

# **Ecclesiastical Court of the Anglican Diocese of the Living Word Rules of Procedure**

## **Preface**

The rules of the ecclesiastical court are for the purpose of the smooth functioning of the court. The function of the court is to be the finder of fact in the case of church discipline against a priest, deacon or a layman. It is also the finder of fact in the case of other disputes brought before the court. The court does not impose a sentence in the case of church discipline, and does not pronounce judgment in the case of other disputes. The role of the court is to hear and determine any disputed facts, and in the appropriate case, to make recommendations to the bishop for sentence or judgment. It is the role of the bishop to impose the appropriate sentence in the case of church discipline, or to render a judgment for other disputes.

## **Rule 1: Application and Scope of Rules**

These rules govern procedure in the ecclesiastical court in all actions. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every such action.

## **Rule 2: Institution of Presentment in a Matter of Discipline**

A. Notice of Presentment. A presentment proceeding shall be instituted by the service of a notice of presentment, together with a copy of the presentment upon the respondent. The notice of presentment shall be signed by the chancellor or any other judge of the court, and shall identify the court and all the parties to the proceeding, and be directed to the respondent. The notice of presentment shall state that the respondent must file with the court at the office of the chancellor an answer to the presentment within 20 days after receipt, and shall notify the respondent that failure to answer may result in a default judgment that the charged offense was committed by the respondent and place the respondent at risk for a sentence to be pronounced by the bishop.

B. Presentment. The presentment shall be a writing signed by the presenter who accuses the respondent of behavior which the presenter alleges to be violation of the scriptures, the constitution or the canons of the church. The presentment shall contain a statement of the provisions of scripture, the constitution or canons which the respondent is alleged to have violated, and a plain and concise statement of the facts upon which the violations are made setting forth in detail the facts of the alleged behavior of the respondent.

C. Service. The service of the notice of presentment and the presentment shall be made either by personal service or by regular mail. No default may be taken unless service is to the respondent, either personally, or to a person of suitable age and discretion at his place of work or place of abode followed by mailing to such place, or if such service cannot be accomplished with reasonable diligence, by substituted service by affixing to the place of work or place of abode followed by mailing to such place. An answer by the respondent waives all objections as to service.

D. Proof of Service. The person effecting service of the notice of presentment and presentment shall make proof of service by affidavit or sworn statement to the court. If service is waived, the written waiver of service shall be filed with the court.

### **Rule 3: Institution of Complaint in a Non-Discipline Dispute**

A. Notice of Complaint. A non-discipline dispute shall be instituted by the service of a notice of complaint, together with a copy of the complaint upon the respondent. All other procedures for the notice of complaint shall follow the procedures of the notice of presentment in a discipline matter.

B. Complaint. The complaint shall be a writing signed by the complainant accusing the respondent of behavior which the complainant alleges to be committed by the respondent. The complaint may reference a violation of the scriptures, the constitution, or the canons of the church as part of the complaint. The complaint shall contain a statement a plain and concise statement of the facts setting forth in detail the facts of the alleged behavior of the respondent.

C. Service. The service of the notice of notice of complaint and complaint shall be made in the same manner as a notice of presentment and presentment. An answer by the respondent waives all objections as to service.

D. Proof of Service. The person effecting service of the notice of complaint and complaint shall make proof of service by affidavit or sworn statement to the court. If service is waived, the written waiver of service shall be filed with the court.

### **Rule 4: Assistance of the Court to formulate a Presentment or Complaint**

If facts are brought before the chancellor by someone who has not formulated a presentment or complaint, the chancellor or any judge of the court may assist the presenter or the complainant to prepare the notice of presentment and the presentment or the notice of complaint and complaint in proper form. In such case the chancellor or any judge of the court who assisted the presenter or complainant to formulate the presentment or complaint is not disqualified to serve on the panel with respect to such presentment or complaint.

### **Rule 5: Removal from the Court to Informal Resolution or Arbitration**

A. In all disciplinary proceedings after a presentment has been filed, the respondent may with the consent of the bishop remove the presentment from the court for an informal resolution of the presentment at any time in the proceedings rather than have the case continue before the court for findings of fact and the bishop's judgment. If such removal does not result in a satisfactory resolution to either the bishop or the respondent, it may be returned to the court for further proceedings.

B. In all non-disciplinary cases after a complaint has been filed, the complainant and the

respondent may remove the case from the court to voluntary binding arbitration at any time in the proceedings rather than continue before the court for findings of fact and the bishop's judgment.

### **Rule 6: Default by the Respondent**

Defaults shall not require the impanelment of a court panel. If after service on a respondent, the respondent has failed to submit an answer to the court within the time allotted to plead, the chancellor shall forward to the bishop a copy of the presentment or complaint, proof of service upon the respondent, and a statement as to the default of the respondent, and the bishop may thereafter take any action or pass any sentence which he deems appropriate under the circumstances.

### **Rule 7: Answer, Reply, and the Manner of Pleadings**

A. Answer. The answer shall be signed by the respondent and shall state in short and plain terms the respondent's response to each allegation of the presentment or complaint, including any defense thereto, and shall admit or deny the factual allegations of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of any factual allegation, the respondent shall so state and this has the effect of a denial. Denials may also be made in part or with qualification. The answer in cases of a non-disciplinary matter may assert any counterclaim which the respondent has as a complaint against the complainant. The answer and any counterclaim shall be filed with the court within 20 days of the service of the presentment or complaint.

B. Assistance to the Respondent. The chancellor or any judge of the court may assist the respondent to formulate an answer to the presentment or complaint, and such chancellor or any judge of the court is not disqualified to serve on the panel with respect to such presentment or complaint. If the respondent needs further assistance in formulating an answer, reasonable extensions of time may be granted by the chancellor to allow the respondent to secure the assistance of an attorney or non-attorney advocate to assist the respondent in pleading and in other aspects of the case.

C. Parties May Refuse to Admit. The respondent and complainant shall not be required to make any statement or admission against him or herself in any pleading, but may contest any fact alleged in the presentment, complaint or counterclaim.

C. Reply and Counterclaim. If a counterclaim is asserted by the respondent in a non-disciplinary matter, the complainant shall reply to the counterclaim within 20 days of the service of the answer and counterclaim, and shall serve the answer and counterclaim on the complainant by mail at the designated address of the complainant.

D. Style and Construction. Pleadings are to be plain and concise. No technical forms of pleadings or motions are required. All pleadings shall be so construed as to do substantial justice.

E. Form of Pleadings. Every pleading shall identify the name of the court, name of the person, and file number, if any. All allegations in the presentment or complaint and the answer thereto shall be made in separately numbered paragraphs. Exhibits may be attached and identified by reference within the pleading. The court may, in the interest of justice, permit the filing of amended and supplemental pleadings.

F. Signature. All pleadings and motions shall be signed by presenter, the complainant and the respondent, and if a party has an attorney or a non-attorney advocate, such attorney or non-attorney advocate shall also sign. Each pleading or motion, except a presentment, shall state each signer's address and telephone number.

G. Pleadings and Service. Except as otherwise expressly provided in these rules, every pleading, paper, motion, and notice subsequent to the notice of presentment and presentment and the notice of complaint and complaint required to be served on a party shall be served upon the party. If the party is represented service shall be on the attorney for the party or the non-attorney advocate of the party who enters an appearance for the party, unless otherwise ordered by the court. Service shall be made by hand delivering a copy to the party or the party's attorney or by mailing it to the person's last known address. Service by mail is complete upon mailing. The filing of papers with the court shall be made by filing them with the chancellor or assistant chancellor together with a statement of service or mailing, unless otherwise directed by the court. The parties may by agreement approved by the court also provide for service by other means such as electronic mail and/or facsimile transmission.

#### **Rule 8: Court Panel and Scheduling Order**

A. Court Panel Constituted. Upon the filing of a presentment or complaint and the receipt of an answer from the respondent, the chancellor shall select a chief judge, which may be the chancellor, and other members of the court panel from the elected and appointed members of the ecclesiastical court. Such court panel shall sit with respect to the inquiry as to discipline or a hearing with respect to any other controversy.

B. Scheduling Order. Upon impanelment of the court the chancellor shall make a scheduling order setting forth dates for any further pleadings or amended pleadings, the making and compliance with discovery demands, the making of motions, and the inquiry or hearing of the case. The failure of the parties to adhere to the scheduling order may be the subject of motions, or the court may *sua sponte* make any order which may be appropriate, including a default order against one of the parties.

C. Conduct of the Inquiry or Hearing in a Contested Case. The inquiry or hearing shall be held at any convenient location for the court as directed by the chief judge of the court panel, or may be held by telephonic or video conference provided that all of the members of the court panel and the parties and their advocates may hear and participate in the proceedings. The prosecution of a presentment may be conducted by an attorney or non attorney advocate, or the court may conduct its proceedings without such a prosecutor with the judges of the court making the relevant

inquiry or conducting the hearing through questioning of the witnesses by the judges of the court.

**Rule 9: Admission To the Court**

Upon application by an attorney at law or any non-attorney advocate on behalf of any party to the proceeding, the chancellor may admit such attorney or non-attorney advocate to represent a party in the court proceedings.

**Rule 10: Voluntary Disclosures, Discovery**

A. Voluntary Disclosures. The parties shall provide to each other and the court not later than 15 days prior to inquiry or hearing a list of all the witnesses expected to testify at inquiry or hearing, including the name and address of each witness and copies of all documents and exhibits intended for use at the inquiry or hearing.

B. Discovery. The parties may conduct discovery through written or oral depositions, written interrogatories, and requests for documents. The court may limit the number, length, and scope of depositions, interrogatories and requests.

**Rule 11: Defenses and Motions.**

Defenses may be asserted either in the answer or by motion for: (1) lack of jurisdiction; (2) failure to state a cause of action for which relief can be granted; (3) failure to state the factual basis of an offense; (4) laches or the expiration of an applicable period of limitations, and (5) any other defense to the presentment or complaint. The respondent may also move for a more definite statement before filing an answer if the presentment or complaint is so vague or ambiguous that respondent cannot reasonably be required to frame a responsive pleading.

**Rule 12: Summary Judgment and other Motions**

A. How Made. If the respondent defaults in the proceedings after an answer is interposed, or if the facts are not disputed, a party may move with or without supporting affidavits for summary judgment, or for such other motion as may be appropriate. A respondent may also move, with or without supporting affidavits, for summary judgment on part or all of the allegations of the presentment or complaint. Other motions may be made as are appropriate. All motions shall be served upon the opposing party and filed with the court with proof of service not less than 15 days before any such hearing on the motion. Dates for the hearing on a motion shall be designated by the presiding judge of the panel, or pursuant to the scheduling order.

B. Opposing Affidavits. The party opposing any other motion may submit affidavits or memoranda in support of his or her answer to the motion which shall be filed and served not less than 7 days before the hearing of the motion, with reply papers to be filed and served not less than 2 days before the hearing of the motion.

C. Proceedings Thereon. The court shall convene to consider any motion and may, in the court's discretion, receive oral testimony at any such hearing. If the presentment, together with affidavits, if any, and any oral testimony or other admissible evidence presented to the court show that there is no genuine issue as to any fact material to a determination that the respondent committed an offense, the court shall render summary judgment as sought by the motion for summary judgment.

D. Form of Affidavits. Supporting and opposing affidavits, and any oral testimony, shall be made on the basis of personal knowledge, shall state such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated. Copies of papers referred to in an affidavit shall be attached to and served with the affidavit.

E. Defense Required. When a motion is made and supported as provided in this rule, the opposing party may not rest upon mere allegations or denials of the adverse party's pleading but must, by affidavits or otherwise provided in this rule, set forth specific facts to show that there is a genuine issue for inquiry or hearing.

### **Rule 13: Taking of Testimony**

In all court proceedings where the testimony of witnesses is taken, it shall be taken orally either in open court or if the matter is conducted by telephone conference or video conference, by such telephone conference or video conference, and a stenographic or other recording of the proceeding shall be made. Testimony shall be given under oath or affirmation.

### **Rule 14: Inquiry on a Presentment and Hearing of a Complaint**

A. Inquiry on a Presentment. Each respondent is entitled to a speedy and just inquiry of the allegations set forth in the presentment. Each respondent is entitled to confront the evidence against him or her. The facts alleged in the presentment must be proved by clear and convincing evidence and the diocese bears the burden of going forward and of proof as to each and every allegation in the inquiry of a presentment for discipline.

B. Hearing of a Complaint. The complainant bears the burden of going forward and of proof as to each and every allegation in the hearing on a complaint by a preponderance of evidence for all other controversies on complaints.

C. Rules of Evidence. Inquiries and hearings shall be governed by the federal rules of evidence, with the chief judge of each inquiry or hearing empowered to interpret or modify such rules of evidence to do substantial justice and to facilitate a fair resolution of the issues.

### **Rule 15: Findings of Fact, Judgment and Sentence**

A. Findings Upon a Presentment. The court shall render its findings of fact in writing no later

than 30 days after the date of the conclusion of a motion for summary judgment or upon the conclusion of an inquiry in an matter of a presentment for discipline. The court must be unanimous in its findings on a matter of its findings on a presentment.

B. Findings Upon a Complaint. The court shall render its findings of fact in writing no later than 60 days on any hearing on a complaint. The court must reach a two-thirds majority decision in its findings on a matter of any non-discipline complaint.

C. Findings to the Bishop for Sentence or Judgment. The findings of fact shall be forwarded to the bishop to pass sentence with respect to the judgment on matters of church discipline, and for judgment upon matters involving a complaint for non-disciplinary matters.

### **Rule 16: Disclosure of Findings of Fact and Sentence or Judgment**

A. Presentment or Complaint and Sentence or Judgment of the Bishop to be Disclosed. The findings of fact on a presentment or complaint, and the sentence with respect to the judgment on matters of church discipline, and judgment upon matters involving a complaint for non-disciplinary matters shall be disclosed to any person, organization, or other church seeking information on the respondent to employ the respondent in any capacity, or to receive or involve the respondent into any ministry or affiliation with such person, organization or church.

B. Duty to Disclose. If the bishop or the chancellor has reason to believe that a respondent who has been disciplined is seeking employment or already is employed or is being considered for or already has been received or involved into any ministry or affiliation with another person, organization or church, the bishop or the chancellor shall disclose to such person, organization or church the findings of fact on the presentment or complaint, and the sentence with respect to the judgment on matters of church discipline, and the judgment upon matters involving a complaint for non-disciplinary matters.

Ecclesiastical Court Rules of Procedure of  
Anglican Diocese of the Living Word  
promulgated by the Chancellor  
this 5<sup>th</sup> day of June in the  
year of our Lord 2019

Raymond J. Dague, Chancellor  
Anglican Diocese of the Living Word