8/05 affirming that Father Bollinger has not violated any law or any canon and that any bookkeeping or accounting errors on the part of the church or the respondent are simply that, and are not any evidence of larceny, misappropriation, or any other alleged wrongdoing on the part of the church or Father Bollinger.

**AS AND FOR A SIXTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE, THE RESPONDENT
HEREIN ALLEGES:**

6. Upon information and belief, the pastoral directive issued by Bishop Adams was improper, without authority and contrary to Canon IV in that, among other things, it was a self-serving reprisal to comments by the respondent that were taken by the Bishop as critical of the Diocese and the Bishop with respect to their failure to investigate and otherwise properly handle a claim of pedophilia, which by mid-January, 2005, had been further documented by an Affidavit from the victim himself. The Diocese

claimed that it was unable to locate the victim, but the respondent and his wife made a search of their own after hearing this claim of the Diocese and had no trouble in locating the victim, although admittedly he did not have a permanent residence at the time. Within one week of the Affidavit being obtained and provided to the Diocese, the Bishop, in an effort to silence the respondent, issued the unjustified, punitive directive calculated to stifle even legitimate dissent or criticism within the Diocese.

**AS AND FOR A SEVENTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
RESPONDENT HEREIN ALLEGES:**

7. The pastoral directive issued by Bishop Adams on January 18, 2005 was not valid and did not conform with Title IV of the Canons. The issuance of such pastoral directive was in part motivated by the Bishop's ire resulting from Father Bollinger's criticism of the handling of the pedophilia claims and the conduct of the Comptroller of the Diocese, who, unlawfully and without authorization, gained access to a personal account of the respondent and his wife.

8. Addressing the specifics of the pastoral directive issued on January 18, 2005, Father Bollinger fully complied or substantially complied with any and all pastoral directions of Bishop Adams which it was within the authority of the Bishop to issue.

9. Upon information and belief, the Bishop had no factual foundation for or ecclesiastical authority for directing a physical and psychiatric examination of the respondent at a time and place of the Bishop's choosing, given the widely recognized privacy which all individuals enjoy with respect to their physical and mental health.

10. Upon information and belief, the Bishop has no authority to deny Father Bollinger the ability to communicate with other clergy, alleged victims or families of alleged victims of sexual abuse.

Such direction was clearly designed to prevent the exposure of the conduct which had been engaged in by the Diocese, and in particular Bishop Adams, which was wholly contrary to his own obligation to the Diocese, the clergy within the Diocese, and particularly those persons who were victims of any abuse or the families of those victims.

11. The Presentment, in purporting to identify the “response” on the part of the respondent to the pastoral directive, sets forth allegations which are patently incorrect and false in that there never were any meetings involving the Bishop and the respondent on November 22, 2005 or December 22, 2005, or any other date during that immediate time period.

12. Father Bollinger has provided all contact information relevant to the victim who came forward that he was authorized to disclose. Upon information and belief, Bishop Adams and the Diocese made little or no effort to try to contact the victim, even after an Affidavit from the victim was presented.

13. Father Bollinger cooperated with the forensic audit, as did the leadership of St. Paul’s Church, and even the auditor himself said he would “describe the Wardens and Father Bollinger as cordial and cooperative.”

14. The Bishop’s directive to Father Bollinger to submit a written resignation of his membership on the Diocesan Ecclesiastical Court exceeded the authority of the Bishop, particularly in light of the fact that Father Bollinger had been elected to the position on the court, and was not appointed by the Bishop or serving at his pleasure.

**AS AND FOR AN EIGHTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
RESPONDENT HEREIN ALLEGES:**

15. The Temporary Inhibition originally issued by Bishop Adams lapsed for a variety of reasons, including his failure to provide grounds for extending such Inhibition, the failure of the Diocese

to provide an appropriate hearing with respect to the merits of said Inhibition, and ultimately the failure of the Diocese to provide a timely hearing with respect to the second extension of the Inhibition, despite such hearing being properly requested by the respondent.

**AS AND FOR A NINTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE, THE RESPONDENT
HEREIN ALLEGES:**

16. The claim of any undue or immoral influence upon the Vestry of St. Paul's Church is totally false, and the assertion of such a claim by the Bishop is in fact immoral because he knows full well that the Vestry has functioned as a prudent and independent voice in the governance of St. Paul's and that the Vestry is comprised of sufficiently strong and capable people that there is no real potential for such influence. Upon information and belief, the Vestry has had its own independent legal counsel throughout much of these proceedings. This assertion by the Bishop is simply calculated to undermine the persuasiveness of the voice of the Vestry as it has attempted repeatedly to convince the leadership of the Diocese that its conduct is off base and unwarranted. Ironically, it appears that the Bishop has utilized his influence over individuals and groups within the Diocese to deprive the respondent of due process, to cover up the truth and to otherwise try to shield himself from any criticism, however well founded it might be.

**AS AND FOR A TENTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE, THE RESPONDENT
HEREIN ALLEGES:**

17. Although it is true that a civil action was commenced in November, 2005 against the Bishop, the Diocese and a former employee of the Diocese, said action was not in violation of the Canons

in that it did not seek interpretation by a secular court of the Constitution and Canons of the church, and it was not for the purpose of delaying, hindering or reviewing any proceeding under the Canons.

18. If said civil action represented a technical breach of the Canons, upon information and belief, it was fully justified by the failure of the Diocese and the Bishop to afford the respondent Father Bollinger any reasonable due process and/or to proceed with the procedures outlined in the Canons in any timely manner.

**AS AND FOR AN ELEVENTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
RESPONDENT HEREIN ALLEGES:**

19. The respondent reserves all procedural objections with respect to any documents required to be served as part of the process which have not been provided to him.

**AS AND FOR A TWELFTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
RESPONDENT HEREIN ALLEGES:**

20. The proceedings in this Presentment should be stayed due to the psychological and/or psychiatric issues currently confront the respondent because his care givers indicate that he is not in a position to fully participate in his own defense and attempting to participate would be contrary to his mental and physical health at this time.

**AS AND FOR A THIRTEENTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
RESPONDENT HEREIN ALLEGES:**

21. The Presentment fails to state a proper charge in that among other things, and in addition to its lack of factual specificity, it fails to identify a request for relief.

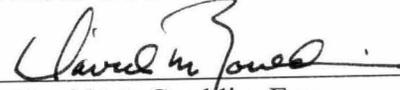
**AS AND FOR A FOURTEENTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
RESPONDENT HEREIN ALLEGES:**

22. Some of the individuals charged with serving on the ecclesiastical court are predisposed with respect to a finding concerning any charges against the respondent and should therefore be disqualified from serving on the court.

WHEREFORE, the respondent requests that the Presentment served upon him be dismissed or, in the alternative, that it be stayed pending a specific identification of "factual" charges to which he can respond and pending his recovery from psychiatric conditions which compromise his ability to effectively defend himself in this proceeding.

DATED: Vestal, New York
March 30, 2006

LEVENE GOULDIN & THOMPSON, LLP



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