

# PROPOSED REVISION TO CANON 22 IMPLEMENTING TITLE IV CHANGES

## CANON 22

### ~~On the Trial of a Priest or Deacon~~ Of Ecclesiastical Discipline

#### SEC. 22.1 Discipline of Priests and Deacons

All procedures for discipline of Priests and Deacons in this Diocese shall be governed by Title IV of the Canons of the General Convention as supplemented by these Canons.

#### SEC. 22.2 The Church Attorney

(a) Every three years the Convention shall elect ~~from among the laypersons of the Diocese learned in the law~~ *an attorney to serve* as the Church Attorney, who shall hold office until his or her successor shall be elected. If the Church Attorney shall die or resign at a time when the Convention shall not be in session, the Standing Committee shall appoint ~~from among the laypersons of the Diocese learned in the law~~ *an attorney to serve* as the Church Attorney to hold office until the next meeting of the Convention. It shall be the duty of the Church Attorney to represent the Church in proceedings as provided in Title IV. ~~act as the official prosecutor in all ecclesiastical trials under this Canon.~~ The Church Attorney shall conduct to conclusion any *matter* ~~trial~~ in which he or she may be actually engaged at the time of the expiration of his or her term of office. *Neither the Chancellor nor any Vice Chancellor of this Diocese shall serve as Church Attorney in this Diocese.*

(b) The Standing Committee, acting in consultation with the elected Church Attorney, may appoint one or more individuals similarly qualified as an additional Church Attorney for specific cases as the need arises.

#### SEC. 22.3 ~~The Ecclesiastical Trial Court~~ *Disciplinary Board*

The Disciplinary Board shall perform the functions and have the powers and responsibilities given to a Committee of that name by Title IV of the Canons of General Convention relating to the ecclesiastical disciplinary process.

#### 22.3.1 ~~The Triers and Court~~ *Disciplinary Board* Members

(a) ~~Every three years~~ The Convention shall elect *seven nine* lay persons from among the confirmed adult communicants of the Church in good standing, having domicile in this Diocese, and eight clergy, actually as well as canonically resident in the Diocese and more than ten years in Holy Orders, no one of whom shall be a member of the Standing Committee, to serve as *Triers members of the Disciplinary Board (the "Board")*. ~~from whom shall be established the Ecclesiastical Trial Court (the "Court")~~ *Each member shall serve for a term of three years, with the terms to be staggered so that at least five new members of the Committee shall be elected each year. In case of a vacancy, the Standing Committee shall appoint an individual of the same Order (lay or clergy) to serve until the next Diocesan Convention, at which time the Convention shall elect a person of the same order for the remainder of the term. No person may serve more than two full terms consecutively.*

(b) No person *serving as Chancellor, Vice Chancellor, Advisor, Conciliator, Church Attorney, Intake Officer or Investigator* may ~~shall~~ at the same time serve as a member of the *Disciplinary Board*.

(c) *Within sixty days following each Diocesan Convention, the Disciplinary Board shall elect a President from among its members to serve for a term of one year, with the right to succeed herself or himself.*

(d) *The 7 lay and 8 clergy Triers elected at the Diocesan Convention of November 9, 2009 who received the most votes shall serve as Provisional Members of the Disciplinary Board set forth in subsection (a), above, from the Effective Date of this Canon until the first Annual Convention thereafter, at which time they will be replaced by means of the election process set forth in subsection (a). As soon as practicable after the Effective Date of this Canon, but in no event later than July 15, 2011, the Provisional Members shall convene and elect one of their Members as the Provisional President of the Disciplinary Board, who shall serve until the first Annual Convention thereafter. Provisional Members of the Disciplinary Board, and their services as Triers or Provisional Members*

*shall not count towards the two full terms of consecutive service set forth in the last sentence of subsection (a), above.*

~~(b) The Ecclesiastical Trial Court shall consist of the first five members of the clergy and the first four members of the laity to be elected, ranked in the order in which they are elected. The order of the election shall be determined (i) by the order of the ballot on which the trier is elected (from first to last) and (ii) from among those elected on the same ballot, by number of votes received from highest to lowest).~~

~~(c) In the event of a tie vote in the fourth position (as to the laity) or the fifth position (as to the clergy), the fourth or fifth member of the Court (as the case may be) shall be selected by drawing lots from among those tied.~~

#### 22.3.2 *Intake Officer    ~~The Presiding Judge~~*

~~The Court shall annually elect, within two months following the Convention, one of its members to serve as Presiding Judge for the ensuing year.~~

*Within sixty days following each Diocesan Convention, the Disciplinary Board, after consultation with the Bishop, shall choose an Intake Officer from among the confirmed adult communicants of the Church in good standing, to whom information regarding alleged Offenses is reported.*

#### 22.3.3 *Investigators.*

*Investigators shall be appointed annually by the Bishop Diocesan in consultation with the President of the Disciplinary Board.*

#### 22.3.4 *Conference and Hearing Panels*

*(a) Conference Panels shall consist of three members of the Disciplinary Board selected by the President, and the President shall designate a president of such panel.*

*(b) Hearing Panels shall consist of three members of the Disciplinary Board selected by the President, and the President shall designate a president of such panel. At least one member of each Hearing Panel shall be a member of the clergy.*

*(c) The President of the Board shall be ineligible to serve on either Panel.*

#### 22.3.5 *Advisors*

*(a) Advisors shall be made available by the Bishop to all Respondents and Complainants for the purposes of support, assistance, consultation and advice regarding the process provided in Title IV and this Canon and the rights, responsibilities and alternatives pertaining thereto.*

*(b) The following may not serve as an Advisor: the Bishop, the Church Attorney, members of the Disciplinary Board, the Intake Officer, any Investigator, the Chancellor, any Vice Chancellor, and any person who is likely to be a witness in any pertinent proceeding.*

*(c) No Respondent or Complainant shall be required to accept the services of any Advisor made available by the Bishop. Any Respondent or Complainant may use the services of any Advisor of his or her choice after designating that person as Advisor in writing to the Intake Officer.*

#### 22.3.6 *Privileged Communications*

*In addition to other privileges afforded under Title IV, any communication or disclosure made in confidence and with the expectation of privacy between a Respondent and any person from whom the Respondent has been provided counseling, pastoral care, spiritual direction or spiritual guidance shall be deemed privileged and not subject to disclosure in any proceeding under Title IV without the consent of the Respondent.*

~~The Presiding Judge shall appoint, subject to the approval of the members of the Court, at least one but not more than three Lay Assessors to give the Court an opinion on any question of Law, procedure or evidence upon which the Court or any member thereof, or either party, shall desire an opinion. Lay Assessors shall have no vote.~~

SEC. 22.4 Challenges to the Members of the Hearing Panel Court and Vacancies

22.4.1 Challenges

The Church Attorney and the Respondent may each challenge for cause any of the members of the Hearing Panel, and the *remaining members of the Hearing Panel Court* shall pass upon the sufficiency of such challenges. The Church Attorney and the Respondent also shall be allowed each to make two peremptory challenges *to members of the Hearing Panel*. ~~during the selection of Court members. If the number of the Court is reduced to less than nine,~~ The procedure for filling vacancies shall be followed as set forth in Section 22.4.2 below. These proceedings shall be repeated until the number of unchallenged ~~Court~~ *Hearing Panel* members reaches ~~nine~~ *three*.

22.4.2 ~~Court~~ Vacancies *on Hearing Panel*

A ~~Court~~ vacancy *on the Hearing Panel*, whether occurring before or after the commencement of a hearing, shall be filled by *appointment by the President of the Disciplinary Board* from the remaining ~~Triers~~ *members of the Disciplinary Board*. ~~in the order in which they were elected (as provided in Sec. 22.3.1(b)).~~

22.4.3 ~~\_\_\_\_\_~~ Vacancy in the Office of Presiding Attorney

~~\_\_\_\_\_~~ Vacancies in the office of Presiding Judge for any cause, whether occurring before or after commencement of a trial, shall be filled by vote of the majority of the Court, immediately after the Court vacancy has been filled as provided in Sec. 22.4.4 above.

22.4.4 ~~\_\_\_\_\_~~ Vacancy in the Office of Church Attorney

~~\_\_\_\_\_~~ If a vacancy in the position of Church Attorney occurs during a trial, the trial shall be adjourned and the Standing Committee shall appoint a Church Attorney.

22.4.5 ~~\_\_\_\_\_~~ Vacancies Occurring During a Trial

~~\_\_\_\_\_~~ If a vacancy in any of the offices described in this section shall happen during a trial, after the vacancy has been filled as herein provided, the trial shall begin de novo and forthwith proceed as in the case of a new trial.

**22.5 Canon 4.6 is repealed effective July 1, 2011.**