

RESOLUTION

¹RE: Ecclesiastical Discipline

SUBMITTED BY: Canons Committee and Chancellor

RESOLVED: That Canon 26 of the Canons of the Diocese be repealed as of July 1, 2011, except with respect to matters then pending before the Standing Committee or Ecclesiastical Trial Court as specified in Title IV, Canon 20 of the Canons of the General Convention, and that as to those matters, Canon 26 shall remain in effect until the final disposition of all such matters, including any appeal, whereupon (i) Canon 26 shall be repealed, (ii) the terms of office of the members of the Ecclesiastical Trial Court shall terminate and (iii) the new Canon 26A shall be renumbered to be Canon 26; and

FURTHER RESOLVED: That the attached "Agreement for Joint Administration of Title IV," by and among the Bishops of the Dioceses of Vermont, New Hampshire and Maine, be and hereby is ratified; and

FURTHER RESOLVED: that a new Canon 26A be adopted, to read as set forth below; and

FURTHER RESOLVED: That this Resolution and the new Canon 26A shall take effect on July 1, 2011, and the Agreement for Joint Administration of Title IV shall take effect according to its terms.

CANON 26A

Ecclesiastical Discipline

PART A: Multi-Diocese Agreement. The Diocese may enter into an Agreement to develop and share a Disciplinary Board and/or other resources necessary to implement Title IV of the Canons of the General Convention (respectively, "Title IV" and the "Church Canons") with one or more other dioceses as authorized by Church Canon IV.5.3(i) (an "Agreement"). An Agreement and any amendment to it must be signed by the Bishop and ratified by Convention in a vote by Orders in like manner as for an amendment to the Diocese's Canons before becoming effective. During the effectiveness of an Agreement, the provisions of Part B below shall apply except as modified by the following provisions of this Part A of this Canon.

Section 1. Disciplinary Structure. The Disciplinary Board provided for in an Agreement shall be a court for the Diocese for the discipline of the Clergy of the Diocese. Members of that Board from the Diocese shall meet the eligibility requirements and be selected as provided in Part B, Sections 3(2)-3(4) below, except that the number of

¹ Diocesan Canon 37.2 requires that this Resolution be adopted by a concurrent vote, by Orders, of two-thirds of those present and voting in each Order.

members shall be as provided in the Agreement and their terms shall be staggered so that as nearly as is practicable one-third of the members shall be elected each year. Vacancies among those members shall be filled as provided in Section 3(5) below.

Section 2. Intake Officer. The Intake Officer(s) for the Diocese shall be selected as provided in Part B, Section 3(8) below, except that the Bishop shall consult with the Standing Committee instead of the Board in making a selection.

Section 3. Investigator. The Investigator(s) for the Diocese shall be selected as provided in Part B, Section 3(9) below, except that the Bishop shall consult with the President of the Standing Committee instead of the President of the Board in making a selection.

Section 4. Church Attorney. The Church Attorney(s) for the Diocese shall be selected or removed as provided in Part B, Section 3(10) below, except that the Bishop shall consult with the President of the Standing Committee instead of the President of the Board in making a selection or removal.

Section 5. Clerk and Records. The Diocese shall be obligated to provide a Clerk and recordkeeping in accordance with Part B, Sections 3(13) and 5 below only to the extent that those matters are not provided for in the Agreement.

PART B. Discipline.

Section 1. Purpose; Title IV of the Church Canons. This Canon adopts policies, procedures and structures to implement in the Diocese of Vermont (the "Diocese") provisions for discipline set forth in Title IV for Clergy who, by their vows at ordination, have accepted both responsibility and accountability for the doctrine, discipline and worship of The Episcopal Church (the "Church"). Those provisions of Title IV of the Church Canons which are applicable to the Diocese are hereby incorporated as part of this Canon. To the extent, if any, that any of the provisions of this Canon are in conflict or inconsistent with the provisions of Title IV, the provisions of Title IV shall govern.

Section 2. Definitions. The capitalized terms in this Canon shall have the meanings attributed to them in Church Canon IV.2 unless otherwise defined in this Canon. All references herein to Bishop shall mean the Bishop Diocesan or the Bishop Coadjutor if specific jurisdiction for matters contemplated by Title IV of the Canons of the Church has been assigned to the Bishop Coadjutor in accordance with III.11.10(a)(2) of the Church Canons.

Section 3. Disciplinary Structure.

(1) **Disciplinary Board.** There is hereby created a court for the Diocese to be known as the Disciplinary Board (the "Board"). The Board shall consist of nine persons, five of whom shall be Clergy members and four of whom shall be Lay persons.

(2) **Clergy Members.** The Clergy members of the Board must be canonically and geographically resident within the Diocese.

(3) **Lay Members.** The Lay members of the Board shall be Adult Communicants in Good Standing, and registered in a congregation in the Diocese.

(4) **Election and Terms.** The initial members of the Board will be appointed by the Bishop with the advice and consent of the Standing Committee, to serve until January 1, 2012. Thereafter, the members of the Board shall be elected by the Convention. Subject to Part A.1 of this Canon, the Convention in 2011 shall elect one Clergy member and two Lay members for a term of one year, two Clergy members and one Lay member for a term of two years, and two Clergy members and one Lay member for a term of three years. Thereafter, three members shall be elected annually for a three (3)-year term; except, if a member is elected to fill a vacancy, the term of such member shall be the unexpired term of the member being replaced. The term of each member except the initial members shall commence on the first (1st) day of the year following election.

(5) **Vacancies.** Vacancies on the Board shall be filled as follows:

- (a) Upon the determination that a vacancy exists, the President of the Board shall notify the Bishop of the vacancy and request appointment of a replacement member of the same order as the member to be replaced.
- (b) The Bishop shall appoint a replacement Board member.
- (c) Persons appointed to fill vacancies on the Board shall meet the same eligibility requirements as apply to elected Board members.
- (d) With respect to a vacancy created for any reason other than pursuant to a challenge as provided below, the term of any person selected as a replacement Board member shall be until the first day of the year following the next annual Convention. With respect to a vacancy resulting from a challenge, the replacement Board member shall serve only for the proceedings for which the elected Board member is not serving as a result of the challenge.

(6) **Preserving Impartiality.** In any proceeding under Title IV, if any member of a Conference Panel or Hearing Panel of the Board shall become aware of a personal conflict of interest or undue bias, that member shall immediately notify the President of the Board and request a replacement member of the Panel. Respondent's Counsel and the Church Attorney shall have the right to challenge any member of a Panel for conflict of interest or undue bias by motion to the Panel for disqualification of the challenged member. The members of the Panel not the subjects of the challenge shall promptly consider the motion and determine whether the challenged Panel member shall be disqualified from participating in that proceeding.

(7) **President.** Within forty-five (45) days following the annual Convention, the sitting Board President shall convene a meeting of the Board to elect a President to serve for the following calendar year.

(8) **Intake Officer.** The Intake Officer shall be appointed from time to time by the Bishop after consultation with the Board. The Bishop may appoint one or more Intake Officers according to the needs of the Diocese. The Bishop shall publish the name(s) and contact information of the Intake Officer(s) throughout the Diocese.

(9) **Investigator.** The Bishop shall appoint one or more Investigators in consultation with the President of the Board. The Investigator may, but need not, be a Member of the Church. The compensation and terms of appointment of each Investigator will be provided in a written retainer agreement to be entered into between the Diocese and the Investigator.

(10) **Church Attorney.** The Bishop in consultation with the Chancellor and President of the Board shall appoint one or more Church Attorneys. Each person so selected must be a Member of the Church and a duly licensed attorney, but need not reside within the Diocese. The Bishop may, with the advice and consent of the Chancellor and President of the Board, remove a Church Attorney from that position at any time for cause, which shall include but not be limited to matters of importance to the good order and well being of the Diocese. Each Church Attorney will execute a written retainer agreement setting forth the compensation and other terms of engagement of the Church Attorney, which agreement will specifically require the Church Attorney to render periodic reports and submit reasonably detailed budgets for each matter pending from time to time and assigned to the Church Attorney.

(11) **Pastoral Response Coordinator.** The Bishop may appoint a Pastoral Response Coordinator, to serve at the will of the Bishop in coordinating the delivery of appropriate pastoral responses provided for in Church Canon IV.8 and this Canon. The Pastoral Response Coordinator may be the Intake Officer, but shall not be a person serving in any other appointed or elected capacity under this Canon.

(12) **Advisors.** In each proceeding under this Canon, the Bishop shall appoint an Advisor for the Complainant and an Advisor for the Respondent. Persons serving as Advisors shall hold no other appointed or elected position provided for under this Canon, and shall not include Chancellors or Vice chancellors of this Diocese or any person likely to be called as a witness in the proceeding.

(13) **Clerk.** The Board shall appoint a Board Clerk to assist the Board with records management and administrative support. The Clerk may be a member of the Board.

(14) **Panels.** In accordance with Church Canon IV.2, a Reference Panel shall be composed of the Intake Officer who received the information concerning an Offense, the President of the Board and the Bishop. In accordance with Title IV, a Conference Panel and a Hearing Panel shall be chosen by the President of the Board; provided, however, in the event a Conference Panel shall have more than one member, the Panel shall include at least one Clergy and one Lay member. Each Hearing Panel shall include at least one Clergy and one Lay member.

(15) **Accord**. Except for an Accord issued in accordance with Church Canon IV.9, no less than thirty (30) days prior to the issuance of an Accord, the Bishop shall be afforded an opportunity to be heard on the proposed terms of the Accord.

(16) **Order**. No less than thirty (30) days prior to the issuance of an Order, the Bishop and Complainant shall be afforded an opportunity to be heard on the proposed terms of the Order in accordance with Church Canon IV.14.7.

Section 4. Costs and Expenses. Unless otherwise expressly provided in this Canon, all costs, expenses and fees incurred under Title IV and this Canon shall be the obligation of the person incurring them. The Diocese shall reimburse reasonable and necessary expenses of the Board, Intake Officer, Advisors appointed by the Bishop, and Clerk as may be approved by both the Bishop and the Standing Committee. Under certain circumstances the Diocese may reimburse certain fees and expenses of other parties to a proceeding upon the recommendation of the Bishop, the consent of the Standing Committee, and the approval of Diocesan Council. Except for the provisions of Church Canon IV.19.23(b), this Canon shall provide the exclusive procedure and method for reimbursement or payment of costs, expenses and fees incurred in a proceeding under Title IV and this Canon.

Section 5. Records.

(1) **Records of Proceedings**. Records of active proceedings before the Board, including the period of any pending appeal, shall be preserved and maintained in the custody of the Clerk, if there be one, otherwise by the Diocesan offices.

(2) **Permanent Records**. The Bishop shall make provision for the permanent storage of records of all proceedings under this Canon at the Diocesan Archives and the Archives of the Episcopal Church, as prescribed in Title IV.

Section 6. Privileged Communications. The term "Privileged Communication" as defined in Church Canon IV.2 shall include communications between parties to a Civil Union to the same extent as between married persons.

Section 7. Ecclesiastical Nature. Disciplinary proceedings under Title IV and this Canon are neither civil nor criminal but ecclesiastical in nature and represent determinations by the Church of who may serve as members of the Clergy of the Church, and further represent the hierarchical polity and order of the Church

AGREEMENT FOR JOINT ADMINISTRATION OF TITLE IV

This is an agreement dated as of October 1, 2010 among the Dioceses of Maine, New Hampshire and Vermont (jointly, the “Dioceses”, and individually, “Maine,” “New Hampshire” and “Vermont”), for the joint administration and staffing of matters of clergy discipline under Title IV of the Canons of the General Convention of The Episcopal Church (“Title IV”) arising in the Dioceses.

1. The Disciplinary Board.

- a. There will be one Disciplinary Board for the Dioceses, consisting of eleven persons, six of whom will be Priests or Deacons of The Episcopal Church and five of whom will be lay persons, selected as provided below. The Disciplinary Board will constitute the only Court instituted by each of the Dioceses within the meaning of Article IX of the Constitution of The Episcopal Church.
- b. Each of the Dioceses will select as members of the Disciplinary Board each year two persons who are either Priests or Deacons and one lay member. In addition, on a rotating basis two of the Dioceses will select a fourth member of the Disciplinary Board, who shall be a lay person. The Diocese that will select only three members will change every three years; for the three years commencing January 1, 2012, Maine will select three members; for the three years commencing January 1, 2015, New Hampshire will select three members; and for the three years commencing January 1, 2018, Vermont will select three members. Thereafter the rotation will continue in like manner for the duration of this agreement.
- c. Selection of members of the Disciplinary Board will be in a manner provided by the Canons of the Diocese selecting the member, provided that all members of the Disciplinary Board shall meet the requirements of Title IV.
- d. Any vacancy in the membership of the Disciplinary Board will be promptly filled by the Diocese selecting the prior member whose resignation or declination to serve, death, disability rendering the member unable to act, or loss of qualification for membership created the vacancy.
- e. On or before December 1 of each year, the Bishop of each of the Dioceses or the Bishop’s designee will notify the then President of the Disciplinary Board of those persons selected from that Diocese to serve for the ensuing year as members of the Disciplinary Board. The President will call a meeting of the Disciplinary Board to be held in January of the following year, which may be held by conference call or other electronic means affording simultaneous audio communication, at which the Disciplinary Board will elect a President to serve for the year and until a successor President is elected.

- f. For the period July 1, 2011 to December 31, 2011, Maine will be the Diocese to select only three members, Vermont and New Hampshire will select four members and all persons selected as members will serve terms expiring on December 31, 2011. Thereafter, and notwithstanding that a Diocese may select Board members for longer terms, for the purposes of this agreement the term of each person selected as a member will be for a calendar year, but there will be no limit to the number of successive terms that a member may serve. If a member's term expires after that person has been appointed to a Conference Panel or a Hearing Panel for a specific matter, but before the matter is finally disposed of, and the member is not selected to continue as a member from that Diocese, the member shall nonetheless continue as a member of the Disciplinary Board for the sole purpose of continuing to serve on the Panel for that matter until final disposition thereof.
2. Other Title IV offices.
 - a. Each of the Dioceses will make such provision for Church Attorneys, Intake Officers, Advisors, Investigators, Conciliators and other persons acting under Title IV as it may choose, and will notify the other Dioceses and the President of the Disciplinary Board of the names and contact information of the persons designated for those offices.
 - b. Each of the Dioceses will also notify the other Dioceses and the President of the Disciplinary Board of the names and terms of engagement of such of its Advisors, Investigators, or Conciliators as may be available to the other Dioceses for those services.
3. Conduct of Cases
 - a. The Diocese within which the Respondent is canonically resident shall be responsible for designating a Church Attorney to be assigned to the matter, and shall provide all other Title IV personnel required, although such personnel may be from one of the other Dioceses.
 - b. In selecting a Conference Panel and a Hearing Panel for any case, the President will first decide whether the Conference Panel will be one or more than one person. If the Conference Panel is to be only one person, the President will select that person by drawing by lot a name from among all the names of the Disciplinary Board members who are not disqualified. The President will select the Hearing Panel, and the Conference Panel if it is to be more than one person, by dividing the names of the Disciplinary Board members who are not disqualified into two pools, clergy and lay, and drawing one member of each Panel by lot from each of the two pools. Thereafter, the names remaining in the two pools will be mixed together in a single pool from which the President will draw by lot names to complete the two Panels.
 - c. Wherever appropriate and consistent with the values expressed in Canon IV.1, the Disciplinary Board and each of its Panels may conduct proceedings using technology that facilitates distance meetings in order to conserve resources.

- d. For each proceeding, the Reference Panel will consist of the Intake Officer for the Diocese of canonical residence of the subject member of the clergy (and if there be more than one Intake Officer in that Diocese, then the Intake Officer assigned by the Bishop to the proceeding), the President of the Disciplinary Board, and the Bishop of that Diocese.
- e. In addition to the provisions of Canon IV.19.14 of Title IV, the integrity of the Disciplinary Board shall be maintained by permitting the Church Attorney or a Respondent to challenge a member of the Disciplinary Board or Panel appointed for a proceeding on grounds of conflict of interest or undue bias. The Disciplinary Board shall determine whether a challenge is relevant and well-founded in accordance with Canon IV.19.15 of Title IV.

4. Fees and Expenses

- a. Expenses of the Disciplinary Board in carrying out its duties in a proceeding will be the responsibility of the diocese of canonical residence of the subject member of the clergy. Expenses of the Disciplinary Board not incident to a particular proceeding will be borne equally by the Dioceses.
- b. Unless expressly provided otherwise in the canons of the diocese of canonical residency of the subject member of the clergy or in this agreement, all costs, expenses and fees incurred under Title IV or otherwise in the administration of matters of clergy discipline shall be the obligation of the person incurring them.

5. Applicability of Title IV.

- a. This agreement establishes policies, procedures and structures to implement Title IV in the Dioceses for the discipline of Priests and Deacons, who by their vows at ordination, have accepted both responsibility and accountability for the doctrine, discipline and worship of The Episcopal Church. In the event any provision of this agreement is in conflict with or inconsistent with Title IV in a material way, the provisions of Title IV shall prevail.
- b. The Disciplinary Board established by this agreement is intended to serve as the Disciplinary Board under Title IV for each of the Dioceses, and is responsible for carrying out all of the duties of a Disciplinary Board within each of the Dioceses.

6. Effective Date

- a. This agreement will become effective on July 1, 2011, provided that prior to that date each of the Conventions of the Dioceses shall have ratified it in a vote by Orders in like manner as for an amendment to the Diocese's Canons.

7. Duration and Amendment

- a. This agreement, once it has become effective, will remain in effect until the end of the calendar year following the year in which the Bishop of one or more of the Dioceses, having received the concurrence of the Bishop's Convention, sends written notice to the Bishops of the other Dioceses of the termination of this agreement. If any proceeding has

been commenced and is still ongoing as of the termination date, this agreement shall remain in effect solely with respect to such proceeding until the final disposition thereof.

- b. Any amendment to this agreement must be in writing and signed by the Bishops of each of the Dioceses and be concurred in by the Conventions of each of the Dioceses in a vote by Orders in like manner as for an amendment to the Diocese's Canons, and will be effective not earlier than the first day of the year following the year in which the ratification of the amendment shall have been approved by all of the Dioceses.

Diocese of Maine

By _____
The Rt. Rev. Stephen T. Lane Date

Diocese of New Hampshire

By _____
The Rt. Rev. V. Gene Robinson Date

Diocese of Vermont

By _____
The Rt. Rev. Thomas C. Ely Date