

General Convention of The Episcopal Church 2022 Archives' Research Report

Resolution No.: 2022-D040
Title: Amend Canons IV.13.4, IV 13.11.e, IV.13.13, and IV.14.6 [Document Dissemination, Appeal of Sanction, Of Hearing Panels, Order of Dismissal]
Proposer: The Rev. Lynn Carter-Edmands
Topic: Discipline

Directly Related: (Attached)

2018-A118 Amend Canons IV.13 and IV.14.7 [Of Hearing Panels, Order Issued by Panels]
2015-A135 Amend Canon IV.13 [Of Hearing Panels]

Indirectly Related: (Available in the [Acts of Convention](#) database, searchable by resolution number)

None

In preparing this report, the Archives researched the resolutions in the Acts of Convention database for the period 1973 through 2018, selecting “direct” resolutions that have a substantive bearing on the proposed legislation. The “direct” resolutions are attached and “indirect” resolutions are available in the Acts of Convention database. Committee members who require other research assistance should contact the Archives through the [Research Request Form](#) or call 800-525-9329.

D040 - Amend Canons IV.13.4, IV 13.11.e, IV.13.13, and IV.14.6 [Document Dissemination, Appeal of Sanction, Of Hearing Panels, Order of Dismissal]

Final Status: Not Yet Finalized

Proposed by: The Rev. Lynn Carter-Edmands

Endorsed by: Dr. Elizabeth Barker, The Rev. Jason Prati

Requests New Interim Body: No

Amends C&C or Rules of Order: Yes

Has Budget Implications: No

Cost:

HiA: HB

Legislative Committee Currently Assigned: 03 - Title IV Disciplinary Canons

Completion Status: Incomplete

Latest House Action: N/A

Supporting Documents: No

Resolution Text

Resolved, the House of _____ concurring,

That the 80th General Convention amend Canon IV.13.4 to read as follows:

<Amended text as it would appear if adopted and concurred. Scroll below the line of asterisks (***) to see the version showing all deleted and added text.>**

Sec. 4. If at any time after a matter has been referred to a Hearing Panel an Accord or Order of Dismissal endorsed by the Bishop Diocesan is reached that ends the proceedings before the Hearing Panel issues an Order, the Bishop Diocesan shall make the Notice of Accord or Order of Dismissal available to the Church and Church media as provided in Sec. 3 as well as to the Hearing Panel.

<Proposed amended resolution text showing exact changes being made:>

Sec. 4. If at any time after a matter has been referred to a Hearing Panel an Accord or Order of Dismissal endorsed by the Bishop Diocesan is reached that ends the proceedings

before the Hearing Panel issues an Order, the Bishop Diocesan shall make the Notice of Accord *or Order of Dismissal* available to the Church and Church media as provided in Sec. 3 as well as to the Hearing Panel.

And be it further

Resolved, That Canon IV.13.11.e be amended to read as follows:

<Amended text as it would appear if adopted and concurred. Scroll below the line of asterisks (***) to see the version showing all deleted and added text.>**

e. If an Accord is reached or the matter is dismissed that ends the proceedings before the Disciplinary Board issues an Order other than an Order of Dismissal under this Section, the Bishop Diocesan shall make the Notice of Accord or Order of Dismissal available to the Church and Church media as provided in Sec. 3 as well as to the Disciplinary Board and the Hearing Panel.

<Proposed amended resolution text showing exact changes being made:>

e. If an Accord is reached *or the matter is dismissed* that ends the proceedings before the Disciplinary Board issues an Order *other than an Order of Dismissal* under this Section, the Bishop Diocesan shall make the Notice of Accord *or Order of Dismissal* available to the Church and Church media as provided in Sec. 3 as well as to the Disciplinary Board and the Hearing Panel.

And be it further

Resolved, That Canon IV.13.13 be amended to read as follows:

<Amended text as it would appear if adopted and concurred. Scroll below the line of asterisks (***) to see the version showing all deleted and added text.>**

Section 13. If the determination is to dismiss the matter, the Hearing Panel shall issue an Order which shall include the reasons for dismissal and which contains findings exonerating the Respondent. A copy of the Order shall be provided to the Bishop Diocesan, the Respondent, the Respondent's Advisor, the Complainant, the Complainant's Advisor, and the Church Attorney, and a record copy of the Order shall be kept by transmitting a copy to The Archives of The Episcopal Church. A copy of the Order shall also be made available to the Church and the Church media in the same manner with which documents were initially made available to the public as set forth in Sec. 3.

<Proposed amended resolution text showing exact changes being made:>

Section 13. If the determination is to dismiss the matter, the Hearing Panel shall issue an Order which shall include the reasons for dismissal and which ~~contains~~ ~~may contain~~ findings exonerating the Respondent. A copy of the Order shall be provided to the Bishop Diocesan, the Respondent, the Respondent's Advisor, the Complainant, the Complainant's Advisor, and the Church Attorney, and a record copy of the Order shall be kept by transmitting a copy to The Archives of The Episcopal Church. *A copy of the Order shall also be made available to the Church and the Church media in the same manner with which documents were initially made available to the public as set forth in Sec. 3.*

And be it further

Resolved, That IV.13.14 be removed in its entirety.

<Amended text as it would appear if adopted and concurred. Scroll below the line of asterisks (***) to see the version showing all deleted and added text.>**

Sec. 14. [removed]

<Proposed amended resolution text showing exact changes being made:>

~~**Sec. 14.** If the resolution is the issuance of an Order other than an Order of dismissal, the provisions of Canon IV.14 shall apply.~~

And be it further

Resolved, That Canon IV.14.6 be amended to read as follows:

<Amended text as it would appear if adopted and concurred. Scroll below the line of asterisks (***) to see the version showing all deleted and added text.>**

Sec. 6. An Order issued by a Conference Panel or Hearing Panel may (a) provide any terms which promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among the Complainant, Respondent, affected Community and other persons; (b) place restrictions on the Respondent's exercise of ministry; (c) recommend to the Bishop Diocesan that the Respondent be admonished, suspended or deposed from ministry; (d) limit the involvement, attendance or participation of the Respondent in the Community; or (e) dismiss the matter; or (f) any combination of the foregoing. An Order providing for suspension from Ministry shall specify on what terms or conditions and at what time the suspension shall cease. Any Order providing for limitation upon the involvement, attendance or participation of the Respondent in the Community shall also provide conditions for restoration. Any Order dismissing the matter shall provide the reasons for dismissal and a statement exonerating the Respondent and shall be made available to

members of the Church and the Church media in the same manner with which documents were initially made available to the public as set forth in Canon IV.13.3.

<Proposed amended resolution text showing exact changes being made:>

Sec. 6. An Order issued by a Conference Panel or Hearing Panel may (a) provide any terms which promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among the Complainant, Respondent, affected Community and other persons; (b) place restrictions on the Respondent's exercise of ministry; (c) recommend to the Bishop Diocesan that the Respondent be admonished, suspended or deposed from ministry; (d) limit the involvement, attendance or participation of the Respondent in the Community; or (e) *dismiss the matter*; or (f) any combination of the foregoing. An Order providing for suspension from Ministry shall specify on what terms or conditions and at what time the suspension shall cease. Any Order providing for limitation upon the involvement, attendance or participation of the Respondent in the Community shall also provide conditions for restoration. *Any Order dismissing the matter shall provide the reasons for dismissal and a statement exonerating the Respondent and shall be made available to members of the Church and the Church media in the same manner with which documents were initially made available to the public as set forth in Canon IV.13.3.*

Explanation

These amendments address the need for greater clarity and direction where Orders of Dismissal are concerned once the Title IV matter has been referred to the Hearing Panel (Canon IV.13).

Canon IV.13.3 provides for public dissemination of a Title IV matter through the media, diocesan website, etc. (and in the case of a Bishop, on The Episcopal Church websites and of the General Convention) once a matter has been referred to the Hearing Panel and before any Order or hearing has taken place. However, no canon provides for public dissemination through the same media of any dismissal and subsequent exoneration of the Respondent when the dismissal has been made by an Intake Officer with endorsement by the Bishop Diocesan, or even by the Hearing Panel. In fact, the canons distinguish between a dismissal and an Order in one place by omitting the mention of a dismissal (Canon IV.14.6) and refer to a dismissal as an Order in another (Canon IV.13.13). This distinction creates two unnecessary standards for all Orders.

Amendment to Canon IV.14.6 recognizes that an Order of Dismissal is also possible under this canon, and that its possibility needs to be stated here. Currently, the only Orders mentioned in Canon 14 "Of Accords and Orders" are those that address the values of Canon IV.1 as they relate to discipline only and not exoneration of the Respondent. Additionally, in an effort to repair the reputation of any clergy or bishop falsely accused of misconduct subject to proceedings under this Title, amendment to this canon provides for dissemination of the dismissal in the same manner the charges against the Respondent were initially made available to members of the Church and Church media, if such notice

was made available to the public. When an Order of Dismissal is treated as other Orders, Canon IV.13.14 becomes unnecessary.



Resolution Number: 2018-A118
Title: Amend Canons IV.13 and IV.14.7 [Of Hearing Panels, Order Issued by Panels]
Legislative Action Taken: Concurred as Amended
Final Text:

Resolved, the House of Bishops concurring, That Canon IV.13 be amended by adding new Sections 3 and 4 and renumbering all subsequent sections:

Sec. 3. As soon as possible, the Hearing Panel shall make documents available to members of the Church and the Church media as set forth in this Section. The documents shall be disseminated in such a way as to make them broadly known to members of the Church and the Church media. For a matter in which a Priest or Deacon is the Respondent, dissemination shall include, at a minimum, posting to the diocesan website. For a matter in which a Bishop is the Respondent, dissemination shall include, at a minimum, posting the documents on the websites of The Episcopal Church and of the General Convention.

(a) The documents covered by this Section are all documents filed with or issued by the Hearing Panel or by any party or person including but not limited to motions, briefs, affidavits, opinions, objections, decisions, notices, challenges, and Orders.

(b) Notwithstanding the above, the Hearing Panel, at its discretion and for good cause to protect any Injured Person or allegedly Injured Person, may require the redaction of documents provided for in Sec. 3(a), after consultation with the Church Attorney, the Respondent's counsel, the Respondent's Advisor, the Complainant's Advisor or Complainant's counsel, if any, and, where appropriate, the Bishop Diocesan.

Sec. 4. If at any time after a matter has been referred to a Hearing Panel an Accord is reached that ends the proceedings before the Hearing Panel issues an Order, the Bishop Diocesan shall make the Notice of Accord available to the Church and Church media as provided in Sec. 3 as well as to the Hearing Panel.

And be it further

Resolved, That Canon IV.13.6 is hereby amended to read as follows:

Sec. 6. All proceedings before the Hearing Panel except its private deliberations shall be open to the Respondent and to each Complainant, to any Injured Person, and to persons from the public. Each Complainant shall be entitled to be present throughout and observe the Hearing and each may be accompanied at the proceedings by another person of his or her own choosing in addition to his or her Advisor. Notwithstanding the above, the Hearing Panel, at its discretion and for good cause, including to protect the privacy of

any person, may close any part of the proceedings to any person or group of persons, after consultation with the Church Attorney, the Respondent's counsel and, where appropriate, the Bishop Diocesan; *provided, however, that no proceedings before the Hearing Panel, except its private deliberations, shall be closed to the Respondent, Respondent's Advisor, Respondent's Counsel, the Complainant, the Complainant's Advisor, Complainant's Counsel or the Church Attorney.* A record of the hearing shall be made by such means as to enable the creation of a *verbatim* written transcript of the hearing.

And be it further

Resolved, That Canon IV.13.8 is hereby amended to read as follows:

Sec. 8. In all proceedings of the Hearing Panel the testimony of witnesses shall be taken orally and personally or by such other means as provided by order of the Hearing Panel. All testimony shall be given under oath or solemn affirmation and be subject to cross-examination. The Hearing Panel shall determine the credibility, reliability and weight to be given to all testimony and other evidence. The proceedings shall be conducted as follows:

(a) The president shall regulate the course of the hearing so as to promote full disclosure of relevant facts.

(b) The president:

- (1) may exclude evidence that is irrelevant, immaterial or unduly repetitious;**
- (2) shall exclude privileged evidence;**
- (3) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;**
- (4) may take official notice of any facts that could be judicially noticed, including records of other proceedings and of technical or scientific facts within the Hearing Panel's specialized knowledge;**
- (5) may not exclude evidence solely because it is hearsay;**
- (6) shall afford to the Church Attorney and to the Respondent reasonable opportunity to present evidence, argue and respond to argument, conduct cross-examination and submit rebuttal evidence; and**
- (7) may, at the discretion of the Hearing Panel, give persons other than the Church Attorney and the Respondent opportunity to present oral or written statements at the hearing.**

(c) Nothing in this section shall preclude the exercise of discretion by the president in taking measures appropriate to preserve the integrity of the hearing.

And be it further

Resolved, That Canon IV.13.9 be hereby amended by adding new subsections (d) and (e) as follows:

(d) The requirements of Sec. 3 of this Canon shall apply to the Disciplinary Board as if it were a Hearing Panel for the purpose of an appeal of sanctions under this Section.

(e) If an Accord is reached that ends the proceedings before the Disciplinary Board issues an Order under this Section, the Bishop Diocesan shall make the Notice of Accord available to the Church and Church media as provided in Sec. 3 as well as to the Disciplinary Board and the Hearing Panel.

And be it further

Resolved, That Canon IV.14.7 is hereby amended to read as follows:

Sec. 7. Prior to the issuance of an Order by a Conference Panel or a Hearing Panel, the issuing Panel shall afford the Bishop Diocesan, the Respondent and the Complainant each with an opportunity to be heard on the proposed terms of the Order.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Austin, 2018* (New York: General Convention, 2018), pp. 1151-1153.



Resolution Number: 2015-A135
Title: Amend Canon IV.13 [Of Hearing Panels]
Legislative Action Taken: Concurred as Amended
Final Text:

Resolved, That Canon IV.13 be amended to read as follows:

Sec. 1. ~~If~~*When the Conference Panel decides to refer a matter is referred to the Hearing Panel, the president of the Conference Panel shall within three days of that decision promptly notify the president of the Disciplinary Board and the Church Attorney of the referral.*

Sec. 2. ~~Upon~~*Within 10 days of receipt of a referral for Hearing Panel proceedings, the Church Attorney shall review all information acquired as of the time of such referral and, if necessary, shall revise or update the statement of the alleged Offense and shall provide the same to the Hearing Panel; provide to the Hearing Panel the statement of the alleged Offense(s), updated as needed. No other material from any prior proceedings under Title IV shall be provided to the Hearing Panel. Upon receipt of the Church Attorney's communication, the Hearing Panel shall within seven days issue a notice to the Respondent, to the Respondent's Advisor, to Respondent's counsel, if any, and to the Church Attorney.*

(a) The notice shall describe the nature and purpose of the proceeding, contain a copy of the written statement prepared by the Church Attorney, disclose the names of all persons to whom the notice is sent, advise the Respondent that a written response to the notice must be filed by the Respondent with the Hearing Panel within thirty days of the mailing date of the notice and advise the Respondent that ~~failure to attend or participate in a scheduled or noticed hearing may result in a finding of default~~*of the provisions of Canon IV.19.6.*

(b) A copy of the notice shall be sent to the Complainant and to the Complainant's Advisor.

(c) Unless additional time is approved *for good cause* by the Hearing Panel, the Respondent shall *within 30 days of the mailing date of the notice* file with the Hearing Panel *and deliver to the Church Attorney* a written response signed by the Respondent ~~within thirty days of the mailing date of the notice. The president of the Hearing Panel shall forward a copy of the response to the Church Attorney.~~

Sec. 3. ~~In all proceedings before the Hearing Panel, the Church Attorney shall appear on behalf of the Diocese, which shall then be considered the party on one side and the Respondent the party on the other. Each Complainant shall be entitled to be present throughout and observe the Hearing and each may be accompanied by another person of his or her own choosing in addition to his or her Advisor.~~

Sec. 4. ~~All proceedings before the Hearing Panel, except its private deliberations, shall be public, provided, however, that the Hearing Panel may close any part of the proceedings at its discretion to protect the privacy of any person. A record of the hearing shall be made by such means as to enable the creation of a written transcript of the hearing.~~

Sec. 53. The Church Attorney and the Respondent shall each be afforded reasonable time and opportunity ~~to prepare evidence~~*discover evidence in preparation* for the hearing as follows:

(a) ~~Within thirtysixty days after the filing and delivery of the response by the Respondent, the Church Attorney and the Respondent's counsel shall meet and confer regarding the nature and basis of the allegations against the Respondent and the defenses thereto and to make or arrange for initial disclosures as described in Canon IV.13.5(b), and to develop~~

~~a proposed plan of discovery forms and schedule for approval by the Hearing Panel. A report of the proposed plan shall be filed with the president of the Hearing Panel within fifteen days after the conference.~~

~~(b) Within fifteen days after the conference described in Canon IV.13.5(a), the Church Attorney and the Respondent's counsel shall each provide to the other initial a mandatory disclosure of all evidence known to them that would tend to prove or disprove the allegations against the Respondent, including but not limited to (1) the name and, if known, the address and telephone number of each individual likely to have direct knowledge of information which may be used to support the allegations against the Respondent or the defenses thereto, together with a detailed summary of the expected testimony of the person, if called to testify; and (2) a copy of, or a description by category and location of, all documents and tangible things that may be used to support the allegations against the Respondent or the defenses thereto, except as such disclosure would involve Privileged Communications. The parties must supplement mandatory disclosures made under this section as additional information becomes known. Documents and tangible items identified in the mandatory disclosures that are in the possession of a party shall be produced upon request, and copies of all documents provided to the requesting party. The Hearing Panel may, upon request of a party or Injured Person, enter an order limiting production of documents or tangible items of a sensitive nature.~~

~~(b) If any party withholds from disclosure any relevant document on the ground of privilege, the party must provide a log containing the date of the communication, a list of all persons party to the communication, and a short description of the nature of the communication. The scope of the privilege shall be determined by the Hearing Panel, pursuant to Canon IV.19.27.~~

~~(c) If the discovery plan has been mutually agreed upon by the Church Attorney and counsel for the Respondent, the president of the Hearing Panel may approve the plan and incorporate it in a discovery order and scheduling order governing all discovery procedures and establishing a date for hearing of the matter. If the Church Attorney and Respondent's counsel do not agree on all elements of the discovery plan, the president of the Hearing Panel shall allow each to be heard with respect to the elements in dispute, make a determination of appropriate discovery procedures and issue a discovery order and scheduling order within thirty days of the receipt of the discovery planning report. Within fifteen days after the delivery of the mandatory disclosures, the President of the Hearing Panel shall convene a scheduling conference with the Church Attorney and Respondent's counsel. During the scheduling conference, after the Church Attorney and Respondent's counsel have been heard, the president of the Hearing Panel shall issue a scheduling order to provide for (1) a calendar for discovery, including depositions and written interrogatories, as provided in this section; (2) filing deadlines and hearing dates for preliminary motions and for dispositive motions; and (3) the date of hearing before the Hearing Panel.~~

~~(d) Discovery procedures as approved in the discovery plan filed pursuant to Canon IV.13.5(a) may include written interrogatories, oral or written deposition testimony of any person having knowledge pertaining to the alleged Offense or any defenses, requests for production of documents or tangible objections, and requests for admissions of fact. The Scheduling Order shall provide the Church Attorney and Respondent's counsel authorization to take up to two depositions and propound up to twenty written interrogatories regarding each Complainant.~~

~~(e) In addition to the disclosures required by this section and the discovery obtained pursuant to the discovery plan, the Church Attorney and Respondent's counsel shall each provide to the other and to the Hearing Panel at least thirty days before the hearing final pre-hearing disclosures including (1) the name, address and telephone number of each~~

witness expected to be called to testify at the hearing; (2) identification of each document or other tangible object expected to be used as an exhibit in the hearing; and (3) requests, if any, to have all or portions of the hearing closed to the public. *No other discovery shall be allowed at any point during the pendency of a matter under this Title except with permission of the Hearing Panel upon a showing of good cause.*

(f) ~~Notwithstanding any provision of this section, in approving or determining the discovery plan, the president of the Hearing Panel shall take reasonable steps to assure that the discovery process will not unduly burden any person from whom information is sought or unduly adversely affect any pastoral response being offered to any such person. The Hearing Panel may impose, after reasonable notice and opportunity to be heard, reasonable sanctions on any party for failure to comply with any discovery or scheduling order pursuant to the provisions of Canon IV.13.7.~~

Sec. 4. In all proceedings before the Hearing Panel, the Church Attorney shall appear on behalf of the Diocese, which shall then be considered the party on one side and the Respondent the party on the other.

Sec. 5. All pre-hearing motions and challenges shall be filed with the Hearing Panel within the time limits prescribed in the scheduling order. All responses shall be filed by the non-moving party within 15 days of receipt of the motion or challenge. Upon receipt of a motion or challenge, the Hearing Panel will promptly set the matter for hearing. The hearing may be conducted by conference call. After consideration of the argument of the parties, the Hearing Panel shall render a decision within three days of the hearing. The decision shall be final as to all procedural matters. Decisions on evidentiary matters are preliminary and may be reconsidered by the Hearing Panel during the course of the hearing if warranted by the evidence. The decision shall be provided to the parties and placed on the record of proceedings.

Sec. 6. All proceedings before the Hearing Panel except its private deliberations shall be open to the Respondent and to each Complainant, to any Injured Person, and to persons from the public. Each Complainant shall be entitled to be present throughout and observe the Hearing and each may be accompanied at the proceedings by another person of his or her own choosing in addition to his or her Advisor. Notwithstanding the above, the Hearing Panel, at its discretion and for good cause, including to protect the privacy of any person, may close any part of the proceedings to any person or group of persons, after consultation with the Church Attorney, the Respondent's counsel and, where appropriate, the Bishop Diocesan. A record of the hearing shall be made by such means as to enable the creation of a written transcript of the hearing.

Sec. 7. At least 15 days before the hearing, the Church Attorney and Respondent's counsel shall each provide to the other and to the Hearing Panel final pre-hearing disclosures including (1) the name, address, and telephone number of each witness expected to be called to testify at the hearing; (2) identification of each document or other tangible object expected to be used as an exhibit in the hearing; and (3) requests, if any, to have all or portions of the hearing closed to the public.

Sec. 68. In all proceedings of the Hearing Panel, the testimony of witnesses shall be taken orally and personally or by such other means as provided by order of the Hearing Panel. All testimony shall be given under oath or solemn affirmation and be subject to cross-examination. The Hearing Panel shall determine the credibility, reliability and weight to be given to all testimony and other evidence. The proceedings shall be conducted as follows:

(a) The president shall regulate the course of the hearing so as to promote full disclosure of relevant facts.

(b) The president:

(1) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(2) shall exclude privileged evidence;

(3) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

(4) may take official notice of any facts that could be judicially noticed, including records of other proceedings and of technical or scientific facts within the Hearing Panel's specialized knowledge;

(5) may not exclude evidence solely because it is hearsay;

(6) shall afford to the Church Attorney and to the Respondent reasonable opportunity to present evidence, argue and respond to argument, conduct cross-examination and submit rebuttal evidence; and

(7) may, at the discretion of the Hearing Panel, give persons other than the Church Attorney and the Respondent opportunity to present oral or written statements at the hearing.

(c) Nothing in this section shall preclude the exercise of discretion by the president in taking measures appropriate to preserve the integrity of the hearing.

Sec. 79. Following the conclusion of the hearing, the Hearing Panel shall confer privately to reach a determination of the matter by (a) dismissal of the matter or (b) issuance of an Order.

Sec. 810. If the determination is to dismiss the matter, the Hearing Panel shall issue an Order which shall include the reasons for dismissal and which may contain findings exonerating the Respondent. A copy of the Order shall be provided to the Bishop Diocesan, the Respondent, the Respondent's Advisor, the Complainant, the Complainant's Advisor, and the Church Attorney.

Sec. 911. If the resolution is the issuance of an Order other than an Order of dismissal, the provisions of Canon IV.14 shall apply.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Salt Lake City, 2015* (New York: General Convention, 2015), pp. 459-462.