

GENERAL CONVENTION OF THE EPISCOPAL CHURCH 2018
ARCHIVES' RESEARCH REPORT

RESOLUTION NO.: 2018-A125

TITLE: Amend Canon IV.2 and IV.13 pertaining to Declining to Advance Proceeding

PROPOSER: Standing Commission on Structure, Governance, Constitution and Canons

TOPIC: Canons

Directly Related: (Attached)

None

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

2015-A124 Amend Canon IV.2 [Of Terminology Used in This Title]

2009-A185 Amend Title IV [Ecclesiastical Discipline]

Supplemental Documents: (Linked)

(Blue Book) Report to General Convention, [Standing Commission on Structure, Governance, Constitution and Canons](#), see pages 440-441.

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.

A125 Amend Canon IV.2 and IV.13 pertaining to Declining to Advance Proceedings

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| 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. 131, 152 |
| 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 the following section of Canon IV.2 be amended to read as follows:
 - 2 Church Attorney shall mean one (1) 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.
 - 3 And be it further
 - 4 *Resolved*, That Canon IV.13 be amended by inserting before the existing Section 10 a new section as follows and renumbering succeeding sections:
 - 5 *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.

EXPLANATION

Title IV prohibits the Church Attorney from terminating a proceeding by declining to advance the proceeding. These amendments provide a formal process for terminating a proceeding by seeking leave to decline to advance the proceeding. These amendments are proposed in response to a situation in which a Church Attorney made the decision to decline to advance because the Respondent had resigned Holy Orders at a time at which the Respondent was not allowed to resign because he was under imputation.

The amendments provide for a process in which the Church Attorney may seek leave from the Hearing Panel to decline to advance the proceedings or to refer the matter back to the Intake Officer or Bishop for a pastoral response instead of continuing to seek disciplinary action. The Hearing Panel will then hold a hearing on the request, giving the Complainant, Respondent and Bishop Diocesan the right to respond. If the Hearing Panel grants the request for leave to decline to advance the proceedings, it shall enter an order of dismissal, thereby resulting in a “dismissal, Accord or Order” under Canon III.7.9 (deacons), Canon III.9.11 (priests) or Canon III.12.8(b) (bishops).