

# Title IV Training Materials

January 2011

Drafted by Robin Hammeal-Urban, Esq.  
Pastoral Response Coordinator, Diocese of Connecticut

## Table of Contents

<b>1. Purpose of Title IV.....</b>	<b>2</b>
<b>2. Participants.....</b>	<b>3</b>
<b>3. Scope of Title IV: What is an Offense?.....</b>	<b>5</b>
<b>4. The Title IV Process for Offenses:</b>	
<b>Stage 1: Intake.....</b>	<b>7</b>
<b>Stage 2: Referral.....</b>	<b>11</b>
○ Pastoral Response with No Other Action.....	11
○ Conciliation.....	12
○ Investigation.....	13
○ Possible Agreement Between Bishop and Respondent.....	14
<b>Stage 3: Adjudication.....</b>	<b>15</b>
○ Conference Panel.....	15
○ Hearing Panel.....	17
○ Appeal of Order issued by Hearing Panel.....	23
<b>5. Accords and Orders.....</b>	<b>26</b>
<b>6. Bishop’s Authority: Pastoral Direction, Restricted Ministry and Administrative Leave.....</b>	<b>32</b>
<b>7. Abandonment of the Episcopal Church.....</b>	<b>35</b>
<b>8. Flow Charts:</b>	
Participants-Composition of Boards and Panels	
Stage 1: Intake	
Stage 2: Referral	
Stage 3: Adjudication	
Conference Panel	
Hearing Panel	

## **Creation of these Materials**

These materials were drafted by Robin Hammeal-Urban as a member of and in consultation with the General Convention Title IV-II taskforce.

The interpretations, suggestions and opinions expressed herein are solely those of the author and do not necessarily reflect the interpretations, suggestions opinions of others in the Episcopal Church.

## **Use of These Materials**

These materials address the structure and process of Title IV of the Constitution & Canons of the Protestant Episcopal Church as revised by the 76<sup>th</sup> General Convention 2009, effective July 1, 2011, and focus primarily on the process for resolving matters regarding offenses.

These materials are intended to be used for training purposes only. They are not written as any type of legal authority on Title IV and should not be used as such. There are many details and exceptions in Title IV that are not acknowledged in these materials.

Throughout these materials references to canon numbers and sections are provided in parentheses for the convenience of the reader.

Information on Title IV provisions regarding Abandonment of the Episcopal Church is included in section 7 of these materials.

## **1. Purpose of Title IV**

Title IV sets out a process to resolve questions regarding behavior of clergy and to provide pastoral care and response for those persons and communities aggrieved by a cleric's conduct. The Title IV process is designed to promote "healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among all involved or affected." (1)

By virtue of ordination, all bishops, priests and deacons accept additional responsibilities and accountability for doctrine, discipline, worship and obedience. Title IV addresses two main categories of clergy behavior:

1. Offenses (misconduct);
- AND
2. Abandonment of the Episcopal Church.

These training materials primarily focus on the process for resolving matters regarding Offenses. However, section 7 of these materials includes a brief overview of the Title IV process pertaining to Abandonment of the Episcopal Church.

**Title IV  
Training Materials for Advisors**

**Table of Contents**

<b>1. Purpose of Title IV</b>	2
<b>2. Participants</b>	3
<b>3. Scope of Title IV: What is an Offense?</b>	5
<b>4. The Title IV Process for Offenses</b>	
<b>Stage 1: Intake</b>	7
<b>Stage 2: Referral</b>	
Pastoral Response with No Other Action	11
Conciliation	12
Investigation	13
Possible Agreement Between Bishop and Respondent	13
<b>Stage 3: Adjudication</b>	
Conference Panel	15
Hearing Panel	17
Appeal of Order issued by Hearing Panel	23
<b>5. Accords and Orders</b>	26
<b>6. Bishop's Authority: Pastoral Direction, Restricted Ministry and Administrative Leave</b>	32
<b>7. Abandonment of the Episcopal Church</b>	35
<b>8. Flow Charts:</b>	
<b>Participants-Composition of Boards and Panels</b>	38
<b>Stage 1: Intake</b>	39
<b>Stage 2: Referral</b>	40
<b>Stage 3: Adjudication</b>	
Conference Panel	41
Hearing Panel	42

**Use of These Materials**

These materials address the structure and process of Title IV of the Constitution & Canons of The Episcopal Church as revised by the 76th General Convention 2009, effective July 1, 2011.

These materials are intended to be used for training purposes only. They are not written as any type of legal authority on Title IV and should not be used as such. There are many details and exceptions in Title IV that are not acknowledged in these materials.

The interpretations, suggestions and opinions expressed herein are solely those of the author and do not necessarily reflect the interpretations, suggestions opinions of others in the Episcopal Church.

Information on Title IV provisions regarding Abandonment of The Episcopal Church is included in section 7 of these materials. However, the focus of these materials is primarily on the process for resolving matters regarding offenses.

Throughout these materials references to canon numbers and sections are provided in parentheses for the convenience of the reader.

## 1. Purpose of Title IV

Title IV sets out a process to resolve questions regarding behavior of clergy, and to provide pastoral care and response for those persons and communities aggrieved by the conduct of a member of the clergy. The Title IV process is designed to promote “healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among all involved or affected.” (1)

By virtue of ordination, all bishops, priests and deacons accept additional responsibilities and accountability for doctrine, discipline, worship and obedience. Title IV addresses two main categories of clergy behavior:

1. **Offenses** (misconduct)
2. **Abandonment** of the Episcopal Church.

These training materials primarily focus on the process for resolving matters regarding Offenses. However, section 7 of these materials includes a brief overview of the Title IV process pertaining to Abandonment of the Episcopal Church.

## 2. Participants in Title IV process

The participants are listed roughly in order of appearance in the Title IV process.

1. **Complainant** is the person who gives information about a possible offense to an Intake Officer (IO). A Complainant can also be any person, group or community who has been or may be affected by an Offense. The Bishop can designate a person or group as an “Injured Person” to give them the rights of a Complainant even though they were not the person or group to give information to the Intake Officer.

2. **Intake officer** (IO) is the person (or persons) to whom information regarding offenses is reported. The IO is designated by the bishop after consultation with the Disciplinary Board or as specified by diocesan canons. The IO serves as one of three members of the Reference Panel.

3. **Bishop** is the diocesan bishop unless s/he has “expressly assigned” responsibility for Title IV matters to a Bishop Suffragan, Assistant Bishop or Bishop Coadjutor. The Bishop is one of three members of the Reference Panel.

4. **Church Attorney** (CA) represents the church in Title IV proceedings and has broad authority under Title IV. Among other powers and duties, the CA:

- Receives and reviews the IO’s written report;
- Conducts investigations and oversees the Investigator. In connection with an investigation, the CA has “access to the personnel, books and records of the Diocese and its constituent parts(2);”
- Determines within his/her discretion whether reported information, if true, would be grounds for discipline;
- Exercises discretion and may, in the interests of the church, decide not to pursue a matter. The CA can send a matter back to the IO or bishop for pastoral response instead of disciplinary action.

A diocese may have more than one CA. CAs are selected as specified in diocesan canons. Diocesan canons may also provide for removal of a church attorney for cause.

5. **Disciplinary Board** is a group of at least seven (7) people chosen in accordance with diocesan canons. The Disciplinary Board must include laity and priests or deacons. The majority of the Board must be priests or deacons but only by a majority

of one. Members of the Disciplinary Board are chosen to serve on the Conference Panel and Hearing Panel by the President of the Disciplinary Board.(5)

6. **President of the Disciplinary Board** is chosen from among the members of the Disciplinary Board. The Disciplinary Board convenes to elect its president within sixty (60) days after each Diocesan Convention unless diocesan canons provide for another method of selecting the President.

The President of the Disciplinary Board is one of the three (3) members of the Reference Panel; the Bishop and the IO are the other two members. S/he chooses which members of the Disciplinary Board will serve on the Conference Panel and Hearing Panel for each matter.

7. **Respondent** is any member of the clergy who is the subject of proceedings under Title IV. Canon 2 sets out when in the process a member of the clergy officially becomes a Respondent.

8. **Conciliator** is a person skilled in dispute resolution and appointed by the Bishop on a case-by-case basis. The Conciliator seeks to reach an agreement between the parties (Complainant and Respondent) to resolve all the issues when a matter is referred for Conciliation.

9. **Investigator** needs to have “knowledge, skill, experience and training” to conduct investigations and be familiar with Title IV. Investigators are appointed by the Bishop “in consultation” with President of the Disciplinary Board.

10. **Conference Panel** is composed of between one (1) and three (3) of the members of the Disciplinary Board. The President of the Disciplinary Board chooses who will serve on the Conference Panel for each matter unless diocesan canons provide another means of selection. A member of the Conference Panel cannot also serve on the Hearing Panel in the same matter.

11. **Hearing Panel** is composed of three (3) members of the Disciplinary Board selected by the President of the Disciplinary Board, unless diocesan canons provide another means of selection.

12. **Injured Person** is any person, group or community who has been, is, or may be affected by the commission of an offense by a cleric.

13. **Advisors** serve to provide “support, assistance, consultation and advice” to Complainants and Respondents. Bishops must offer Complainants and Respondents an Advisor and pay for the “reasonable costs and expenses” of providing an Advisor.(19.10.f) A Complainant or Respondent does not have to accept the services of an Advisor offered by the Bishop and can choose his or her own Advisor, but in this case, the Bishop does not have to pay this person’s costs and expenses. All communication between a Complainant or Respondent and his/her Advisor is confidential and privileged.

Advisors play a significant role when there is a question as to whether a Respondent has committed an Offense. There is no canonical role for Advisors when a Respondent’s behavior may constitute Abandonment of the Episcopal Church.

14. **Provincial Court of Review** hears appeals of Orders issued by Hearing Panels and determines jurisdictional issues (questions when multiple dioceses are involved in a Title IV matter). This court consists of one bishop, two priests (or one priest and one deacon) and two lay ministers. The priests and/or deacons must be canonically resident in different dioceses. The lay ministers must reside in different dioceses from each other. All members of the Provincial Court of Review must be members of the

Disciplinary Boards of their own diocese. Alternate members are needed because a member of the Court of Review can not serve in a matter arising from his/her own diocese. Alternates consist of one bishop, one priest or deacon, one lay minister. The members are appointed annually by the President of the Province. (5.4)

Note: The diocesan standing committee has no role in responding to matters concerning an offense. There is a role for the standing committee in the Title IV process to resolve questions regarding a Respondent's Abandonment of The Episcopal Church. (Members of the Standing Committee may serve as members of the Disciplinary Board if so provided by diocesan canon.)

### **3. Scope of Title IV**

#### **What conduct is within the scope of Title IV?**

There is a three pronged test to determine whether clergy conduct is subject to Title IV. The conduct in question must be:

1. an **Offense**;
2. **material** (which means that it is important, relates to substance not merely form, and goes to the merit or essence); AND
3. "**substantial** or of clear and weighty importance to the ministry of the church."

Conduct that constitutes an Offense may not be subject to Title IV if it is not both "material" and "substantial or of clear and weighty importance" to the church (3.3)

#### **What is "an Offense"?**

An offense is defined as a violation of the standards of conduct for Members of the Clergy. The standards of conduct require clergy to engage in certain behaviors and to refrain from other behaviors. Pursuant to the standards of conduct, **clergy are required to:**

1. Maintain **confidentiality**;
2. Conform to the **Rubrics** of the BCP;
3. Abide by ordination **vows** and promises;
4. Comply with an **Accord** (a negotiated resolution under Title IV), Order, Pastoral Direction, restriction on ministry or placement on administrative leave;
5. Safeguard the **property and funds** of the church;
6. **Report** all matters to the IO "which may constitute an offense...meeting the standards of...being both material and substantial or of clear and weighty importance to the ministry of the church"; AND
7. Follow **provisions** of applicable Constitution and Canons, ecclesiastical licensure or commission and community rules or bylaws. Community is the group in which the Respondent functions, or a religious community. It is not the municipality.(2)

The standards of conduct specifically **require clergy NOT to:**

1. Engage in any **sexual misconduct**. Sexual misconduct includes sexual abuse and sexual behavior within certain relationships;
  - Sexual abuse is defined as sexual behavior by a person 18 years of age or older with a person under 18 years of age, in high school or legally incompetent.
  - The definition of sexual behavior is broad. It includes "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. (2)

- Sexual misconduct also includes sexual behavior with an employee, volunteer, student, counselor, member of the Respondent’s congregation or person with whom Respondent has had a pastoral relationship.
  - A pastoral relationship is any relationship in which the Respondent currently or has in the past “provided counseling, pastoral care, spiritual direction or spiritual guidance, or from whom such ... [Respondent ]...has received information within the Rite of Reconciliation of a Penitent.”(2)
2. Hold or teach any **Doctrine contrary** to that held by the church;
  3. Engage in any **secular employment**, calling or business **without consent** of the Bishop of canonical residence;
  4. Be **absent** from the diocese of canonical residence for more than 2 years without that Bishop’s consent;
  5. Commit **criminal acts** that adversely reflect on the Cleric’s honesty, trustworthiness, or fitness as a minister;
  6. Engage in **dishonesty**, fraud, deceit or misrepresentation;
  7. Habitually **neglect public worship**, Holy Communion and exercise of the ministerial office without cause; OR
  8. Engage in any **conduct unbecoming** a member of the clergy.

In addition, it is an Offense for a member of the clergy to:

1. **Fail to cooperate** with any investigation or proceedings without good cause;
2. Intentionally bring a **false accusation**; OR
3. Knowingly provide **false testimony** or evidence. (3.1)

Note: Title IV also covers conduct that constitutes Abandonment of the Episcopal Church. This conduct and the process to address such conduct are discussed in section 7 of these materials.

#### 4. The Process

For training purposes, the Title IV process is presented in three stages:

*Stage 1: Intake*

*Stage 2: Referral*

- Appropriate Pastoral Response with No Other Action
- Conciliation
- Investigation
- Possible Agreement Between Bishop and Cleric

*Stage 3: Adjudication*

- Conference Panel
- Hearing Panel
- Appeal of Order issued by Hearing Panel

There is a flow chart delineating each of these three stages as the end of these materials.

#### ***Title IV Process Stage 1: Intake***

##### **Who can report information about offenses?**

Anyone can report information concerning an offense to the Intake Officer (IO). The new canons do not contain a finite listing of individuals or groups with standing to raise concerns about an Offense. Rather, the canons state that “[a]ny person other than the IO who receives information regarding an offense shall promptly forward the information

to the IO.” (6.3) A Bishop may also forward information about a possible offense to the IO.

Each diocese must “publicize methods and means of reporting information concerning offenses.” (6.1)

### **How is information about an offense submitted to the IO?**

On this point the canons are clear. Information may be submitted to the IO “in any manner and in any form.” (6.2) This appears to include written and oral reports. There is no requirement that the person providing the information identify him/herself.

### **What happens after the IO receives the information?**

There are two things that the IO must do: write an intake report, and determine whether the information in the report, if true, would constitute an Offense. The intake report should include “as much specificity as possible.” If the IO thinks that it is necessary, s/he may conduct a preliminary investigation. The IO provides copies of the intake report to the other two members of the Reference Panel (the Bishop and the President of the Disciplinary Board) as well as the Church Attorney (CA). (6.4)

### **When is a pastoral response provided?**

“Whenever any report is made to the Intake Officer” the Bishop is required to provide an appropriate pastoral response. (8.1) The Bishop can designate the IO or another person to implement the pastoral response. (8.1) This person can coordinate pastoral care and communication between the Bishop and the Advisors.

### **What constitutes an appropriate pastoral response?**

An appropriate pastoral response embodies “respect, care and concern for affected persons and communities. It is to be designed “to promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among all involved or affected.” (8)

Pastoral care is one component of pastoral response. The Bishop must “consider offering pastoral care to all of the following:

1. All those affected by an Offense;
2. All those affected by allegations of an Offense;
3. Complainant;
4. Complainant’s family;
5. Respondent;
6. Respondent’s family;
7. Injured person;
8. Injured person’s family;
9. Any affected community;
10. Witnesses; AND
11. Disciplinary Board. (8.3)

In providing a pastoral response the bishop may disclose information s/he deems pastorally appropriate regarding any:

- Offense;
- Allegations regarding an Offense;
- Accord; OR
- Order.

Although the Intake process is confidential, this confidentiality is not absolute. The canons anticipate that a Bishop will share some information in providing the required



pastoral response. The canons caution a Bishop to consider the “privacy interests and pastoral needs of all affected persons,” so that the content and process of sharing information this is done with the utmost care. (8.3 & 8.4)

**What decision making authority does the IO have?**

The IO determines whether the reported information might constitute an offense. For the purpose of this initial determination, the IO assumes that the reported information is true. (6.5) The assumption that the allegations are true is made only at the intake stage of the Title IV process. There are many opportunities for a Respondent to contest the truthfulness of allegations during later stages in the process. For example, at the Hearing Panel the Respondent is presumed not to have committed the offense and the burden is on the CA to prove the allegations. (19.6)

**What happens if IO determines that information might constitute an Offense?**

The IO promptly forwards the written intake report to the Reference Panel (composed of the IO, Bishop and President of the Disciplinary Board.) The President of the Disciplinary Board promptly selects, by lot or other means, those members of the Disciplinary Board who will serve on the Conference Panel and Hearing Panel for the matter. The President of the Disciplinary Board also designates a president for each of those panels. (6.7)

**What happens if IO determines that information might not constitute an Offense?**

The IO can dismiss the matter. Before dismissing the matter, the IO must inform the Bishop of the IO’s intent to dismiss the matter. If the Bishop does not object, then the IO dismisses the matter by preparing a written notice that includes:

1. The decision to dismiss;
2. The reasons for dismissal; AND
3. An explanation of Complainant’s right to appeal the decision to dismiss within thirty (30) days of date of the notice.

The IO sends the notice of dismissal to both the Complainant and Bishop. The IO also sends a copy of the notice of dismissal and written intake report to the President of the Disciplinary Board.

The IO may keep a copy of the intake report and any related information on file. This information can be considered by the IO if any additional information regarding the Respondent comes to the attention of the IO. (6.5)

**What can a Complainant do if the IO dismisses the matter?**

The Complainant has a right to appeal the IO’s decision to dismiss a matter. To appeal, the Complainant needs to prepare two documents:

1. a statement that the Complainant appeals the dismissal AND
2. a written statement of the objectionable conduct.

The IO must offer to help the Complainant prepare these documents. The Complainant then sends these documents to the President of the Disciplinary Board. The President of the Disciplinary Board has thirty (30) days to affirm or overrule the dismissal and must promptly notify the Complainant, IO and Bishop of this decision.

If the President of the Disciplinary Board affirms the decision to dismiss, then this is the end of the matter under Title IV. The Complainant has no right to contest or appeal this dismissal. If the President of the Disciplinary Board overrules the dismissal, the President forwards the intake report to the Reference Panel.

The Bishop must offer an Advisor to the Complainant when the Complainant files an appeal of a dismissal by the IO. The Bishop may offer an Advisor earlier in the Title IV process.(19.10.b.2)

**Are matters in the Intake Process confidential?**

Yes. All communications and deliberations during the intake stage are confidential, except as required by law (i.e. mandated reporting of suspected abuse) or as the bishop deems pastorally appropriate. (6.10) Within this frame of confidentiality, the Bishop is required to provide an appropriate pastoral response encompassing pastoral care each time a report is made to the IO. (8.1)

***Title IV Process Stage 2: Referral***

**What is the role of the Reference Panel?**

The Reference Panel decides, by majority vote, which process would be best to resolve a matter. The Reference Panel makes its decision based on the content of the intake report. The panel does not hear any evidence or talk with any witnesses.

**What referral options are available to the Reference Panel?**

At this stage there are four referral options. Each of these options is discussed in detail below:

1. Appropriate pastoral response with no other action;
2. Conciliation;
3. Investigation; OR
4. Possible agreement with bishop regarding terms of discipline.

When a matter is referred for investigation the matter returns to the Reference Panel after completion of the investigation. The Reference Panel then again refers the matter and has the additional option of referring the matter to the Conference Panel. This can lead to further referral to the Hearing Panel.

**Can a matter come to the Reference Panel more than once?**

Yes. A matter can come to the Reference Panel multiple times if a prior referral did not result in a final resolution of the matter. Throughout the Title IV process, the Reference Panel continues to determine which referral option could best resolve a matter and refers accordingly. The referral cycle continues until the matter concludes in one of the following ways:

- Determination by the Reference Panel that no action is required other than Appropriate Pastoral Response;
- An Accord entered pursuant to Conciliation, an Agreement Between the Bishop and Respondent, or at the Conference Panel;
- Dismissal by Conference Panel or Hearing Panel;
- An Order issued by the Conference Panel that is not refused by the CA or Respondent; OR
- An Order issued by the Hearing Panel. (There is no option to refuse this Order.)

### **What is An Appropriate Pastoral Response with No Other Action?**

When the Reference Panel determines that no action other than appropriate pastoral response is required, the Reference Panel must notify the Complainant and Cleric of that determination and the basis for this determination.

The result is that only a pastoral response is provided. Such a response is already mandated in each matter as the Bishop is to provide a pastoral response “whenever any report is made to IO.” (8.1) Beyond the pastoral response there is “no other action” or remedy in the Title IV process. This is the end of the matter. There are no provisions that permit the Complainant to appeal this determination of the Reference Panel.

For a discussion of what constitutes an appropriate pastoral response see discussion on this topic in the section on Stage 1: Intake.

### **What is Conciliation?**

A process in which a Conciliator works with the parties to come to an agreed upon resolution of all the issues. The goal is to seek “a resolution which promotes healing; repentance, forgiveness, restitution, justice, amendment of life and reconciliation among Complainant, Respondent, affected Community other persons and the church.” (10.1)

### **The Process of Conciliation**

When the Reference Panel refers a matter for Conciliation, the Bishop appoints a person to serve as Conciliator. The Conciliator must be skilled in dispute resolution techniques and have no conflict of interest in the matter. The Conciliator is not required to be a member of the Disciplinary Board. The Bishop can appoint anyone s/he wishes.

The Conciliator may communicate and meet privately with participants. The Bishop or a representative appointed by the Bishop may participate in the Conciliation. Participants in Conciliation are not required to be present with or communicate directly with the other participants. All communication between participants and the Conciliator is confidential unless a participant gives permission for the Conciliator to disclose information to other participants.

### **Timeframe for Conciliation**

If an agreement cannot be reached within “a reasonable time” the matter is referred back to the Reference Panel. The canons do not specify what constitutes “a reasonable time,” or who make this determination.

### **Possible Outcomes of Conciliation**

If through Conciliation the parties agree on a “suitable resolution of all the issues” an Accord is prepared. Such an Accord needs to be signed by the Respondent, Cleric and lastly the Conciliator.

If the parties do not reach an agreement, the Conciliator reports this to the Bishop and the matter is referred back to the Reference Panel. (10.3) The Reference Panel meets to determine how the matter should now be referred. The Reference Panel’s options for referral include:

- Appropriate pastoral response with no further action;
- Investigation; OR
- Possible Agreement Between the Bishop and Respondent for Discipline.

### **What happens when a matter is referred for Investigation?**

The Reference Panel forwards a copy of the intake report to a Title IV Investigator. The Investigator then uses “appropriate investigative means, with due consideration to pastoral sensitivities” to “investigate all facts pertinent to the factual claims of the intake report.” (11.2)

The Investigator prepares a written report for the Reference Panel. The Reference Panel may meet with the Investigator and can ask for further investigation. If such request is made, the Investigator must conduct further investigation and submit a supplemental report to the Reference Panel.

Investigations are confidential with two exceptions: 1) the person interviewed consents to allow the information to be disclosed, or 2) the Bishop deems that it is “pastorally necessary” to disclose the information. All people interviewed by an Investigator are to be advised of the confidential nature of the investigation including that the information they give may be disclosed to certain parties at the Bishop’s discretion. (11.5)

### **Timeframe for investigation**

An investigation is to be conducted “as expeditiously as possible.” (11.2)

### **Possible outcomes of investigation**

After the investigation is completed to the satisfaction of the Reference Panel, the Panel has five options for referral:

1. Appropriate Pastoral Response with no Further Action;
2. Conciliation;
3. Further Investigation;
4. Possible Agreement Between Bishop and Cleric for Discipline; OR
5. Referral to a Conference Panel.

Note: The Reference Panel has the option of referring a matter to the Conference Panel only after an investigation is completed.

### **What happens when a matter is referred for Possible Agreement Between Bishop and Respondent for Discipline?**

When a matter is referred for Possible Agreement between Bishop and Respondent, either the Bishop or the Respondent may propose terms of discipline. Even if the matter is not referred by the Reference Panel for possible agreement, either the Bishop or Respondent can propose terms for discipline at any time before an Order has become effective.

### **The process to reach an agreement**

Before reaching an agreement, the Bishop must consult with Injured Persons (which would include any Complainant(s)), the President of the Disciplinary Board, and the Church Attorney (CA).

If an agreement is reached, the terms are set out as a proposed Accord. An Accord can be entered if all of the following conditions are met:

1. The Respondent is aware of the discipline to be imposed and the effect of the discipline;
2. The Respondent had opportunity to consult with an attorney of the Cleric’s choosing; AND

3. The terms of the Accord, when possible, promote “healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation” and “is otherwise an appropriate resolution of the matter.” (9.2)

A Respondent has three (3) days to withdraw a proposed Accord that results from an agreement with the Bishop. After the three days, the Accord becomes “effective and irrevocable.” The bishop does not have the option to withdraw the proposed Accord. (9.3)

#### **Time frame for agreement**

A Bishop or Respondent can propose terms for an agreement any time before an Order becomes effective.

#### **Possible Outcomes**

An Accord may be entered if the Bishop and Respondent reach an agreement.

In the absence of an Accord, the matter goes back to the Reference Panel for further referral. The Reference Panel’s options for referral are:

- Appropriate Pastoral Response with No Further Action;
- Conciliation;
- Investigation; OR
- Conference Panel if an investigation has already been conducted.

#### **What is the difference between Conciliation and Agreements Between the Bishop and Respondent?**

Although Conciliation and Agreements between the Bishop and Respondent both result in an Accord, there are important differences between these two processes.

To engage in Conciliation under Title IV, a matter must be referred for Conciliation by the Reference Panel. In Conciliation an Accord can only be entered if the Complainant agrees to the terms of the Accord. In contrast, an Accord can be reached via Agreement Between the Bishop and Respondent any time before an Order becomes final, and the Bishop needs only to “consult” with Complainant, et al. The Complainant has no right to appeal or contest the terms of such an Agreement.

#### **Are matters in the Referral stage confidential?**

Yes. All communications and deliberations during the referral stage are confidential, except if the Bishop deems it pastorally appropriate to disclose information or as required by law (i.e. mandated reporting of suspected abuse). (6.10)

#### ***Title IV Process Stage 3: Adjudication***

Adjudication can be thought of as consisting of three (3) sequential steps each of which can result in a final resolution of a matter. The three (3) steps are:

1. Conference Panel
2. Hearing Panel
3. Appeal of Order Issued by Hearing Panel

#### **Adjudication Step 1: Conference Panel**

The Reference Panel can refer a matter to the Conference Panel after an investigation is completed. To make such referral, the President of the Disciplinary Board sends all materials regarding the matter to the Church Attorney (CA). The CA prepares a document that will inform the Respondent with “reasonable particularity” of the Offense(s) the Respondent is alleged to have committed. The CA then forwards all the materials including the CA’s document to the Conference Panel.

The Conference Panel is composed of between one (1) and three (3) of the members of the Disciplinary Board. The President of the Disciplinary Board chooses who

will serve on the Conference Panel unless diocesan canons provide another means of selection. (A person serving on the Conference Panel cannot also serve on the Hearing Panel in the same case.)

### **Notice Issued by Conference Panel**

The Conference Panel decides who should be “directed” to participate in the Conference Panel. This can include family members and representatives of an affected Community. Title IV provides no recourse against laity who choose not to comply with “a direction” issued by a Conference Panel.

The Conference Panel issues a notice to:

- Respondent and Respondent’s Advisor;
- Complainant and Complainant’s Advisor;
- Investigator (who has already conducted the investigation); AND
- Others whom the Conference Panel have decided should participate in this process.

The notice must include:

1. The nature and purpose of Conference Panel proceedings;
2. A copy of the document prepared by CA;
3. Names of all the people to whom the notice is sent;
4. Date, time and place Respondent is to appear before the Conference Panel.(12.3)

### **Proceedings of Conference Panel:**

The Respondent, Respondent’s Advisor and the CA are required to attend Conference Panel Proceedings. The Respondent’s Advisor is also allowed to participate. The Complainant may attend but is not required to do so. The Complainant’s Advisor may attend even if the Complainant chooses not to attend. (12.6)

The nature of Conference Panel proceedings is informal and conversational. Unlike court proceedings there are no witnesses called to testify and no record of the proceedings. Conference Panel proceedings are confidential and thus closed to all except Conference Panel members and invited participants.

The Conference Panel must describe the alleged Offense(s) and may hear from all of the following:

- The Church Attorney;
- Respondent and Respondent’s Advisor; AND
- Complainant and Complainant’s Advisor.

In addition, the Conference Panel may hear from others.

Note: The Complainant is not required to participate in the Conference Panel proceedings, but needs to be given the opportunity to do so.

The Conference Panel may confer with participants outside the presence of other participants. This could be helpful to Complainants who do not want to discuss the matter in the presence of the Respondent.

The Conference Panel has the authority to direct an Investigator to do further investigation.

### **Possible Outcomes of Conference Panel**

The Conference Panel confers privately to determine the outcome except when an Accord is entered as a result of the parties reaching an agreement.

There are five possible outcomes of Conference Panel proceedings. Only two of these outcomes are final resolutions of a matter. The possible outcomes are:

1. An **Accord** if the parties (Respondent, Complainant and CA) reach a negotiated resolution of the matter with the Conference Panel. This is a final resolution of the matter. (In the absence of an Accord, the Conference Panel confers privately and decides on one of the following four outcomes.);
2. **Dismissal** of the matter. An Order of dismissal must state the reasons for dismissal and can contain findings that exonerate the Respondent. A copy of an Order of dismissal must be provided to the Bishop, Respondent, Respondent's Advisor, Complainant, Complainant's Advisor, and CA. An Order of dismissal is final. The Complainant does not have a right to appeal an Order of Dismissal;
3. Referral for **Conciliation**;
4. Referral to **Hearing Panel**;
5. An **Order** imposing some form of discipline. This Order is not necessarily final as the Respondent or CA can refuse this Order. (The Bishop does not have the option to refuse an Order issued by a Conference Panel.) To refuse an Order of the Conference Panel, written notice of such refusal must be given to the Conference Panel within 15 days. The President of the Conference Panel then notifies the President of the Disciplinary Board of the refusal and the matter goes on to the Hearing Panel. The matter does not go back to the Reference Panel.

#### **Adjudication Step 2: Hearing Panel**

Matters come to the Hearing Panel via referral from the Conference Panel or as a result of the Respondent's or CA's refusal of an Order from the Conference Panel.

(14.11) The President of the Conference Panel notifies the President of the Disciplinary Board of the referral. (13.1)

The Hearing Panel is composed of three (3) members of the Disciplinary Board selected by the President of the Disciplinary Board unless diocesan canons provide another means of selection.

Hearing Panel proceedings are the closest thing to trial court proceedings available under Title IV.

The CA reviews all information regarding the matter and can revise or update the CA's written statement of Offense(s). The CA then forwards all this documentation to the Hearing Panel. There is no documentation from the proceedings of the Conference Panel as those proceedings were confidential.

#### **Notice Issued by Hearing Panel**

The Hearing Panel issues a notice to Respondent, Respondent's Advisor and CA. The notice must:

1. Explain the nature and purpose of proceeding;
2. Include the CA's written statements;
3. Disclose names of whom notice is sent;
4. Advise Respondent that a written response must be filed with Hearing Panel within 30 days;
5. Advise Respondent that failure to attend or participate in a scheduled hearing may result in a finding of default (loosing the opportunity to contest the matter due to failure to appear.) (13.2.c)

A copy of the notice is sent to the Complainant and the Complainant's Advisor.

### **Nature of Hearing Panel Proceedings**

The proceedings of the Hearing Panel are open to the public except for deliberations of the Hearing Panel, which are private. The Hearing Panel has discretion to close any part of proceedings to protect privacy of a person. (13.4)

A record of all Hearing Panel proceedings is made so that a written transcript can be produced. (13.4)

There are two parties in proceedings before the Hearing Panel; the Respondent and the CA who appears on behalf of the diocese. The Complainant is not a party in these proceedings. However, each Complainant has the right to be present throughout the hearing. In addition, the Complainant has the right to have his/her Advisor present and one additional person of the Complainant's choosing. (13.3)

### **Framing the Contested Issues before the Hearing**

The Respondent is required to file a written response to the CA's document within thirty (30) days of the date when notice was mailed by the Hearing Panel. This document must be signed by the Respondent. (13.2.c) The President of the Hearing Panel forwards a copy of the Respondent's response to the CA.

This exchange of documents frames the factual issues that are contested between the parties. The canons set out a very specific process that allows the parties to discover each other's evidence before the hearing.

### **Pre-Hearing Discovery Process**

Oral and written deposition testimony of "any person having knowledge pertaining to the Offense or and defense thereto" can be obtained before the hearing. Generally in a deposition the testifying witness is under oath and provisions are made to record the session so that a written transcript can be produced. Members of the Hearing Panel are not present at a deposition. In addition, the parties can seek from each other the production of documents or tangible objects and, request that the other admits to specific facts. (13.5.c) Interrogatories (written questions that must be answered in writing by the other party) are specifically not allowed.

Thirty days (30) after the Respondent files his/her written response to the CA's allegations, the CA and Respondent's attorney meet to develop a proposed plan of discovery. This meeting is referred to as a "discovery conference."

Within fifteen (15) days of the discovery conference the parties are to file a proposed discovery plan with the President of the Hearing Panel. If they are unable to agree upon a discovery plan, the Hearing Panel will allow each to be heard regarding the disputed parts of a plan and issue a discovery order. (13.5.c)

Also within fifteen (15) days of the discovery conference the parties are to provide each other with an initial disclosure of :

- Names, addresses and phone numbers of people with "direct knowledge of information" about the alleged offense(s) or defense(s);
- a detailed summary of each of those individuals' expected testimony; AND
- a copy of or description of all documents and tangible evidence that supports alleged offense(s) or defense(s).

At least thirty (30) days before the hearing the CA and Respondent's attorney give each other and the Hearing Panel "final pre-hearing disclosures" which include:



- Name, address and phone number of each witness expected to be called to testify;
- Identification of each document or tangible object expected to be used as an exhibit;
- Any requests to close portions or all of the hearing to the public. (13.5.e)

The President of the Hearing Panel is to ensure 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.” (13.5.f) In addition, privileged communications do not have to be disclosed in the discovery process.(13.5.b)

The Hearing Panel can impose sanctions against a party for failure to comply with discovery or a scheduling notice. Sanctions can only be imposed after the party has been given reasonable notice and an opportunity to be heard (13.5.f) Sanctions could include, for example, preclusion of expert testimony if the party failed to disclose that expert in a timely manner.

### **The Hearing**

*The Hearing is the most formal and adversarial process within the framework of Title IV.* The President of the Hearing Panel regulates the proceedings “so as to promote full disclosure of relevant facts.” (13.6.b.2) The Hearing resembles a trial, but there are some important differences between typical trial procedures and those of a Hearing:

- People in addition to the parties (the Respondent and CA) may be given an opportunity to present oral or written statements at a hearing. (13.6.b.7)
- Hearsay evidence may not be excluded from a Hearing solely because it is hearsay. (13.6.b.5)
- The burden of proof at a Hearing is “clear and convincing evidence” which is lower than “beyond a reasonable doubt” (the burden of proof in our secular criminal courts) and higher than “preponderance of the evidence” (the burden of proof in many secular civil proceedings.) (19.16)
- Like most criminal proceedings, there is a presumption that the Respondent did not commit the offense at a Hearing. (19.6) The CA bears the burden of proving by clear and convincing evidence that the Respondent committed the Offense(s) as alleged.

The CA and Respondent must each be given an opportunity to present evidence, cross-examine the other party’s witnesses and submit rebuttal evidence. All testimony is presented under oath. The Hearing Panel may take “official notice” of facts. (This is like judicial notice allowing certain facts to be established without evidence of those facts admitted at the Hearing. The Hearing Panel can receive documents into evidence that are copies of the original document. Privileged evidence is to be excluded from evidence at a Hearing. (Privileged communication is defined in 3.)

The Hearing Panel determines the credibility, reliability and weight given all evidence. These determination(s) of the Hearing Panel are not reviewable on appeal unless there is evidence that the Hearing Panel’s findings are “not supported by substantial evidence...” This can be hard to establish. (This determination would be reviewed by the Provincial Court of Review, which hears all appeals of Orders issued by Hearing Panels.) **Possible Determinations of Hearing Panel:**

After hearing the evidence, the members of the Hearing Panel confer privately and determine the outcome. They have two basic options:

1. Dismiss the matter; OR
2. Issue an Order that imposes some obligation/restriction on the Respondent.

To dismiss a matter, the Hearing Panel issues an Order of Dismissal. Such an Order must include the reasons for the dismissal and may state findings of fact that exonerate the Respondent. A copy of the Order must be sent to the Bishop, Respondent, Complainant, both Advisors and CA. (13.8)

If the Hearing Panel does not dismiss a matter, it issues an Order that can contain any of the following:

1. Terms which promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among the Complainant, Respondent, affected Community and others;
2. Restrictions on Respondent's exercise of ministry;
3. Recommendations to Bishop that Respondent be sentenced by
  - Admonition (a public and formal censure or reprimand)
  - Suspension (temporarily required to refrain from exercise of the gifts of ministry conferred by ordination) OR
  - Deposition (deprivation of the right to exercise the gifts and spiritual authority of God's word and sacraments conferred at ordination. "Sentence" is a term defined in the canons. There may well be other "terms" in an Order which are not "Sentences.")
4. Limitations on Respondent's involvement in the community, which can include conditions for restriction of attendance or participation.

An Order must specify canon section(s) and "general information" regarding the offense(s) to protect the Respondent from further Title IV proceedings for the same incident(s). Such "double jeopardy" proceedings are barred under Title IV. (19.13)

Before issuing an Order, the Hearing Panel (or Conference Panel if it intends to issue an Order) must give the Bishop and Complainant an opportunity to be heard regarding the proposed terms of the Order. (14.7)

### **Imposing Sentence**

After issuance of an Order, the Hearing Panel sends the Order to the Bishop. Only the Bishop can impose a Sentence on a Respondent. Within thirty (30) days after issuance of the Order, the Bishop must advise in writing the Respondent, Complainant, both Advisors, CA, and President of the Hearing Panel whether s/he will:

1. Pronounce Sentence as recommended;
2. Pronounce a lesser Sentence than recommended; AND/OR
3. Reduce the burden on Respondent of any of the other terms of the Order.

If the Bishop chooses to impose a lesser Sentence or to reduce the burden on the Respondent, the other terms of the Hearing Panel's Order remain enforceable.

If the Respondent or CA appeal an Order issued by the Hearing Panel, the Bishop may not impose Sentence until that appeal is heard. (For a discussion on the appeal process see segment 5 of these materials.) However, while the appeal is pending the Bishop can:

1. Place restrictions upon exercise of Respondent's ministry;
2. Place Respondent on administrative leave;

3. Continue Administrative Leave or other restrictions on ministry that were in effect when the Order was issued.

### **What happens if the Hearing Panel proceedings are delayed?**

If the Hearing Panel proceedings are “unreasonably delayed or suspended” the Respondent or CA can file a written request to resume the proceedings with the Hearing Panel. If the proceedings are still not resumed within sixty (60) days of the written request, the Respondent or CA can file a written request with the Provincial Court of Review seeking an Order that directs the Hearing Panel to resume the proceedings.

Whoever files the request (Respondent or CA) must:

- Include in the request a statement of the status of the case;
- The reason for the delay or suspension; AND
- A statement of what action the party has taken to get the proceedings moving again.

The moving party must also give copies of the request to the Presidents of the Hearing Panel and Disciplinary Board.

Within 15 days of receiving a copy of the request, the President of the Hearing Panel must file a response to the request with the Provincial Court of Review. Copies of this response must be provided to the Respondent, CA and President of Disciplinary Board.

The Provincial Court of Review convenes in person or via phone to consider the request. The court can issue one of two orders:

- An order declining to direct resumption. The Provincial Court of Review must provide a written explanation of the reasons for this decision.
- An order directing the Hearing Panel to resume to proceedings. If the Hearing Panel refuses or is unable to do so, the Respondent or CA can ask the Court of Review to transfer the matter to a Hearing Panel of another diocese in the Province. The Court of Review orders the Disciplinary Board of the originating diocese to send complete records of the proceedings to the new Hearing Panel (15.1(d)).

The canons do not provide time frames for the convening of the Provincial Court of Review or the issuance of an order.

### **Adjudication Step 3: Appeal of Order issued by Hearing Panel**

#### **Who can appeal an order of the Hearing Panel?**

The Respondent or Church Attorney (CA) can appeal an order of the Hearing Panel. Neither the Complainant nor Bishop has a right to appeal the order (15.2)

Note: The Bishop may appeal a finding of the Hearing Panel that a Respondent did not commit an Offense involving a question of doctrine, faith or worship of the church. (15.3)

#### **What are the grounds for a successful appeal?**

The Provincial Court of Review will change, overrule, or modify the order of the Hearing Panel only if the appealing party can show, based on the record of the proceedings, that s/he has been “substantially prejudiced” by any of the following:

- A violation of the Constitution and Canons of the diocese;
- Hearing Panel exceeded its canonical jurisdiction;
- Hearing Panel did not decide all the issues;

- Hearing Panel made a mistake in interpreting or using the Constitution and Canons;
- Hearing Panel made a procedural error or used a decision making process that violates Title IV;
- Hearing Panel, after hearing all the evidence, made factual determinations (i.e. believed one person's story rather than another's) that are "not supported by substantial evidence when viewed in the whole light of the record on appeal."

This means that not every mistake in the Title IV process will be "corrected" on appeal. In any complex multi-stage process, there are bound to be some facets that are not perfect. The only errors that will be "corrected" through an appeal are those that "substantially prejudiced" the appealing party. While a party may feel very angry, hurt or unfairly treated by the Title IV process and outcome, that feeling may not be based on an error that rises to the legal standard of having been "substantially prejudiced."

### **Generally, what happens in an appeal?**

The Court of Review looks at (reviews) the record of the proceedings to see if the appealing party has been substantially prejudiced. It does not hear and see the evidence of the case again. *This is not an opportunity to retry the case.*

If in reviewing the record the Court of Review finds errors in the proceedings, the court may deem these to be "harmless errors" which do not alter the Order of the Hearing Panel.

### **How does the appeal process work?**

A Respondent or CA has forty (40) days after the issuance of an Order by the Hearing Panel to file an appeal.

Note: During this time the Bishop has the authority to limit the Respondent's ability to exercise ordained ministry. The Bishop has this authority during much of the Title IV process. (A full discussion of the Bishop's authority can be found in section 6 of these materials.)

An appeal is filed by "serving written notice" upon the Bishop along with a copy of the Hearing Panel's order. The notice must be signed by the Respondent's counsel or the CA. (15.2)

Note: Serving written notice cannot be accomplished by using regular first class mail. Service must be made by:

- Delivering the document in hand to the person;
- Leaving the document with an adult at the person's home; OR
- Mailing it via certified mail to the person's home. (14.2)

The Hearing Panel is required to provide the record of the Hearing Panel proceedings to the party who filed the appeal. The record consists of a transcript of the Hearing Panel proceedings and all the documents and tangible evidence. The canons do not specify a time frame in which the record must be produced.

Within thirty (30) days of receiving the record, the appealing party must serve all of the following upon the "opposite" party:

- Two (2) copies of the record;
- Notice of appeal; AND
- Appealing party's brief, if there is one.

The appealing party must also deliver five (5) copies to the President of the Provincial Court of Review.

Within thirty (30) days of “receiving” these documents, the party opposing the appeal must serve his/her brief in opposition to the appealing party and five (5) copies to the President of the Provincial Court of Review. (15.7)

The appealing party then has fifteen (15) days to serve the reply brief to the party opposing the appeal and five (5) copies to the President of the Provincial Court of Review. (15.7)

### **Does the Provincial Court of Review hold a hearing?**

Yes. At the hearing the Respondent and CA must be given an appointment to be heard. The Court of Review can “regulate,” or limit, the number of attorneys to be heard. (15.10) The Court does not look at evidence or hear testimony from witnesses. It hears oral argument regarding whether the proceedings thus far (up to and through Hearing Panel) have been conducted in accordance with Title IV of the canons.

All members and alternates of the Provincial Court of Review who are serving on a particular appeal must be present for “any oral proceedings” of the appeal. (15.8) The Provincial Court of Review must keep a record of all its proceedings. To do this, the court appoints a ‘reporter’ who serves at the pleasure of the court. The reporter’s role is to provide a verbatim recording of the appeal proceedings so that a transcript of the proceedings could be created if needed.

The canons do not specify a time frame in which the hearing is to be held.

### **What decisions can the Provincial Court of Review make?**

After the hearing, the members of the court deliberate in private. A concurrence of the majority is needed to make a decision. If there is no concurrence of the majority of members hearing the appeal, then the Order of the Hearing Panel is affirmed. This means that the Order of the Hearing Panel remains in effect, there are no changes made, and that the Order is now final and not subject to any further appeal.

In its deliberations, the Court of Review can choose to do any of the following:

- **Dismiss** the appeal. This could happen if the appealing party failed to articulate any legally recognized ground for the appeal or failed to comply with the canonical appeal process (i.e. missed filing deadline). This means that the Order of the Hearing Panel remains intact, is now final and enforceable (not subject to any further challenges).
- **Affirm** in Whole. This means that the Order of the Hearing Panel remains as is and is now final and enforceable. In essence, the Court of Review has put its “stamp of approval” on the Order of the Hearing Panel. Generally this would indicate that the Court of Review examined the record, analyzed the issues presented by the appealing party, and decided that the process and decision of the Hearing Panel was appropriate.
- **Reverse** in Whole. Here, the entire Order of the Hearing Panel is set aside and the Provincial Court of Review Orders the opposite. This could happen if the Provincial Court of Review decides that the factual findings of the Hearing Panel are not supported by substantial evidence when the entire record of the proceedings is viewed as a whole. If an Order of the Hearing Panel that imposes restrictions or discipline on a Respondent is reversed in whole, then there are no restrictions or sentences to be imposed pursuant to the Hearing Panel’s Order. This is a final decision. Another claim based on the same incident(s) could not be brought before another Hearing Panel. (19.13)

- Reverse or Affirm **in Part**. This means that the Provincial Court of Review is modifying some of the terms of the Order of the Hearing Panel, some are being left the same and some are being changed. In essence, the order of the Hearing Panel is modified by the Provincial Court of Review.
- Grant a **New Hearing**. Here the Provincial Court of Review is telling the Hearing Panel there were such significant errors in its process and proceedings that the appealing party was “substantially prejudiced.” Instead of trying to “fix” the mistakes in the first hearing, the Hearing Panel proceedings must start anew.

## **5. Accords & Orders**

### **What is the difference between an Accord and an Order?**

An Accord is a written document that reflects a negotiated resolution of a matter regarding an Offense. (14.1) An Accord can be reached during various stages of the Title IV process. At each stage there are different sets of people who can reach an Accord. (See discussion below for details.)

An Order, on the other hand, can be issued only by the Conference Panel or Hearing Panel. Here, the parties do not negotiate the terms. The terms are decided by the Panel. However, the Panel must give the Bishop and Complainant an opportunity to be heard regarding the proposed terms of the Order before it issues an Order.

### **What terms MUST be in an Accord or Order?**

Accords and Orders must include all of the following:

- Name of Respondent;
- Reference to the canon(s) section(s) and subsection(s) that specify the offense;  
AND
- Sufficient information regarding the offense so that if a new claim regarding the Respondent’s behavior were raised, it could be determined whether the new claim involves the same incident(s) that had already been resolved as evidenced by the Accord or Order. (14.9)

Note: A Respondent cannot be disciplined more than once for the same incident(s) under Title IV. If a report comes to the IO regarding an Offense for an incident that has already been resolved under Title IV, then that matter cannot proceed. However, a pastoral response must be made each time a matter is reported to the IO even if the matter cannot proceed under Title IV. (19.13.)

### **What terms MAY be included in an Accord or Order?**

An Accord or Order may provide terms that:

- “Promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation....”
- Place restrictions on the Respondent’s exercise of ministry;
- Place the Respondent on probation;
- Recommend to the Bishop that a Sentence be imposed. The Sentence recommended can be:
  - Admonition (a public and formal censure or reprimand)
  - Suspension (temporarily mandated to refrain from the exercise of the gifts of ministry conferred by ordination) If an Accord or Order provides for suspension from ministry, it must also specify “what terms or conditions and at what time the suspension shall cease.” (14.1) OR

- Deposition (deprivation of the right to exercise the gifts and spiritual authority of God's word can sacraments conferred at ordination.)
- Limit Respondent's involvement, attendance or participation in the Community. If an Accord or Order contains such limitation, it must also provide conditions for restoration; OR
- Any combination of these.

**Who gets notice of an Accord or Order?**

Almost everyone. When an Accord or Order becomes effective, the Bishop must give written notice "without delay" to:

- Every member of the clergy in the diocese;
- Each vestry in the diocese;
- The Secretary of Convention;
- The standing committee of the diocese (notice added to other official records);
- The Presiding Bishop;
- All other bishops of the church (or the ecclesiastical authority, in the absence of a bishop);
- The Recorder of Ordinations office at the Church Pension Group;
- Church deployment office;
- Secretary of the House of Bishops;
- Secretary of the House of Deputies.

**What is included in a notice of an Accord or Order?**

The notice of an Accord or Order must contain only two things:

1. Name of the Respondent; AND
2. Canon(s), section(s) and subsection(s) that specify the Offense(s.)

The names of Complainant(s), Injured Person(s) and witnesses are not included in the notice of an Accord or Order. A copy of the Accord or Order is not required to be distributed with the notice.

Note: A similar notice must be given whenever there is a modification or remission of any Order for which notice was previously given.

**Who can reach and sign an Accord?**

There are three (3) different sets of people who can reach a negotiated resolution that results in an Accord:

- The parties (Complainant and Respondent) may reach an Accord through Conciliation. Such an Accord is signed by the Complainant, Respondent, and Conciliator.
- The Respondent and CA may reach an Accord at either the Conference or Hearing Panel. Such an Accord is signed by the Respondent, CA and President of the Hearing Panel.
- The Bishop and Respondent may reach an Accord any time before an Order becomes effective. It must be signed by the Bishop and Respondent. The Bishop must "consult" with the Complainant(s), Injured Person(s), the President of the Disciplinary Board, and the CA prior to entering into an agreement for discipline with a Respondent. (9.1)

Note: Only in the first situation is the Complainant directly involved in reaching the terms of the negotiated resolution of the matter. In the other settings the Complainant is not directly involved and has no authority to reject terms of a negotiated resolution.

The Bishop is directly involved in reaching terms of an Accord only in the instances when an Accord is entered pursuant to an Agreement Between Respondent and Bishop. The Bishop, however, has the sole authority to impose the terms of all Accords. See discussion below regarding bishop's imposition of terms of an Accord.

**What happens after an Accord is signed?**

The last person to sign an Accord is the Conciliator, President of the Conference Panel or President of the Hearing Panel (depending on where the matter was when the Accord was reached.) On the day the Conciliator, President of the Conference Panel or President of the Hearing Panel signs the Accord s/he must send a copy to all of the following:

- Complainant;
- Complainant's Advisor;
- Respondent;
- Respondent's Advisor;
- Church Attorney; AND
- Bishop.

Remember, if the Accord was reached by agreement between the Bishop and Respondent, the Respondent has three (3) days to withdraw the Accord. The Bishop does not have this option.

**When does an Accord become effective?**

An Accord entered by Agreement between the Bishop and Respondent becomes effective and irrevocable three (3) days after the Accord is signed. During the three days following the signing, the Respondent has the right to withdraw the Accord.

Accords signed by a Conciliator, President of Conference Panel or President of Hearing Panel are effective 30 days following the date it was signed.

**How are the terms of an Accord imposed?**

The Bishop has the sole authority to impose the Sentence contained in an Accord. The Bishop must decide whether to:

- pronounce the Sentence as recommended in the Accord;
- pronounce a lesser Sentence than recommended in the Accord; OR
- reduce the burden on the Respondent (lighten the scope or severity of the restrictions or obligations imposed by the terms of the Accord, other than the Sentence.)

The Bishop must advise, in writing, the following of his/her decision within thirty (30) days from the date when the Accord was sent to the Bishop:

- Respondent;
- Respondent's Advisor;
- Complainant;
- Complainant's Advisor;
- CA; AND
- Conciliator, or President of Conference Panel or President of Hearing Panel, whoever signed the Accord.

Although notice of the Bishop's decision must be sent to all of the above listed individuals, they do not have the right to be heard or contest the Bishop's decision.



If a Bishop decides to pronounce a lesser Sentence or modify the terms of the Accord so as to reduce the burden on the Respondent, the other terms of the Accord are still valid and enforceable.

**When does the Bishop pronounce Sentence pursuant to an Accord?**

The bishop must pronounce the sentence between 40-60 days after the date on which the notice of the Accord was sent to the Bishop.

**What options does a Bishop have when an Order is issued?**

The Bishop must decide whether s/he will:

- Pronounce the Sentence as recommended in the Order;
- Pronounce a lesser Sentence than recommended; AND/OR
- Reduce the burden on the Respondent by modifying other terms of the Order.

Within thirty (30) days of the issuance of the Order the Bishop must inform the following, in writing, of his/her decision:

- Respondent;
- Respondent's Advisor;
- Complainant;
- Complainant's Advisor;
- CA; AND
- President of Conference or Hearing Panel depending on which panel issued the order.

The Bishop's decision to pronounce a lesser Sentence or otherwise reduce the Respondent's burden does not affect the validity or enforceability of the other terms in the Order. (14.8)

**How does a Respondent refuse an Order from the Conference Panel?**

To refuse an Order from the Conference Panel, the Respondent must give written notice to the President of the Conference Panel within fifteen (15) days of the effective date of the Order. (12.12) In essence, the Respondent has forty-five (45) days from the date of issuance to refuse an Order. (Before deciding to refuse an Order a Respondent could wait until s/he is notified of the Bishop's determination regarding possible pronouncement of a lesser Sentence or reduction of the burden on Respondent.)

Upon receipt of the Respondent's notice of refusal, the President of the Conference Panel notifies the President of the Disciplinary Board of said refusal. (12.12) The matter is then referred to a Hearing Panel for a Hearing. (14.11)

Note: A Respondent cannot refuse an Order from a Hearing Panel. A Respondent can however, appeal an Order issued by a Hearing Panel to the Provincial Court of Review.

**When does an Order become effective?**

An Order becomes effective when it is not subject to appeal or refusal by the Respondent. Orders of the Hearing Panel are effective 30 days after issuance (14.10), and Orders of the Conference Panel are effective 45 days after issuance. (12.12 & 14.10.) (See also 14.11)

**When does the Bishop pronounce sentence?**

The Bishop pronounces the sentence between 40-60 days after the Order was issued. (14.8)

**Can the Bishop pronounce sentence if an appeal is pending?**

No. (14.8) However, while an appeal is pending the Bishop may place restrictions on the Respondent's ministry or place the Respondent on administrative leave or continue any restriction or leave that was in effect when the Order was issued.

## **6. Bishop's Authority: Pastoral Direction, Restricted Ministry and Administrative Leave**

### **What is a Pastoral Direction and when can it be issued?**

A Pastoral Direction is "written direction given by a Bishop" to a Member of the Clergy to address concerns of "Doctrine...worship...or the manner of life and behavior" of a Cleric, in addition to concerns regarding discipline. (1) A Bishop can issue a Pastoral Direction even in the absence of information indicating that the Cleric may have committed an Offense.

A Bishop can issue a Pastoral Direction at any time to any Cleric who is canonically resident, actually resident, or licensed in the diocese (1.7) A Bishop can modify the terms of a Pastoral Direction at any time.

To be valid, a Pastoral Direction must meet all seven (7) of the following requirements:

1. Be in writing;
2. Clearly state the reasons for the direction;
3. Clearly state what the Bishop is requiring of the Cleric;
4. Be issued in Bishop's capacity as pastor, teacher and overseer of clergy;
5. Not be arbitrary or capricious;
6. Be directed to "some matter which concerns the Doctrine, Discipline or Worship of the church or the manner of life and behavior" of the Cleric; AND
7. Be promptly served upon the Cleric.

Title IV does not include a process by which a Cleric can challenge or contest the issuance of a Pastoral Direction.

### **What is Restricted Ministry and Administrative Leave, and when can they be imposed?**

A Bishop may restrict ministry or impose administrative leave when the Bishop determines any one of the following:

1. Respondent "may have committed any offense;" OR
2. Good order, welfare or safety of the church may be threatened by a Respondent; OR
3. Any person or Community may be threatened by a Respondent. (7.3)

The threshold for restricting ministry or placing a Respondent on administrative leave is relatively low; the Bishop needs only to determine that the Respondent "may have" committed an Offense. A Bishop may take such action without giving the Respondent any prior notice or hearing and can do so even before the IO has received information regarding an Offense. (7.3)

The canons do not address whether a Respondent continues to be paid when his/her ministry is restricted or placed on administrative leave.

### **In what sequence can Pastoral Directions, Restricted Ministry and Administrative Leave be imposed?**

Pastoral directions, restrictions on ministry and administrative leave may be issued and imposed in any chronological order and/o concurrently (7.6) An Accord or

Order supersedes a restriction on ministry or administrative leave unless otherwise specified in the Accord or Order. (7.3)

**What is the difference between Restricted Ministry and Administrative Leave?**

Administrative Leave is a total restriction on a Respondent's ministry in which "ministry is suspended in entirety during the period of the Administrative leave and may include suspension from any ecclesiastical and related secular office." (2)

In contrast, Restricted Ministry addresses only certain segments or aspects of ordained ministry. A Respondent on Restricted Ministry may still be permitted to exercise some of the responsibilities conferred by ordination.

**What is required to restrict ministry or impose administrative leave?**

Restriction of ministry or placement on administrative leave must be done in writing. The writing must clearly state:

1. The reasons for such restriction or placement;
2. Limitations and conditions;
3. The duration which may be for a specified period of time (i.e. until a certain date) or until an event occurs or a condition is satisfied; (7.5) AND
4. That the Respondent has a "right to be heard." (Unlike Pastoral Directions, the Respondent does have the right to challenge or contest restriction of ministry or placement on administrative leave.)

The written document must be promptly served on the Respondent and a copy given to the CA.

A Bishop cannot act arbitrarily or capriciously in restricting ministry or imposing administrative leave. Nor can a Bishop act in any way contrary to the Constitutions and Canons.

If the Bishop restricts ministry or places a Respondent on administrative leave before the IO receives information about the matter, then the Bishop may (the Bishop does not have to) send the information to the IO. Upon receipt of such information from the Bishop, the IO proceeds with intake process.

**Can a Respondent seek review of restrictions on ministry or administrative leave?**

Yes. A Respondent has a right to challenge (seek review of) any restriction on ministry or administrative leave any time it is in effect. The Bishop must offer the Respondent an Advisor no later than when ministry is restricted or administrative leave is imposed.

To seek review, the Respondent must request review in writing. The request is to be addressed to:

1. President of the Disciplinary Board AND
2. Church Attorney

A copy of the request is to be sent to the bishop.

The review is to be conducted within fifteen (15) days of delivery of the request for review to the President of the Disciplinary Board, unless the Respondent agrees to an extension of time.

**How is the Review conducted?**

The Panel that conducts the review depends on where the matter has been referred at the time the request for review is made. The Conference Panel conducts the review if the request for review is made:

- Before a matter is referred to the Conference Panel OR

- After referred to the Conference Panel but before referral to the Hearing Panel. The Hearing Panel conducts the review if the request for review is made after the matter is referred to the Hearing Panel. In short, the Conference Panel conducts the review unless the matter has already been referred to the Hearing Panel.

The reviewing panel decides whether the restriction on ministry or administrative leave and the terms or conditions are warranted. The panel decides based on information available at the time of the review, not by looking back at what information the Bishop had when ministry restrictions or administrative leave was imposed.

The review is conducted in person or by phone. The following have the right to be present and heard from either personally or telephonically:

- IO;
- Respondent;
- Respondent’s Advisor;
- Bishop;
- Chancellor; AND
- Church Attorney

Note: The Complaint and Complainant’s Advisor do not have the right to be heard in this review process. However, the panel has the discretion to hear from other persons, in addition to those listed above, when conducting a review. (7.11)

After conducting the review the Panel confers privately and determines if the restriction of ministry or imposed administrative leave is warranted. The Panel can decide to:

- Dissolve the Bishop’s restriction/imposition;
- Affirm (let the Bishop’s decision stand as is); OR
- Affirm but modify the Bishop’s terms and conditions.

The reviewing Panel’s determination must be in writing and delivered to:

1. Respondent;
2. CA;
3. Bishop; AND
4. IO.

Note: The canons do not require the reviewing panel to the panel’s basis and findings for its determination.

## **7. Abandonment of The Episcopal Church**

### **What does Title IV have to do with Abandonment of The Episcopal Church?**

Abandonment of The Episcopal Church (TEC) is not considered “an Offense” under Title IV. Title IV sets out a separate process to resolve questions regarding whether a Member of the Clergy has abandoned TEC. This process does not involve the IO or any members of the Disciplinary Board; it does involve the Diocesan Standing Committee. (16.3, 16.4)

### **What is Abandonment of The Episcopal Church?**

There are three categories of abandonment of TEC:

- By an open renunciation of the Doctrine, Discipline or Worship of the church;
- By the formal admission into any religious body not in communion with the church; OR
- In any other way.

### **What if a Cleric no longer feels called to ordained ministry in The Episcopal Church?**

The Member of the Clergy can renounce his or her ordination vows pursuant to the provisions in Title III of the canons. This permits the Cleric to be released from ordained orders. The Cleric is deprived of the rights and responsibilities to “exercise the gifts and spiritual authority conferred in ordination.” (III.9.10)

Notice of such removal of a Cleric, due to renunciation of vows, is given to individuals and offices throughout the church similar to the notices of Accords and Orders under Title IV. When a Cleric renounces vows under Title III, the notice sent out specifically states that the release from ministry is “for causes which do not affect the person’s moral character.”

A Cleric who renounces his or her ordination vows in TEC and is later formally admitted into another religious body is not considered to have abandoned TEC under Title IV.

### **What happens when an act that could constitute Abandonment of The Episcopal Church is reported to the Standing Committee?**

When a Diocesan Standing Committee receives a report that a Cleric has engaged in an act that could constitute abandonment, the committee is to “ascertain and consider the facts.” The canons do not specify how the report to the Standing Committee must be made or who can make the report. There is also no mention of how the Standing Committee is to ascertain the facts. (16.B.3)

The Standing Committee then determines by vote whether the Cleric has abandoned TEC. If the Standing Committee determines by ? vote of all the members that the Cleric has abandoned TEC, the Standing Committee notifies the Bishop in writing of:

- Its determination; AND
- The factual basis for its determination including reasonable detail about the act(s) or declaration(s) that form the factual basis.

### **What is the Bishop’s role?**

After the Standing Committee determines that a Cleric has abandoned TEC, the Bishop can:

- Affirm the determination of the Standing Committee; OR
- Not affirm the determination of the Standing Committee.

Note: There is no further process in the canons if the Bishop fails to affirm the Standing Committee’s determination. Presumably, the non-affirmation is equivalent to the Bishop disregarding the determination of the Standing Committee.

### **What happens if the Bishop affirms the Standing Committee’s determination of abandonment?**

The Bishop must restrict the Cleric’s ministry for sixty (60) days. The Bishop must give written notice to the Cleric that informs/provides the Cleric of the following:

- The restriction on ministry for sixty (60) days;
- A copy of the Standing Committee’s determination and statement of the factual basis for that determination;
- The right of the Cleric to declare in a written statement that the facts alleged in the Standing Committee’s statement are false;
- The right of the Cleric to renounce ordained ministry under Title III; AND
- The Bishop will consider deposing the cleric at the end of 60 days.

**What can happen during the sixty (60) days?**

There are two (2) options the Cleric can exercise during this sixty (60) day period:

1. The Cleric may renounce his/her vows under Title III; OR
2. The Cleric may give the Bishop a signed written statement that retracts the acts or declaration relied upon by the Standing Committee OR denies that the Cleric committed the acts or declaration. If the Bishop is “reasonably satisfied” that the retraction or denial is made in good faith, the Bishop must withdraw the notice that restricted ministry for sixty (60) days. This ends the restriction on ministry.

**What happens at the end of the sixty (60) day restriction on ministry?**

If during the sixty (60) days the Cleric does not renounce ordination vows under Title III or make a good faith retraction or denial of the acts or declarations, the Bishop must do one of the following:

- Depose the Cleric OR
- Release the Cleric from the obligations of ordained ministry if the Bishop is satisfied that no “previous irregularity or misconduct is involved” and the Standing Committee consents to such release. (16.B.4)