

MINUTES

White & Dykman Subcommittee Standing Commission on Constitution and Canons In Person Meeting

October 25 – 28, 2015
New Orleans

PRESENT: Diane Sammons (Chair), Joan Geiszler-Ludlum (Secretary), Bill Cathcart, Steve Hutchinson, Sally Johnson and Tom Little.

EXCUSED: Dorsey Henderson, Larry Hitt and Mark Duffy (Archivist).

Sunday, October 25, 2015

Diane Sammons called the meeting to order at 7:40 pm. Diane reviewed the agenda for this evening's work. The Subcommittee reviewed the mandate to SCCC regarding the annotated Constitution and Canons. See Canon I.1.2(n)(3)(iv).(2012).

[List work from the Tom Little June 2012 Outline of Work.]

1. Discussion of evidentiary support for reasons to revise Title IV in 1994: legislative history

What was SCCC responding to?

1991 authorizing resolution for Title IV work

COSE work – sponsored the resolution, Committee of Executive Council

What does Archives have from COSE- minutes, reports?

Flesh out legislative history as far as possible from contemporary documents.

2. Case law work – 25-30 cases since 1994.

Tracking down cases and their records for Archives, summarize the decisions, create a process for triennial updating and recommend to SCCC, annotations of 1994 and 200 and 1997 updates.

Digitizing archives of trials and opinions.

Precedential value of case law in the absence of a practice of following case law?

Address as “Reports of Cases” that have applied Title IV, what was done right or wrong, and respond by changing canons.

No Judiciary branch in TEC.

Summaries of cases tried, opinions written and issued.

Develop a search term system for Archives materials.

“Don’t let perfect be the enemy of the good.” – Tom Little

3. Work accomplished in 2012-15 triennium

Good progress and quantity of Commentary on 1994 and 2009 revisions
Identify and began work on cases reported.
Developed a system for future annotations
Digitization is not within our control
Assure our continuation during the next triennium but not necessarily a three year commitment
How will it be maintained and by whom thereafter?
Resolution 2015-A106 sets up SC on Constitution Canons and Governance includes mandate for Annotated Constitution and Canons work – quote from Res

Meeting adjourned at 8:40 pm.

Monday 26, 2015

Commentary 1994 Revision

Diane Sammons called the meeting back to order at 9:40 am. Attention turned to review of the draft of pre-1994 and 1994-2000 revisions prepared by Sally Johnson. Sally reported she is nearly done with 1994 revisions commentary. Work remains on Canon IV.14 and IV.15 and on the sections addressing discipline for bishops. Editing will give attention to verb tenses, “cognate Canons committees”, gaps that need to be filled, some are noted within the text. She can track interim changes from the 1994 rewrite through to the 2009 rewrite. Input on treatment and support in some areas will also need to be reviewed. Steve suggested on verb tenses that it be written looking back from 2015. White & Dykman is written in both past and present tense. Pre-1994 should be written in past tense and updates in present tense. Goal is a final product that is understandable and reads well. Once the major commentary is completed, subsequent annotations would continue following the traditional W&D model by General Convention year. That entails full text as of the last publication date then each change is set out by year.

Concern was expressed about relying on anecdotal support as opposed to documentary support for context as revisions moved along.

Steve: not enough significance given to impact on victims, affected parties and congregations of introducing due process rights into Title IV revision process. Concerns for the rights and treatment of priests emerged from the UCMJ model and the Beebe case and Royce experience in Long Island context. Beebe (1976 decision) described ecclesiastical proceedings as criminal in nature. (W&D p. 1018ff) Similar movement from a criminal model to a professional discipline model was taking place in the legal profession.

Sally took the approach not to get too bogged down in the sexual misconduct claims context that was very much a driving factor in the 1994 revisions and subsequent.

Reviewed membership of 1991 SCCC as available to interview for context of the authorizing resolution to study Title IV. Sally joined SCCC in 1994, she was only member who had not served in military.

Larry Hitt arrived at 10:30 am after delays due to weather conditions.

Questions/Title IV influences for Preamble/setting the stage pre-1994:

1. Why was UCMJ model selected? (Bob **Royce** was member of both, also still around is Becky Snow. Bob Royce did the drafting of 1994 revisions.) **Joan**
2. Influence of insurance claims issues/sexual misconduct? **Sally**
3. Beebe opinion (1976) (due process rights of clergy)
4. Movement from criminal model to professional discipline model for lawyers
Steve
5. Moses decision (Colorado approx. 1990)
6. CIC warranties for sexual misconduct liability Coverage K **Sally**
7. LA Times article mentions lead of Episcopal Church response on sexual misconduct prevention policies (5 or 6 years ago, mentions the Moses case)
Larry
8. First Amendment
9. COSE (Committee on Sexual Exploitation), Margo Marris as primary source
Sally
10. Bp. Plummer case in Navajoland and its handling of charges against a bishop
11. Reference cases in appropriate sections of commentary with link to case summary
12. Evidence for too frequent use for voluntary waivers and submissions?
13. Nathan Network
14. Testimony and training before the Instruments of Thy Peace conferences in Minneapolis (Office of Pastoral Development under Bp. Hopkins in 1990s)
15. Establish audio files from oral history-type interviews of principal participants.
16. What would authenticate for future readers observations about what was going on in discipline matters pre-1994?
Lack of discipline structures
Too difficult to bring charges
Handling to protect clergy careers
David Beers (**Larry and Steve**), David Rider, chancellors
17. Chancellors conference outlines pre-1994 **Larry**
18. Source of “ugly rumor” provision. **Sally**: Review Canons Committees minutes of 1994
19. If there was no nondisciplinary Renunciation Canon prior to 1994, what would happen with a bishop who wished to leave TEC? (**Royce?**) **Joan**
20. Verify rules of confidentiality as related to the Bates case where Respondent died before filing a response to the Presentment. **Sally**
21. Canon IV.14.10 – add discussion of Bishop C.I. Jones case re: Waiver and Voluntary Submission to Discipline **Bill**

Sally will draft a preamble/introduction, Diane suggested a 10 page limit.

Attention turned to reviewing the drafts section by section for identification of major issues, gaps, questions, comments in Canon order.

Editorial issues/conventions;

1. Note that cognate Committees' amendments were all adopted up front or where it occurs in text? Preference expressed for noting as appropriate section by section.
2. Change reference from "cognate Committee" to "Canons Committees".
3. How to reference the Blue Book Reports or Journals: use what GCO style/Archives style/Journals/White & Dykman.
4. Distinguish Inhibition from Temporary Inhibition.

The Subcommittee broke for lunch at 12:00 noon and resumed at 1:00 pm.

Review of the drafts of the 1994 Commentary continued.

Things to do/research for correction:

1. **Tom** will research the reference to the Federal Rules of Appellate Practice in Canon IV.4(b).46. (Done)
2. **Tom/Joan** will research GCO writing style guidelines. (Done)

Attention turned to identifying additional resources:

Time Line

Sally reported that she expects she can complete the 1994 Commentary by December 31, 2015 and draft the 1997 revisions Commentary by January 31, 2016. Editing from the initial drafts ought to be handled by one of our members to make grammatical and spelling corrections.

Editing

Tom Little agreed to undertake this editing with assistance from Joan. Bill will undertake the updated annotation from 2000-2009.

Commentary 2009 Revision

Steve then took up review of the work he is drafting. Canon changes adopted by GC 2000, 2003 and 2006 will follow the outline that Sally has established and reflecting the original White & Dykman Annotation format. Sally will lay out the 1994 Canon section by section and then note the subsequent amendments as those occurred. Steve will then lay out the 2009 Canon as the next starting point and follow the same annotation format for 2012 and 2015 amendments. For the 2009 revised Canon, there will be a preamble

that outlines the work of the Title IV Task Force from 2000-2009 with links to the working documents.

The Subcommittee will review Steve's draft Narrative of Title IV Proceedings tonight for further discussion tomorrow.

Meeting adjourned at 4:35 pm.

Tuesday, October 27, 2015

Diane called the meeting back to order at 9:02 am and reviewed the agenda for the day. Discussion of the fourth draft 2009 Narrative as Steve Hutchinson drafted it focused on edits for content and style. Attention then turned to dividing up Title IV 2009 to assist Steve with the canon section and amending resolutions text, with Steve focusing on the Commentary. After discussion, **Steve and Bill** will begin work following Sally's outline for presenting the text and history of the canon, and from there will determine what further assistance is needed from the group at the next teleconference meeting.

Bill reviewed the flow chart that Mary Kostel prepared for Title IV training for possible inclusion as an Appendix. Decisions about links to other resources or as appendices were deferred until more of the drafting of the basic Annotation pieces is completed.

Case Law

Drafts of five of the fourteen cases now available are complete: Jones, Bennison, Clement, Minnis and Wendt. These were reviewed, discussed and edited. **Diane** will assign the remaining cases.

Next Steps

Title III needs similar attention as Title IV. The Subcommittee's charge is to update White & Dykman to the present. Title III will need involvement of members of the Standing Commission on Ministry Development who drafted the Title III revisions. The Subcommittee's work will need to be merged with work that Bob Royce has completed and from there determine what further updating is needed. **Diane** will send a memo to Polly Getz to outline the work of the Subcommittee to date and future work for approval by the new Standing Commission on Governance, Structure, Constitution and Canons.

The Subcommittee discussed planning for a reader's group who would provide feedback on the approach. Names suggested for this group include Michael Glass, Polly Getz, Bradley Wirth, Jack Finlaw from the new Standing Commission, Joe Delafield and Les Alves from the Title IV Task Forces. The expectation is that this Subcommittee will continue in the 2015-18 triennium to complete this work.

Next meetings:

Video teleconference December 8, 4:00 pm to 6:00 pm. Include discussion with Mark Duffy (**Diane**) on the hand-over of the finished work to Archives on that agenda: form, format, official approval needed, final editing work,...

Face to face in the Spring funded by the Episcopal Chancellors Network, date TBD depending on drafting progress, tentatively April 15-18, considering Houston, Dallas, Minneapolis, Chicago or Salt Lake City. (**Diane**)

The Subcommittee adjourned for lunch at 11:50 am, to return to working in subgroups at 1:00 pm.

After meeting in working groups, the Subcommittee reconvened at 2:50 pm to review progress and discuss issues. **Sally** will do the 1994-2006 annotation of amendments to Title IV since she has an established working structure. **Steve and Bill** will address the few amending resolutions that passed General Convention in 2009 and 2012. **Bill** will address the 2015 amendments.

Larry and Diane reported on the case law subgroup. They assigned the remaining cases. They reviewed the several drafts already done on the Bishop Jones case and examined what should be in the summary and what should be left out. For example, interim orders do not appear necessary for inclusion in the summary as these will be available from the full case documentation in the Archives. Bill noted that motions for summary judgment should be included even if not the subject of an appeal and dispositive of some issues in the case. The approach will be to include in the draft what appears to be an issue of interest and the full Subcommittee can respond. Most if not all summaries should be drafted by the next meeting.

Sally will combine her drafts which are now separate by Canon section into a one document.

Tom and Joan reported on their discussions about the editing process. One question is verb tenses, when to use past tense and when to use present tense. They will look for style guidance on that point. White & Dykman seems to use past for prior GC actions and present for the most recent GC action. Reference in the 1994 Commentary section noting what was proposed by SCCC as opposed to what the Canons Committees sent to the floor is more important in the context of the 1994 revision because it was one of the only times that a Legislative Committee worked to make a substantial change in the direction from what SCCC had proposed. A parallel question is the departure from the White & Dykman approach that primarily reports what General Convention did without any detailed reporting on the content of Blue Book Reports and the work of legislative committees. What may be more important to report is making it clear that what SCCC proposed in 1994 was not what General Convention adopted. Future readers and users should be informed not to rely on the 1994 Blue Book Report as legislative history on how to understand the 1994 revision.

One of the key editing challenges is multiple rounds of editing by multiple editors and keeping track of the progressions of changes. Tom will be the repository of the edited versions and their tracking. Tom requests each reader use a header that notes the editor and date and save the document using the editor's initials and date. Tom will also investigate how large law firms manage editing large documents and provide further guidance.

[Insert Tom's email outline 10.27.15]

Planning for this afternoon:

Subgroups to work on particular pieces: 1pm to 4pm and then regather before dinner

Bill and Steve on 2009 Commentary

Diane and Larry on case law assignments

Tom and Joan on editing process

Sally will continue her work

Steve/Bill

Reformat to follow Sally's format

Legislative history and commentary 2000-06

"Pre-amble" late '90s thru Title IV Task Force

Legislative history and commentary 2009-15

Appendix: Narrative; Comparison chart

The meeting adjourned at 4:00 pm.

Wednesday, October 28, 2015

9:00 a.m.

- I. Recap, clarify status and tasks ahead, timelines and scheduling, and resources needed; ~~Next Meetings~~

10:30 a.m.

Meeting adjourns

Departures

Task Assignments

Larry: Beebe opinion case summary.

LA Times article mentions lead of Episcopal Church response on sexual misconduct prevention policies

Interview David Beers (with Steve)

Chancellors conference outlines pre-1994

Sally: Influence of insurance claims issues/sexual misconduct?

CIC warranties for sexual misconduct liability Coverage K.

COSE (Committee on Sexual Exploitation), Margo Marris as primary source.

Testimony and training before the Instruments of Thy Peace conferences in Minneapolis (Office of Pastoral Development under Bp. Hopkins in 1990s).

Source of “ugly rumor” provision. Review Canons Committees minutes of 1994

Verify rules of confidentiality as related to the Bates case where Respondent died before filing a response to the Presentment.

Draft a preamble/introduction.

Consolidate separate drafts into a single draft.

Post-1994 – 2006 annotation of amendments

Bill: Canon IV.14.10 – add discussion of Bishop C.I. Jones case re: Waiver and Voluntary Submission to Discipline
2015 amendments

Tom: Verify reference to Federal Rules of Appellate Practice. **Done:** Correct title is Federal Rules of Appellate Procedure.
Editing/proofreading (with assistance from Joan)

Joan: Interview Bob Royce around 1994 revisions:

why was UCMJ selected as model?

If there was no nondisciplinary Renunciation Canon prior to 1994, what would happen with a bishop who wished to leave TEC?

Assist Tom with editing/proofreading.

Steve: Movement from criminal model to professional discipline model for lawyers.
Interview David Beers (with Larry)

Steve/Bill: Reformat to follow Sally’s format

Legislative history and commentary 2000-06

“Pre-amble” late ‘90s thru Title IV Task Force

Legislative history and commentary 2009-15

Appendix: Narrative; Comparison chart

Amendments 2009-12

Diane: Assign the remaining cases for summary.

Memo to Polly Getz to outline the work of the Subcommittee to date and future work for approval by the new Standing Commission on Governance, Structure, Constitution and Canons.

Arrangements for 2016 face to face meeting.

Questions for Mark Duffy:

- Hand-over of the finished work to Archives on that agenda: form, format, official approval needed, final editing work, etc.

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Respectfully submitted,

Joan C. Geiszler-Ludlum
Secretary