

OPPOSITION OF THE CHURCH ATTORNEY TO THE APPEAL OF THE RESPONDENT
FROM THE JUNE 17, 2017, SANCTIONS IMPOSED BY THE HEARING PANEL

The Church Attorney, Jerry Coughlan, opposes the appeal of the Respondent, Bishop Jon Bruno, from the Sanctions imposed by the Hearing Panel in this Title IV case on June 17, 2017. The Church Attorney urges the Disciplinary Board to affirm the Sanctions Order.

I. INTRODUCTION

Respondent's appeal is based upon false assumptions and presents an erroneous description of "three charges". First, the charging document, Respondent's Exhibit B, included a Factual Allegation of Alleged Canonical Offenses that Respondent acted in a manner unbecoming a clergyperson by "summarily taking possession of the real and personal property of St. James the Great on or about June 29, 2015". The seizure and lock-out of the congregation were always at the heart of this case. Second, Respondent claims that the panel has no power to act with respect to a bishop's sale of real property. But, the Panel has the power "to provide any terms which promote ... restitution ..." and the power to place restrictions on Respondent's exercise of ministry, including limiting his involvement in the Community. Title IV.14.6(b).

The Church Attorney specifically requested relief pursuant to these provisions in his post-trial brief. (Exhibit I) Respondent's appeal accordingly should be denied as improper and dilatory. In any event, Respondent's request for a stay must be denied to provide the panel time to complete its deliberations and make its decision, and not to allow Respondent to undermine that decision by his secret misconduct.

Respondent's request for confidentiality similarly should be denied. Title IV is by its very terms an open and public proceeding. Canon IV.13.6. Respondent's request to keep these

proceedings secret is particularly offensive when one realizes that he secretly entered into a sales agreement and a confidentiality agreement which excluded even his own church from seeing the agreement. He did that knowing that at that very time, the Hearing Panel was deciding his case including issues directly related to the church property. Respondent entered into this sale purportedly based on an open ended, blank check, given by a Standing Committee which saw no evidence concerning this particular sale. Their purported authorization allowed Respondent to sell St. James the Great to ISIS for \$1.00 if he so desired. Respondent's conduct raises serious questions about his motivation. Why is he selling the church now when he knows that a decision by the hearing panel is imminent. Is there some personal gain for him? Or some secret within Corp Sole he is concerned about?

As set forth below, Respondent's most recent conduct is simply one more manifestation of his arrogant belief that the Episcopal Church has no rights over him and Corp Sole. It is still another example of dilatory conduct by Respondent and his lawyers throughout these proceedings.

II. PROCEDURAL HISTORY

One cannot understand the present Sanctions Order without an understanding of the long history of this case, including Respondent's various efforts to delay the proceedings.

A. THE SALE AND LOCK-OUT OF THE CONGREGATION HAVE ALWAYS BEEN CENTRAL TO THIS MATTER.

The Episcopal Church has owned the St. James property in Newport Beach, California, since 1945, when Griffith Company donated the land for "church purposes exclusively." (Although Respondent calls it the NPB property, to avoid the connection with St. James the

Great, it is the same property, on Via Lido.) St. James was one of the congregations that “disaffiliated” from the Episcopal Church and the property was the subject of extended expensive litigation, including a decision by the California Supreme Court. *Episcopal Church Cases*, 198 P.3d 66 (Calif. 2009). In October 2013, after the property was recovered, Respondent re-opened and re-dedicated the church as an Episcopal church, giving it the new name St. James the Great. A new congregation flourished. They donated hundreds of thousands of dollars, volunteered thousands of hours of work and rebuilt attendance. Then, in May 2015, without any warning, Respondent announced after Sunday services that he had sold the St. James property to Legacy Residential to build condominiums. There was intense public controversy, including misrepresentations by Respondent, and the Legacy sale did not close, but on June 29, 2015, Respondent locked the doors of St. James, and they have remained locked ever since.

The present Title IV case started on July 6, 2015, with a letter of complaint from William F. Kroener III to Bishop Clayton Matthews, a copy of which is attached as Exhibit A. One of Kroener’s key complaints was that Respondent had engaged in “conduct unbecoming” by locking the doors of St. James the Great and forcing the congregation to worship outside in a nearby park. (See Exhibit A paragraphs 139 and 145). Kroener also alleged that Respondent had made various misrepresentations about St. James the Great, and that Respondent may have signed the agreement to sell the St. James the Great property without the permission of the Los Angeles Standing Committee. During the hearing in this matter the evidence showed that there was no such Standing Committee consent; Respondent believed that he did not need that consent because the property was owned by Corp Sole, the controversial California corporation which Bishop Bruno serves as the only officer and director.

St. James the Great and Corp Sole were major issues at the December 2015 Los Angeles Diocesan Convention. In his bishop's address, Respondent promised that St. James the Great could remain a congregation of the Episcopal Church, that it could be a vibrant "church without walls." As late as a November 2016 deanery meeting, St. James the Great was treated as a congregation of the diocese, and paid its annual deanery dues of one hundred dollars.

Respondent now claims in his appeal papers, without citing a date, without citing any document, that the St. James the Great congregation "was dissolved pursuant to EDLA Canon 2.09."

Appeal Page 3. When and how a congregation that was meeting every week for Sunday services, and actively engaged in ministries and community activities, was dissolved, Respondent does not state, and the congregation and Church Attorney do not know. Respondent complains about a lack of due process in this Title IV case—and yet he also purports to have dissolved an ongoing strong Episcopal congregation—without any process whatsoever.

In early 2016, a conference panel of five was appointed. Although conference panel proceedings are usually confidential, Respondent relied on them in his appeal, the Church Attorney needs to respond with some relevant points that do not violate the proper limits of such confidentiality. The conference panel considered a February 2016 statement of alleged offenses prepared by the prior Church Attorney (Exhibit B). Respondent's actions in locking the congregation out of the church were a key element of these charges. "On or about June 29, 2015," the charges stated, "the Respondent, without advance notice to the clergy or congregation of St. James the Great, caused the locks on the doors to St. James the Great to be changed and deprived the clergy and congregation of access to the real property and their personal property therein." This was "conduct unbecoming" according to the February 2016 charges. The conference panel also considered a detailed written presentation by the Complainants, a key

feature of which was a draft Accord to allow the congregation to return to St. James the Great. The Conference Panel held a hearing on June 20, 2016, in Los Angeles. There was no Accord.

In July 2016, the present Hearing Panel of five was appointed. A copy of the order forming the Hearing Panel, and restating the charges attached as Exhibit C. The lockout of the congregation is a key element of the charges.

On August 26, 2016, the Complainants filed a request for an interim order, requiring the Respondent to re-open the church. A copy of the request, without the exhibits, is attached as Exhibit D. The request detailed the harm that the continued lockout was causing to the congregation, to the community, and to the broader Episcopal Church. Among the articles attached to the request were articles about the lockout that had appeared in *Episcopal Café*, in *Living Church*, in the *Los Angeles Times*. The Church Attorney, on August 29, 2016, joined and adopted the request for interim relief. (Exhibit E). The Church Attorney noted “the Episcopal Church should not be in the position of rejecting and locking out loyal Episcopalians from their church building. The Episcopal Church is a welcoming, inclusive church. The lockout is the opposite.” Respondent’s lockout of the congregation continues to this day. Respondent has provided, as Exhibit G in his appeal papers, a May 2017 email from Betsy Scuderi to the Presiding Bishop, pleading for his help in securing access to St. James the Great for the funeral of her mother, Nancy Knight, who had worshipped in the church for more than fifty years. Bishop Matthews responded for Bishop Curry; Respondent never responded, so Nancy Knight’s funeral was not held in the church she loved but at the Newport Beach City Hall, attended by about 150 people.

B. RESPONDENT ATTEMPTED TO DELAY THESE TITLE IV PROCEEDINGS AND DELIBERATELY FAILED TO PROVIDE PROPER DISCLOSURES.

Respondent filed a motion to dismiss the charges, raising numerous specious legalistic arguments including alleging misconduct by many people, including Bishop Matthews, Chancellor David Beers, and the presiding bishop. The Hearing Panel held a hearing in Chicago on October 26, 2016, to consider the motion to re-open the church and the motion to dismiss. The Hearing Panel denied both motions, without explanation. (Exhibit F)

Respondent, throughout the discovery process, was difficult and dilatory. For example, Respondent claimed he would need to take the deposition of all of the more than one hundred Complainants, as well as dozens of other witnesses, ranging from minor clerks to Bishops Matthews and Jefferts-Schori. Respondent's initial disclosures violated title IV.13.3. His witness statements were so vague and his document disclosures so obviously inadequate that the Hearing Panel had to hold a hearing and then issue an order on December 12, 2016, requiring Respondent to provide more fulsome witness statements and documents. (Exhibit G)

Despite Respondent's claimed need for over 100 depositions (which of course would have delayed the proceedings for many months or even years), the panel after a hearing limited the parties to two depositions each. Even as to the depositions, Respondent attempted to dictate the locations and terms, further delaying the depositions. Respondent, at his own deposition, on March 1, frequently "did not recall" and "did not understand." Respondent claimed that there was no connection between the sale of St. James the Great in Newport Beach and the purchase of commercial real estate in Anaheim - even though emails among his staff members and other documents proved that financial connection. Respondent made no mention of the Standing Committee's November 2016 decision to deconsecrate the church, even though the Church

Attorney asked questions which any normal person would interpret as asking for information about this. When asked whether St. James the Great was going to be deconsecrated, Respondent answered, “If it was sold.” When asked “has it ever been deconsecrated” he responded, “not at this point.” See Exhibit H pages 28-30. These answers were probably misrepresentations in light of what Respondent has revealed in the past few days—in connection with the Sanctions Order—about the November 2016 actions of the Standing Committee.

The Hearing Panel conducted a three-day hearing in Pasadena on March 28-30, 2017. They heard testimony from fifteen witnesses. More than seventy exhibits were introduced in evidence. One of the key issues at the hearing was the lockout of the congregation, the harm the lockout was doing to the congregation and the community. Several witnesses testified emotionally to the hurt they had experienced because of Respondent’s conduct. Witnesses included not only members of the congregation but members of the community, and the former mayor of Newport Beach, who testified to the community opposition to the proposed sale and destruction of the church structures. The Church Attorney, in his post-trial brief, emphasized the lock-out and requested that the Hearing Panel use its broad, canonical authority under Title IV.14.6 to limit Respondent’s ministry and restore the church to an Episcopal congregation. (Exhibit I).

As noted by Respondent in this appeal, Kroener sent emails on June 9 and 14, 2017, to inform church authorities of the possibility of sale of St. James the Great.¹ The Hearing Panel asked Respondent on June 14 to provide information about the sale agreement and the status of the sale. Instead of responding to the Hearing Panel’s questions, Respondent’s counsel offered

¹ Kroener’s emails were not, as Respondent claims, addressed to the Hearing Panel; they were addressed to David Beers and Mary Kostel, and copied to Bishop Hollerith and Brad Davenport for their information. See Respondent’s Exhibit C-1.

on June 15 a host of legalistic (and nonsensical) objections, and notably did not even mention the existence of a confidentiality agreement. (Respondent's Exhibit D) Faced with this obfuscation, the Hearing Panel quite properly, on June 17, 2007, issued a Sanctions Order, prohibiting the Respondent from selling or conveying the St. James the Great church property. On June 26, 2017, the Hearing Panel overruled Respondent's objections, and declined to be bound by the confidentiality agreement. Exhibit K.

III. LEGAL RESPONSE TO RESPONDENT'S APPEAL

A. THE SANCTIONS ORDER WAS WITHIN THE JURISDICTION OF THE HEARING PANEL

The first words of Title IV in Canon 1 provide that "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 language is echoed in Section IV.14.6 on Hearing Panel Orders, which provides that such orders may contain "any terms which promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among the Complainant, Respondent, affected Community and other persons." This is relatively new language; it was added in the general revision of Title IV in 2009. Before that, for many decades, the Canons provided for only three possible sanctions: admonition, suspension or deposition. See Canon IV.12.1 (2006 version). The drafters of the 2009 revision, and those who adopted it at the General Convention, gave hearing panels broad authority to promote the canonical goals of Title IV.

The Dennis Canon declares that “all real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located.” Title I Canon 7 Section 4. The Dennis Canon reflects and restates a central, foundational principle of the Episcopal Church; that no one man (or Corp Sole exclusively controlled by one man), no one congregation, no one diocese controls church property; it is held in trust for the whole Church. “The Dennis Canon, adopted in 1979 merely codified in explicit terms a trust relationship that has been implicit in the relationship between local parishes and dioceses since the founding of [the Episcopal Church] in 1789.” *Rector, Wardens & Vestrymen of Trinity St. Michael’s Episcopal Parish v. Episcopal Church in Diocese of Connecticut*, 620 A.2d 1280, 1292 (Conn. 1993). Or, as the Supreme Court of Georgia observed, “we view the Dennis Canon as making explicit that which had always been implicit in the discipline of the Episcopal Church (and the Church of England before it), as shown in the documents setting forth, in legally cognizable and non-religious terms, the property-related rules and the relative authority of Christ Church, the Georgia Diocese, and the Episcopal Church, as well as the parties' understanding of them as revealed by their course of conduct.” *Rector, Wardens & Vestrymen of Christ Church in Savannah v. Bishop of the Episcopal Diocese of Georgia*, 718 S.E.2d 237 (Ga. 2011).

Without even mentioning these provisions and principles (which is perhaps understandable, as at the hearing Respondent’s testimony showed a lack of understanding of the Dennis canon). Respondent now claims that “Title IV does not give the Hearing Panel jurisdiction to control the disposition of Diocesan Property.” He is wrong. One of the explicit purposes of Title IV, as set out in Canon 1, is “restitution.” Restitution is restoring property to its proper owner or proper usage. If a priest stole a thousand dollars from the parish accounts,

Title IV would authorize a Hearing Panel, in that situation, to issue an order requiring restitution of the thousand dollars. Or, to take an example closer to the present case, if a white bishop locked the doors of an Episcopal church against a black congregation, surely Title IV would authorize a Hearing Panel to issue an order directing the bishop to allow the black congregation back in to their church. And, in the present case, if the Hearing Panel concludes that Respondent has violated the canons by locking the doors of St. James the Great for two years, Title IV authorizes the Hearing Panel to order Respondent to open those doors—to order restitution of church property to its proper church usage.

The Sanctions Order from which Respondent appeals is not the final Order of the Hearing Panel; it is an interim sanctions order under Title IV Canon 13 Section 9. That section, also relatively new to the canons, gives a Hearing Panel authority to issue sanctions against any misconduct which the Hearing Panel “deems to be disruptive, dilatory, or otherwise contrary to the integrity of the proceedings.” The section has to be read in light of the broad purposes of Title IV, the specific evidentiary record, and in light of the status of hearing panels as the general trial courts in the Episcopal discipline system. Trial courts have broad authority to issue appropriate preliminary orders “to preserve the status quo pending final determination of the issues.” *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 290 (1940). That is just what the Hearing Panel did here; issued an interim order to preserve the status quo until it could issue its final decision. To allow Respondent to prevent the Hearing Panel from issuing an effective order of restitution and/or restrictions on Respondent’s ministry to reopen the church to the congregation, by letting Respondent sell secretly the church to a developer on the eve of the Hearing Panel’s decision, would be utterly disruptive and disrespectful of the Title IV process. The Hearing Panel had jurisdiction to issue the Sanctions Order.

B. THE SANCTIONS ORDER IS REASONABLE AND PROPER

On Saturday June 17, when it issued the Sanctions Order, the Hearing Panel could not be sure that there was an agreement for the sale of St. James the Great. It could not know whether that agreement was going to close on that day. This was information in Respondent's possession, that he had chosen not to provide to the Hearing Panel. Even more offensive than Respondent's effort to moot an eventual order of the Panel is his entry into an agreement to keep the deal secret even from his own church! All the Hearing Panel knew, on that Saturday, was that there was evidence of a sales agreement and Respondent's counsel had filed an absurd, legalistic, dilatory set of objections. As the Hearing Panel noted in its order, "if the Respondent has entered into a contract to sell, or sold, the St. James property before the Hearing Panel has decided the case, that conduct is disruptive, dilatory and otherwise contrary to the integrity of this proceeding. The same applies to his failure to supply information concerning the alleged sale." So the Hearing Panel, acting under its authority under Title IV Canon 13 Section 9, issued an order to prohibit Respondent "from selling or conveying or contracting to sell or convey the St. James property until further order of the Hearing Panel."

Respondent now claims that his conduct, in entering a secret sale agreement for the St. James property, in failing to respond to the Hearing Panel's questions about that agreement, in pursuing this pointless appeal, is not "conduct that is disruptive, dilatory, or otherwise contrary to the integrity of these proceedings." In fact, Respondent has undoubtedly caused the Hearing Panel to be diverted from its work on its order by his most recent dilatory tactics. Instead the Hearing Panel and its counsel have had to work to determine whether there was a secret sales

agreement for the St. James property and to pry the facts and documents regarding that secret sales agreement out of the Respondent. Respondent's conduct could not be more dilatory, disruptive and disrespectful. And Respondent's conduct is in all ways "contrary to the integrity of the proceedings" as *the* fundamental underlying concern and issue in this case, is whether the St. James church building should be used by the St. James the Great congregation as an Episcopal church. Respondent has attempted to take that issue out of the hands of the Hearing Panel by an eleventh-hour, under cloak-of-darkness, sale of the St. James the Great property on unknown terms. His conduct is obviously contrary to the integrity of this Title IV proceeding.

Respondent argues that, if the Disciplinary Board denies this appeal, it will force Respondent to default on the current purchase and sale agreement, supposedly set to close on July 3, 2017, and expose Corp Sole to damages or lawsuits. "Section 16 of the contract," Respondent claims on page 5 of the Appeal, "allows the Buyer to choose between suing for specific performance, suing for damages, or terminating the contract in the event of default." But Respondent has not provided the contract to allow the Hearing Panel or the Disciplinary Board to evaluate this claim. Nor has Respondent provided any evidence that the Purchaser is still interested in purchasing the St. James property, in light of the legal questions about Respondent's authority to enter into and complete the agreement, and in light of the community controversy that the sale of the church property and destruction has aroused. A sample of recent press coverage is attached as Exhibit J.

No one forced Respondent to enter into a contract containing such terms. The problems Respondent faces are entirely self-created. Respondent claims that he was "authorized and directed" to sell the property but this is wrong; nothing in the November 2016 or June 2017 standing committee minutes, attached to Respondent's papers, *directs* Respondent to sell the

property. Nothing there even mentions this sale. The minutes on their face reflect a blank check to Respondent and an abdication of the Standing Committee's responsibility to evaluate a particular transaction. Respondent could have left the property in its current state for a few more days, and handed the property and the issues over to his successor John Taylor, who is set to be ordained on July 8, 2017, and set to take over as Bishop Diocesan at some point before the end of the year. Respondent could have raised the question of a sale with the Hearing Panel, asking whether the Panel would have any objection to the sale of the St. James the Great property. (The recent correspondence proves if nothing else that the Hearing Panel does object to the sale of the St. James property at this time.) Respondent could, even now, negotiate with the purchaser to obtain an extension of the July 3, 2017, closing date, in order to allow time for the issues to be resolved properly. There is no suggestion that Respondent has even *attempted* to extend the July 3 deadline much less to terminate the sales agreement. We do not even know if it was Respondent who insisted on the confidentiality agreement. Instead Respondent uses the deadline as a club, trying to beat the Disciplinary Board into submission, so that Respondent can close the sale of the St. James church before the Panel issues its decision. Respondent perpetrated all of this knowing that the Church Attorney had recommended an opening of St. James and a process for reconciliation. Respondent's eagerness to close the sale of this consecrated church under a confidentiality agreement, and operating his exclusive control of Corp Sole, necessarily leads to serious questions about his motive. Is he covering up some financial impropriety? Does he stand to gain personally from this sale? Respondent's conduct is so suspicious that the Church Attorney now believes a forensic audit of the books of Corp Sole is necessary.

C. NOTICE WAS REASONABLE AND THE NOTICE ISSUE IS NOW MOOT

Respondent complains that the Hearing Panel did not provide him adequate notice that it might impose sanctions for his failure to respond to its questions about a pending sale agreement. But the relevant provision simply requires “reasonable notice.” Title IV Canon 13 Section 9(b). The Hearing Panel had evidence from the Complainants suggesting that Respondent had entered into a sale agreement for the St. James property and asked Respondent to confirm or deny that. The Hearing Panel’s email of June 14 asked for a response by the end of the next day. See Respondent’s Exhibit C-1. Instead of answering the question, or explaining why he could not answer the question, Respondent on June 15 offered a litany of legal objections, now overruled. See Respondent’s Exhibit D and Church Attorney Exhibit I. He did not even communicate that he had until July 3, 2017, to sign the agreement, nor volunteer to hold off until then. As far as the Hearing Panel knew, at that point, there was a legal agreement to sell the property, and the agreement could close any day. So it was right and reasonable for the Hearing Panel, almost as soon as possible, to issue the June 17 Sanctions Order, and to make it immediately effective.

The notice issue is in any case now moot. Respondent is now well aware that the Hearing Panel might impose sanctions because it *has* imposed sanctions through the June 17 order. Respondent has had a chance to assemble and present his arguments against the sanctions order, in the June 23 appeal. The standard of review for this appeal, under Canon IV.13.9(c), is *de novo*. So even assuming that the Hearing Panel failed to provide Respondent with reasonable notice, Respondent has not suffered any prejudice, because he has presented his arguments against sanctions, such as they are, through this appeal to the Disciplinary Board.

IV. RESPONDENT’S APPEAL SHOULD BE SUMMARILY DENIED.

We recognize that the Disciplinary Board will want to deal with this appeal promptly, both because of the impending closing date, and because of the terms of Canon IV.13.9(c), requiring some form of hearing within twenty days. It must in the meantime not issue the stay requested by Respondent. Under the circumstances, *i.e.*, that the Panel was in the midst of deciding the case and was presented with an emergency and secret conduct by Respondent to undermine its efforts, the Panel should summarily deny Respondent's appeal after review of the record. In order to further the evidentiary record available, we attach the Church Attorney's comprehensive "Statement of Proposed Facts" submitted to the Panel with the Church Attorney's post-trial brief. (Exhibit L) If the Disciplinary Board feels the need for oral argument, the Church Attorney is ready and available to participate in such an argument and is available to answer any questions.

V. CONCLUSION

Respondent's conduct directly attacks the discipline process of the Episcopal Church. Respondent's conduct continues his personal vendetta against a congregation. Respondent's secret effort (even from his own church) to sell the church in the midst of the Title IV proceedings undermines the integrity of the process. We are dealing here with a bishop who has, at every turn, attempted to thwart and obstruct the disciplinary processes of the Episcopal Church. We are dealing here with a bishop who believes that he alone has authority over the property held by Corp Sole - even consecrated church properties. We are dealing in short with a rogue bishop. The Disciplinary Board, to uphold the disciplinary process of the Episcopal Church, should promptly affirm the Sanctions Order of the Hearing Panel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerry Coughlan". The signature is fluid and cursive, with the first name "Jerry" and last name "Coughlan" clearly distinguishable.

Jerry Coughlan
Church Attorney