

# Report of the ACNA Governance Task Force January 19-20, 2021

**To:** Archbishop Foley Beach and the ACNA Executive Committee

**From:** The Rev. Canon J Philip Ashe, Chair of the Governance Task Force

**Dated:** January 31, 2021

Your Grace and members of the Executive Committee of the Anglican Church in North America

Following the annual meeting of the ACNA Governance Task Force (GTF) we submit for your comments the proposed canonical amendments for the 2021 meeting of Provincial Council (subject to final ratification at the next Provincial Assembly). Your review and comment will enable us to prepare an online Report in late February-March seeking first round comments from the Province, an exercise in genuine conciliar governance by the whole body of Christ. The deadline for these comments will be April 15, 2021. We will prepare a second, final round of comments from the Province in May, followed by a final Report of the GTF in June to all delegates to Provincial Council 2021, and to all diocesan chancellors.

I wish to acknowledge and commend the work of the GTF this year on the challenging questions we have addressed in this report. We did all of our week in an evening and daylong zoom meeting January 19-20. Those participating include The Right Rev. John Guernsey (Dean of Provincial Affairs), Provincial Chancellors Messrs. Scott Ward, Jeff Garrety and Mike Donison, The Rev. Canon Jim Lewis (S Carolina), The Ven. Jim Payne (REC), The Rev. Andrew Brashier (SJAF), The Rev. Jeff Weber (Christ our Hope), The Rev. Dcn. Dr. Mary Baker (Pittsburgh) and Mr. Mose Stuart, Esq. (Gulf-Atlantic). Special thanks to The Very Rev. Andrew Rowell (Gulf-Atlantic) for his assistance in drafting both Agenda and proposed canons, the Rev. Dr. Travis Boline (Gulf-Atlantic) for taking and keeping copious notes, and Mrs. Debbie Petta for her prayers throughout.

The following include our responses to questions posed by His Grace and the College, and other matters holding over from 2020. The amendments are by track changes underlined/stricken in red.

## **1. How can the Executive Committee and the College of Bishops assess the sustainability of dioceses per Canon I.5.7, and as a condition of granting consent for an episcopal election per Canon III.8.4?**

**Background:** The Archbishop and College have requested the GTF to help define more objective criteria for the Executive Committee to fulfill its recommendation with regards to diocesan sustainability Under Canon I.5.7. Under the current canon, the EC is charged to review sustainability and “open a dialogue” with a diocese it deems in need of assistance. “Sustainability” is a word which may invite speculation and has raised questions of whether others beyond EC should provide additional criteria and review of review of a diocese beyond the canonical warrant in Canon I.5.7

## **Proposed Amendment:**

### **Canon I.5 – Of Dioceses**

#### **Section 1 - Concerning Structure**

A diocese is a grouping of congregations gathered for mission under the oversight of a Bishop (the “Ecclesiastical Authority”). A diocese is composed of a minimum of twelve (12) congregations with an ASA of at least fifty (50) each and a collective ASA of at least one thousand (1,000). **A diocese shall demonstrate that there is sufficient financial support for the office of the Bishop and shall provide financial support to the Province in the spirit of Canon I.9.** In exceptional cases, the Provincial Council may modify these requirements **for application for diocesan status provided in this canon** on a case-by-case basis by two-thirds vote upon the affirmative recommendation by the Executive Committee.

#### **Section 7 – Concerning Diocesan Sustainability**

**Every year** ~~†~~the Executive Committee shall review the annual Diocesan Reports with the objective of determining ~~the sustainability of the several dioceses~~ **whether each diocese meets the requirements for a diocese as provided in section 1 of this canon.** The Executive Committee may open a dialogue with any diocese it ~~feels is in~~ **determines may** need ~~of~~ assistance with the objective of strengthening its sustainability.

**Rationale:** The amendments in Canon 5, Sections 1 and 7 add minimum requirements for dioceses that are already self-evident and in practice within the Province, and already acknowledged as the norms for every diocese. The focus on these canonical norms for a diocese actually narrows the conversation in a helpful way. They give the EC some concrete basis on which to assess sustainability and to initiate a dialogue if needed. If and when a diocese falls below the minimum requirements in Section 1, the EC and the diocese have both an incentive and an opportunity for a discussion about sustainability well in advance of the request for consent for an episcopal election. The amendment in Section 7, “every year” makes explicit the responsibility of the EC to review all of the dioceses *annually*. We believe these amendments reaffirm the responsibility and authority the EC already has under Canon I.5.7.

## **2. Should we add a provincial canon defining “membership in good standing” within a congregation?**

**Background:** This question has been raised in the College of Bishops meeting 2019 and in the 2020 meeting of the Anglican Legal Society. This will become a matter of importance for the Province in defense of freedom of religion and association. We believe it is ultimately a matter of subsidiarity for each diocese to decide. Whatever work we might do would be in drafting a model canon.

**Action:** GTF formed a working group to address the definition of “membership in good standing” across the Province, and to draft a model diocesan canon if possible for consideration in 2022.

**3. Should we remove the option of “selection” by the College of Bishops of one among a number of nominees for episcopal election by a diocese, as provided in Article X and Canon III.8.3?**

**Background:** During PC 2019, the GTF proposed an amendment for Canon III.8.6, regarding bishops for special mission, removing the language about multiple names being certified by the College of Bishops for purposes of an election. This amendment was approved. However, in the general canon for the election of a bishop, III.8.4, the option still exists for a diocese to certify two or three nominees from which the COB may select for the diocese so requesting, rather than electing a bishop by vote and then submitting that name for approval by the COB. *See also* ACNA Constitution Article X.5. Canon III.8.4.4 commends the former as the preferable method if the diocese is newly formed. The question has been raised, should we remove the constitutional and canonical option of certifying multiple candidates to the COB on the grounds that, beyond formation, dioceses will always know better than the College whom they should elect as bishop? If so, the following proposed amendments would effect this change:

**ARTICLE X: COLLEGE OF BISHOPS**

5. The College of Bishops shall have authority to consent to ~~in the election of bishops of the Province which may be: a) consent to~~ an election from a diocese ~~or network (whether regional or affinity-based), or b) the actual choice and consent from among two or more nominees put forward by a diocese or network (whether regional or affinity-based), in the manner set forward by canon~~ of the Province.

**Canon III.8 – Of Bishops**

**Section 4 - Concerning the Election of Bishops**

3. An electing body from the diocese shall certify the election of a Bishop for consent by the College of Bishops, ~~or may certify two or three nominees from which the College of Bishops may select one for the Diocese.~~
4. Where the originating body is newly formed, that body ~~shall normally~~ may nominate two or three candidates, from whom the College of Bishops may select one.

**Recommendation of the GTF:** Postpone consideration until 2024 when we have both a Provincial Council and a Provincial Assembly that can amend both Constitution and Canons. While the above amendments effect the proposed change (also removing the obsolete language of Networks), we note that we have never amended the Constitution. Whereas the Canons may be amended by a simple majority vote (Canon V.1.1), the Constitution may be amended only by a supermajority of 2/3 of all members present and voting (Article XV).

Moreover, we are aware of at least one diocese facing an episcopal election that would welcome retaining the option of sending multiple nominees to the College for selection in the event their electing Synod/Convention is deadlocked. We believe this matter should be sent back to the College for further discussion on whether the changes would be helpful to their work in consenting to episcopal elections.

**4. What is the nature of the consent or choice that the College of Bishops shall exercise pursuant to Canon III.8.4 following the diocesan election of a Bishop?**

**Background:** The College of Bishops has been wrestling over the nature of the consent they are asked to give to a bishop elected under Canon III.8.4. The principle of subsidiarity requires us to respect the several dioceses' process, selection and choice of those whom they believe God to be calling to lead them as Bishop. On the other hand, the fact that a bishop is elected through the College to serve as a bishop of the whole church (and not just the electing diocese), the requirements for affirmation by a supermajority of the College and the possibility of a refusal to consent in the language of Canon III.8.4 indicate that the "Consent or choice" by the College is more than a mere formality.

How do we balance these two competing values so that the "Consent or Choice" by the College of Bishops is *neither* a mere formality *nor* a complete and effectively separate review *de novo* of the diocesan process of selection and choice?

**Proposed Amendments:**

**Canon III.8 – *Of Bishops***

**Section 4 - *Concerning the Election of Bishops***

5. **Consent or choice by the College of Bishops shall be based upon the canons for Holy Orders as provided in Title III, Canon 2.4-6 and Canon 8.** Consent or choice shall require the affirmative vote of two-thirds of the membership of the College of Bishops present and voting, which consent **shall normally be given by the next regular meeting of the College of Bishops must be given within 60 days of certification** and in writing **to the originating body**. For purposes of the election of Bishops at a meeting of the College, a quorum shall be a majority of the active members of the College.

**Rationale:** The draft amendment in Canon III.8.4 paragraph 5 seeks to ground the consent or choice by the College in two areas of the canons regarding Holy Orders: (1) those canonical requirements for Holy Orders regarding the qualities of those who are to be ordained--specifically those sections that touch upon divorce and remarriage that would otherwise be an impediment to episcopal election and consecration (Canon III.2.4-6), and (2) the specific criteria for the Episcopate enumerated in Canon III.8.3. This narrows the consent to more objective standards with regards to the character, doctrinal faithfulness and competence of those elected. We believe this will enable the College to exercise its consent or choice in a meaningful way, without being redundant or overreaching.

**5. Authority under Title IV for the Archbishop to issue an inhibition against a bishop.**

**Background:** Situations arise when a bishop needs to be temporarily inhibited pending the process by which he might be brought to presentment and trial. However, our canons do not yet explicitly authorize the Archbishop to issue such an inhibition. Only when the Archbishop or a bishop *has been presented* may there be an inhibition, and that only by an affirmative vote of three of the five senior active diocesan bishops in the College of Bishops (Canon IV.9.2). In situations where there are reasonable grounds to believe that a Bishop or the Archbishop has

engaged in conduct subject to a presentment and/or in the best interests of the accused and the Church, we believe the Archbishop should have express authority under Title IV to Admonish or Inhibit a Bishop during the process of investigating accusations and prior to any presentation or voluntary submission to discipline. Such an “emergency inhibition” by the Archbishop pending presentation could be subject to an appeal to that same panel of five senior members of the College of Bishops, with a majority vote capable of lifting the inhibition.

Upon extensive discussion of this need, the GTF concluded that a more extensive amendment of Canons IV.2, IV.5 and IV.9 are necessary to clarify the nature and use of admonitions by Bishops upon clergy and Presbyters, by the Archbishop upon a Bishop, and by the Dean of the Province with the College upon the Archbishop, with appropriate checks and balances.

### **Proposed Amendments to Canons IV.2, IV.5 and IV.9**

#### **Canon IV.2 – Of Charges against and Godly Admonitions to Bishops, Presbyters, or Deacons**

##### **Section 1 - Concerning Charges**

The following are the charges or accusations on which the Archbishop, a Bishop, a Presbyter, or a Deacon in this Church may be presented:

1. Apostasy from the Christian Faith;
2. Heresy, false doctrine, or schism;
3. Violation of ordination vows;
4. Conduct giving just cause for scandal or offense, including the abuse of ecclesiastical power;
5. A conviction by a court of competent jurisdiction for felony or other serious offenses;
6. Sexual immorality;
7. Acceptance of membership in a religious jurisdiction with purpose contrary to that of this Church;
8. Violation of any provision of the Constitution of this Church;
9. Disobedience, or willful contravention of the Canons of this Church or of the constitution or canons of the Diocese in which he holds office;
10. Habitual neglect of the duties of his Office;
11. Habitual neglect of public worship, and the Holy Communion, according to the order and use of this Church;
12. Willful refusal to follow a lawful Godly Admonition.

##### **Section 2 - Concerning Godly Admonitions**

A Godly Admonition is a written directive from **(a)** a Bishop with jurisdiction to a member of the Clergy under his jurisdiction, **(b) the Archbishop to a Bishop, or (c) the Dean of the Province to the Archbishop.** ~~Such~~ **No** Admonition shall not be issued until the Bishop, **Archbishop, or Dean of the Province (or such person to whom authority has been validly**

~~delegated under these canons) shall have met personally with the one receiving the Admonition member of the Clergy—unless for valid reason under these canons the Bishop shall have delegated such meeting to another Bishop—~~and the issues have been clearly and fairly discussed. The written ~~A~~admonition shall be specific concerning the matter complained of and the canonical or theological basis for the complaint, and shall provide a reasonable time for ~~the~~ any required action to be taken. A Godly Admonition may be used alone or in conjunction with an Inhibition (ACNA IV.9) where appropriate.

**In the case of an Admonition to a Bishop, the Archbishop must first consult with a panel of the five senior active diocesan members of the College of Bishops by date of consecration (exclusive of any bishop involved in the Admonition) before issuing an Admonition.**

**In the case of an Admonition to the Archbishop, the Dean of the Province must first consult a panel of the five senior active diocesan members of the College of Bishops by date of consecration (exclusive of any bishop involved in the Admonition) before issuing an Admonition.**

### **Canon IV.5 – Of Courts, Membership and Procedures**

#### **Section 2 - Concerning Courts for the Trial of a Bishop**

1. There shall be a Court for the Trial of a Bishop, whose jurisdiction shall be limited to proceedings against a Bishop of this Church, **including the Archbishop**, arising under these Canons.
2. The members of this Court shall be three Bishops who are members of the College of Bishops, two Presbyters, and two adult confirmed members in good standing. The members of this Court shall be elected by the Provincial Council, each Order electing its representatives by majority vote of that Order. An equal number of alternate members of this Court shall be elected in the same manner, and such alternate(s) shall serve in the event of a vacancy on the Court or the recusal of a member of the Court. The term of each member of the Court shall be three years or until a successor is elected and qualified.
3. The senior Bishop in date of consecration shall be the President of the Court. The Archbishop **or, in the case of a proceeding against the Archbishop, the Dean of the Province**, shall also appoint a legal advisor to the Court who shall be trained in canon law, and a prosecutor, also trained in canon law, to bring and prosecute presentments when necessary.

### **Canon IV.9 – Of Inhibitions**

#### **Section 1 - Concerning Inhibitions of a Presbyter or Deacon**

1. An Inhibition is a temporary suspension of the Archbishop, a Bishop, a Presbyter or a Deacon from the exercise of ministry, in whole or in part, when **one having authority under these canons believes, upon reasonable grounds, that the accused has engaged in conduct upon which an accused may be presented and/or the** Bishop believes that it is in the best interests of the accuser(s), the Church, and/or the accused to do so, pending an accusation, canonical investigation, presentment, trial or voluntary submission to discipline under these canons. An Inhibition may be used alone or in conjunction with a Godly Admonition (ACNA IV.2.2). **An Inhibition shall be in writing, signed by one having**

authority under these canons or one to whom authority has been validly delegated under these canons.

### Section 2 - Concerning Inhibition of a Presbyter or Deacon

- ~~21.~~ A Bishop may temporarily inhibit a Presbyter or Deacon ~~when the Bishop believes, upon reasonable grounds, that the Presbyter or Deacon has engaged in conduct upon which a Presbyter or Deacon in this Church may be presented.~~ under this canon. With the advice and consent of the Standing Committee or its equivalent, ~~such~~ any Inhibition of a Presbyter or Deacon may be extended until such charge is dropped or action taken by a Trial Court or the accused voluntarily submits to the discipline of the Church.
- ~~32.~~ Upon application by a Presbyter or a Deacon who has been temporarily inhibited under this Canon and upon a showing of good cause, the Archbishop or his designate may modify or revoke the temporary Inhibition. Such decision shall be rendered within thirty (30) days of the application.

### Section 23 – Concerning Inhibition of a Bishop

~~In the case of the presentment of a Bishop of this Church (including the Archbishop), three of the five senior active diocesan members of the College of Bishops by date of consecration (exclusive of any bishop involved in the presentment or trial) may, by their affirmative vote, temporarily inhibit the Bishop from the exercise of ministry. Such inhibition shall be in writing, signed by those consenting to it.~~

1. The Archbishop may temporarily Inhibit a Bishop under this canon. Prior to such Inhibition, the Archbishop shall consult with three of the five senior active diocesan members of the College of Bishops by date of consecration (exclusive of any bishop involved in the Inhibition) before Inhibiting a Bishop. With the advice and consent of a panel of three of the five senior active diocesan members of the College of Bishops by date of consecration (exclusive of any bishop involved in the Inhibition), any Inhibition of a Bishop may be extended by majority vote until such charge is dropped or action taken by a Court for the Trial of a Bishop or the accused voluntarily submits to the discipline of the Church.
2. Upon application by a Bishop who has been temporarily Inhibited under this Canon and upon a showing of good cause, a panel of the five senior active members of the College of Bishops by date of consecration (exclusive of any bishop involved in the inhibition) may modify or revoke the temporary Inhibition. Such decision shall be rendered within thirty (30) days of the application.

### Section 4 - Concerning Inhibition of the Archbishop

1. The Dean of the Province may temporarily Inhibit the Archbishop under this canon. Prior to such Inhibition, the Dean of the Province shall consult with three of the five senior active diocesan members of the College of Bishops by date of consecration (exclusive of any Bishop involved in the Inhibition) before inhibiting the Archbishop. With the advice and consent of a panel of three of the five senior active diocesan members of the College of Bishops by date of consecration (exclusive of any bishop involved in the Inhibition), any Inhibition of the Archbishop may be extended by majority vote until such charge is dropped or action taken by a Court for the Trial of a Bishop or the accused voluntarily submits to the discipline of the Church.



**2. Upon application by the Archbishop and upon a showing of good cause, a panel of the five senior active members of the College of Bishops by date of consecration (exclusive of any Bishop involved in the inhibition) may modify or revoke the temporary Inhibition. Such decision shall be rendered within thirty (30) days of the application.**

**Rationale:** We believe this extensive amendment of Title IV provides the needed authority for the Archbishop to act reasonable and speedily upon receipt of an accusation against a Bishop. We believe these draft amendments preserve the checks and balance in our constitutional and conciliar governance by requiring the Archbishop to consult with a panel of senior Bishops (by date of consecration) before issuing such an Inhibition. The provisions for appeal from such an Inhibition likewise preserve the checks and balance inherent in our judicial government.

**6. The Process for Nominating qualified members to serve on the Provincial Courts.**

**Background:** The Courts of the Province include the Court for the Trial of a Bishop, the Court of Extraordinary Jurisdiction and the Provincial Tribunal. Those serving on these Courts have three year terms and were last elected at PC 2018 in Jerusalem. Their terms will expire at PC 2021. The members of the Court of Extraordinary Jurisdiction are appointed by the Archbishop, but the members who serve on the Court for the Trial of a Bishop and Provincial Tribunal must be elected by PC. (*see* Canon IV.5)

Our canons do not spell out any authority or process have to put forward nominations for the Courts. We believe there is a need for somebody to identify, recruit and vet potential nominees. We would also be wise to have a full slate of alternates elected and put in order so there is no subjective element of who serves when there is a vacancy on the Court. There also needs to be guidance on what to do in conflicts of interest and the need for recusal.

The EC formed a nominating committee for this purpose last time. But there is no canonical provision for them to take on this task.

**Recommendation:** We respectfully request the EC to ask the GTF to create a Nominating Committee for this purpose, to develop a process/best practices for recruiting and vetting candidates, and for election at PC 2021. Following PC 2021 this Nominating Committee may continue to work with the EC to draft either appropriate amendments to Canon IV.5 or a customary/protocol for such nominations.

**7. The need to develop Rules of the Court for all Provincial Courts and as a model set of Rules for Diocesan Courts for the Trial of a Presbyter or Deacon who do not yet have such Rules.**

**Background:** Canon IV.5 *Of the Courts, Section 7 Concerning Procedures*, provides as follows:

“The Provincial Tribunal, the Court for Trial of a Bishop, the Court of Extraordinary Jurisdiction, and the Trial Courts of the several Dioceses shall establish their own procedures, to include the appointment of a recorder of proceedings. Such procedures shall acknowledge the presumption of innocence of the accused, the right to representation by counsel, the right to



confront and examine witnesses and shall be consistent with principles of fairness, due process and natural justice and shall require expeditious handling consistent with those principles. No new rule of procedure shall be made while a matter is pending that would be affected by that rule. In all courts of original jurisdiction, the standard of proof shall be by clear and convincing evidence...”

To our knowledge, our various courts, both provincial and diocesan, have *not* formally adopted rules of procedure, as required under Canon IV.5.7. The College of Bishops has asked the GTF to commend rules of procedure to each court for consideration and adoption.

It has been suggested that simple adoption of the Federal Rules of Civil Procedure (FRCP) and the Federal Rules of Evidence (FRE) would be too detailed and complex (and, perhaps, too U.S.-specific for a province spanning both Central America and Canada). We believe an uncritical adoption of the FRCP and FRE as a whole would give rise to a surfeit of process over substance in our courts.

*We are indebted to Vice-Chancellor Jeff Garrety* who graciously accepted my request to review the existing procedures of other ecclesiastical courts and produced the recommended Rules of Court (enclosed separately) for your review. After extensive review and discussion the GTF unanimously adopted these Rules, subject to a review by Vice Chancellor Mike Donison with Chancellors in ANiC to see how these rules might operate within the Canadian context.

**Recommendation:** The EC authorize the GTF to (1) call the members of the Provincial Courts to convene at the earliest possible opportunity, to elect a Presiding Officer and a Deputy, to adopt these rules in the absence of any rules they may have already adopted, and to consult with the GTF on whatever changes or clarifications they may need to make in their Rules; and (2) to commend these rules to the bishops, chancellors and trial courts of the dioceses of the ACNA for their review and adoption, if they have not already adopted rules for their court.

The GTF is eager to consult with any diocese about their specific rules.

#### **8. Amend Canon IV.10 to include notification of all diocesan clergy by the sentencing Bishop.**

**Background:** It has been suggested that the clergy of a diocese need to be informed when a fellow deacon or presbyter within said diocese have been sentenced following presentment. Currently, Canon IV.10 requires the sentence only be shared with the Office of the Archbishop and then disseminated by him among all the bishops having jurisdiction.

As one member noted, “the cone of silence is not helpful.” The proposed amendment would require the sentencing bishop to notify the clergy of the diocese in which the deacon or presbyter has been sentenced to prevent the sentenced clergy from being invited as supply clergy by those who don’t know what has happened.

**Proposed Amendment:**

**Canon IV.10 – *Of Notification of Disciplinary Action Taken***

The Bishop or Archbishop pronouncing sentence shall within thirty (30) days after the sentence becomes final and not subject to appeal, notify the Office of the Archbishop, who shall notify all Bishops with jurisdiction and shall maintain a permanent record of the action. **The sentencing Bishop shall also notify all of the clergy in the diocese in which the deacon or presbyter has been sentenced.** Such **required** notice shall be limited to **the offence under Canon IV.2 for which the member of the clergy has been presented, tried, and convicted, or voluntarily submitted to the discipline of the Church, and** the sentence **imposed under Canon IV.8 pronounced.** Should a sentence be amended or terminated, notification of such amendment or termination shall also be reported to the Office of the Archbishop who shall promptly give notice to all Bishops with jurisdiction of and record the amendment or termination in the permanent record.

**Rationale:** This amendment addresses the needs for disclosure to diocesan clergy for the good order of the Church. The limitations on the notice balance the need for disclosure of relevant information and for confidentiality. The amendment is in keeping with new Canon IV.11, the Provincial List and the limited information provided in keeping with this balance. We suggest Vice-Chancellor Mike Donison consult with Chancellors in ANiC to make sure there are no problems with disclosure and privacy under Canadian law.

Respectfully submitted in the spirit and prayer of Psalm 90:17,



The Rev. Canon J Philip Ashey  
Chair of the ACNA Governance Task Force  
Special Counsel to the Archbishop and College of Bishops