BEFORE THE COURT OF REVIEW OF THE EPISCOPAL CHURCH

The Rev. Dr. Daniel W. McClain,
Appellant/Appellant

v.

The Episcopal Diocese of Southern Ohio,
Appellee.

Reply Brief of Appellant

The Rev. Dr. Daniel W. McClain (hereinafter "Fr. McClain" or "Appellant"), by and through his undersigned attorney, and with the support of his Advisor, The Rev. Lynn Carter-Edmands, for his Reply Brief, respectfully states:

Presently Fr. McClain is employed as a public-school teacher and passed all background checks necessary to teach in a public school.[1] He has lived for over three years under the cloud of false allegations by the Church that he improperly coerced the withdrawal of abuse allegations, engaged in "willy nilly" financial practices, and otherwise was unliked. These allegations are refuted by letters from 25 parishioners.[2] The allegations have reached into his secular employment and have impacted him psychologically.[3]

In light of significant procedural violations by the Hearing Panel, which prejudiced the Respondent, and because the decision below is unsupported by evidence, Appellant respectfully requests that the order of the Hearing Panel be reversed. Canon IV.15.5.

[1] See 2025.01.08 - Motion for Summary Judgment, ¶40 (p. 11 of 166).
[2] See 2025.10.07 - Exhibits 1-9 to the Respondent's Reply to Response to MSJ, Exhibit 1 (pp. 2-15 of 122).
[3] See 2025.10.07 - Exhibits 1-9 to the Appellant's Reply to Response to MSJ, Exhibit 3 (pp. 51-52 of 122).

I. Response to Church's Claim of Undisputed Facts

a. Extramarital Relationship

The Church's recitation of negative facts related to the Appellant's divorce and subsequent marriage omits material facts critical to an appropriate evaluation. For example, in determining whether to impose a penalty, and the appropriate length of any penalty, there should have been consideration of the fact that there was no breach of trust by the Appellant. Rather, Appellant initiated a relationship after his ex-wife surprised him with a divorce petition and initiated the divorce in a manner that left him homeless, and without access to his sons.[4] The divorce was contentious divorce, and included prolonged litigation over custody.[5] These facts should be evaluated prior to issuing a judgment of deposition on the sole basis of an extramarital relationship.

b. Spirit of Repentance and Fitness for Priestly Office.

The Church claims that the Appellant is disobedient and unrepentant and that he takes no responsibility for his errors. This claim was refuted by the written submissions. For example, the written response to the complaint says:

> Appellant is not a perfect person. He is a good father to his children, and a good priest to St. Paul's Oakwood (hereinafter the Parish). He deserves some guidance and some correction, but he also deserves respect. All of the clergy in The Episcopal Church deserves to be given the benefit of the doubt, and to be heard. Appellant does not deserve public humiliation or disparagement of his character. He deserves to have the beneficial work he has done evaluated in like manner as his mistakes.[6]

[4] See 2025.09.30 - Response to Church's Motion for Partial Summary Judgment, Exhibit 1 (p. 17 of 37).
[5] See 2025.09.30 - Response to Church's Motion for Partial Summary Judgment, Exhibit 4, (pp. 32-37 of 37).
[6] See 2024.02.29 - Answer (p. 1 of 12).

Additionally, the Appellant has followed the direction of every bishop who has spoken to him regarding this matter, including by submission to a lengthy three-day psychological evaluation. Notwithstanding he received no direction from the Church to do so, he has processed the outcome of that evaluation with his own psychotherapist, who he has seen in over ninety sessions to deal with trauma from the divorce and from this Title IV.[7] Appellant's treating psychotherapist wrote that he " . . . has been damaged by the church process . . . especially by the publication of ad hominem and uninvestigated allegations, and by the long period of uncertainty."[8]

Accordingly, the Church's allegation of lack of fitness is not supported and is controverted by evidence of record.

II. The Motion to Attach is a Canonically Appropriate Correction to the Record

The Court of Review has opined that Canon IV.15.4 prohibits the Court from reviewing facts not of record.[9] However, the Court of Review is empowered in that same canon to correct the record on appeal, if the record is defective. Canon IV.15.4 states, "An appeal shall be heard on the record of the Hearing Panel. **The record on appeal may be corrected, if defective**, but no new evidence shall be taken by the Court of Review." (emphasis added)

Appellant's Motion to Attach[10] includes two documents that the Appellant submitted to the Hearing Panel below but which the Church elected not to include in its published record of the proceedings. The Hearing Panel denied the Motion to Attach without explanation.[11]

[7] See 2025.10.07 - Exhibits 1-9 to the Appellant's Reply to Response to MSJ, Exhibit 3 (pp. 51-52 of 122).
[8] Id.
[9] See Ramey v. Diocese of Virginia (2025)(p. 8 of 37).
[10] See 2025.11.07 - Motion to Attach
[11] See 2025.11.10 - Email with decision of Hearing Panel on Motion to Attach

The documents are not new evidence. They are documents that were properly part of the record. One is a stipulation by the church Attorney that the allegations of abuse were dismissed after a full investigation.[12] The other is a finding by the Hearing Panel that there was no abuse.[13]

These are important documents after the Church has publicly stated on its website for over three years that the Appellant violated Title IV by coercing a witness to withdraw abuse allegations.[14]

Because they constitute a stipulation of the Church Attorney and a finding of fact of the Hearing Panel, and because they were submitted to and or generated by the Hearing Panel, these documents were required to be part of the record.[15] The Church has not disputed the authenticity of these documents. Therefore, this Court has authority under Canon IV.15.4 to include the documents in the record as a correction to a defective record, and the documents should be evaluated on appeal.

III. The Hearing Panel Violated IV.13.3.a, By Publishing Only Part of Its Findings.

On October 14, 2025, the Hearing Panel issued an order granting partial summary judgment to the Church and declining to consider all other arguments on the grounds that they were moot.

On the same day that the Hearing Panel issued its order, the President of the Hearing Panel also sent an email to Appellant's attorney titled, "additional letter."[16] The attachment to the email is titled "McClain extra.doc."[17] The attachment was a letter, which states:

> 14 October 2025
> To whom it may concern:

[12] See 2025.11.07 - Motion to Attach, Exhibit A (p. 4 of 7).
[13] See 2025.11.07 - Motion to Attach, Exhibit B (p. 7 of 7).
[14] See 2024.01.25 - McClain Written Statement of Offense final (p. 10 of 14).
[15] See Canon IV.13.3.a
[16] See 2025.11.07 - Motion to Attach, Exhibit B (p. 6 of 7).
[17] Id.

> Please be advised that the convened Hearing Panel for Title IV regarding Daniel McClain found no evidence of any abuse committed on any party by Mr. McClain.
>
> The Rev. Dr. Susan Q. Claytor,
> President of the Hearing Panel[18]

It is likely that the President of the Hearing Panel wrote this letter in connection with complaints by the Appellant that:

> Dan has been looking for employment in the secular setting and is currently employed as a public-school teacher. **The public negativity by the church, in the form of the complaint which is posted online, and which re-asserts abuse allegations the church has not ever proved and does not ever plan to prove in any hearing, has been incredibly damaging to Dan and was recently brought up by administrators during a job interview. He did not get the job**. As discussed in our motion for summary judgment, the abuse allegations are false.[19]

The privacy of the Hearing Panel's decision and of the Church Attorney's prior stipulation directly violated Canon IV.13.3.a, which requires: "the Hearing Panel shall make documents available to members of the Church and the Church media as set forth in this Section. . . The documents covered by this Section are all documents filed with or issued by the Hearing Panel or by any party or person including but not limited to motions, briefs, affidavits, opinions, objections, decisions, notices, challenges, and Orders."

The Church argues that Hearing Panel's private letter is not a decision, but an *ex parte* communication. It is correct that the cover email, and the attached letter were sent *ex parte* by the President of the Hearing Panel to the Appellant's attorney. However, the manner in which the decision was communicated does not change what it is. It is a decision of the Hearing Panel. Regardless of how transmitted, the decision reflects an important finding on an issue that has impacted the Appellant's mental heath and search for secular employment. The *ex parte* nature

[18] See 2025.11.07 - Motion to Attach, Exhibit B (p. 7 of 7).
[19] See 2025.07.30 - Title IV - Message from Appellant's Attorney (emphasis added).

of the decision is exactly what is being appealed. It was prejudicial for the Hearing Panel to keep such an important conclusion confidential and *ex parte*.

The Church's speculation about *ex parte* communications is a distraction from the merits. The record reflects that the Appellant's counsel requested that the attorneys **not** engage in *ex parte* communications.[20] The undersigned received *ex parte* communications from the President of the Hearing Panel but did not solicit or encourage them as speculated by the Church, and did not respond to the *ex parte* emails except to say "thank you" as a form of acknowledgement of receipt.

While the Church speculates and makes accusations of *ex parte* communications by the Appellant, the Church Attorney attached a document showing Mr. Ellcessor himself received an *ex parte* email from the Hearing Panel, which copied himself, the President of the Disciplinary Board, and the Hearing Panel, but which did not include Appellant's counsel.[21]

At no point did Appellant's attorney ask the Hearing Panel for a private letter or ask that any portion of the Hearing Panel's decision be put into a private letter. The Church's speculation about *ex parte* communications is a distraction from the merits and from the Hearing Panel's violation of its duty to hold public hearings, and to render full and public decisions.

The *ex parte* and confidential nature of the Hearing Panel's decision that there was no finding of abuse is unjust and must be reversed.

[20] See 2025.07.30. Title IV - Message from Appellant's Counsel.
[21] See 10.30.25 email from The Rev. S. Claytor.

IV. Re-asserting the 2022 Title IV Allegations was Inappropriate

The Church argues on appeal that it is allowed to re-litigate the 2022 Title IV because it was "withdrawn." The Church's position that the 2022 allegations were withdrawn is factually and procedurally false.

Factually, the Church's brief neglects to advise the Court of Review that the 2022 allegations were dismissed following an investigation. A stipulation entered by the Church Attorney in this matter states: **"the allegations in the prior matter were never substantiated, were dismissed after a full investigation, and are not in any way the subject of this matter."**[22]

Following the 2022 investigation, the Chancellor for the Diocese of Southern Ohio offered by email to end the Title IV matter with an Accord that would be "procedural" rather than "juridical."[23] No Accord was reached. On January 13, 2023, the Diocese dismissed the First Title IV proceedings by referral to a pastoral response.[24] Following the dismissal, Bishop Smith signed a rector letter of agreement.[25] These facts indicate much more than a withdrawal of the complaint by the Complainant.

In addition, the Church's position is also procedurally inaccurate. The Church cannot, as argued by the Church, dismiss a Title IV merely because the Complainant has asked for dismissal. The advancement of meritorious Title IV claims is non-discretionary, even when the injured person supports the conduct of the clergy. It is the burden of the Reference Panel, and then the Church Attorney, not the Complainant, to determine which Title IV matters should

[22] See 2025.11.07-Motion to Attach, Exhibit A.
[23] See 2025.01.08 - Motion for Summary Judgment, Exhibit 12 (p. 68 of 166).
[24] See 2025.01.08 - Motion for Summary Judgment, Exhibit 13 (p. 71 of 166).
[25] See 2025.01.08 - Motion for Summary Judgment, Exhibit 14 (pp. 73-77 of 166).

proceed on the merits. Such decisions must be grounded in the criteria set forth in the canons, not in the wishes of the Complainant. *See* Canon IV.13.2.

Title IV has no procedural mechanism for a Complainant to withdraw a complaint. While the Church Attorney must analyze the availability of witnesses to evaluate, as required in Canon IV.13.2., whether a claim should be advanced, credible evidence does not lie merely with the Complainant. In the absence of criminal prosecutions, divorce decrees, photographs, statements of witnesses, statements of court appointed guardians, damaged physical property, and any other evidence, there was a genuine lack of credible evidence to support the claim. Accordingly, it was inappropriate for the Church to assert allegations that had been investigated and dismissed in the 2022 matter, which the Church has no intention to prove at a hearing as stipulated by the Church Attorney.

V. A Hearing Was Required.

The Church argues that Appellant waived his right to a hearing by not continuing to argue with a tribunal that had already decided not to have a hearing. There is no authority suggesting that Title IV requires procedural irregularities to be preserved for appeal through the objections of counsel. Even if preservation of legal issues is required in Title IV, the concept of preservation does not ever require a litigant to continue arguing after the tribunal has rendered an adverse ruling.

A. Appellant Did not Waive a Hearing at the Scheduling Conference.

In conversations at the scheduling conference, the Appellant's attorney understood herself to have been reprimanded by a member of the Hearing Panel for asking for both (1) a hearing on the cross motions, and (2) a hearing on the merits of the case if the cross motions were denied. The understanding was that this scheduling request was too much of a burden on

the panel members who were volunteers. The Church Attorneys recall this unrecorded conversation differently, as reflected in their written submission. Irrespective of the factual dispute about what happened at the scheduling conference and taking the Church's position as true for the sake of argument, the Appellant's attorney does not have an obligation to continue arguing with a decision-maker who has rendered an adverse ruling. As discussed in the Appellant's opening brief, the record reflects repeated written requests for a hearing. The Church's acknowledgement that the request for a hearing was denied at the scheduling conference is sufficient to warrant reversal of the outcome below. Appellant honored the decorum of the court by discontinuing argument following the pronouncement of an unfavorable ruling.

B. Communications Following the Hearing Panel's Written Decision Do Not Constitute Waiver of a Hearing.

In its response brief, the Church attaches new documents and claims that the documents show that the Appellant waived his right to a hearing. These documents show that the Hearing Panel communicated that they felt their decision was "valid" that the case was "resolved," and that they would not change their minds, but that they would meet with the Appellant over Zoom.

When the undersigned declined the offer to meet over zoom and declined to comment <u>further</u> on the form of an order (possibly proposed order) that had already been rendered by the Hearing Panel, this was not the same as waiving a right to a hearing. The Church's argument fails because it conflates Canons IV.13. and IV.14.7. The Appellant did not waive his right to a hearing under Canon IV.13. He declined to comment <u>further</u> on the form of an order (possibly proposed order) under Canon IV.14.7, after the Hearing Panel had already rendered a decision, and after the Hearing Panel stated that it would not change its mind.

There is a difference between an opportunity for a hearing (Canon IV.13.), and an opportunity to comment on the form of a proposed order (Canon IV.14.7.). Title IV affords both of those rights. Appellant's declination to comment <u>further</u> on the form of a proposed order, especially in the context in which that declination was made, is not—as argued by the Church—waiver of a hearing before a Hearing Panel.

October 14, 2025, the Hearing Panel issued its public decision granting summary judgment, and its private letter decision regarding no abuse.

On October 16, 2025, the undersigned wrote to the Hearing Panel and the Church Attorney asking:

> Is this an order, or is this the proposed terms of an order? Looking at Canon IV.14.Sec. 7., the panel is to afford the bishop, Appellant, and complainant with an opportunity to be heard on the proposed terms of an order in advance of issuing an order.
>
> Also thank you for your separate letter in which you stated, "Please be advised that the convened Hearing Panel for Title IV regarding Daniel McClain found no evidence of any abuse committed on any party by Mr. McClain." Please help me understand why that is not in your order, proposed order.

This email constitutes comment by Appellant on the terms of the order (possibly proposed order) by asking why the finding of no abuse was not included in the order. The Hearing Panel received this communication but declined to consider the comments of the Appellant's attorney and declined to integrate its public and private rulings.

On October 16, 2025, the President of the Hearing Panel stated, that she thought the decision was final, but also offered a zoom hearing for the Appellant and indicated, "I await further instructions from Mr. Reid and others." Mr. Reid is the President of the Disciplinary Board.[26]

[26] See Canon IV.2, Definition of Hearing Panel ("The president of the Disciplinary Board shall be ineligible to serve on the Hearing Panel."); see also Canon IV.19.11 ("No person subject to the authority of the Church may attempt to

On October 24, 2025, the Hearing Panel President sent an email stating:

> Hello,
>
> We have not heard from you regarding Mr. McClain's wishes **as we finish the matter**. **We have consulted the leadership on TItle IV** and made the following determination.
>
> **Our finding following the Summary Judgements is valid.** However, we are willing to allow him his hearing, by zoom and without any witnesses. As we stated in the letter, **we do not believe any material would change our opinions so the case is resolved**. **Please advise us within seven days if Mr. McClain wishes to address the panel with an understanding of our decision in his case.**
> Susan+

(emphasis added) This email was not understood as an opportunity for a hearing. It was understood as a statement that after consulting with the "leadership," the Hearing Panel felt the case was "resolved" and that the decision they had already made was "valid" and that it would not change. This message was further understood as the Hearing Panel's denial to consider integrating its public and private decisions.

Following receipt of the Hearing Panel President's email, the Appellant respectfully accepted their ruling as final as they indicated it was and declined to take more of the volunteer's time. This was not a waiver of hearing. It was listening respectfully to the language of the Hearing Panel.

VI. IV.13, not IV.12, Applies in Drafting the Public Statement of Offense.

The issue in this matter that has the most significant potential impact for the denomination as a whole is the Church Attorney's obligation to act as an independent reviewer of the evidence, prior to the Church's publication of written statements. The Canons do not

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coerce or improperly influence, directly or indirectly, the actions of any body performing functions under this Title, or any member of such body or any other person involved in such proceedings.")

contemplate the Church Attorney being a mere conduit for an investigator, a bishop, or a complainant. Rather, the Church Attorney represents "the Church."[27]

The Church Attorney must evaluate independently the facts and canons and must decide whether there is evidence to support a case. As reflected in the Church's briefing, the Church Attorneys in this matter do not consider themselves responsible to determine whether the facts published in the statement of the case can be proved as true. The Church's brief states:

> 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.

This interpretation of the canons has been incredibly damaging to the Appellant, who's secular colleagues believe what the Church has published about him online.

More importantly, the Church's interpretation of the Canons is incorrect. Before a statement is published by a diocese, the Church Attorney must evaluate the case and decide, "whether to proceed with the matter or decline to advance proceedings in the matter." Canon IV.13.2. This analysis is solely the responsibility of the Church Attorney.

"If advancing the proceedings, the Church Attorney must update, as needed, the statement of alleged offenses." Canon IV.13.2.a. Appropriate reasons for declining to advance the proceedings include, "(1) the unavailability of clear and convincing evidence sufficient to overcome the presumption of innocence set out in Canon IV.19.16, or (2) the Church Attorney's opinion that resolution of the matter through the mechanism of a Hearing Panel would not be the most effective means for achieving the goals of Title IV."

[27] See Canon IV.2, Definition of Church Attorney

As shown in the Church's briefing on appeal, no analysis was carried out by the Church to determine whether it possessed clear and convincing evidence necessary to overcome the presumption of innocence. Rather, numerous claims that were unfounded.[28]

Using the voice of a Diocesan website to publicize allegations without having first analyzed whether the allegations were supported by evidence has been incredibly prejudicial to the Appellant.

VII. This Court has Authority to Analyze the Godly Judgment in Determining whether the Priest has been Prejudiced.

It is stipulated that the Court of Review cannot reverse a "godly judgment." However, the Court can take notice of it.

The Court of Review has authority to: (a) dismiss the appeal; (b) reverse or affirm in whole or in part the Order of the Hearing Panel; or (c) grant a new hearing before the Hearing Panel.[29]

In light of the years of the Respondent has lived with the humiliation of false allegations, and the godly judgment which took his job away, and the multiple years of suspension during these proceedings, a substantial penalty has already been imposed, and it would be fair for this Court to reverse in whole the order of the Hearing Panel.

VIII. The Same Firm, Issue Cannot be Waived.

As the record reflects, counsel for the Appellant did not file a motion objecting to Deborah Adams as Church Attorney. The undersigned did, however, notify the Church Attorneys that they were violating the canons, as acknowledged by the Church's brief.

[28] See 2025.01.08 - Motion for Summary Judgment, ¶¶40 - 114 (pp. 11-20 of 166).
[29] See Canon IV.15.14.

The plain language of the canons prevents Church Attorneys who are "from" the same firm as the Chancellor. This rule was violated by Attorney Deborah Adams, who holds herself out as a Frost Brown Todd attorney as does the Diocesan Chancellor.

IX. Evidence of Retaliation is in the Church's Written Submissions to the Hearing Panel.

The Church argues there is no evidence of retaliation for the Title IV involving Bishop Wayne Smith. This is refuted by the Church's written submissions below. The Church's Reply Memo in support of its Motion for Summary Judgment included a litany of the Appellant's alleged faults. One of those faults was, "His counsel filed a Title IV Complaint against Bishop Smith in August 2022."[30] [31] Clearly, the Church treated the Appellant's filing of a Title IV Complaint against Bishop Smith as a negative factor. This constitutes evidence of retaliatory motive.

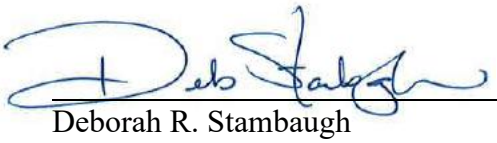
X. Conclusion and Prayer for Relief

WHEREFORE, in light of the years during which the Appellant has lived with the humiliation of false allegations, the loss of employment, and prolonged suspension, the disciplinary purposes of Title IV have already been fully served. Due to significant procedural irregularities, and lack of evidence supporting the Church's position, Appellant respectfully prays that this Honorable Court of Review reverse in whole the Order of the Hearing Panel pursuant to Canon IV.14.15(b).

[30] See 2025.10.06 - Reply Memo in Support of DSO Motion for Partial Summary Judgment (p. 3 of 4).
[31] This Title IV was not public until it was disclosed by the Church Attorneys in this case.

DATED this 14th day of April, 2026.

WISLER PEARLSTINE LLP

By: 

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