

**GENERAL CONVENTION OF THE EPISCOPAL CHURCH 2018
ARCHIVES' RESEARCH REPORT**

RESOLUTION NO.: 2018-A121
TITLE: Amend Canon IV.2 Remove Definition of Procedural Officer
PROPOSER: Standing Commission on Structure, Governance, Constitution and Canons
TOPIC: Canons

Directly Related: (Attached)

2015-A124 Amend Canon IV.2 [Of Terminology Used in This Title]
2015-A126 On the Topic of Amending the Canon on Disciplinary Structures (Rejected)
2015-A135 Amend Canon IV.13 [Of Hearing Panels]
2015-A146 Amend Canon IV.19.14(b) and (c) [Of General Provisions]

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

None

Supplemental Documents: (Linked)

(*Blue Book*) Report to General Convention, [Standing Commission on Structure, Governance, Constitution and Canons](#), see pages 437-438.

In preparing this report, the Archives researched the resolutions in the Acts of Convention database for the period 1976 through 2015, 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 at 800-525-9329 before Convention or at Convention in the General Convention Secretariat.

A121 Amend Canon IV.2 Remove Definition of Procedural Officer

Proposer	Standing Commission on Structure, Governance, Constitution and Canons
Topic	Canons
Endorsed by	
Sponsored by	
Page numbers	Blue Book: p. N/A; Constitution & Canons: p. 134
HiA / Leg. Cttee	/
Current Status	Resolution Filed
Version	Original (as filed)
Review Status	Not yet reviewed

RESOLUTION TEXT

- 1 *Resolved*, the House of _____ concurring, That Canon IV.2 is hereby amended to strike the following language:
- 2 ~~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.~~

EXPLANATION

The 78th General Convention adopted Resolution A124 which included a definition of "Procedural Officer". However, the 78th General Convention rejected Resolution A126 which contained provisions relating to a Procedural Officer, and amendments to Resolutions A135 and A146 removed all references to that office. Accordingly, Canon IV.2 contains a definition for an office which does not otherwise exist under Canon and this definition should be removed to make the Canons internally consistent.



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

[*Resolved*, That the Canon IV.2 definition of “Procedural Officer” is hereby amended to read as follows:]

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.

Citation: Canon IV.2 is excerpted from the Final Text of 2012-A124, which revised Canon IV.2. See 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-A126
Title: On the Topic of Amending the Canon on Disciplinary Structures
Legislative Action Taken: Rejected
Text of Resolution:

Resolved, the House of Deputies concurring, That Canon IV.5.3(j) is hereby amended to read as follows:

(j) Church ~~and~~ Attorneys, Intake Officers, Advisors, Investigators ~~and~~, Conciliators, *and Procedural Officers* need not reside in or be members of the Diocese proceeding under this Title. Members of the Disciplinary Board shall be members of the Diocese in which they serve unless such Diocese has entered into an agreement for the sharing of resources as provided in Canon IV.5.3(i).



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.



Resolution Number: 2015-A146
Title: Amend Canon IV.19.14(b) and (c) [Of General Provisions]
Legislative Action Taken: Concurred as Amended
Final Text:

Resolved, That Canon IV.19.14(b) and (c) be amended as follows:

(b) *The Church Attorney or Any* member of any Panel provided for in this Title shall disqualify himself or herself in any proceeding in which ~~the member's~~*such person's* impartiality may reasonably be questioned. The ~~member~~*person* shall also disqualify himself or herself when the ~~member~~*person*, the ~~member's~~*person's* spouse, any person within the third degree of relationship to either of them, or the spouse of such person, (1) is the Respondent, Complainant or an Injured Person, (2) is likely to be a witness in the proceeding, (3) has a personal bias or prejudice concerning the Respondent, Complainant or any Injured Person, (4) has personal knowledge of disputed evidentiary facts concerning the proceeding, (5) has a personal financial interest in the outcome of the proceeding or in the Respondent, Complainant, any Injured Person or any other interest that could be substantially affected by the outcome or (6) is a member of the same congregation or otherwise has a close personal or professional relationship with the Respondent, the Complainant, any Injured Person or any witness in the matter.

(c) *The Church Attorney or Any* member of any Panel provided for in this Title who has not disqualified himself or herself as provided in this section may be subject to challenge by the Church Attorney or the Respondent on grounds described in this section. The Complainant or the Complainant's Advisor may inform the Church Attorney of any such grounds. The challenge shall be investigated by the remaining members of the Panel who shall determine whether the challenged ~~member of the Panel~~*person* should be disqualified and replaced according to the procedures of this Title for filling vacancies.

Citation: General Convention, *Journal of the General Convention of...The Episcopal Church, Salt Lake City, 2015* (New York: General Convention, 2015), pp. 927-928.