

**General Convention of The Episcopal Church 2024
Archives' Research Report**

Resolution No.: 2024-A106
Title: Amend Canon IV.15.5.a
Proposer: Court of Review
Topic: Canons, Discipline

Directly Related: (Attached)

None

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 2022, 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](#).

A106 - Amend Canon IV.15.5.a

Final Status: Not Yet Finalized

Proposed by: Court of Review

Has Budget Implications: No

Cost:

Amends C&C or Rules of Order: Yes

Requests New Interim Body: No

Changes Mandate Of Existing Ib: No

Directs Dfms Staff: No

Directs Dioceses: No

Directs Executive Council: No

HiA: No House Assigned

Legislative Committee Currently Assigned: No Committee Assigned

Completion Status: Incomplete

Latest House Action: N/A

Supporting Documents: No

Resolution Text

Resolved, the House of _____ concurring,

That Canon IV.15.5.a is hereby 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. 5. The standards for and conditions of appeal to the Court of Review shall be as follows:

- a.** Where an Order is issued against a Respondent who fails to appear before the Hearing Panel or who otherwise fails to participate in proceedings before the Hearing Panel, such Order shall be upheld unless a review of the record on appeal shows the Hearing Panel made a clear error in issuing such Order, which substantially prejudiced the Respondent. The Court of Review shall review the facts and record in the light most favorable to the Respondent.

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

Sec. 5. The standards for and conditions of appeal to the Court of Review shall be as follows:

a. Where an Order is issued against a Respondent who fails to appear before the Hearing Panel or who otherwise fails to participate in proceedings before the Hearing Panel, such Order shall be upheld unless a review of the record on appeal shows the Hearing Panel made a clear error in issuing such Order, *which substantially prejudiced the Respondent*. The Court of Review shall review the facts and record in the light most favorable to the Respondent.

Explanation

When a Respondent chooses not to participate in proceedings or appear for hearing, they necessarily forfeit certain options to subsequently challenge a hearing panel's order. This is particularly the case since Title IV proceedings are neither civil nor criminal in nature, but ecclesiastical. Ordained persons who chose not to participate or appear in a Title IV proceeding against them have expressed in such actions a profound disregard for the life and health of the Body of Christ. Such disregard in itself, absent any allegations of misconduct, suggests unfitness for ordained ministry. Not all avenues of appeal which are open to Respondents who participate in the proceedings and in the hearing should be available to a Respondent who had intentionally chosen not to participate. It appears that the language of "clear error" is intended to parallel the secular appellate review standard set out in *U.S. v. Gypsum*, 333 U.S. 364 (1948) for questions of fact that leave the reviewing court "with the clear impression that a mistake has been committed" in the issuance of a hearing panel order. However, the Court of Review is concerned that without the proposed clarifying language, it could too persuasively be argued that an error which was clear but did not prejudice the Respondent could provide a basis for a Respondent bent on delaying final resolution of a matter to do so to the prejudice of the process, complainants, and the Church. The suggested language assures that the reviewing court retains the ability to set aside orders which are mistaken, while retaining the ability to bring closure where appropriate.