

BEFORE THE COURT OF REVIEW OF THE EPISCOPAL CHURCH

BRIEF OF APPELLEE, THE EPISCOPAL DIOCESE OF SOUTHERN OHIO, IN RESPONSE TO THE OPENING BRIEF OF APPELLANT, THE REV. DR. DANIEL MCCLAIN

Introduction and Summary of Undisputed Facts

In this appeal, Appellant The Rev. Dr. Daniel McClain (“Appellant”) asks this Court to excuse him from all consequences of an open and notorious extramarital affair of over 18 months to which, both below and before this Court, Appellant freely and voluntarily admits. Accepting no responsibility whatsoever for his misconduct, Appellant instead paints himself as a victim of the Title IV process and seeks to cast blame for his plight upon everyone but himself: his now-ex-wife, the Church Attorney, the Bishop Diocesan, the prior Bishop Provisional, and even the Hearing Panel. The Hearing Panel found that, based upon his admitted extramarital affair and other undisputed misconduct related thereto, Appellant was guilty of the Offense of Conduct Unbecoming a Member of the Clergy under Canon IV.4.1.h.9. The Church respectfully submits that the Hearing Panel’s ruling was eminently correct and should be affirmed by this Court.

Despite Appellant’s attempts at misdirection, this is a simple and straightforward matter decided upon undisputed and admitted facts. While still married to Ms. Kate McClain, beginning in early 2023 Respondent began an adulterous relationship with a woman residing in Columbus, Ohio, about a 90 minute drive from Dayton (The Diocese of Southern Ohio’s Motion for Partial Summary Judgment at p. 2). Appellant continued in his extramarital affair through the time Appellant’s divorce became final in December 2024. Appellant frequently spent the night at his paramour’s residence in Columbus. On multiple occasions, Appellant conducted Morning Prayer services from her deck or patio which were livestreamed to parishioners attending remotely. (*id.*) Appellant continued to serve as rector at St. Paul’s Church and preach from the pulpit there for nearly a year while openly engaged in an adulterous relationship. Additionally, Appellant took his paramour on a church-financed trip to the United Kingdom, ostensibly for the purpose of scouting possible locations for a future church retreat, without disclosing her status or presence to parish staff or parishioners. (*id.*) The Church’s Motion for Partial Summary Judgment was predicated upon and limited to these undisputed facts, and Appellant has never denied any of them.

Ignoring the undisputed material evidence, Appellant instead focuses his argument on a series of alleged procedural slights totally unrelated to the merits of the Hearing Panel’s decision. Each of these is discussed in greater detail below. It suffices to state at this

junction that Appellant's arguments neither undermine the correctness of the Hearing Panel's decision – most are completely unrelated thereto – nor establish that Appellant suffered substantial prejudice on account thereof. Moreover, Appellant misconstrues many of the Canons he cites; peppers his Brief with inflammatory hyperbole, unfounded accusations, and conclusions devoid of support in the Record; and raises numerous “issues” falling far outside this Court's review jurisdiction. None of Appellant's arguments warrants reversal or modification of the Hearing Panel's Order.

For these reasons, the Church respectfully submits that the Court of Review should affirm the Hearing Panel's Order finding Appellant guilty of the Offense of Conduct Unbecoming a Member of the Clergy, Canon IV.4.1.h.9.

The Standards for and Conditions of Appeal

As Appellant notes, the standards for and conditions of appeal to the Court of Review are set forth in Canon IV.15.5.b:

In all other appeals, the Court of Review shall grant relief to the appealing party only if, on the basis of the record on appeal, it determines that the party seeking review has been substantially prejudiced by any of the following:

1. *The action taken below violates the Constitution and Canons of the Church or the Diocese;*
2. *The Hearing Panel has exceeded the jurisdiction conferred by this Title;*
3. *The Hearing Panel has not decided all of the issues requiring resolution;*
4. *The Hearing Panel has erroneously interpreted or applied the Constitutions or Canons of the Church;*
5. *The Hearing Panel has committed a procedural error or engaged in a decision-making process contrary to this Title;*
6. *The factual determinations of the Hearing Panel are not supported by substantial evidence when viewed in the whole light of the record on appeal.*

Appellant argues that the Hearing Panel's decision ran afoul of Canon IV.15.5. b.1,3,4,5, and 6. We will address each of the arguments made and discuss their merit.

Part III.A of Appellant’s Brief: Canon IV.15. 5.b.1 Does Not Apply Because Canon IV.19.13 Was Not Violated

Canon IV.19.13 provides, in relevant part:

Proceedings under this Title, other than pastoral responses, shall be barred to the extent that the specific Offense has been the subject of any prior proceeding under this Title against the same Member of the Clergy which resulted in an Order or Accord.

Appellant has been a Respondent in two Title IV proceedings. In April 2022, Kate McClain, Appellant’s then wife, filed a Title IV complaint against him. That Complaint was withdrawn by Ms. McClain and, as a result, dismissed prior to any referral of the matter to a Conference Panel or Hearing Panel. Appellant returned to the pulpit in September 2022. In July 2023, Eric Bonetti, Editor of The Anglican Watch, filed a second Title IV complaint against Appellant which resulted in the decision now on appeal.

Canon IV.19.13 is inapplicable for two reasons. First, the 2022 Title IV Complaint did not result in an Order or Accord relating to any Offenses alleged in that Complaint; rather, it was dismissed without any adjudication on the merits. By the plain language of Canon IV.19.13, that dismissal did not operate as a bar to any subsequent Title IV proceedings, including the 2023 Anglican Watch Complaint.¹

Second, the two Complaints do not present the same “specific Offense”. As the first Complaint was withdrawn and dismissed prior to any referral to a Conference Panel or Hearing Panel, no Statement of Offenses was ever prepared in 2022. Moreover, Ms. McClain’s Complaint was personal to her. Appellant’s counsel has described Ms. McClain’s Title IV Complaint as a “domestic dispute and fetid divorce proceedings”. (Ex. 5 to Respondent’s Reply Memo in Support of Respondent’s Motion for Summary Judgment). The Anglican Watch Complaint addressed Appellant’s alleged failings as a pastor to his congregation as a whole, including the sin of adultery, which, of course, had not occurred as of April 2022 and is the issue now on appeal. None of the Offenses alleged in the second Complaint were based on the subject matter of the 2022 Complaint.

Appellant appears to argue that because there is some factual overlap between the two Title IV Complaints, the second is barred. That is not what Canon IV. 19.13

¹ There was a Conference Panel determination in the course of the 2022 Title IV proceedings, but it related to an appeal by Appellant from an administrative leave restriction imposed on him by his bishop and was not an Order or an Accord relating to the Offenses alleged in that complaint.

says. Appellant’s misinterpretation of a Canon is not sufficient to overturn the decision below.

Part III.B of Appellant’s Brief: Canon IV.15. 5.b.1 and 3 Do Not Apply Because Canon IV.13.3 Was Not Violated And, Even If It Was, Any Violation was Harmless Error and Did Not Cause Substantial Prejudice

On pages 4 and 5 of his Brief, Appellant offers the remarkable claim, without any factual support, that “the Hearing Panel kept part of its ruling private, and secretly informed Fr. McClain in a letter that they had found no evidence of abuse” – which, according to Appellant, somehow “demonstrates *an unfair process motivated by some political factor other than the truth . . .*” (Emphasis added.) Upon multiple grounds, this baseless accusation should be rejected

The most obvious rejoinder to this argument is that the absence of this so-called “private letter” from the Record in no way impacts the correctness of the Hearing Panel’s Order, nor does Appellant argue that it does. As noted previously, the Church’s motion for partial summary judgment, which the Hearing Panel granted, was premised *exclusively* on Appellant’s admitted extended extramarital affair and undisputed evidence relating thereto. Indeed, allegations of domestic abuse made by Ms. McClain in her 2022 complaint against Appellant were *not* part of this case *at all* – a point emphasized repeatedly by the Church to the Hearing Panel and to Appellant’s counsel, and which the Hearing Panel, at least, plainly understood. The “no evidence of abuse” “finding” Appellant strove to wedge into the Record bore no more relevance to the issues presented by the Church’s motion than other “non-evidence” that Appellant never robbed a bank, stole a car, or kicked a dog. Whatever Appellant’s collateral purpose may have been for attempting to thrust irrelevant “findings” into the Record,² Appellant suffered no prejudice, let alone substantial prejudice, by excluding from the Record a “private letter” having no bearing on what Appellant *was* found guilty of – adultery.

Appellant’s claim that the Hearing Panel somehow violated Canon IV.13.3 is equally meritless. The “private letter” of October 14 was not part of the Record when the Hearing Panel issued its recommended decision and formed no part of the Hearing Panel’s ruling; rather, it was part of an informal *ex parte* communication between Appellant’s counsel and

² Because the Church was not party to these communications – indeed, the Church Attorney was unaware of this “private letter” until Appellant’s counsel’s email of 10.16.2025 thanking the president of the Hearing Panel for the letter – the Church has no knowledge as to how or why the letter came to be, or why Appellant was intent on forcing clearly-collateral “findings” on irrelevant issues into the Record.

the President of the Hearing Panel sent after that recommendation was made. (See Exhibit B to Appellant’s Motion to Attach Stipulation and *Ex Parte* Communication to Recorded Record, reprinted in Appellant’s Notice of Appeal, Exhibit 3 thereto.) The Hearing Panel ultimately denied Appellant’s motion to include it in the Record (2025.11.10 Email with decision of Hearing Panel on Motion to Attach), and the Hearing Panel did not abuse its discretion in doing so. Nothing in Canon IV.13.3 compels the Hearing Panel to include for publication and inclusion in the Record an informal letter arising from *ex parte* communications among fewer than all of the parties to a Title IV dispute. And it is particularly inappropriate for Appellant, whose counsel was apparently engaged in those *ex parte* communications, to suggest that what even Appellant characterizes as a “private letter” is now somehow vested with the *imprimatur* of official action by the Hearing Panel. Finally, Appellant’s conclusory characterization of the Hearing Panel proceeding as “secret” and “demonstrat[ing] an unfair process motivated by some political factor other than the truth” is regrettable and, the Church respectfully submits, has no place whatsoever in an ecclesiastical disciplinary proceeding. No further comment is necessary.

Part III.C of Appellant’s Brief: Canon IV.15.5.b.5 Does Not Apply Because Canon IV.13.7 Was Not Violated And, Even If It Was, Any Violation was Harmless Error and Did Not Cause Substantial Prejudice.

Appellant next argues that the Hearing Panel committed reversible error by not conducting a hearing on the Church’s motion for partial summary judgment. (Brief of Appellant at 5.) This argument also presents no factual or Canonical basis for reversal.

In his Brief, Appellant claims that his counsel twice requested a hearing via e-mails to the Hearing Panel dated April 21, 2024 and January 28, 2025 (*id.*, fn 9), and that the parties jointly requested a hearing date in a proposed scheduling order submitted on February 13, 2025. (*Id.*, fn 10.)³ What Appellant fails to note, however, is that during a scheduling conference call held among the Hearing Panel, counsel for Appellant, and the Church Attorneys on September 10, 2025, the Hearing Panel advised the parties that, given the

³ Notably, these requests did not bear on the Church’s motion for partial summary judgment. The April 21, 2024 e-mail was prepared 9 months *before* any motion for summary judgment was brought by either party and has no relevance here. The January 28, 2025 e-mail pertains only to Appellant’s own motion for summary judgment, which was filed with the Hearing Panel that same day. The Church did not file its separate motion for partial summary judgment, which the Hearing Panel granted and which is the basis of this appeal, until September 15, 2025. As to the February 13, 2025 e-mail, that likewise was prepared and submitted approximately seven months before the Church filed its motion for partial summary judgment.

extensiveness of the summary judgment motions and briefing, oral argument on the motions would be an unnecessary waste of the parties' and the Hearing Panel's time and resources.⁴ Counsel for Appellant offered no objection at that time, nor at any point prior to the Hearing Panel's initial decision of October 14, 2025, to the Hearing Panel's decision not to conduct a hearing. Appellant also fails to note that, after the Hearing Panel rendered its initial decision of October 14, it expressly extended to Appellant's counsel an opportunity to appear before the Panel and be heard on the Church's motion. (10.16.25 email from The Rev. S. Claytor; 10.30.25 email of D. Stambaugh) Appellant declined that offer. (10.30.25 email from The Rev. S. Claytor.) Why Appellant chose to decline the opportunity to appear before the Hearing Panel is unclear, but whatever it was is irrelevant. The Canons give a respondent the right to have a hearing, the Hearing Panel honored that right, and Appellant rejected the opportunity.

Waiver, as the Court knows, is the voluntary abandonment of a known legal right or privilege. To the extent Appellant contends that Canon IV.13.7 guaranteed him the right to a hearing on the Church's motion for partial summary judgment, the Church respectfully submits that the foregoing facts demonstrate Appellant's knowing and voluntary waiver of that right. On this basis alone, the Court should reject Appellant's argument.

Also absent from Appellant's brief is any argument that Appellant suffered substantial prejudice resulting from the absence of any oral argument on the Church's motion. As emphasized above, the Church's motion for partial summary judgment and the Hearing Panel's decision and Order were premised upon a narrow set of admitted and undisputed facts – Appellant's adulterous affair of over 18 months and his misconduct in connection with that affair. Appellant has never denied those, and the Hearing Panel correctly observed that no genuine dispute of material fact existed as to them. Appellant nowhere contends, nor can he, that oral argument would have somehow placed before the Hearing Panel an alternative set of material facts. Nor can Appellant credibly argue that the lack of a hearing deprived him of the ability to convince the Hearing Panel that a married clergy member's extended adulterous affair somehow is *not a per se* violation of Canon IV.4.1.h.9 – a question of law reserved to the Hearing Panel in any event. Lacking any substantial prejudice resulting from the Hearing Panel's failure to hold a hearing, Appellant's claim should be denied on this independent basis.

⁴ That discussion was not recorded. However, the Church Attorneys and counsel for Appellant were both on that call, and the Church Attorneys clearly recall the Hearing Panel's comments in that regard.

Part III.D of Appellant’s Brief: Canon IV.15.5.b.3 Does Not Apply Because Canon IV.13.2 Was Not Violated And, Even If It Was, Any Violation was Harmless Error and Did Not Cause Substantial Prejudice

Appellant next assails the Church Attorney for (1) preparing a “Statement of the Case”⁵ which, according to Appellant, contained false allegations against Appellant which should have been screened out before its filing, and (2) thereafter “decid[ing] privately that there would not be a hearing about these false allegations.” (Brief of Appellant at 5-6.) For numerous reasons, this argument presents no issue on review and should be rejected out of hand.

Importantly, Appellant makes no argument that the *Hearing Panel* is somehow responsible for this alleged failing, directing his full vitriol instead at the Church Attorney. But Canon IV.15.5.b.3, Appellant’s claimed jurisdictional basis (*id.* at 6), applies only where “[t]he Hearing Panel has not decided all of the issues requiring resolution.” Canon IV.15.5.b.3. It does not authorize the Court of Review to address errors allegedly committed by the Church Attorney in connection with preparing the statement of alleged Offenses. Nor has Appellant shown where he raised this issue below, and he did not; waiver thus attaches.

In any event, Appellant’s argument reveals a profound misunderstanding of both the role played by the statement of alleged Offenses in a Title IV proceeding and the Church Attorney’s preparation of it. Under Canon IV.12.1, the statement of alleged Offenses is exactly what its name implies – a recitation of *the Church’s allegations* against a respondent. Its purpose is to apprise the respondent of both the canonical Offenses with which the respondent has been charged and with reasonable particularity “the acts, omissions or conditions which are the subject of the charge,” so that the respondent can begin to prepare his or her defenses thereto. In his or her written response, the respondent may deny any or all of the Offenses or facts alleged. At that point, it becomes the Church Attorney’s duty to prove any allegations denied by the respondent by clear and convincing evidence. If the Church fails to sustain that burden, the respondent prevails. Regardless, nothing in either Canon IV.12.1, or its application to Hearing Panel proceedings at Canon IV.13.2.a, imposes upon the Church Attorney at the early stages of a Title IV dispute any duty to undertake a more fulsome factual analysis of the type suggested by Appellant on page 6 of his Brief – especially not before Appellant’s written response to the statement (see Canon IV.13.2.a.3), the parties’ mandatory disclosures (Canon IV.13.5.a), depositions

⁵ No such term exists in the Canons. The Church presumes Appellant is referring to the statement of alleged Offenses as referenced in Canons IV.12.1 and IV.13.2.a.

and other discovery (Canon IV.13.5.c), and the results of pre-hearing motion practice (Canon IV.13.7) are known to either side.⁶

Nor does the Church's duty to publish the Church Attorney's written statement of alleged Offenses on the diocesan website, Canon IV.13.3, impose any higher obligation upon the Church Attorney regarding the Church's allegations against Appellant. If a respondent claims that any of the allegations contained in the Church Attorney's written statement are incorrect, the respondent may challenge those in his or her written response thereto, which also must be published on the diocesan website. See Canons IV.13.2.a.3 and IV.13.3.

Given the foregoing, Appellant's unsupported, conclusory claim that "[t]he Church Attorney did not act as an independent Title IV officiant" (Brief of Appellant at 5) lacks any factual or Canonical basis. In preparing his written statement of alleged Offenses, the Church Attorney conformed to the requirements of the Canons. The allegations against Respondent were supported by a substantial Canon IV.11 investigation and report. If the Church Attorney's written statement "painted Appellant as a villain" (*id.* at 6), as Appellant characterized it, Appellant had every opportunity to tell his side of the story in his written response thereto and have that posted to the diocesan website – which is exactly what Appellant did here. The Canons require nothing more. And Appellant's unsupported charge that the Church Attorney "decided privately that there would not be a hearing about those false allegations" (*id.*) is baseless speculation and requires no further comment.

Finally, absent from Appellant's Brief is any alleged *nexus* between any allegations contained in the Church Attorney's written statement which Appellant finds objectionable and the Hearing Panel's Order. In particular, nowhere in his Brief does Appellant argue that, in deciding this case and preparing its Order, the Hearing Panel was somehow improperly influenced by the Church Attorney's written statement. That absence is not surprising. The Church Attorney's written statement is not evidence and was not submitted as an exhibit in support of its motion for partial summary judgment. Moreover, nothing in the Record suggests that, when rendering its decision on the merits, the Hearing Panel relied on the Church Attorney's written statement in any respect. Lacking any such *nexus*, Appellant

⁶ The Canons may require a more fulsome analysis of the anticipated evidence if the Church Attorney *declines* to advance Title IV proceedings. See Canon IV.13.2.b ("if declining to advance proceedings . . . the Church Attorney shall submit . . . a written decision stating the reasons therefor, which may include (1) the unavailability of clear and convincing evidence sufficient to overcome the presumption of innocence set out in Canon IV.19.16. . . .") That requirement is intended to protect (1) the interests of the Complainant(s) in seeking further review of that decision from the Conference Panel (see Canon IV.13.2.b) and (2) the integrity of the ecclesiastical disciplinary process – *not* the Respondent. In any event, the Church Attorney did not so decline here, and hence Canon IV.13.2.b has no applicability to this matter.

cannot claim that the Church Attorney's written statement somehow substantially prejudiced the outcome of this case.

Part III.E of Appellant's Brief: Canon IV.15.5.b (5) Does Not Apply Because Canon IV.19.16 and 17 Were Not Violated

Canons IV.19.16 and 17 provide:

Sec. 16: There shall be a presumption that the Respondent did not commit the Offense. The standard of proof required for a Hearing Panel to find an Offense by a Respondent shall be that of clear and convincing evidence.

Sec. 17: In all matters under this Title, it shall be the burden of the Church through the Church Attorney to establish an Offense by any Respondent.

The material facts supporting the Hearing Panel's Order were more than merely "clear and convincing;" they were openly admitted by Appellant. The Church amply satisfied its own evidentiary burden of establishing an Offense by clear and convincing evidence. Appellant's argument to the contrary is frivolous.

Further, the facts and circumstances of Appellant's adultery alone, without more, support the Hearing Panel's finding that "Mr. McClain has neither the temperament, understanding of obedience, nor the understanding of church polity necessary to perform as a priest". Adultery, in and of itself, is an act of disobedience in defiance of the Seventh Commandment and his vows. The brazen manner in which Appellant conducted the adulterous relationship further established his absolute disregard for the required obedience to the Scripture and church doctrine. He began the affair while married, having secured a girlfriend from a dating app. He engaged in the hypocrisy of preaching from the pulpit while living in adultery. He did not report the Offense as he was required to do under Canon IV.4.1.f, an additional violation and act of disobedience. He spent significant parts of the work week at his girlfriend's house in Columbus, away from his Dayton-area parish. He streamed morning prayer services to his congregation from his lover's patio. He squired his lover around Dayton, encountering parishioners. He took church money to go on a "professional development" trip to the United Kingdom and brought his lover with him, a fact he did not reveal in his application for funds.

Appellant appears to argue that so long as he did not disobey a direct command of a bishop then he committed no Offense (ignoring that he did not report his adultery to the Bishop). God’s word, to which bishops and priests are subject, forbids adultery. Appellant deliberately defied and disobeyed that word for his own comfort and pleasure. Appellant chose to ignore that Members of the Clergy, through their vows of ordination, accept additional responsibilities and accountabilities for doctrine, discipline, worship and obedience. That deliberate disregard reveals a temperament unfitted for the priesthood, as does his failure to accept blame, express remorse, or repent. The uncontradicted record evidence establishes a temperament prone to selfish arrogance rather than obedience and service.

Part III.F of Appellant’s Brief: Canon IV.15.5.B(1) Does Not Apply Because Canon IV.3.1.e Was Not Violated

Appellant next observes that, in a reply brief filed by the Church in October 2025 – nearly 2 ½ years after this matter was commenced – the Church Attorney wrote that “[Appellant’s] counsel filed a Title IV Complaint against Bishop Smith in August 2022.” From that single shred of “evidence,” Appellant leaps to the conclusion that this *entire* Title IV proceeding “was retaliatory” and “motivated by a spirit of retaliation” (Brief of Appellant at 7, 8) and, as a result, should be dismissed on appeal pursuant to Canons IV.3.1.e and IV.15.5.b.1. This claim, like so many before it, is specious.

Canon IV.3.1.e, part of the Canon of Accountability, provides in pertinent part:

A Member of the Clergy shall be subject to proceedings under this Title for:

(e) discharging, demoting, or otherwise retaliating against any person because the person has opposed any practices forbidden under this Title or because the person has reported information concerning an Offense, testified, or assisted in any proceeding under this Title.

It is undisputed this Title IV proceeding was commenced in July 2023 not by the Church, but by an independent layperson, Mr. Eric Bonetti – an individual having no connection to the Diocese of Southern Ohio. As a layperson, Mr. Bonetti is not subject to Canon IV.13.1.e. Once the Reference Panel referred the complaint to the Hearing Panel for further proceedings on January 16, 2024, it became the Church’s Attorney’s Canonical duty to prosecute this matter, and he did so in conformity with the Canons. Like Mr. Bonetti, the Church Attorney is not a Member of the Clergy and is not subject to Canon IV.13.1.e. Moreover, under the Canons the Church Attorney plays no role in deciding whether a Title

IV complaint should be commenced; that decision is made by others in the process long before the Church Attorney becomes involved. See Canons IV.12.1 and IV.13.1.

Moreover, Appellant offers no credible evidence to support the naked allegation that this Title IV proceeding was somehow motivated by retaliation against Appellant for his counsel's Title IV complaint against the Bishop Provisional. and no such evidence exists. Certainly Mr. Bonetti, who did commence this action, held no such motivation, and Appellant does not argue to the contrary. Furthermore, the single shred of "proof" offered by Appellant – an accurate reference to Appellant's counsel's filing of a Title IV complaint against the Bishop Provisional nearly 2 ½ years earlier – plainly has no bearing on *why* this matter was commenced. Unsupported conspiracy theory is no substitute for admissible evidence in an ecclesiastical disciplinary proceeding, and Appellant offers none.

Part III.G of Appellant's Brief: Canon IV.15.5.b (1) Does Not Apply Because The Godly Judgment Did Not Violate Canon IV.19.16 and 17

It is undisputed that, while these Title IV proceedings were pending, the Vestry of St. Paul's voted to dissolve the pastoral relation between Appellant and the parish. When Appellant refused to voluntarily resign, the Vestry correctly referred the disagreement to the Bishop Diocesan as provided by Canons XVI.24-30 of the Canons for the Diocese of Southern Ohio.⁷ Following unsuccessful attempts to resolve the disagreement between the Vestry and Appellant, on November 26, 2024, Bishop White issued her written godly judgment declaring the pastoral relationship dissolved.⁸

Claiming that "concurrent DSO Canon XVI.24-30 and TEC Title IV proceedings are specifically prohibited by [DSO Canons]," Opening Brief of Appellant at 8, Appellant seeks reversal of the Hearing Panel's Order on this additional basis. For the reasons set forth below, Appellant's argument fails.

Though careful not to quote it (or even to cite to it) in his Brief, Appellant bases his argument upon DSO Canon XVI.30(b), which provides:

⁷ Because DSO Canons XVI.24-30 are consistent with the requirements of TEC Canon III.9.15, the Diocesan canons govern. See TEC Canon III.9.15.h.

⁸ Though explicitly referring to it in his Brief, Appellant did not include a copy of Bishop White's written godly judgment in the Record. Should the Court of Review desire a copy, the Church would be happy to provide the same.

In the course of proceedings under this Canon, if the Vestry makes a charge against the Rector that could give rise to a disciplinary proceeding under Canon IV.1, all proceedings under this Canon shall be suspended until the charge has been resolved or withdrawn. (Emphasis added.)

Based upon this language, at least two fatal flaws in Appellant’s argument are immediately apparent.

First, the issue Appellant raises falls outside of the Court of Review’s jurisdiction on appeal. Even if, *arguendo*, DSO Canon XVI.30(b) were to apply here, under that Canon it is the pastoral dissolution process which should have been stayed pending the outcome of the Title IV proceedings, not *vice versa*. DSO Canon XVI.30(b) (“all proceedings *under this Canon* shall be suspended until the charge has been resolved or withdrawn”) (emphasis added). Whatever unhappiness Appellant might claim over Bishop White’s issuance of a godly judgment, the Hearing Panel was completely uninvolved in the pastoral dissolution process and entitled by DSO Canon XVI.30(b) to pursue the charges against Appellant to resolution. Hence, even if Bishop White somehow erred by failing to stay the pastoral dissolution process, that error is not attributable to the Hearing Panel, and the Court of Review therefore lacks Canonical jurisdiction to review it. Canon IV.15.5.b (noting that the Court of Review may grant relief only upon certain enumerated errors allegedly committed by the Hearing Panel).⁹

Second, based upon the undisputed facts of this matter, Appellant’s claim that DSO Canon XVI.30(b) prohibits all “concurrent” pastoral dissolution and Title IV proceedings against Appellant is specious. On its face, DSO Canon XVI.30(b) applies only where, in the course of a request to dissolve the pastoral relation, “the Vestry makes a charge against the Rector that could give rise to a disciplinary proceeding under Canon IV.1.” The Record contains no evidence whatsoever suggesting that St. Paul’s Vestry ever made any such charge against Appellant, and Appellant cites to none in his Brief. Moreover, this Title IV action was commenced long before St. Paul’s sought to dissolve its pastoral relationship with Appellant, and by an individual – Eric Bonetti of *Anglican Watch* – having no connection to St. Paul’s, its Vestry or the Diocese. Accordingly, DSO Canon XVI.30(b) has no applicability here and did not prohibit Bishop White from dissolving the pastoral relationship between Appellant and St. Paul’s during the pendency of these Title IV proceedings.

Undaunted, Appellant suggests that Bishop White’s dissolution of his pastoral relationship with St. Paul’s was somehow a form of “discipline” in violation of Canonical due process

⁹ For essentially the same reasons, Appellant cannot claim that he was substantially prejudiced by clear error at the hands of the Hearing Panel. See Canon IV.15.5.b.

guarantees. Brief of Appellant at 8 (“by *disciplining* Appellant in the form of termination of his employment” and “Appellant was *disciplined* by a godly judgment before any finding of fact was made by the Hearing Panel”) (emphasis added). Appellant is demonstrably incorrect. Canon III.9.15 and diocesan canons analogous thereto are not part of Title IV, and a Bishop Diocesan’s dissolution of the pastoral relationship between a parish and its Rector is not a form of ecclesiastical discipline. The Bishop Diocesan is vested with broad Canonical, spiritual, and pastoral discretion to promote the well-being of all parishes within the Diocese and further the best interests of the Church. In the exercise of that discretion, Bishop White determined that dissolution of the pastoral relationship between St. Paul’s and Appellant was necessary to initiate healing and reconciliation within the parish. Appellant’s claim that Bishop White’s godly judgment was a “use of [her] soft power . . . to openly oppose Appellant [and] undermine[] a fair process” (*id.*) – without citation to a shred of supporting evidence – is unsupported hyperbole.

Part III.H of Appellant’s Brief: Canon IV.15.5.b (1) Does Not Apply Because Canon IV.19.19 Was Not Violated And, Even If It Was, Any Violation was Harmless Error and Did Not Cause Substantial Prejudice

Canon IV.19.19 provides, in relevant part:

No Chancellor or Vice Chancellor of a Diocese shall serve as Church Attorney in that Diocese. (Irrelevant language omitted). The Church Attorney in any proceeding shall not be from the same law firm as any Chancellor or Vice Chancellor otherwise disqualified under this section.

Appellant acknowledges that the Church Attorney and Chancellor, although formerly partners in the same law firm, are both retired from that practice. There is no indication that the prohibition in Canon IV.19.19 applies in perpetuity and covers those no longer employed by the same law firm. In any event, Appellant has waived any objection in this regard. The fact of the former common employment of the Chancellor and Church Attorney has long been known to Appellant. He did not move to disqualify. Indeed, on a conference call with the Hearing Panel, his counsel specifically said she did not intend to do so. Finally, Appellant makes no showing or even allegation of substantial prejudice in this regard.

Part IV of Appellant’s Brief: Determining The Appropriate Sentence For Appellant’s Offenses Rests Within The Exclusive Authority Of The Bishop Diocesan, Not The Court Of Review

Finally, Appellant asserts that, even if the admitted charge against him of adultery is upheld on review, he has already been punished enough “in the form of a two year suspension, loss of his position as a rector, and public humiliation” and no further punishment is warranted. Brief of Appellant at 9; see *also id.* at 3 (“the Hearing Panel’s penalty is severe in light of the absence, throughout the Episcopal church, of any record of similar discipline to unmarried or divorcing clergy who engage in sexual relationships”). The succinct response to this argument is that, under Canon IV.14.6(c), the Hearing Panel’s recommended Sentence of deposition is just that – a recommendation. Sentence has not yet been pronounced, and the Hearing Panel’s recommendation is not binding on Bishop White. See Canon IV.14.8.a (the Diocesan Bishop may impose the Sentence as recommended by the Hearing Panel, or a lesser Sentence). Determining and pronouncing an appropriate Sentence is the exclusive responsibility of the Bishop Diocesan, as this Court observed in *Watkins v. Diocese of Alabama*, Court of Review, May 16, 2024, slip op. at 33 (“[t]he Canons do not provide for the Court of Review to make recommendations regarding the appropriate Sentence for the portions of the Hearing Panel’s Order which it has affirmed”). This argument, like so many others, presents no issue for this Court on review.

CONCLUSION

For these reasons, the Episcopal Diocese of Southern Ohio respectfully requests that the Order of the Hearing Panel in this matter be affirmed.

Respectfully submitted,
Steven J. Ellcessor
Church Attorney