

# **TITLE IV**

## **“ECCLESIASTICAL DISCIPLINE”**

### **Overview of New Disciplinary Structures and Proceedings**



Effective July 1, 2011  
Diocese of Rochester Training  
January, 2013



# Underlying Principles of New Title IV

- By virtue of our Baptismal Covenant, all members of this Church are called to holiness of life and accountability to one another
- The Church and each Diocese shall support their members in their life in Christ and seek to resolve conflicts by promoting healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among all involved or affected
- This Title of accountability and ecclesiastical discipline applies to Members of the Clergy, who have by their vows at ordination accepted additional responsibilities and accountabilities for doctrine, discipline, worship and obedience.



# Goals of Revised Title IV

- ▣ Less Adversarial
- ▣ Reflect theology
- ▣ Flexibility of outcomes to promote healing
- ▣ Allow early story telling
- ▣ Options for constructive resolutions
- ▣ More efficient
- ▣ Promote pastoral care for all



# Goals

- ▣ Seek to resolve conflicts by promoting:
  - healing
  - repentance
  - forgiveness
  - restitution
  - justice
  - amendment of life
  - reconciliation
  - (IV.1)



# Offenses

- ▣ Title IV.3 and 4
  - Phrased as more detailed standards of conduct
  - Includes accountability provisions, e.g, failing to cooperate in any Title IV investigation
  - Must be material and substantial or of clear and weighty importance to the ministry of the Church
  - Clergy required to report Offense except those within Rite of Reconciliation of a Penitent



# Offenses List

## ▣ Title IV.3: Of Accountability

- Sec. 1. A Member of the Clergy shall be subject to proceedings under this Title for:
  - ▣ (a) knowingly violating or attempting to violate, directly or through the acts of another person, the Constitution or Canons of the Church or of any Diocese;
  - ▣ (b) failing without good cause to cooperate with any investigation or proceeding conducted under authority of this Title; or
  - ▣ (c) intentionally and maliciously bringing a false accusation or knowingly providing false testimony or false evidence in any investigation or proceeding under this Title.
- Sec. 2. A Member of the Clergy shall be accountable for any breach of the Standards of Conduct set forth in Title IV.4.
- Sec. 3. In order for any conduct or condition to be the subject of the provisions of this Title, the Offense complained of must violate applicable provisions of Title IV.3 or IV.4 and must be material and substantial or of clear and weighty importance to the ministry of the Church.



# Offenses List

- ▣ Title 4: Of Standards of Conduct
  - Sec. 1. In exercising his or her ministry, a Member of the Clergy shall:
    - ▣ (a) respect and preserve confidences of others except that pastoral, legal or moral obligations of ministry may require disclosure of those confidences other than Privileged Communications;
    - ▣ (b) conform to the Rubrics of the Book of Common Prayer;
    - ▣ (c) abide by the promises and vows made when ordained;
    - ▣ (d) abide by the requirements of any applicable Accord or Order, or any applicable Pastoral Direction, restriction on ministry, or placement on Administrative Leave issued under Title IV. 7;



# Offenses List

- (e) safeguard the property and funds of the Church and Community;
- (f) report to the Intake Officer all matters which may constitute an Offense as defined in Canon IV.2 meeting the standards of Canon IV.3.3, except for matters disclosed to the Member of Clergy as confessor within the Rite of Reconciliation of a Penitent;
- (g) exercise his or her ministry in accordance with applicable provisions of the Constitution and Canons of the Church and of the Diocese, ecclesiastical licensure or commission and Community rule or bylaws;
- (h) refrain from:
  - (1) any act of Sexual Misconduct;
  - (2) holding and teaching publicly or privately, and advisedly, any Doctrine contrary to that held by the Church;





# Offenses List

- (3) engaging in any secular employment, calling or business without the consent of the Bishop of the Diocese in which the Member of the Clergy is canonically resident;
- (4) being absent from the Diocese in which the Member of the Clergy is canonically resident, except as provided in Canon III. 9.3(e) for more than two years without the consent of the Bishop Diocesan;
- (5) any criminal act that reflects adversely on the Member of the Clergy's honesty, trustworthiness or fitness as a minister of the Church;
- (6) conduct involving dishonesty, fraud, deceit or misrepresentation; or
- (7) habitual neglect of the exercise of the ministerial office without cause; or habitual neglect of public worship, and of the Holy Communion, according to the order and use of the Church; and
- (8) any Conduct Unbecoming a Member of the Clergy



# Disciplinary Board

- ▣ 7 members (Diocesan Canon 21.2)
  - 4 clergy, 3 lay
  - Clergy must be canonically resident; Lay must be adult communicants in good standing in church in Diocese
  - 3 year staggered terms; 2 term limit (terms ending in 2012, 2013 not subject to limit)
  - 3 classes, currently 2013 (2), 2014 (3) and 2015 (2)
  
- ▣ (canon references beginning with 21 are Diocesan; beginning with IV are General)



# DB Members

- ▣ President chosen by DB from Members(21.4; IV.5.1)
- ▣ Not allowed to serve on DB: Bishop, Members of Standing Committee, Chancellor, Vice Chancellor, Advisor, Conciliator, Church Attorney, Intake Officer, Investigator, or Diocesan staff (IV.5.3(c); 21.2(b)(3))



# DB Members

- ▣ DB Board Members (21.2)
  - 2013 Class:
    - ▣ The Rev. Leslie Adams (clergy), Nadine Hunter (lay)
  - 2014 Class:
    - ▣ The Very Rev. Jim Adams (clergy) [President], The Rev. Ruth Ferguson (clergy), and Sue Scanlon (lay)
  - 2015 Class:
    - ▣ The Rev. Mary Ann Brody (clergy), Jeremy Cooney (lay) [Clerk]



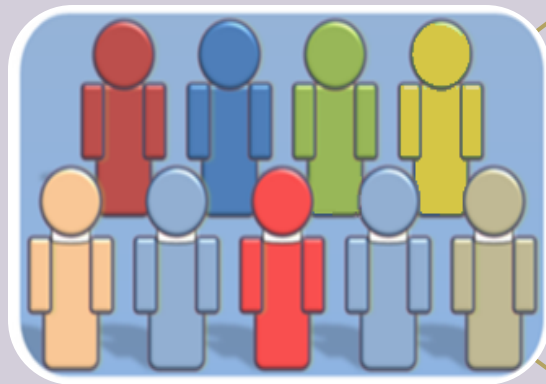
# Diocesan Changes

- ▣ General Title IV changes effective July 1, 2011
- ▣ Applicable to all dioceses
- ▣ Some points left for diocesan decision
- ▣ 2011 Diocesan Convention adopted new Canon 21
- ▣ Players changed as of July 1, 2011
- ▣ Consider cooperation with Western New York for advisors, investigators (21.16)



# Panels formed from DB

7 Members of DB become members of 3 other groups, exclusively



**Disciplinary Board**

RP

- **Reference Panel**
  - President of DB
  - Plus, Bishop & Intake Officer

CP

- **Conference Panel**
  - 1 or more of DB

HP

- **Hearing Panel**
  - 3 or more of DB
  - Clergy and lay



# Players

- ▣ Bishop
- ▣ Disciplinary Board, incl. Hearing and Conference Panels (IV.5.1)
- ▣ Intake Officer (21.5, IV.2) Bishop appoints
- ▣ Reference Panel (IV.2) consists of Intake Officer, Bishop Diocesan and President of DB
- ▣ Pastoral Care Coordinator (21.8, IV.8) Bishop appoints



# Players

- ▣ Investigator (21.6; IV.2) Bishop appoints, consults Pres DB
- ▣ Church Attorney (21.7; IV.2) Bishop appoints, consults with SC; must be attorney, need not be a member of Church or reside within Diocese
- ▣ Advisors (21.9; IV.19.10) Bishop appoints
- ▣ Conciliator (IV.10) Bishop appoints
- ▣ Complainant and Respondent (IV.2)





# Diocesan Canons

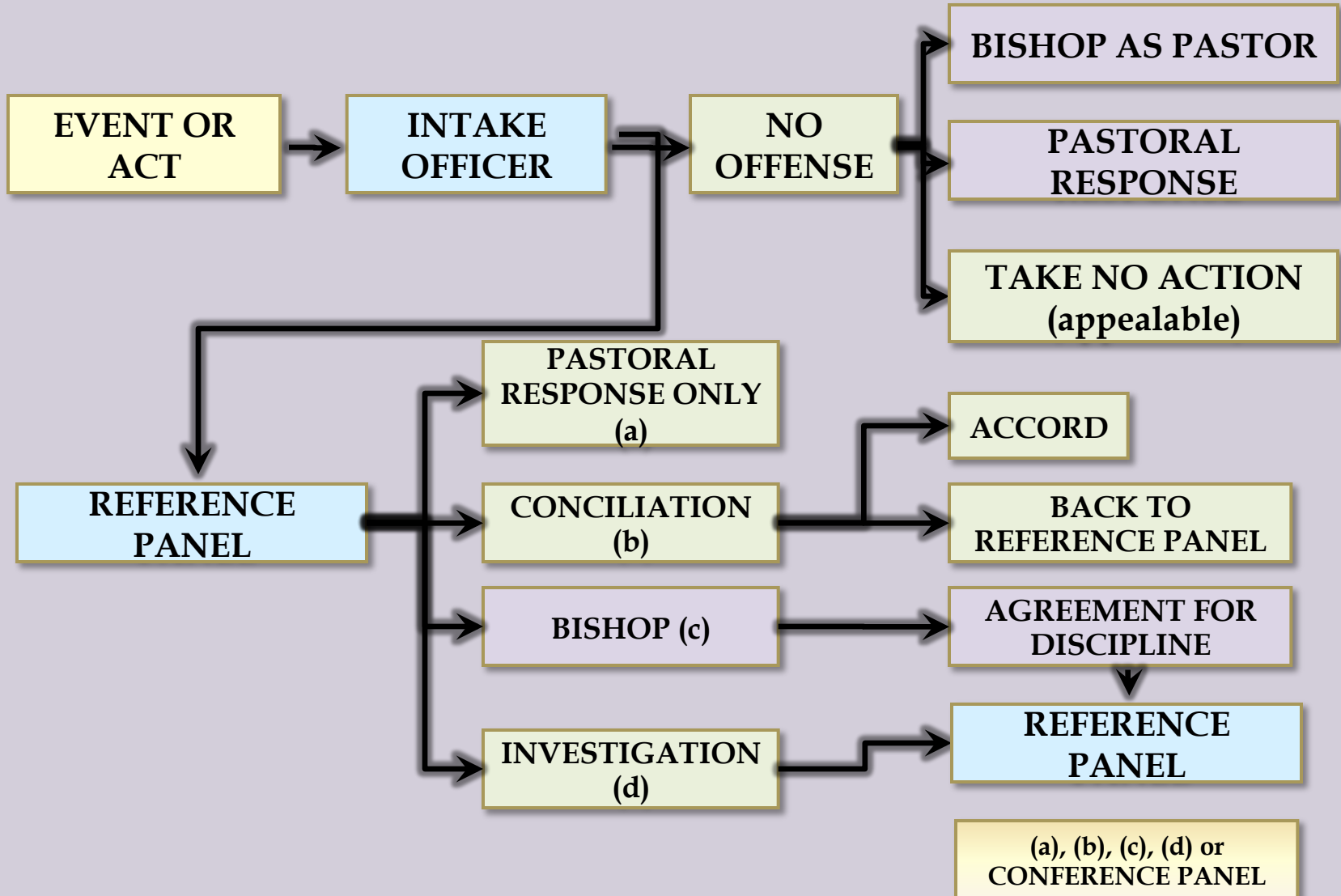
- ▣ Selection of players (21.5-9)
- ▣ How vacancies on Disc. Board are to be filled – by Bishop, consults with SC, until next Convention (21.2(c))
- ▣ Records (21.12; 21.13)



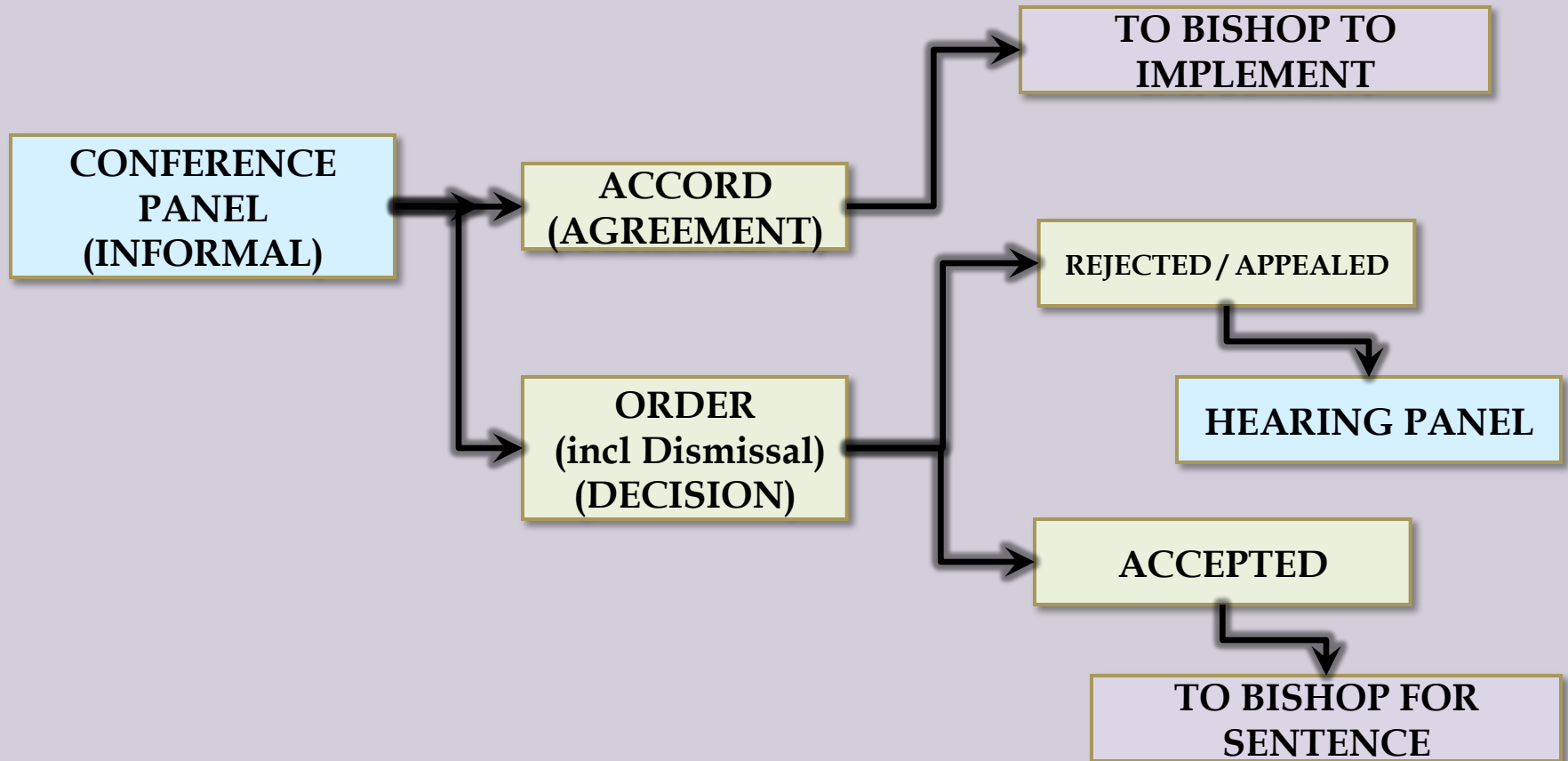
# ECR Participants

- ▣ Bishop: The Rt. Rev. Prince G. Singh
- ▣ Disciplinary Board:
  - Seven (7) Members (21.2(a))
  - First elected by 2011 Diocesan Convention
  - President: The Very Rev. James Adams (elected 1-5-12, 11-10-12 for 2013)
- ▣ Intake Officer:
  - The Rev. Gary D. Sawtelle (appointed 6-14-12)
- ▣ Church Attorney
  - Harold A. Kurland, Esq. (appointed 6-14-12)
- ▣ Investigator, Advisors, Conciliator, Pastoral Response Coordinator chosen for each case

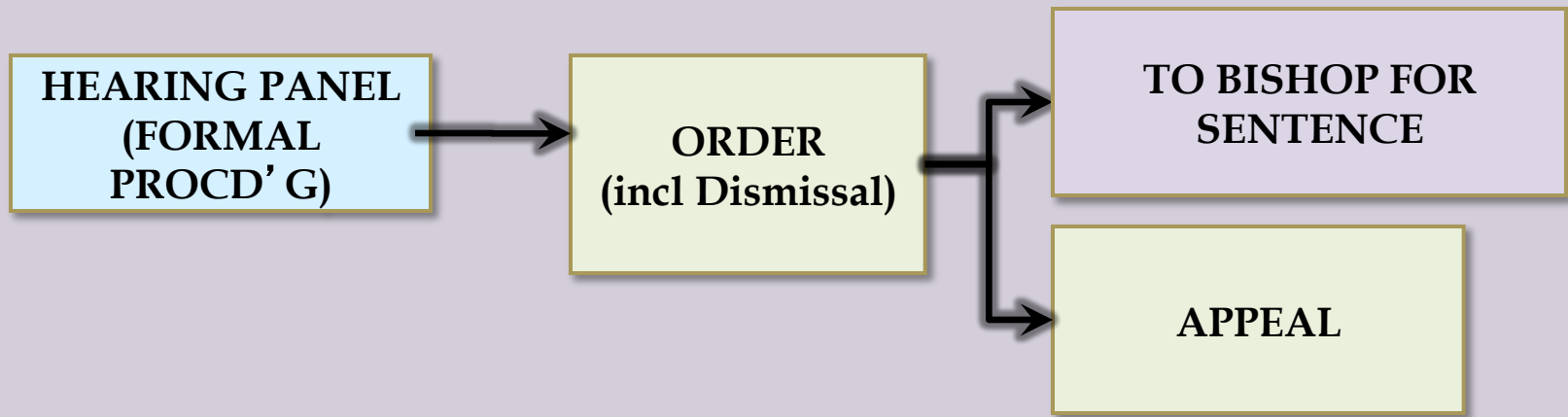
# TITLE IV FLOW CHART STAGE ONE - INTAKE



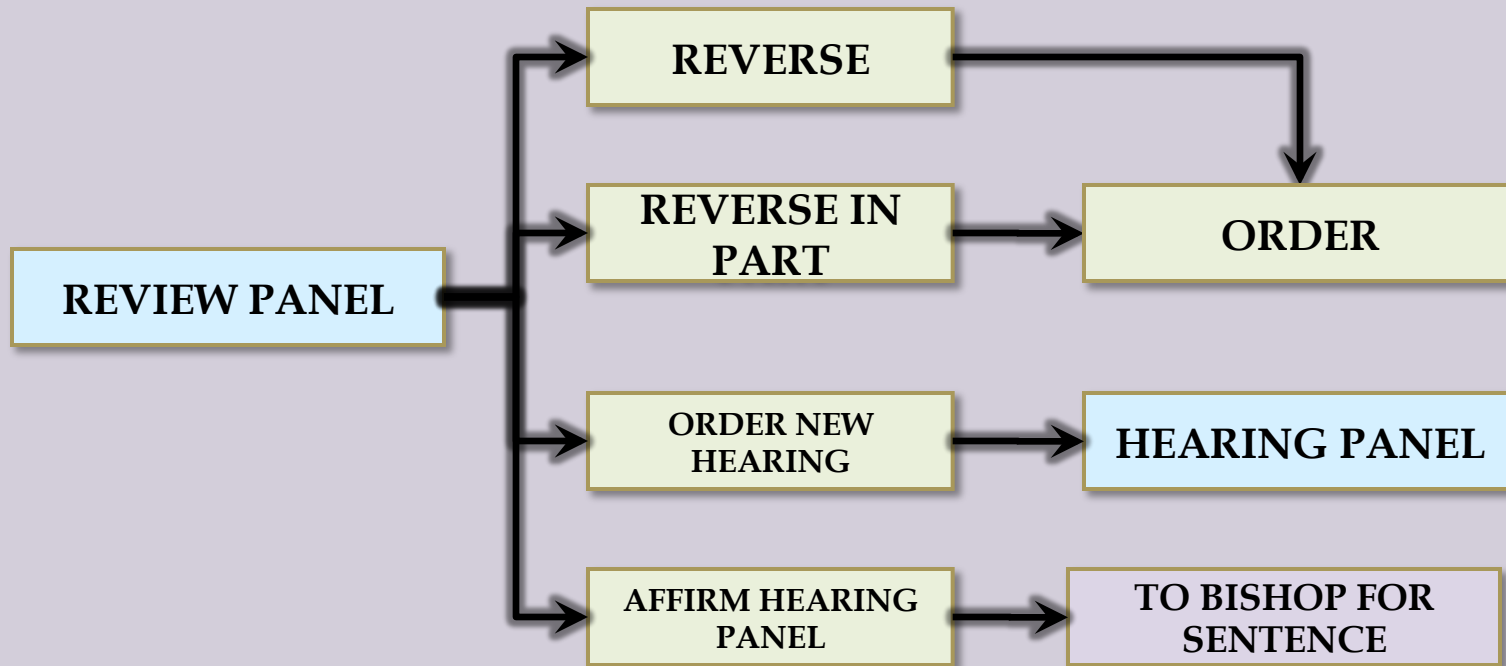
# TITLE IV FLOW CHART STAGE TWO - CONFERENCE PANEL



# TITLE IV FLOW CHART STAGE THREE – HEARING PANEL



# TITLE IV FLOW CHART STAGE FOUR - APPEAL





# Bishop

- ▣ Appointment powers
- ▣ Member Reference Panel (IV.2)
- ▣ Agreement for Discipline (IV.9)
- ▣ Provides pastoral care & direction
- ▣ Pronounces sentence after recommendation of an Accord or Order of the Conference Panel or Hearing Panel (IV.14)



# Table Exercise

- ▣ At each table pretend you collectively are the Intake Officer. Read each situation and discuss what actions you would take and relate to Title IV.3 & 4.
  - A person claiming to be a parishioner at an ECR parish comes to you complaining that the rector refuses to include the Nicene Creed in services because he does not view the contents to express his beliefs.
  - A Senior Warden complains that the rector will give a detailed accounting of use of the discretionary fund only to the person who audits the parish financials and not to the vestry.





# President of DB

- ▣ Appoints presidents of Conference and Hearing Panels (IV.6.7)
- ▣ Serves as member of Reference Panel with Bishop and Intake Officer (IV.2)
- ▣ Acts as the appeals person if complaint is dismissed by Intake Officer (IV.6.6)
- ▣ Selects members of Conference Panel and Hearing Panel by lot or random means in a given case (IV.6.7)



# President of DB

- ▣ Decides with the rest of Reference Panel how to refer a complaint not dismissed by Intake Officer (IV.6.8)
  - Appropriate pastoral response only
  - Conciliation
  - Further investigation
  - Referral for possible agreement with Diocese for discipline



# Intake Officer (IV.6)

- ▣ May be more than one
- ▣ Initial point of contact of information concerning Offenses
- ▣ One of three members of Reference Panel
- ▣ Selected by Bishop (IV.2)
- ▣ Bishop publishes contact information of Intake Officer(s) (21.5)



# Intake Officer (IV.6)

- ▣ 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
- ▣ 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



## Intake Officer (IV.6)

- ▣ Assists Complainant in appeal of dismissal (President acts within 30 days of receipt to affirm or overrule the dismissal) (IV.6.5)
- ▣ If IO determines information (if true) would constitute an Offense, intake report is forwarded to Reference Panel



# Reference Panel

- ▣ Intake Officer, Bishop & Pres, DB
- ▣ 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 Bishop for possible agreement on discipline



# Advisors

- ▣ Title IV.2. A person designated to support, assist, consult with and advise a Complainant or Respondent.
- ▣ Not meant to act as attorney
- ▣ Title IV.19.10 (a). Bishop makes Advisor available to Respondent not later than 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



# Advisors

- ▣ Title IV 19.10 (b). Bishop shall make Advisor available to Complainant not later than 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





# Advisors

- ▣ 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 (IV.19.10 (f))
- ▣ All communications between Respondent or Complainant and their respective Advisors privileged.(IV.10.10 (e))



# Conciliator

- ▣ A person skilled in dispute resolution and without conflict of interest in the matter (IV.10.4)
- ▣ Appointed by the Bishop Diocesan (IV.10.2)
- ▣ All communications are confidential, unless permission is obtained from the parties. (IV.10.4)
- ▣ Reference Panel may refer matter to Conciliator. (IV. 6.8)
- ▣ If agreement among parties, Accord is prepared; otherwise matter is referred back to Reference Panel (IV.10.3)



# Church Attorney

- ❑ One or more attorneys selected by Bishop in with consultation with SC (21.7)
- ❑ Represents the Church in specific discipline cases; an independent prosecutor not answerable to ecclesiastical authority.
- ❑ Need not be a Member of Church, nor reside in Diocese (21.7)
- ❑ Removal for cause by Bishop, in consultation with SC (21.7)



# Church Attorney

- ▣ Acts as independent prosecutor representing the Church with appropriate powers necessary to do so, including independent determination whether and how to proceed. (IV.2 Church Attorney)
- ▣ Does not report to, or take direction from, anybody but may consult with the Conference Panel (IV.2. Church Attorney(d))



# Investigator

- ▣ A person with (a) sufficient knowledge, experience and training to conduct investigations, and (b) familiarity with the provisions and objectives of Title IV. (IV.2)
- ▣ Appointed by the Bishop Diocesan in consultation with the President of the Disc. Board (IV.2; 21.6)
- ▣ Reports to Church Attorney (IV.2 Church Attorney)



# Conference Panel

- ▣ One, two or three members of Disc. Board selected by President (IV.2).
- ▣ To conduct informal and conversational closed hearing; no record is kept, no witnesses called to testify (IV.12)
- ▣ Directs who shall appear in order to promote the purposes of the Title; Respondent and Church Attorney must attend; Complainant may attend or send Advisor (IV.12.4-6)



# Conference Panel

- ▣ Gives notice to Respondent, Respondent's Advisor (if any), Complainant, Complainant's Advisor (if any), Investigator, Church Attorney of time and place of hearing
- ▣ May issue Accord or Order
  - Dismissal; if dismissal, Order includes the reasons and any findings that exonerate the Respondent
  - Referral for conciliation
  - Referral to Hearing Panel
  - Issuance of an Order to Bishop for acceptance and pronouncement



# Conference Panel

- ▣ 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
- ▣ If refused, disciplinary matter goes to Hearing Panel for further action





# Hearing Panel

- ▣ Acts as trial court. Three members of Disciplinary Board selected by DB President (IV.2)
- ▣ 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 (IV.13)



# Hearing Panel

- ▣ Church Attorney and Respondent may agree on discovery plan; if no agreement president of Hearing Panel decides (IV.13.5(c))
- ▣ Discovery may include
  - Oral or written deposition testimony
  - Requests for production of documents
  - Requests for admissions of fact (IV.13.5(d))
- ▣ Discovery may not include written interrogatories



# Hearing Panel

- ▣ Testimony shall be under oath, subject to cross-examination, and recorded.(IV.13.6)
- ▣ Hearing Panel sole arbiter of weight, credibility and reliability to be given to all testimony and other evidence.(IV.13.6)
- ▣ President of Hearing Panel shall regulate hearing so as to promote full disclosure of relevant facts(IV. 13.6(a)), including admission of hearsay if otherwise appropriate. (IV.13.6 (b)(5))



# Hearing Panel

- ▣ Hearing Panel confers privately and either:
  - Issues an Order of Dismissal that includes reasons and may contain exonerating findings (IV.13.8)
  - Issues an Order other than Dismissal, and the matter proceeds to sentencing (IV.14)
  - Standard of Proof: “Clear and Convincing” (IV.2)



# Challenges

- ▣ 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”



# Expenses

- ▣ All costs, expenses and fees shall be the obligation of the party that incurs them. (21.11(a))
- ▣ Except reasonable defense costs incurred by Respondent may be paid by Diocese if (21.11(b)):
  - Accord, Final Order, or Hearing Panel finds matter “without basis in fact, brought in bad faith, or frivolous”, or
  - Bishop or SC determines that “in interests of justice” payment is proper, then the Respondent may make application to Bishop or SC for payment



# Appeals

- ▣ Can speed up procedure by notifying court of Review if there is a delay of over 60 days after there is a request the Hearing Panel. (IV.15.1)
- ▣ Respondent may appeal within 40 days after issuance of an order. (IV.15.2)
- ▣ Provincial Court of Review (IV.5.4 (a))
  - One bishop, two priests (or one priest and one deacon), two lay persons, all of the Province. Priests/deacons of different dioceses and lay of different dioceses.
  - Appointed annually by President of Province
- ▣ Possible appeal by EA (IV.15.3)



# Questions



For further questions/comments, send email to  
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