



# Diocesan Canonical Changes

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# Matters for Diocesan Canon Attention

- Selection of players; removal
- Extend privilege on communications beyond that required by state or federal law
- Whether a member of Standing Committee may serve on Disc. Board
- How vacancies on Disc. Board are to be filled
- Whether and how diocese participates with other dioceses in disciplinary process
- Challenges to sitting members of a panel
- Changes to allocations of costs, expenses and fees to certain parties

# Canonical Choices

## Mandatory:

- Disciplinary Board: number and manner of selection
- Church Attorney selection

Mandatory, but, if not, default provisions

- Filling vacancies on Disc. Board
- Manner of challenges

## (Canonical Choices cont.)

- Permissive:
  - Removal of Ch. Att. For cause
  - Selection of Conference Panel
  - Selection of Hearing Panel
  - Selection of Intake Officer
  - Scope of privileged communication
  - Time for electing Pres. Of Disc. Bd.
  - Eligibility of St. Com. to serve on Disc. Bd.
  - Allocation of costs

# Disciplinary Board

- Not fewer than seven(7) persons.  
Seven allows minimum staffing; if  
want/need latitude for vacancies or  
disqualifications, then allow for  
more.
- Selected as determined by diocesan  
canon:
  - election by convention;
  - appointment by Diocesan followed by approval  
by convention;
  - appointment by Diocesan without further  
action

## (Disciplinary Board cont.)

- Both lay and clergy; must be majority of one clergy
- If want one or more Standing Committee member (s) on Disc. Board must so provide by diocesan canon
- No Chancellor, Vice-Chancellor, Advisor, Conciliator, Church Attorney, Intake Officer or Investigator may serve

## (Disciplinary Board cont.)

- Diocese should provide by canon for filling vacancies on Disc. Board; if not, Diocesan appoints.
- Members of Disc. Board should be members of Diocese, except with multi-diocesan agreements.
- Canons need to provide transition between diocesan convention and the effective date of the revisions (July 1, 2011)
- Canons should provide for a system of challenges to any member of any panel of the Disc. Board

# President of Disc. Board

- President selected by Board from among the members of Disc. Board
  - Within 60 days of election unless other provisions made by canon
  - Canons will need to provide for transition period between initial election and effective date of revisions (July 1, 2011)
  - No maximum term specified for either President or members of the Disc. Board, nor whether reelection annually is required; if desired should be provided by diocesan canon

## (President of Disc. Board cont.)

- President:
  - Selects members of Conference Panel and Hearing Panel in a given case
  - Serves as member of Reference Panel with Bishop and Intake Officer
  - Acts as the appeals person if complaint is dismissed by Intake Officer

## (President cont.)

- Decides with the rest of Reference Panel how to refer a complaint not dismissed by Intake Officer
  - Appropriate pastoral response only
  - Conciliation
  - Further investigation
  - Referral for possible agreement with Diocesan for discipline

# Intake Officer

- Selected by Diocesan after consultation with Disc. Board, unless otherwise selected per diocesan canon
- May be more than one
- Initial point of contact of information concerning Offenses
- One of three members of Reference Panel

## (Intake Off. Cont.)

- Makes initial investigation
- Prepares Intake Report
  - copies to Reference Panel and Church Attorney
- Makes initial determination whether information, if true, may constitute an Offense or not

## (Intake Off. Cont.)

- If IO wants to dismiss, Bishop may object
- If no objection IO notifies Complainant of dismissal and right to appeal within 30 days to President
- IO assists Complainant in preparing appeal statement
- President acts within 30 days of receipt to affirm or overrule the dismissal

## (Intake Off. Cont.)

- If IO determines information (if true) would constitute an Offense, intake report is forwarded to Reference Panel

# Reference Panel

- The Intake Officer, President of Disc. Board and Diocesan Bishop (unless Title IV duties assigned to a different bishop)
- President rules on appeals of dismissals
- On basis of intake report decides
  - No action beyond pastoral response
  - Refer to conciliation
  - Refer for further investigation
  - Refer to Diocesan for possible agreement on discipline
  - Refer to Conference Panel

# Conference Panel

- One, two or three members of Disc. Board selected by President unless diocesan canons otherwise require
- To conduct informal and conversational closed hearing; no record is kept, no witnesses called to testify

## (Conf. Panel cont.)

- To direct who shall appear in order to promote the purposes of the Title; Respondent and Church Attorney must attend; Complainant may attend or send Advisor
- Shall give notice to Respondent, Respondent's Advisor (if any), Complainant, Complainant's Advisor If any), Investigator, Church Attorney of time and place of hearing

## (Conference Panel cont.)

- May issue Accord or Order
  - Dismissal; if dismissal, Order includes the reasons and any findings which exonerate the Respondent
  - Referral for conciliation
  - Referral to Hearing Panel
  - Issuance of an Order

## (Conf. Panel cont.)

- An Order from a Conference Panel can be refused by either Respondent or Church Attorney
- Written notice of refusal within 15 days to president of Conference Panel
- Disciplinary matter goes to Hearing Panel for further action

# Hearing Panel

- Acts as trial court. Three members of Disciplinary Board selected by President, unless other manner of selection is provided by diocesan canon.
- Issues notice to Respondent, Respondent's Advisor, Church Attorney, Complainant requiring written response by Respondent to the charges within 30 days or a finding of default may occur; also failure to attend or participate in any scheduled hearing may result in default

## (Hearing Panel cont.)

- Church Attorney and Respondent may agree on discovery plan; if no agreement president of Hearing Panel decides
- Discovery may include
  - Oral or written deposition testimony
  - Requests for production of documents
  - Requests for admissions of factDiscovery may not include written interrogatories

## (Hearing Panel cont.)

- Testimony shall be under oath, subject to cross-examination, and recorded.
- Hearing Panel sole arbiter of weight, credibility and reliability to be given to all testimony and other evidence.
- President of Hearing Panel shall regulate hearing so as to promote full disclosure of relevant facts, including admission of hearsay if otherwise appropriate.

## (Hearing Panel cont.)

- Hearing Panel confers privately and either:
  - Issues an Order of Dismissal which includes reasons and may contain exonerating findings
  - Issues an Order other than Dismissal which then goes to the Bishop for further action

# Advisor

- Canon 2. A person designated to support, assist, consult with and advise a Complainant or Respondent.
- Canon 19.10. Bishop required to make an Advisor available to Respondent not later than the earliest of
  - Reference for conciliation or to either panel
  - Imposition of restriction on ministry or placement on administrative leave
  - Any interrogation or request for a statement or other information from a Respondent

## (Advisor cont.)

- Bishop shall make Advisor available to Complainant not later than the earliest of
  - Forwarding of Intake Report to Reference Panel
  - Complainant's appeal of a dismissal
  - Bishop's designation of an Injured Person as a Complainant

## (Advisor)

- Diocese to pay reasonable costs and expenses of proffered Advisor. Neither Respondent nor Complainant required to accept proffered Advisor, but if select another, then must pay own expenses
- All communications between Respondent or Complainant and their respective Advisors is privileged.

# Church Attorney

- One or more attorneys selected pursuant to diocesan canon to represent the Church; an independent prosecutor not answerable to ecclesiastical authority.
  - Who selects?
- Licensing and jurisdiction not specified; could be from a different diocese
- Canon may also provide process for removal for cause

## (Church Attorney)

- Acts as independent prosecutor representing the Church with appropriate powers necessary to do so, including independent determination whether and how to proceed
- Does not report to, or take direction from, any body but may consult with the Conference Panel

# Challenges

- Diocese to provide by canon for a system of challenge; if no such canon, then Church Attorney or Respondent may challenge for conflict of interest or undue bias; remaining board members rule on the challenge
- Self-disqualification of bishop or panel member “where impartiality may reasonably be questioned”

# Investigator

- A person with (a) sufficient knowledge, experience and training to conduct investigations, and (b) familiarity with the provisions and objectives of Title IV.
- Appointed by the Bishop Diocesan with consultation with the President of the Disc. Board

# Conciliator

- A person skilled in dispute resolution and without conflict of interest in the matter
- Appointed by the Bishop Diocesan
- All communications are confidential
- If agreement, Accord is prepared; otherwise matter is referred back to Reference Panel

# Expenses

- Canon 19.27. Except as varied by Title IV, diocesan canon, or terms of an Order or Accord, all costs, expenses and fees shall be the obligation of the party which incurs them.