

To: Executive Council Joint Standing Committee on Governance and Operations

From: Working Group on Provincial Court of Review

Date: January 29, 2019

RE: Populating the New Court of Review

**Summary:** General Convention amended the Canons in 2018 (eff. Jan.1, 2019) to eliminate Provincial Courts of Review for appeals from Title IV hearings for Priests and Deacons and replace them with one church wide Court of Review. This new Court of Review is to be composed of three Bishops elected by the House of Bishops; and six members of the Clergy and six laypersons to be elected by the House of Deputies. While the House of Bishops may elect its members at the March 2019 meeting of that House, no mechanism for selecting the Clergy and lay members of the new Court before the 2021 General Convention was provided in the amended canon creating the single Court of Review.

It is the conclusion of the Working Group that General Convention intended that a church wide Court of Review become functional before General Convention 2021. It is the further conclusion of the Working Group that the clearest indication of how the lay and Clergy positions on that Court should be filled in the absence of General Convention having provided a mechanism for doing so in the amended canon is found in General Convention's most recent instruction for the filling of positions on the Disciplinary Board for Bishops prior to the filling of them by election by the House of Deputies. That instruction provided that, in the absence of an election by General Convention, the President of the House of Deputies appoint lay and Clergy members with the consent of the lay and Clergy members of Executive Council. The Working Group recommends that the same process be followed here, and seeks Executive Council's support for its recommendation. The Working Group further suggests that a resolution be offered to the 2021 General Convention for that body to ratify the process set out here.

**History:** The Standing Commission on Structure, Governance and Constitution and Canons proposed Resolution A110 to amend the Canons to create one church wide Court of Review to replace the provincial Courts of Review to hear appeals in Title IV matters regarding Priests and Deacons. The proposal was adopted and became effective January 1, 2019. The amendment provides that the three Bishop members of the Court of Review be elected by the House of

Bishops. That may be done either at a meeting of General Convention or any other meeting of the House of Bishops. It further provides that the six members of the Clergy and six lay members (and alternates) be elected by the House of Deputies. That House meets only at a meeting of General Convention. No provision was included for filling the lay and Clergy positions between the effective date of the amendments and General Convention 2021.

**Process:** The Presiding Officers became aware of this issue and appointed a Working Group to consider the matter. The members of the Working Group are the Rev. Michael Barlowe, Executive Officer of the General Convention; Douglas Anning, Acting Chief Legal Officer; David Booth Beers, Chancellor to the Presiding Bishop;<sup>1</sup> Sally Johnson, Chancellor to the President of the House of Deputies; Christopher Hayes, Chancellor of the Diocese of California and member of the Standing Commission on Structure, Governance and Constitution and Canons; the Rt. Rev. Todd Ousley, Bishop for Pastoral Development of the Office of the Presiding Bishop; and Mary Kostel, Special Counsel to the Presiding Bishop for Property Litigation and Discipline.<sup>2</sup>

The Working Group met in October and developed a plan of work. The lawyers in the Group have conducted research and considered a number of alternatives with the aim of discerning which most closely reflects the intention of General Convention.

The attorneys reviewed the following relevant canons:

1. Canon IV.5.4, the new Canon, provides, in relevant parts:
  - (a) The Court of Review shall consist of: (i) Three (3) Bishops; six (6) Members of the Clergy, which and will include not fewer than two (2) Priests and not fewer than two (2) Deacons; and six (6) lay persons; and (ii) one (1) Bishop, one (1) Priest or Deacon, and one (1) lay person to serve as alternates as hereinafter provided. ...
  - (b) ... The clergy and lay members and alternates of the Court of Review shall be elected by the House of Deputies for a three-year term, such that one-third of clergy members and one-third of lay members shall come from Province I, II, or III; one-third shall come from Province IV, V, or VI; and one-third shall come from Province VII, VIII, IX. The Court of Review shall select a president from among its members. The President shall be a Priest, Deacon or lay person. ...

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<sup>1</sup> David completed his service as Chancellor to the Presiding Bishop on December 31, 2018.

<sup>2</sup> As of January 1, 2019 Mary became Chancellor to the Presiding Bishop.

(g) Vacancies on the Court of Review shall be filled by appointment by the President of the Court of Review of persons qualified as provided in Canon IV.5.4(a).

2. Canon IV.17.3 (2015), which was in effect until its revision as of January 1<sup>st</sup> this year. This set out how the lay and Clergy members of the new Disciplinary Board for Bishops created by General Convention in 2006 were chosen. In relevant part it stated:

. . . The Disciplinary Board for Board for Bishops shall consist of ten Bishops elected at any regularly scheduled meeting of the House of Bishops, and four Priests or Deacons and four lay persons initially appointed by the President of the House of Deputies with the advice and consent of the lay and clergy members of Executive Council and thereafter elected by the House of Deputies.

(Since this transitional provision is no longer needed, it was eliminated from Canon IV.17.3.)

Prior Canon IV.17.3 demonstrates how General Convention chose to fill the initial lay and Clergy positions on disciplinary bodies in the absence of an election by the House of Deputies. That is, it provided that the initial lay, Deacon and Priest members were appointed by the President of the House of Deputies with consent by the members of Executive Council of the same orders.

Taking into account this text and history, the attorneys considered the following alternatives and variations on these:

- Take no action to fill the lay and Clergy positions on the Court of Review;
- Call a Special Meeting of the General Convention so that the House of Deputies could elect members of the Court;
- House of Bishops elect Bishop members at its March meeting and those Bishop members fill the lay and Clergy vacancies;
- House of Bishops elect Bishop members at its March meeting and those Bishop members choose the lay or Clergy President of the Court who then could fill the vacancies under the new provision that authorizes the Court's President to fill vacancies;
- House of Bishops elect Bishop members at its March meeting and the full Executive Council elect the lay and Clergy members;
- House of Bishops elect Bishop members at its March meeting and President of the House of Deputies appoint lay or Clergy President of the Court who then could fill the vacancies under the same provision described above; and

- House of Bishops elect Bishop members at its March meeting and President of the House of Deputies appoint lay and Clergy members, with the consent of the lay and Clergy members of Executive Council.

In the light of the prior history and canon, the attorneys concluded that the method for filling the initial lay and Clergy positions on the new Court of Review that best reflects past actions of General Convention would be for the President of the House of Deputies to appoint the lay and Clergy members with the consent of the lay and Clergy members of Executive Council. The attorneys communicated their conclusion to the remainder of the Working Group, including the Presiding Bishop and the President of the House of Deputies, all of whom agreed to this method of filling the lay and Clergy positions.