

General Convention of The Episcopal Church 2022 Archives' Research Report

Resolution No.: 2022-D042
Title: Amend Canons IV.2 and IV.13 (new insertion) [Terminology (Church Attorney); Declining to Advance]
Proposer: The Rev. Lynn Carter-Edmands
Topic: Discipline

Directly Related: (Attached)

2018-A125 Refer a Resolution on Amending Canons IV.2 and IV.13 [Of Hearing Panels]
2015-A124 Amend Canon IV.2 [Of Terminology Used in This Title]
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.

D042 - Amend Canons IV.2 and IV.13 (new insertion) [Terminology (Church Attorney); Declining to Advance]

Final Status: Not Yet Finalized

Proposed by: The Rev. Lynn Carter-Edmands

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

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 the following section of Canon IV.2 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.>**

Church Attorney shall mean one or more attorneys selected pursuant to Diocesan Canons to represent the Church in proceedings as provided in this Title. The Diocesan Canons may provide a process for the removal of a Church Attorney for cause. A Church Attorney shall perform all functions on behalf of the Church necessary to advance proceedings under this Title and shall have the following powers, in addition to the powers and duties otherwise provided in this Title: (a) to receive and review the Intake Officer's report; (b) to conduct investigations and oversee the Investigator and, in connection with such investigations, to have access to the personnel, books and records of the Diocese and its constituent parts; and to receive and review the reports of the Investigator; (c) to determine, in the exercise of the Church Attorney's discretion, whether the reported information, if true, would be grounds for discipline; and (d) to exercise discretion consistent with this Title and the interests of the Church by declining to advance proceedings or by referring any matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action prior to the

referral of a matter to the Hearing Panel. In representing the Church, a Church Attorney may consult with the president of the Disciplinary Board at any time after the matter has been referred out of the Reference Panel, and, when the prosecution of the case may impact the mission, life, or ministry of the Church, with the Bishop Diocesan

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

Church Attorney shall mean one or more attorneys selected pursuant to Diocesan Canons to represent the Church in proceedings as provided in this Title. The Diocesan Canons may provide a process for the removal of a Church Attorney for cause. A Church Attorney shall perform all functions on behalf of the Church necessary to advance proceedings under this Title and shall have the following powers, in addition to the powers and duties otherwise provided in this Title: (a) to receive and review the Intake Officer's report; (b) to conduct investigations and oversee the Investigator and, in connection with such investigations, to have access to the personnel, books and records of the Diocese and its constituent parts; and to receive and review the reports of the Investigator; (c) to determine, in the exercise of the Church Attorney's discretion, whether the reported information, if true, would be grounds for discipline; and (d) to exercise discretion consistent with this Title and the interests of the Church by declining to advance proceedings or by referring any matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action *prior to the referral of a matter to the Hearing Panel*. In representing the Church, a Church Attorney may consult with the president of the Disciplinary Board at any time after the matter has been referred out of the Reference Panel, and, when the prosecution of the case may impact the mission, life, or ministry of the Church, with the Bishop Diocesan

And be it further

Resolved, That Canon IV.13 be amended by inserting before the existing Section 12 a new section as follows and renumbering succeeding sections:

<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. 12. Once a matter has been referred to the Hearing Panel, the Church Attorney may file a motion requesting leave to decline to advance proceedings or a motion to refer the matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action. The Church Attorney shall serve notice of the motion on the Complainant, the Respondent, and the Bishop Diocesan, any of whom may file a response within fifteen (15) days of receipt of the motion, or within such other time as the Hearing Panel may direct. Upon receipt of such a motion, the Hearing Panel will promptly set the motion for hearing. If leave to decline to advance proceedings is granted, the Hearing Panel shall enter an Order of dismissal. The decision on the motion shall be provided to the Church Attorney, the Complainant, the Respondent, and the Bishop Diocesan and placed on the record of proceedings.

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

Sec. 12. *Once a matter has been referred to the Hearing Panel, the Church Attorney may file a motion requesting leave to decline to advance proceedings or a motion to refer the matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action. The Church Attorney shall serve notice of the motion on the Complainant, the Respondent, and the Bishop Diocesan, any of whom may file a response within fifteen (15) days of receipt of the motion, or within such other time as the Hearing Panel may direct. Upon receipt of such a motion, the Hearing Panel will promptly set the motion for hearing. If leave to decline to advance proceedings is granted, the Hearing Panel shall enter an Order of dismissal. The decision on the motion shall be provided to the Church Attorney, the Complainant, the Respondent, and the Bishop Diocesan and placed on the record of proceedings.*

Explanation

Resolution 2018-A125 was referred at the 79th General Convention (General Convention, *Journal of the General Convention of...The Episcopal Church, Austin, 2018* (New York: General Convention, 2018), pp. 291-292. However, it remains necessary to provide a formal process for terminating a proceeding once it has been referred to the Hearing Panel by seeking leave to decline to advance the proceeding in Title IV. Resolution 2018-A125 addressed a different situation concerning the renunciation of Holy Orders. The two amendments here borrow some of the language of 2018-A125 and address the dismissal of a Title IV matter and the exclusion of proper reporting of the dismissal at this public stage of the proceedings.

By omitting the requirement of the Church Attorney to obtain “leave from the Hearing Panel to decline to advance the proceedings or to refer any matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action” *once the matter has been referred to the Hearing Panel*, there is no required reporting of any dismissal of the matter to the Archives of The Episcopal Church and other entities within the Church, or for the placement of the decision on the record of proceedings as would be the case if the Hearing Panel provided an Order of Dismissal. What remains is an incomplete record of the Title IV matter without closure of the matter communicated to all concerned, including any record keeping or notice of dismissal of the initial charges that were made public earlier.

These comments are based in an actual case. A Title IV matter had been referred by the Conference Panel to the Hearing Panel. During discovery, both the Respondent and the Complainant were administered polygraph exams, the Respondent at the direction of his attorney and the Complainant subsequently at the direction of the Church Attorney. The Respondent passed his polygraph exam and the Complainant failed his. The Church Attorney then referred the matter back to the Intake Officer who submitted a “First Supplemental Intake Report,” citing Canon IV.6.5 as their grounds for dismissing with prejudice the matter, with the Bishop Diocesan’s endorsement of the dismissal. No Order of Dismissal was produced since the Church Attorney was not required by the canons to obtain “leave from the Hearing Panel to decline to advance the proceedings” with a subsequent Order of Dismissal by the Hearing Panel. The matter that had already been referred to the Hearing Panel was essentially removed from any future decisions and

subsequent process by the Hearing Panel according to Canon IV.13. Closure of the matter was incomplete.



Resolution Number: 2018-A125
Title: Refer a Resolution on Amending Canons IV.2 and IV.13 [Of Hearing Panels]
Legislative Action Taken: Referred
Final Text:

Resolved, That the following section of Canon IV.2 be amended to read as follows:

Church Attorney shall mean one or more attorneys selected pursuant to Diocesan Canons to represent the Church in proceedings as provided in this Title. The Diocesan Canons may provide a process for the removal of a Church Attorney for cause. A Church Attorney shall perform all functions on behalf of the Church necessary to advance proceedings under this Title and shall have the following powers, in addition to the powers and duties otherwise provided in this Title: (a) to receive and review the Intake Officer’s report; (b) to conduct investigations and oversee the Investigator and, in connection with such investigations; to have access to the personnel, books and records of the Diocese and its constituent parts; and to receive and review the reports of the Investigator; (c) to determine, in the exercise of the Church Attorney’s discretion, whether the reported information, if true, would be grounds for discipline; and (d) to exercise discretion consistent with this Title and the interests of the Church by *obtaining leave from the Hearing Panel to decline declining to advance proceedings or to refer by referring* any matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action. In representing the Church, a Church Attorney may consult with the president of the Disciplinary Board at any time after the matter has been referred out of the Reference Panel, and, when the prosecution of the case may impact the mission, life, or ministry of the Church, with the Bishop Diocesan.

And be it further

Resolved, That Canon IV.13 be amended by inserting before the existing Section 10 a new section as follows and renumbering succeeding sections:

Sec. 10. At any time before the matter is submitted to the Hearing Panel for decision, the Church Attorney may file a motion requesting leave to decline to advance proceedings or a motion to refer the matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action. The Church Attorney shall serve notice of the motion on the Complainant, the Respondent, and the Bishop Diocesan, any of whom may file a response within fifteen (15) days of receipt of the motion, or within such other time as the Hearing Panel may direct. Upon receipt of such a motion, the Hearing Panel will promptly set the motion for hearing. If leave to decline to advance proceedings is granted, the Hearing Panel shall enter an Order of dismissal. The decision on the motion

shall be provided to the Church Attorney, the Complainant, the Respondent, and the Bishop Diocesan and placed on the record of proceedings.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Austin, 2018* (New York: General Convention, 2018), pp. 291-292.



Resolution Number: 2015-A124
Title: Amend Canon IV.2 [Of Terminology Used in This Title]
Legislative Action Taken: Concurred as Amended
Final Text:

Resolved, That Canon IV.2, definitions of “Advisor,” “Church Attorney,” “Investigator,” “Procedural Officer,” and “Respondent” are hereby amended to read as follows:

Accord shall mean a written resolution, which is negotiated and agreed among the parties resulting from an agreement for discipline under Canon IV.9, conciliation under Canon IV.10 or a Conference Panel proceeding under Canon IV.12. All Accords shall meet the requirements of Canon IV.14.

Administrative Leave shall mean a restriction on ministry in which the exercise of the Respondent’s ministry is suspended in its entirety during the period of the Administrative Leave and may include suspension from any ecclesiastical and related secular office.

Advisor shall mean a person *familiar with the provisions and objectives of this Title* who is designated to support, assist, consult with, advise and, where expressly so authorized under this Title, speak for a Complainant or Respondent in any matter of discipline under this Title, as provided in Canon IV.19.10.

Church Attorney shall mean one or more attorneys selected pursuant to Diocesan Canons to represent the Church in proceedings as provided in this Title. The Diocesan Canons may provide a process for the removal of a Church Attorney for cause. A Church Attorney shall perform all functions on behalf of the Church necessary to advance proceedings under this Title and shall have the following powers, in addition to the powers and duties otherwise provided in this Title: (a) to receive and review the Intake Officer’s report; (b) to conduct investigations and oversee the Investigator and, in connection with such investigations; to have access to the personnel, books and records of the Diocese and its constituent parts; and to receive and review the reports of the Investigator; (c) to determine, in the exercise of the Church Attorney’s discretion, whether the reported information, if true, would be grounds for discipline; and (d) to exercise discretion consistent with this Title and the interests of the Church by declining to advance proceedings or by referring any matter back to the Intake Officer or the Bishop Diocesan for pastoral response in lieu of disciplinary action. In representing the Church, a Church Attorney may consult with ~~the Conference Panel~~*the President of the Disciplinary Board at any time after the matter has been referred out of the Reference Panel, and, when the prosecution of the case may impact the mission, life, or ministry of the Church, with the Bishop Diocesan.*

Clear and Convincing shall mean proof sufficient to convince ordinarily prudent people that there is a high probability that what is claimed actually happened. More than a preponderance of the evidence is required but not proof beyond a reasonable doubt.

Community shall mean that part of the Church in which a Member of the Clergy performs his or her ministry, such as a Diocese, Parish, Mission, school, seminary, hospital, camp or any similar institution.

Complainant shall mean (a) any person or persons from whom the Intake Officer receives information concerning an alleged Offense and who, upon consent of that person(s), is designated a Complainant by the Intake Officer or (b) any Injured Person designated by the Bishop who, in the Bishop Diocesan’s discretion, should be afforded the status of a

Complainant; provided, however, that any Injured Person so designated may decline such designation.

Conciliator shall mean a person appointed to seek the resolution of a matter under Canon IV.10

Conduct Unbecoming a Member of the Clergy shall mean any disorder or neglect that prejudices the reputation, good order and discipline of the Church, or any conduct of a nature to bring material discredit upon the Church or the Holy Orders conferred by the Church.

Conference Panel shall mean a panel of one or more members of the Disciplinary Board selected by the president of the board, unless some other manner of selection is provided by Diocesan Canon, to serve as the body before which an informal conference is held as provided in Canon IV.12, provided, however that no such member of the Conference Panel may serve as a member of the Hearing Panel in the same case. The president of the Disciplinary Board shall be ineligible to serve on the Conference Panel. If the Conference Panel consists of more than one member, it shall include both clergy and lay members.

Disciplinary Board shall mean the body provided for in Canon IV.5.1.

Discipline of the Church shall be found in the Constitution, the Canons and the Rubrics and the Ordinal of the Book of Common Prayer.

Doctrine shall mean the basic and essential teachings of the Church and is to be found in the Canon of Holy Scripture as understood in the Apostles and Nicene Creeds and in the sacramental rites, the Ordinal and Catechism of the Book of Common Prayer.

Hearing Panel shall mean a panel of three or more members of the Disciplinary Board and shall include both clergy and lay members selected by the president of the Board, unless some other manner of selection is provided by Diocesan Canon, to serve as the body before which a hearing is held as provided in Canon IV.13, provided, however, that no such member of the Hearing Panel may serve as a member of the Conference Panel in the same case. The president of the Disciplinary Board shall be ineligible to serve on the Hearing Panel.

Injured Person shall mean a person, group or Community who has been, is or may be affected by an Offense.

Intake Officer shall mean one or more persons designated by the Bishop Diocesan after consultation with the Disciplinary Board, unless otherwise selected pursuant to diocesan canons, to whom information regarding Offenses is reported.

Investigator shall mean a person having (a) sufficient knowledge, skill, experience and training to conduct investigations under this Title and (b) familiarity with the provisions and objectives of this Title. Investigators shall be appointed by the Bishop Diocesan in consultation with the president of the Disciplinary Board. *The Investigator acts under the direction of the Reference Panel until a referral is made pursuant to Canon IV.11.3; after such referral, the Investigator shall be overseen by and report to the Church Attorney.*

Member of the Clergy shall mean Bishops, Priests and Deacons of the Church.

Offense shall mean any act or omission for which a Member of the Clergy may be held accountable under Canons IV.3 or IV.4.

Order shall mean a written decision of a Conference Panel or a Hearing panel which is issued with or without the Respondent's consent. All orders shall meet the requirements of Canon IV.14.

Pastoral Direction shall mean a written direction given by a Bishop to a Member of the Clergy which meets the requirements of Canon IV.7.

Pastoral Relationship shall mean any relationship between a Member of the Clergy and any person to whom the Member of the Clergy provides or has provided counseling, pastoral

care, spiritual direction or spiritual guidance, or from whom such member of the Clergy has received information within the Rite of Reconciliation of a Penitent.

Privileged Communication shall mean any communication or disclosure made in confidence and with an expectation of privacy (a) within the Rite of Reconciliation of a Penitent; (b) between a client and the client's attorney; (c) between a Respondent and an Advisor or a Complainant and an Advisor; (d) between persons in a relationship in which communications are protected by secular law or Diocesan Canons; or (e) between and among a Conciliator and participants in a conciliation under Canon IV.10.

Procedural Officer shall mean a person learned in the law, experienced in litigation and having familiarity with the provisions and objectives of this Title. No Chancellor or Vice-Chancellor of a Diocese shall serve as Procedural Officer in the same Diocese. Every Diocese shall have a Procedural Officer, who shall be appointed for a term of not less than one year by the Bishop Diocesan in consultation with the President of the Disciplinary Board to aid in the prompt and proper disposition of procedural motions and challenges in Title IV proceedings.

Provincial Court of Review shall mean a court organized and existing as provided in Canon IV.5.4 to serve as the body which performs the duties prescribed in Canon IV.15.

Reference Panel shall mean a panel composed of the Intake Officer, the Bishop Diocesan and the president of the Disciplinary Board to serve as the body which performs the duties prescribed in Canons IV.6 and IV.11.

Respondent shall mean any Member of the Clergy (a) who is the subject of a matter referred for conciliation or to the Conference Panel or to the Hearing Panel; (b) whose ministry has been restricted; (c) who has been placed on Administrative Leave; (d) who is the subject of an investigation and is asked by an investigator or by the Bishop Diocesan to provide information or to make a statement; or (e) who agreed with the Bishop Diocesan regarding terms of discipline pursuant to Canon IV.9; or (f) any Member of the Clergy who requests a review pursuant to Canon IV.19.31.

Sentence shall mean the pronouncement of discipline of a Member of the Clergy pursuant to an Accord or Order in the form of (a) admonition, in which the conduct of such Member of the Clergy is publicly and formally censured or reprimanded, or (b) suspension, in which such Member of the Clergy is required to refrain temporarily from the exercise of the gifts of ministry conferred by ordination, or (c) deposition, in which such Member of the Clergy is deprived of the right to exercise the gifts and spiritual authority of God's word and sacraments conferred at ordination.

Sexual Abuse shall mean any Sexual Behavior at the request of, acquiesced to or by a person eighteen years of age or older and a person under eighteen years of age, in high school or legally incompetent.

Sexual Behavior shall mean any physical contact, bodily movement, speech, communication or other activity sexual in nature or that is intended to arouse or gratify erotic interest or sexual desires.

Sexual Misconduct shall mean (a) Sexual Abuse or (b) Sexual Behavior at the request of, acquiesced to or by a Member of the Clergy with an employee, volunteer, student or counselee of that Member of the Clergy or in the same congregation as the Member of the Clergy, or a person with whom the Member of the Clergy has a Pastoral Relationship.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Salt Lake City, 2015* (New York: General Convention, 2015), pp. 883-886.



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.