COURT OF REVIEW
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No. 97-002
(Argued February 19, 1998 Decided August 31, 1998)

THE STANDING COMMITTEE OF THE DIOCESE OF CONNECTICUT,

Presenter-Appellee,

---v.---

THE REV. BRUCE W. JACQUES,

Respondent-Appellant.

Decision on Appeal from a Judgment of the Ecclesiastical Trial Court of the Diocese of Connecticut

Before: **Scruton, P.J., Burke, Gibson, Goewey, Ineson, Martin and Robinson**

Appeal from a final judgment of the Ecclesiastical Trial Court of the Diocese of Connecticut. The Court found Respondent guilty of two separate violations of the Canons of the Protestant Episcopal Church in the United States of America. The violations involved charges of violations of Ordination vows, within the meaning of Title IV.1.1(h) and of Conduct Unbecoming a Member of the Clergy, within the meaning of Title IV.1.1(j).

Affirmed.

Randall J. Carreira, Esq., Bridgewater, Connecticut *for Respondent-Appellant.*

George P. Seabourne, Esq., Thomaston, Connecticut, Church Attorney, *for Presenter-Appellee.*

Hamilton Doherty, Jr., Esq., Bulkley, Richardson and Gelinas, LLP, Springfield, Massachusetts, *Lay Assessor.*

Per Curiam:

The Rev. Bruce W. Jacques (Respondent) appeals a judgment of the Ecclesiastical Trial Court of the Diocese of Connecticut finding him guilty on each of two counts of an amended Presentment (Complaint) voted by the Standing Committee of the Diocese of Connecticut. Count One charges that Respondent disregarded or disobeyed two separate Pastoral Directions of his Bishop, in violation of Title IV.1.1(h).[1] Count Two charges that Respondent used inappropriate language in the presence of minor children on two separate occasions in June 1994, in violation of Title IV.1.1(j). We affirm.

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[1]Except as otherwise noted, references to Title IV of the Constitution and Canons of the Protestant Episcopal Church in the United States of America are to the 1994 edition, effective on and after January 1, 1996.

I. BACKGROUND

By a Summons dated November 26, 1996, Reverend Bruce W. Jacques of New Milford, Connecticut, was served with Notice of a Complaint before the Ecclesiastical Trial Court of the Diocese of Connecticut alleging:

> Count One: That the Rev. Bruce W. Jacques has committed an offense under Title IV, Canon 1, Sec. 1(h) and is in violation of his ordination vows as set forth on page 526 of the Book o[f] Common Prayer in that he disobeyed or disregarded Pastoral Directions of the Bishop dated September 13, 1994, May 30, 1995 and September 6, 1995.
>
> Count Two: That The [sic] Rev. Bruce W. Jacques has committed an offense under Title IV, Canon I, Sec. 1(j), conduct unbecoming a member of the clergy in that he used inappropriate language on or about June 4, 1994 to a minor child and on or about June 17, 1994 to another minor child.

By an amendment filed April 21, 1997, the date "September 13, 1994" was deleted from Count One of the Complaint.

On December 19, 1996, the first day of trial, Respondent appeared without counsel. At the conclusion of proceedings that day, he asked the Court to appoint an attorney to represent him at the expense of the Diocese, as provided for in the Canons of the Diocese of Connecticut.

On March 7, 1997, after an exchange of correspondence and the submission of financial information from Respondent, the Presiding Judge notified Respondent that the Diocese would pay up to $2,000 to assist him with attorney's fees. Thereafter, Randall J. Carreira, Esq. appeared as counsel for Respondent.

The second and final day of trial was held on July 1, 1997, and on July 8, 1997, the Court entered Judgment of "guilty" as to each Count of the Complaint.

After affording all appropriate parties an opportunity to submit material for the Court's consideration with respect to Sentence, and after receiving written submissions from Respondent and the Church Attorney, the Court, on September 2, 1997, adjudged and imposed a Sentence of Deposition with respect to both Counts.

Respondent filed a timely appeal, and, following briefing, oral argument on the appeal was heard on February 19, 1998.

II. STANDARD OF REVIEW

Respondent challenges the decision of the Court on a number of grounds. Some of these grounds were raised as objections during proceedings below. Others are raised for the first time on appeal. This court applies the following standards to its review of these issues. With respect to those issues as to which objection was made below:

> [T]he Trial Court's legal conclusions are subject to *de novo* review, and its factual determinations are subject to review under the clearly erroneous standard. See, e.g., United States Lines v. United States (In re McLean Indus.), 30 F.3d 385, 387 (2d Cir. 1994), cert. denied, 513 U.S. 1126 (1995). In addition, we generally review any discretionary aspect of the Trial Court's rulings for abuse of discretion. See, e.g., Allstate Life Ins. Co. v. Linter Group, Ltd., 994 F.2d 996, 999 (2d Cir.), cert. denied, 510 U.S. 945 (1993). With respect to evidentiary and other objections that should have been, but were not properly presented at trial, however, we review the proceedings only for plain error. See, e.g., Zolfaghari v. Sheikholeslami, 943 F.2d 451, 454 n.2 (4th Cir. 1991); Denison v. Swaco Geolograph Co., 941 F.2d 1416, 1422 (10th Cir. 1991); see also Constitution & Canons, Title IV.4 App. B.1 [1997 ed.]; Fed. R. Evid. 103(d).
>
> It bears mention that the plain error standard is more deferential than the other standards identified above. In general, plain error arises in the "very limited circumstances" in which the "refusal to consider [the matter will] result in the denial of fundamental justice." Zolfaghari, 943 F.2d at 454 n.2. Further, in order for plain error to be found, "there must have been some basis for charging the [trial] judge with knowledge [of the basis for the error] which the party seeking to raise the point [on appeal] had failed to communicate to the district judge." Id. Finally, plain error is limited to mistakes "that 'almost surely affected the

> outcome of the case.'" Buchanna v. Diehl Machine, Inc., 98 F.3d 366, 372 (8th Cir. 1996) (quoting Champagne v. United States, 40 F.3d 946, 947 (8th Cir. 1994)).

Standing Comm. of Diocese of Mass. v. Hiles, Province One Court of Review, No. 97-001, 5-6 (Mar. 20, 1998) (footnotes omitted).

> In general, with respect to decisions over which a court exercises discretionary authority, the court will not be considered to have "abused its discretion unless one or more of the following circumstances is present: (1) the record contains no evidence upon which the court could have rationally based its decision; (2) the decision is based on an erroneous conclusion of law; (3) the decision is based on clearly erroneous factual findings; or (4) the decision clearly appears arbitrary." Gile v. United Airlines, Inc., 95 F.3d 492, 495 (7th Cir. 1996); see also Statewide Detective Agency v. Miller, 115 F.3d 904, 906 (11th Cir. 1997) ("'By definition, . . . the abuse of discretion standard allows a range of choice for the district court, so long as that choice does not constitute a clear error of judgment.'") (quoting In re Rasbury v. Internal Rev. Serv., 24 F.3d 159, 168 (11th Cir. 1994)); Kayes v. Pacific Lumber Co., 51 F.3d 1449, 1464 (9th Cir.) ("This court finds an abuse of discretion when it has a 'definite and firm conviction that the court below committed a clear error of judgment in the conclusion that it reached upon weighing of the relevant factors.'") (quoting United States v. Plainbull, 957 F.2d 724, 725 (9th Cir. 1992)), cert. denied, 116 S. Ct. 301 (1995).

Id. at 5 n.3.

III. DISCUSSION OF ISSUES

1. *In Camera* Review of Documents. As his first ground of appeal, Respondent argues that the Court erred by reviewing, *ex parte*, certain documents delivered by the Church Attorney to the Court. By a pretrial Order in response to Respondent's Requests for Production of Documents, the Court ordered the Church Attorney to deliver to it "all writings not previously submitted that were involved in the investigation ordered by the Standing Committee and which led to the filing of the Complaint. The Court will examine those documents *in camera* and will determine their relevancy and the further disposition of those documents." The Church Attorney

delivered the documents as requested. The Court identified from that material Exhibit H, an undated report of the Diocesan Response Team, and Exhibit I, a letter dated September 13, 1994 from Bishop Coleridge to the father of one of the minor victims, and directed that these documents be produced to counsel for Respondent. Copies of those documents had previously been provided by the Church Attorney to counsel for Respondent. Exhibit H was never admitted into evidence; Exhibit I was admitted. Respondent's objection to the procedure followed by the Court is based primarily on an assertion that the Court was irreparably prejudiced by its review of Exhibit H, the report of the Diocesan Response Team. This objection having been raised at trial, we review the Court's rulings and procedures for abuse of discretion.

Respondent argues that the Church Attorney's providing of these documents to the Court constituted an improper *ex parte* attempt to influence the Court. There was no improper *ex parte* communication from the Church Attorney to the Court. In accordance with its order to the Church Attorney, the Court reviewed documents sought by Respondent over the Church Attorney's objection. It is entirely proper for the Court to review documents, including potential evidentiary material, *in camera*, to determine whether they should be produced in response to a discovery request. See, e.g., Kerr v. District Court, 426 U.S. 394, 405-06 (1976) ("Court has long held the view that *in camera* review is a highly appropriate and useful means of dealing with claims of government privilege"); Deluca v. Gateways Inn, Inc., 166 F.R.D. 266, 267 (D. Mass. 1996) (court may review psychologist's records *in camera* to resolve discovery dispute). Except in extreme cases, judges are presumed capable of disregarding inappropriate information and rendering judgment on the basis of properly presented evidence. See Gulf States Utils. Co. v. Ecodyne Corp., 635 F.2d 517, 519 (5th Cir. 1981) (trial judge is presumed capable

of disregarding inadmissible evidence of which he has knowledge); Mantle v. Upper Deck Co., 956 F. Supp. 719, 729 (N.D. Tex. 1997) ("even when judges sit as triers of fact, they are presumed competent to hear prejudicial information without becoming biased or partial"). Most of the information contained in Exhibit H was presented to the Court in testimony on the first day of the trial. The contents of Exhibit H were not material to a finding of guilt on Count Two of the Presentment. The evidence that was material to a finding of guilt on Count Two was uncontested by Respondent. There is no evidence or reason to presume that the Court was prejudiced by its *in camera* review of Exhibit H.

In the secular courts, it is sometimes possible to have such documents reviewed by a magistrate rather than by the judicial officer who will sit as finder of fact. Title IV does not provide for such procedures. The procedure followed by the Court is substantially that which is provided for under the Federal Rules of Civil Procedure (Rules 26(b)(5) and 26(c)), in the face of an objection to discovery and a request for a Protective Order. There was no abuse of discretion by the Court.

2. Presentence Statement from the Church Attorney. Respondent next argues that the Court erred by accepting a presentence statement from the Church Attorney dated August 11, 1997. The Court entered Judgment on the Complaint on July 8, 1997, and announced its intention to adjudge sentence on September 2, 1997. As provided by Title IV.4.23-25, the Court instructed the parties that "[d]uring the intervening period, the Respondent may submit written statements in mitigation or excuse, the Church Attorney may submit written recommendations as to the sentence to be adjudged, and the Complainant or Victims may submit written statements pertaining to the sentence to be adjudged." Respondent objects to the August 11, 1997

submission by the Church Attorney on the ground that it included references to matters not in evidence -- i.e., references to secular litigation brought by Respondent against the Bishop and alleged threats by Respondent to impugn the Bishop's character -- which were inflammatory and prejudicial to the Respondent. Respondent did not object to the submission prior to the imposition of sentence. We review the Court's consideration of this submission, therefore, under a plain error standard. We conclude that no error occurred.

The August 11, 1997 letter from the Church Attorney is in the nature of a presentence report, submitted after the Court made its findings of guilt. Prior to the 1994 revisions of Title IV, the Canons provided that the accused should have an opportunity prior to the pronouncement of a sentence by a Bishop "to show cause, if any, why sentence should not be pronounced, and to offer any matter in excuse or palliation for the consideration of the Bishop." Canons of Gen. Convention, Protestant Episcopal Church in the United States of America, Title IV.12.5 (1991). The 1991 Canon made no provision for submissions by other parties. The 1994 revision carried over this approach, affording the Respondent "a reasonable opportunity to offer to the Court matters in excuse or mitigation." Id. Title IV.4.23 (1994). In addition, the 1994 revision offered similar opportunities to the Complainants or Victims and to the Church Attorney. Id. Title IV.4.24-25. We find no substantive differences in the phrases used in the Canons to describe the submissions to the Court on behalf of (1) the Respondent ("matters in excuse or mitigation") (Id. Title IV.4.23); (2) the Complainants or Victims ("statements . . . pertaining to the Sentence") (Id. Title IV. 4.24); and (3) the Church Attorney ("may make a recommendation to the Court as to the Sentence") (Id. Title IV. 4.25).

In the 1997 revisions of Title IV, those three sections have been combined in a new section, which provides that prior to the imposition of a Sentence, a Respondent, Church Attorney, Complainant and Victim each shall have "a reasonable opportunity to offer matters in excuse or mitigation or to otherwise comment on the Sentence." Canons, Title IV.4.22 (1997 ed.) We believe the 1997 revisions reflect the intent and meaning of the three separate sections of the 1994 Canons. The parties' presentencing submissions need not be limited to the evidence before the Court, and the Canon should be interpreted broadly to accomplish the intended purpose of providing information to the decision-maker that may be relevant and useful to reaching a fair and just decision. See United States v. Tucker, 404 U.S. 443, 446 (1972) (with respect to sentencing, "a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come"). The Respondent's own submission clearly raised and referred to matters outside of the evidence and made contentions unsupported by the testimony and exhibits at trial. Further, the Respondent had sufficient time to make an objection to the Court, or to correct inaccurate information, if any, included in the August 11, 1997 letter from the Church Attorney. Respondent did not do so. The Court did not err in its consideration of the Church Attorney's presentencing submission; in any event, there was no plain error.

3. Failure of Witnesses to Attend. As his third ground of appeal, Respondent argues that the Court erred by "preventing" certain witnesses from testifying and by failing to sanction the Standing Committee because certain witnesses identified by the Respondent did not appear to testify at the second day of the trial. Objection on this basis was made by the Respondent during the second day of trial.

In an Ecclesiastical Trial, the parties and the Court all lack authority to compel the attendance of witnesses. At the Respondent's request, the Court issued invitations to testify to at least four persons, including two employees of the Diocese, the Chancellor of the Diocese and a priest canonically resident in the Diocese. By pretrial Order, the Court declined to request the presence of the Bishop. When the Court was advised that the four persons chose not to appear, the Court directed the Respondent to make an offer of proof of the witnesses' anticipated testimony. The Court took under advisement the question of whether dismissal of the Complaint or any other sanction should follow from the failure or inability of the Respondent to elicit the testimony outlined in his proffer. In its Judgment, the Court ruled that "the failure of that testimony, a[s] proffered by Respondent, to be part of the record was insufficient to cause any action to be taken by the Court with respect to either of the Counts in the Amended Complaint."

Respondent contends that the witnesses' failure to appear demonstrated bias against the Respondent by the Court. There was no evidence, however, that the Court played any role in influencing witnesses not to appear. The Respondent had fair notice that the witnesses would not be present, and the Court gave the Respondent a fair opportunity to summarize the witnesses' anticipated testimony. Respondent's offer of proof disclosed that, in general, the witnesses would have been asked about alleged breaches of confidentiality by various individuals, a point not material to the Court's finding of guilt on either Count. The Court ruled that the anticipated testimony would not have affected its decision. The record supports the Court's ruling. Even if the witnesses had testified as summarized, and their testimony were taken as true, there is, in the record, clear and convincing evidence to support the finding of guilt on each Count. There was no error.

4. Sentence of Deposition. The fourth ground of Respondent's appeal is addressed to the Sentence of Deposition imposed by the Court after its finding of guilt on Count II, Conduct Unbecoming a Member of the Clergy. Respondent apparently argues the Court should be limited to a maximum sentence of "Admonition," since the Diocesan Bishop, on or around September 13, 1994, had proposed a disposition of the misconduct claim that did not include Inhibition, Suspension or Deposition.

In making this objection, Respondent fails to grasp the impact of the 1994 revisions to the Canons. Title IV precludes an Ecclesiastical Trial Court from hearing a second Charge based on the same Offense, without the Cleric's consent, only if there has been a prior Presentment, Trial or Voluntary Submission. Canons, Title IV. 14.10. There was no prior Presentment, Trial or Voluntary Submission to discipline that would preclude the Court from hearing evidence or adjudging any sentence with respect to the November 26, 1996 Complaint against Respondent.

Further, the Court and the Bishop have independent roles in the sentencing process under Title IV. After a Charge is filed with the Standing Committee, the Bishop's role in the disposition of the Charge, prior to Judgment by the Ecclesiastical Trial Court, is limited to the consideration of a written voluntary submission to discipline. Id. Title IV. 2. In the absence of a voluntary submission, the Court must, if it finds the Respondent guilty, adjudge and impose a Sentence, which is, in effect, a recommendation to the Bishop; the Bishop may thereafter pronounce the same or a lesser -- but not greater -- Sentence than that imposed by the Court. Id. Title IV.12.6. In this case, where there had been no prior Presentment, Trial or Voluntary Submission, the Court was not limited in its sentencing alternatives by any prior statement made by the Bishop. Thus, we reject Respondent's contention that any recommendation made by the

Bishop during an attempt to resolve pastorally the allegations made against the Respondent limits the Court's discretion with respect to the Sentence that it may adjudge.

5. Discovery Issues. As his fifth ground of appeal, Respondent objects broadly to the Court's orders relating to pretrial discovery. In its pretrial Order dated June 21, 1997, the Court made specific rulings regarding Respondent's objections to the responses of the Standing Committee to the Respondent's Interrogatories and Requests For Production. Respondent does not identify the specific rulings to which he objects or show that he suffered prejudice as a result thereof. The Respondent's Interrogatories were directed, for the most part, to obtaining information allegedly bearing on the credibility of the Complainants, and he received most of the discovery he sought. Further, Respondent admitted the facts on which Count Two was based (use of inappropriate language to two minor children). Thus, the Complainants' credibility was not at issue at trial. Respondent's claims of bias by the Diocese and breach of confidentiality are too vague to warrant consideration, nor has he shown their relevance to any of the issues on appeal.

A court exercises broad discretion in its rulings on discovery disputes. We review objections to those rulings under an "abuse of discretion" standard. See Santiago v. Fenton, 891 F.2d 373, 379 (1st Cir. 1989) (trial court has broad discretion to control discovery). On the record before us, we find no abuse of discretion by the Court.

6. Standing Committee Issue. As his sixth ground of appeal, Respondent objects to the fairness of the proceedings below on the grounds that James Curry, a member of the Standing Committee when the Presentment was issued, was also a member of the Response Team that investigated the information submitted by the Bishop, and therefore had prior knowledge of the

case. It appears from the record that Respondent did not raise this objection at trial. Accordingly, under the plain error standard, we consider whether this aspect of the proceedings almost surely affected the outcome of the case. See Champagne, 40 F.3d at 947.

Title IV. 14.11 states, in pertinent part, "Any member of any Standing Committee . . . (ii) who has knowledge of essential facts involved in the matter . . . shall be disqualified and excused from service in connection with the matter." Title IV does not contain a prohibition against simultaneous membership on a Standing Committee and on another body having responsibilities under Title IV. The Standing Committee minutes of its October 8, 1996 meeting, at which the report of the Church Attorney was heard and the Complaint against Respondent was considered and voted, state that "Jim Curry recussed [*sic*] himself before the presentation of the report by, [Church] attorney George Seabourne, during our deliberation and our voting. Chris Rose assumed the Chairmanship at this point." The minutes further reflect that two-thirds of all members of the Standing Committee voted in favor of both Counts, see Canons, Title IV.3.15(a) (two-thirds vote required to issue a Presentment), and that after completion of the action regarding the Presentment against Respondent, "[t]he Standing Committee then reconvened under the Chairmanship of Jim Curry . . . ."

The overlap of membership among the Standing Committee and other bodies that have Title IV responsibilities may give rise to an appearance of impropriety. In this case, however, the conflict was handled by the Standing Committee in accordance with the provisions of Title IV.14.11. There is no indication in the record that Mr. Curry's prior knowledge of the case affected the decision of the Standing Committee. Thus, there was no error in this phase of the proceedings, much less plain error.

7. Letter Dated September 6, 1995. Count One of the Amended Complaint alleges disobedience or disregard of the Bishop's Pastoral Directions dated May 30, 1995 and September 6, 1995. The seventh ground of objection raised by Respondent is that, because the September 6, 1995 letter was not referenced in the Bishop's information to the Standing Committee, no Offense based on that letter may be prosecuted. We conclude that, in the circumstances of this case, this objection fails.

In this case, acting pursuant to Title IV.3.5, the Bishop wrote to the Standing Committee on January 30, 1996 informing it that certain circumstances required the Committee's investigation of Rev. Bruce W. Jacques, including, inter alia, "Violation of Ordination Vows," and "Disregard and disobedience of Pastoral Direction[s] issued by the Bishop (copies attached: September 13, 1994, May 30, 1995)."[2] In response to Respondent's Motion to Dismiss, the Court concluded that, "although reference to the September 6, 1995 letter was omitted from the original letter from the Bishop to the Standing Committee . . . the September 6, 1995 letter [was] sufficiently connected to the May 30, 1995 letter as to constitute a continuation of the same subject matter alleged in that May 30 letter." The Court further concluded that "Respondent was not injured or otherwise prejudiced by the inclusion of the September 6, 1995 letter in the Complaint, notwithstanding those omissions."

We have carefully reviewed the record. The May 30, 1995 letter directed Respondent to arrange for and receive counseling and to provide his counseling records to the Bishop. The September 6, 1995 letter directed Respondent to meet with the Bishop to discuss why he had not

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[2] Reference to the Bishop's letter of September 13, 1994 was removed by the April 21, 1997 Amended Complaint.

complied with the Bishop's prior admonitions concerning counseling. Thus, the record supports the Court's finding that the September 6 letter constituted "a continuation of the same subject matter." This Court is cognizant that "whenever the Standing Committee shall have good and sufficient reason to believe that any Priest or Deacon has committed [an] Offense," it may bring a Charge. Id. Title IV.3.3(g). In effect, the Respondent argues that any potential Offense a Standing Committee discovers in the course of its investigation that is beyond the specific information submitted by the Bishop must either be ignored or processed as a separate Charge. When, as in this case, the information is closely connected with the conduct and communications identified by the Bishop as a violation of ordination vows, such a technical and formalistic position is not reasonable. Further, Respondent was not prejudiced by inclusion of the September 6, 1995 letter in the Charge. Respondent had notice of the basis of the Charges against him (including the September 6, 1995 letter) and a full opportunity to defend against those Charges. There was no error in the Court's ruling on Respondent's Motion to Dismiss.

8. Pastoral Direction. As his eighth ground of appeal, Respondent argues that the May 30, 1995 letter from the Bishop does not satisfy the canonical definition of "Pastoral Direction," and therefore cannot be the basis for an Offense or a finding of violation of the Ordination vows. In response to Respondent's Motion to Dismiss, the Court ruled that "the May 30, 1995 letter [was] sufficient to constitute a Godly Admonition and that Respondent was not misled or harmed by the delicate phrasing of the background leading to the Godly Admonition." We agree.

The elements of a Pastoral Direction are: (1) a written solemn warning, (2) from a Bishop to a Priest, (3) setting forth clearly the reasons for the Pastoral Direction, (4) given in the

capacity of pastor, teacher and canonical overseer, (5) which is neither capricious nor arbitrary in nature, (6) or in any way contrary to the Constitution and Canons, (7) directed to a matter that concerns Doctrine, Discipline or Worship of the Church or manner of life and behavior of the Priest or Deacon addressed, and (8) which shall be deemed to include without limitation "Admonition" and "Godly Admonition." Id. Title IV.1.1(h)(2) and Title IV.15.

The Bishop's May 30, 1995 letter stated:

> I have recently had word of Joan Bray's meeting with you last Tuesday and of her concern for your health as well as your willingness to now be in dialogue with my office. Given the difficult circumstances over the last months, I too have been deeply concerned about your state of mind. Therefore, it is my godly admonition that you arrange for and receive counseling. It may also help you understand why you made what you admitted were inappropriate remarks to the . . . youngster. If you have no one readily available to you, Dr. Ronald Casey could provide a list of therapist's [sic] names.
>
> I will expect to receive from the therapist:
>
> 1) word that you have made contact
> 2) that you are in a defined clinical process
> 3) a report or information from the therapist to me periodically as to your progress, for which you agree to sign a waiver of release.
>
> I will also expect an expeditious response from you in regard to this directive no later than one week from its receipt.
>
> Know that my prayers are with you and your family during this very difficult time.

In a letter received by the Bishop on June 8, 1995, Respondent acknowledged receipt of the May 30, 1995 letter, and "accede[d] to [the Bishop's] demand to arrange for and receive counseling for the purpose of coming to terms with the difficulties of the past few months." It is uncontested that Respondent never confirmed to the Bishop that he had arranged for and received

counseling and that the Respondent did not provide or arrange for the furnishing of the information identified in the Bishop's May 30, 1995 letter.

Respondent argues that the May 30 letter does not set forth clearly the reasons for the Pastoral Direction, and therefore fails to meet the canonical definition of a Pastoral Direction. We disagree. Whether the Bishop's letter satisfies the definition of a Pastoral Directive is an objective question to be resolved by reference to the text of the letter, and not by inquiry into the Bishop's state of mind. Cf. Coll v. PB Diagnostic Sys., Inc., 50 F.3d 1115, 1122 (1st Cir. 1995) (subjective contemplation of party immaterial to interpretation of unambiguous agreement). The letter is addressed to the manner of life and behavior of Respondent and specifically expresses concern for Respondent's "health" and "state of mind," "the difficult circumstances over the last months," and the "inappropriate remarks to the . . . youngster" made by Respondent. As the Court impliedly found in its June 21, 1997 order denying the Motion to Dismiss, the letter addressed sensitive facts well known to both the Bishop and Respondent that did not need to be revisited in detail. Further, the Court specifically found that Respondent was not misled or harmed by the delicate phrasing of the background leading to the Godly Admonition. Viewed by reference to the circumstances of this case, the reasons for the Pastoral Direction were sufficiently clear. The Court did not err in denying Respondent's Motion to Dismiss.

9. Compensation for Respondent's Counsel. Respondent's final ground of appeal is his claim that the Diocese's payment of $2,000 was unreasonably low and that the Diocese, as prosecutor, set an unreasonably low figure in an attempt improperly to influence proceedings in the Trial Court. This claim was not raised before the Trial Court. Upon a review of the record, we are unable to find plain error, or for that matter, any error on this issue.

Title IV.14.20 provides, in pertinent part, that "all costs and expenses of the several parties shall be the obligation of the party incurring them." The Diocese of Connecticut, however, has adopted a local canon, Article IX, Section 11(h), which provides, in pertinent part, that "[i]f a Respondent [before the Ecclesiastical Trial Court] shall plead financial hardship, the Presiding Judge may, in her or his discretion, appoint Counsel for the Respondent. The reasonable fees and expenses of such appointed Counsel shall be an expense of the Diocese." Acting pursuant to the diocesan canon, Respondent applied for the appointment of counsel, and at the request of the Presiding Judge, submitted a financial affidavit. After consulting with the Diocese, the Presiding Judge on March 7, 1997 notified Respondent in writing that "the Diocese will pay an amount up to $2,000 to assist you in retaining Counsel of your own selection in connection with these proceedings." Mr. Carreira then entered his appearance for Respondent.

Title IV.14.20 expressly provides that each party is responsible for its own costs and expenses. This provision must be construed in harmony with the language of Title IV.14.8, which states, in part, that "[n]o 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 . . . an Ecclesiastical Trial Court . . . ." See Alexander S. v. Boyd, 113 F.3d 1373, 1383 (4th Cir. 1997) (provisions of statute must be construed in harmony to effectuate statutory purpose). Plainly, neither an Ecclesiastical Trial Court nor a diocese has any obligation to provide for payment of any portion of a respondent's legal costs and expenses. Although the Diocese of Connecticut has committed itself to pay "reasonable fees and expenses" of an appointed counsel, we do not construe this language to mean that the Diocese would necessarily pay all legal fees and expenses. In this instance, the Presiding Judge consulted with the Diocese, which, after due

consideration, indicated that it would pay "up to $2,000." Respondent has not shown that $2,000 is unreasonable, nor has he shown that the defense was hampered in any way by the Diocese's decision. Further, contrary to Respondent's contentions, the diocesan office that authorized the payment was not the prosecutor in this matter. Rather, the prosecutor was the Standing Committee, and there is no evidence that it participated at all in the decision. Accordingly, we have no basis for concluding that $2,000 was unreasonable, or that it reflected any attempt on the Diocese's part improperly to influence the proceedings, or that the decision in fact had any such effect. Respondent's arguments have no merit.

CONCLUSION

There appearing no error in the judgment of the Court, and the Charges having been amply proved by clear and convincing evidence, we affirm the judgment below.

+Gordon P. Scruton

The Rt. Rev. Gordon P. Scruton,
Presiding Judge

Marjorie Burke

Marjorie Burke

Ernest W. Gibson III

The Honorable Ernest W. Gibson III

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Via Express Mail
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The Rt. Rev. Clarence N. Coleridge, Bishop
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Via First-Class Mail
The Rev. Christopher L. Rose
President, Standing Committee
The Episcopal Diocese of Connecticut
55 New Park Avenue
Hartford, CT 06106

Re: **Province One - Court of Review, No. 97-002**
Episcopal Diocese of Connecticut v. Rev. Bruce W. Jacques

Gentlemen:

On behalf of the Rt. Rev. Gordon P. Scruton, Presiding Judge of this Court of Review, I have enclosed copies of the decision of the Court of Review in this matter, dated August 31, 1998.

Very truly yours,

Hamilton Doherty, Jr.

Hamilton Doherty, Jr./SB

HD/sdb
Enclosure

cc/w/enc: Province One Court of Review
The Rev. Robert E. Taylor, Presiding Judge of the Trial Court
James C. Ervin, Jr., Esq., Clerk of the Trial Court
Edward G. Hebb, Jr., Esq., Chancellor
Province One Chancellors