



# The Episcopal Church Diocese of Delaware

The Rt. Rev. Wayne P. Wright  
Bishop

February 9, 2010

To: Members of the Ecclesiastical Court of Review, Province III  
The Hon. William Wenner, Lay Assessor  
Ashby Thompson, Clerk

From: Wayne P. Wright, Bishop of Delaware  
Presiding Judge

Re: Opinion of the Court of Review  
In the Matter of  
The Rev. Randolph Merritt Bragg v. The Diocesan Review Committee  
Diocese of Virginia

Along with this memo I am sending a copy of the opinion of the Ecclesiastical Court of Review, Province III. The opinion has been sent by certified mail to the Appellant, the Appellee, and the Diocesan Review Committee. Copies have been sent to the Bishop of Virginia, the President of Province III, and the Presiding Bishop's Office. Copies of court documents will be filed in the Bishop's Office, Diocese of Delaware. The complete set of the original court documents has been sent to the Archivist of the Episcopal Church.

Again, I would like to thank each of you for the time and attention you have given to the consideration of this matter. I would also like to give special thanks to Judge Wenner for his service to the court as Lay Assessor and the Ashby Thompson for her service as our Clerk.



# The Episcopal Church Diocese of Delaware

The Rt. Rev. Wayne P. Wright  
Bishop

February 9, 2010

To: Christopher Holleman, Counsel for the Appellant  
R. Scott Calkins, Esq, Counsel for the Appellee  
President, Diocesan Review Committee (Standing Committee), Diocese of Virginia

From: The Rt. Rev. Wayne P. Wright, Presiding Judge

Re: Opinion of the Ecclesiastical Court of Review, Province III  
In the Matter of  
The Rev. Randolph Merritt Bragg, Appellant v. The Diocesan Review  
Committee, Diocese of Virginia, Appellee

The Ecclesiastical Court of Review, Province III convened in the Episcopal Diocesan Center, Diocese of Maryland on Wednesday, December 16, 2009, 3 p.m. to consider an appeal by the Rev. Randolph Bragg from the decision and the adjudication of sentence of deposition of the Ecclesiastical Trial Court of the Diocese of Virginia.

By a unanimous vote, all members present and voting, the Ecclesiastical Court of Review, Province III affirms the decision and adjudication of the sentence of deposition of the Ecclesiastical Trial Court of the Diocese of Virginia. A copy of the opinion is enclosed.

cc: The Rt. Rev. Neff Powell, President, Province III  
The Rev. Barbara Seras, Provincial Coordinator  
The Rt. Rev. Shannon Johnston, Bishop of Virginia

Enc.

OPINION OF THE ECCLESIASTICAL COURT OF REVIEW OF  
THE EPISCOPAL CHURCH, PROVINCE III

APPEAL FROM THE ECCLESIASTICAL TRIAL COURT OF THE  
EPISCOPAL CHURCH, DIOCESE OF VIRGINIA

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PRESENTMENT	)
IN THE MATTER OF:	)
	)
The Rev. Randolph Merritt Bragg	)
	)
Appellant	)
	)
v.	)
	)
The Diocesan Review Committee,	)
The Diocese of Virginia	)
	)
Appellee	)

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OPINION OF THE COURT

This is an appeal by the Reverend Randolph Merritt Bragg from the decision and the adjudication of a sentence of deposition of the Ecclesiastical Trial Court of the Diocese of Virginia.

I. Issues Presented For Review

- A. Whether the Ecclesiastical Trial Court erred by denying Appellant's motion to dismiss for lack of jurisdiction based upon its finding that Appellant was canonically resident in the Diocese of Virginia at the time the charge was made by the Complainant, [REDACTED] P [REDACTED].
- B. Whether the Ecclesiastical Trial Court erred in denying Appellant's motion to dismiss on the basis that the process was tainted when there was

no procedural non-compliance causing substantial injustice or serious prejudice to Appellant.

C. Whether the Sentence adjudged by the Ecclesiastical Trial Court was excessive.

## II. Statement of the Case

Pursuant to Title IV, Canon 3.16 of the Canons of the General Convention,<sup>1</sup> on September 19, 2008, the Review Committee<sup>2</sup> issued a Presentment<sup>3</sup> arising out of a Charge made by [REDACTED] P [REDACTED] on January 25, 2008, against Appellant, the Reverend Randolph Bragg, concerning two incidents of improper touching that occurred in the spring of 2005, while Rev. Bragg was Rector of St. Andrews Episcopal Church, Arlington, Virginia. *App. Record*, 1.<sup>4</sup> The Presentment contained three counts: Count I for the Offense of Immorality under Canon IV.1.1(b), Count II for the violation of Ordination Vows under Canon IV.1.1(h), and Count III for Conduct Unbecoming a Member of the Clergy under Canon IV.1.1(j). *Id.*

On October 16, 2008, through counsel, Rev. Bragg answered the Presentment by denying the charges and moved to dismiss on the grounds that the Diocese of Virginia had no jurisdiction over him and that the process was “irretrievably tainted.” *App. Record*, 2 and 5. At the end of his memorandum in support of the motion to dismiss, in which he made precisely the same arguments in support of dismissal that he makes on appeal, Appellant stated that that he and his counsel would not participate further in the proceedings. *App. Record*, 5.

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<sup>1</sup> Unless otherwise indicated, the Canons being cited are the Constitution and Canons of the General Convention of the Episcopal Church.

<sup>2</sup> In the Diocese of Virginia, the Standing Committee of the Diocese serves as the Diocesan Review Committee. *See* Canon 27, Section 1, Constitution and Canons for Diocese of Virginia, 2007.

<sup>3</sup> Capitalized terms, unless otherwise defined, have the meanings found in Canon IV.15.

<sup>4</sup> References to the Appellate Record are to the tab number followed, where applicable, by the page number. Capitalized terms, unless otherwise defined, have the meanings found in Canon IV.15.

Following a hearing held on January 29, 2009, which Appellant and his counsel chose not to attend, the Ecclesiastical Trial Court issued an Order on February 4, 2009, denying Appellant's motion to dismiss. *See* Hearing Transcript at *App. Record*, 7, and Order at *App. Record*, 9. Based upon the uncontradicted evidence before it, the Ecclesiastical Trial Court found that Appellant was canonically resident in the Diocese of Virginia at the time of the Charge. *App. Record*, 9. Further, the Ecclesiastical Trial Court rejected the contention that the process was "irretrievably tainted", finding that "there was no procedural non-compliance causing material and substantial injustice or serious prejudice to the rights of the Respondent." *Id.* A telephone status conference was scheduled for February 18, 2009. *Id.*

Appellant's counsel responded to the February 4, 2009, Order by letter stating that his client would not participate in the status conference and reiterating that he and his client would not participate further in the proceedings. *App. Record*, 10. Notwithstanding advanced notice, Appellant and his counsel did not participate in the status conference. Accordingly, following the status conference, the Court set a briefing schedule for a motion for summary judgment. *App. Record*, 11.

On March 4, 2009, the Review Committee, by counsel, filed a motion for summary judgment pursuant to Rule 9 of the Rules of Procedure of the Ecclesiastical Trial Courts, with a supporting affidavit from the Complainant, and served the motion on Appellant's counsel. *App. Record*, 13. Appellant did not respond. Based upon the uncontradicted evidence presented in the affidavit accompanying the motion, by Order dated March 24, 2009, the Ecclesiastical Trial Court granted summary judgment (i.e. a determination that the Appellant had committed the offenses listed in the Presentment) and scheduled a sentencing hearing for May 13, 2009. *App. Record*, 14.

Appellant and his counsel did not attend the sentencing hearing despite having notice of the hearing. The Complainant testified at the hearing. *See* transcript of hearing, *App. Record*, 19. Following the hearing, on May 28, 2009, the Ecclesiastical Trial Court adjudged that the sentence of Deposition be imposed in accordance with Canon IV.12.1(d)(1)(ii). The present appeal followed. *App. Record*, 20.

### III. Summary of this Ecclesiastical Court of Review's Conclusions

Appellant was canonically resident in the Diocese of Virginia, both when the change was made and when the Offense occurred, and, therefore, he was subject to the jurisdiction of the Diocese. Further, the Review Committee fully complied with the Canons in connection with the issuance of the Presentment. Appellant was afforded the due process required by the Canons and voluntarily chose not to participate in the proceedings. The process was not “tainted” and there was no basis for dismissal. Finally, the sentence of Deposition was proper and is hereby affirmed.

### IV. Reasons

#### A. The Diocese of Virginia had Jurisdiction over Respondent.

Appellant's jurisdictional challenge is based upon his assertion that on June 9, 2008, he informed the Diocese that he “had been received into CANA and no longer considered himself a member of the Episcopal Church.” *See* Appellant's Appeal, at p. 2. He also cites to a July 31, 2008, letter from the Rt. Rev. Martyn Minns, found at *App. Record*, 2 at p. 4, in which he is notified that “the conditions of your earlier conditional approval have been satisfied” and he has been received as a priest in CANA. Appellant's June 9, 2008, notification that he had been “received” into CANA came well after January 25, 2008, the date the Charge which is the subject of the Presentment was made, and while he was Amenable to Presentment for an

Offense. Accordingly, in its February 4, 2009, Order, the Ecclesiastical Trial Court properly found that it had jurisdiction over Appellant.

Canon IV.14.19, describes the jurisdiction for priests Amenable for Presentment for an Offense committed by them as follows:

Sec. 19. Jurisdiction. Bishops, Priests and Deacons are Amenable for Offenses committed by them; a Bishop to a Court of Bishops, and a Priest or Deacon to the Ecclesiastical Authority of the jurisdiction in which the Priest or Deacon is canonically resident at the time the Charge is made or in which the Offense occurred, except as provided in Canon IV.11.3(e).

The timing of Appellant's notification of his reception into CANA is a transparent, but futile, attempt to escape responsibility for answering the Charge. It was undisputed that Appellant was canonically resident in the Diocese of Virginia when the Charge was made and when the Offenses occurred. Under Section 19, quoted above, Appellant cannot use his acceptance as a member of CANA as a procedural means to avoid having to answer for a Charge, made when he was canonically resident in the Diocese, for Offenses he committed while serving as a priest in the Diocese. Accordingly, the Ecclesiastical Trial Court's ruling that the Diocese had jurisdiction over Appellant was clearly correct.

Although Appellant's current canonical status is not pertinent to the issue of jurisdiction in this case, it is worthy to note that his canonical status in the Diocese of Virginia did not change with his June 9, 2008, notice of his reception as a member of CANA or with the July 31, 2008, letter from the Rt. Rev. Minns. Pursuant to Canon III.9.4, a priest canonically resident in the Diocese of Virginia may only be transferred from that diocese to another by obtaining Letters Dimissory from the Bishop of the Diocese, which Appellant did not do. To date, no action has been taken by the Diocese of Virginia under Canon III to affect a

transfer or otherwise cause the discontinuance of Appellant's canonical status within the Diocese.<sup>5</sup>

Even if Respondent's June 9, 2008, notice was sufficient to discontinue his canonical status within the Diocese of Virginia, Respondent was still subject to the jurisdiction of the Diocese because the alleged Offense occurred within the Diocese (when Respondent was Rector of St. Andrews, Arlington, Virginia) and he was canonically resident at the time the Charge was made (January 25, 2008). Accordingly, the motion to dismiss for lack of jurisdiction was properly denied.

B. Respondent's arguments about the process are not a basis for dismissal.

On Appeal, Appellant repeats the second argument he presented to the Ecclesiastical Trial Court in his motion to dismiss -- to wit: that the manner in which the Diocese of Virginia handled the Charge was "irretrievably tainted." The Ecclesiastical Trial Court properly found that there was no procedural non-compliance causing material and substantial injustice or serious prejudice to the Appellant.

Appellant's disagreement with the Diocese's actions in response to the Charge is not a basis for dismissal. Citing Canon IV.3.12, Respondent complains that, rather than "immediately" referring the matter to the Church Attorney for investigation, the Diocese turned the matter over to a Diocesan Response Team. This did not violate any Canon. Canon IV.3.12 merely states that the Church Attorney will immediately investigate a Charge that is referred by the Review Committee, it does not establish a time limit for the referral to the Church Attorney.

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<sup>5</sup> By letter dated July 22, 2008 the Bishop of Virginia issued a Temporary Inhibition against Appellant pursuant to the provisions of Canon IV.1.2(a). *App. Record*, 6, Exhibit A. Significantly, the June 9, 2008, notice upon which Appellant relies is not a declaration of his renunciation of his orders and a desire to be removed therefrom; in the notice he specifically said that "This is not to be construed as a renunciation of my orders." *App. Record*, 7, Exhibit A. Even if he had declared his desire to renounce his orders, he was Amendable to Presentment for an Offense at the time and a declaration of renunciation would have to be accepted by the Bishop and Standing Committee. Canon IV.8.4. Further, due to the then pending Charge and the issuance of the Presentment, no action was taken under Canon IV.10 for abandonment. *App. Record*, 6, Exhibit A.



Canon IV.3.11 sets forth the general procedures to be followed by the Review Committee to determine whether an Offense may have occurred if the Charge is true. While it states that the Review Committee will convene within 30 days to consider the Charge, it does not mandate a time period within which the Committee must make its determination and, depending on its determination, refer the matter to the Church Attorney for investigation. Under Canon IV.3.13, the Church Attorney has 60 days after referral (which can be extended for “good and sufficient cause”) to investigate a Charge and submit a confidential report to the Review Committee. The Church Attorney conducted the investigation in accordance with the Canons. *App. Record*, 7, p. 11. Appellant does not contend otherwise. In sum, the process that led to the issuance of the Presentment was conducted in accordance with the Canons.<sup>6</sup>

Even if there was non-compliance with a time period specified in Canon IV.3 (which pertains to Presentments), it would not be grounds for dismissal, except in very limited circumstances. Canon IV.3.20 states: “Non-compliance with time limits set forth in this Canon shall not be grounds for a dismissal of a Presentment unless such non-compliance shall cause material and substantial injustice to be done or seriously prejudice the right of a Respondent as determined by the Trial Court on motion and hearing.” Here all time limits were followed. But even if they were not, Appellant has failed to show how he was seriously prejudiced, or how a material or substantial injustice has been done, by the timing of the referral to the Church Attorney.

Appellant’s complaints of unfairness relate primarily to the conduct of the Diocesan Response Team and the manner in which the Charge was addressed with the congregation at St. Andrews, not to the timing of the referral of the matter to the Church Attorney. There is no

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<sup>6</sup> Appellant also complains about not being given certain documents regarding the Charge. He has not cited, however, to anything he didn’t receive that the Canon’s require he be given. His own discussion reflects that he was informed of the substance of Complainant’s letter by the Diocesan Response Team when he met with the Team. During the investigation by the Church Attorney, Respondent’s counsel was provided a copy the Complainant’s letter. *App. Record*, 6, p. 4, n. 3.

prohibition in the Canons on the appointment of a response team nor do the Canons prescribe how a Charge is to be addressed with the congregation. The fact that Respondent disagrees with how the Diocese and the response team responded to the Charge, or how the matter was addressed by the congregation, is not a basis for a dismissal of the Presentment.

Although not required by the Canons, Respondent was given opportunities to respond to the Charge and explain his side of the events before the issuance of the Presentment. Specifically, Respondent was offered the opportunity to meet with the Diocesan Response Team and, subsequently, the Church Attorney when the Charge was being investigated; in both cases he agreed to do so. Further, had he chosen to participate in the Presentment proceedings beyond filing a motion to dismiss, Appellant (with the aid of his legal counsel) would have had the right to conduct discovery, cross-examine witnesses, and present evidence at trial pursuant to the Federal Rules of Evidence. If any evidence was somehow “tainted” due to events that transpired after the Charge, that is something that Appellant could have argued during trial and it would have gone to the weight of the evidence at trial, it is not a basis for dismissal of the Presentment. Appellant made a calculated decision not to participate in the proceedings, despite being given the opportunity to do so at each stage of the proceedings. Having made the decision not to participate, he cannot now use that decision as a basis for complaining that he was not afforded a fair process.

In sum, there is no basis to overturn the Ecclesiastical Trial Court’s decision to deny the motion to dismiss on the grounds that the process was somehow “irretrievably tainted.”

C. The Sentence is Not Excessive.

Appellant argues that his conduct does not rise to a level that justifies Deposition, as opposed to a lesser discipline, but he does not state what lesser discipline he believes would be

appropriate. Not only do the Canons permit Deposition for the Offenses in question, Deposition was the only appropriate sentence under the circumstances. Admonition or Suspension would not have been appropriate, particularly when Appellant had already declared he no longer considered himself a member of the Episcopal Church subject to the discipline and authority of the Church. Further, because Appellant chose not to participate in the sentencing phase of the proceedings, and present any argument or evidence as to the appropriate disposition, he should not be complaining about the Sentence in any event.

Appellant's contention that there needs to be "long a term affair, abuse of the counseling relationship, or sexual assault" for the sentence of Deposition to be imposed reflects his lack of appreciation for the seriousness of his conduct and its impact on the victim. As evidenced by Complainant's testimony during the sentencing hearing, *App. Record*, 19, Appellant's acts had a significant emotional impact on her, to the point of requiring her to seek professional counseling. The Canons do not establish different levels of Sentences dependent upon the perceived egregiousness of unwanted sexual contact. The Ecclesiastical Trial Court acted within its authority in imposing the Sentence of Deposition.<sup>7</sup>

## V. Conclusion

Appellant was subject to the jurisdiction of the Diocese of Virginia, the proper process was followed, and the sentence of Deposition was proper for Appellant's Offenses. Accordingly, the

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<sup>7</sup> On November 19, 2009, the Appellant, submitted a "supplement" to his appeal, attaching a copy of a letter dated May 14, 2009, which purports to provide the results of a polygraph examination of Appellant. Also attached to the submission were copies of two letters from the Rt. Rev. Martyn Minns of the Convocation of Anglicans in North America ("CANA"). In the submission, Appellant advises that "CANA, the ecclesiastical body to which Rev. Bragg now belongs, has reviewed the charges against him objectively and cleared him." Appellant asserts that the Episcopal Church should do the same. This evidence was not considered for two reasons. First, except for purposes of correcting the record, no new evidence can be considered by the Court of Review. Canon IV.4.38. The polygraph "report" is not being offered to correct any errors in the record, so it and the two letters from Rt. Rev. Minns, which were also not introduced into evidence below, cannot and should not be considered on appeal. Second, if Rev. Bragg had accepted the jurisdiction of the Trial Court and presented evidence, the polygraph "report" would have been inadmissible because it is hearsay. In fact, in many jurisdictions opinions of a polygraph operator or others interpreting polygraph test results are not admissible due to their lack of reliability. See for example *Turner v. Commonwealth*, 2009 Va. Lexis 102 (Nov. 5, 2009).

decision and the adjudication of a sentence of deposition of the Ecclesiastical Trial Court is hereby affirmed.


**[COUNTERPART SIGNATURES OF THE SEVEN MEMBERS OF THE  
ECCLESIASTICAL COURT OF REVIEW APPEAR ON THE  
FOLLOWING PAGES]**

A handwritten signature in cursive script, reading "Wayne P. Wright". The signature is written in dark ink on a white background.


The Rt. Rev. Wayne P. Wright,  
Presiding Judge


  
Terry Michael Banks, Judge

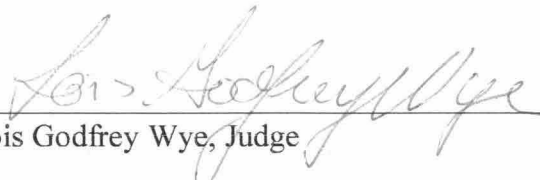
*Enrique R. Brown*  
The Rev. Enrique R. Brown, Judge

  
The Rev. Canon Carl N. Kunz, Jr., Judge



  
The Rev. Dr. John R. Price, Judge

  
Russell R. Reno, Jr., Judge

  
Lois Godfrey Wye, Judge