

**IN THE PROVINCIAL TRIBUNAL
OF THE ANGLICAN CHURCH OF NORTH AMERICA**

Bishop Stewart Ruch, III and)
Chancellor Charles L. Philbrick,)
)
Petitioners,)
)
v.)
)
Archbishop Foley Beach, Bishop Todd)
Hunter, Bishop Kenneth Ross, and)
Bishop Charles Raymond Gillin,)
)
Respondents.)

**PETITIONERS’ RESPONSE TO MOTIONS TO DISMISS,
TO VACATE AND TO DISQUALIFY**

NOW COME Petitioners, The Rt. Rev. Stewart Ruch, III, Bishop of the Diocese of the Upper Midwest, and Charles L. Philbrick, Chancellor of the Diocese of the Upper Midwest, and hereby respond to the Motions to Dismiss, to Vacate and to Stay (hereinafter the “Motions”) filed by one of the three Respondents, specifically The Very Most Reverend Foley Beach. In addition, Petitioners respond to the letter brief submitted by the Archbishop to the Tribunal on March 29, 2023 raising objections to the Tribunal’s March 26, 2023 Scheduling Order.

INTRODUCTION

The Archbishop’s Motions are “much ado about nothing.” His Motions are “much ado” because he managed to compile argument concerning three straightforward jurisdictional and procedural issues into just over twenty thousand, single spaced words. As discussed below, all 20,636 words are highly redundant. Often, the arguments are not supported by persuasive authorities, so that the Archbishop’s contentions amount to *ipse dixit* (he say it himself) propositions that contradict the Constitution and Canons. Finally, the Archbishop adds insult to

injury by accusing the Tribunal of failing to do its homework and being responsible for a supposed parade of horrors, unless the Tribunal backs down. But the truth is the Constitution and Canons are designed so that the Provincial Tribunal serves as a constitution check on abuses of power by either the Archbishop with regard to executory powers or the Provincial Council with regard to its legislative powers.

Contrary to the Archbishop's many protests, the Tribunal has origin jurisdiction to "hear and decide matters in dispute arising from the Constitution and Canons." Petitions' Amended Petition is precisely that: a matter in dispute that arises from the Archbishop's violation of Canon IV.4.1.

His Motions are "about nothing," because the Canon plainly requires the accusers to "swear to" their accusations within their presentment. Canon IV.4.1. The Respondents/accusing Bishops Ross, Gillin and Hunter plainly did not "swear to" their accusations against Bishop Ruch. An unsworn presentment is not a presentment under Canon IV.4.1. It is nothing. So the "constitutional crisis" forecasted by Archbishop if he does not get his own way is of his own making. (Motions at 2)

As for the Archbishop's Motion to Dismiss, this Tribunal is vested with a Constitutional and Canonical mandate to determine all disputes concerning the Constitutions and Canons as a court of first (original) and final jurisdiction. Art. XI.1 and Canon IV.5.4.1(2)(a) Thus, the Archbishop's motion to dismiss should be denied.

As to the Archbishop's Motion to Vacate, this Tribunal possesses unfettered authority to "determine" and "decide" disputes concerning the Constitution and Canon. *Id.* The Tribunal is the constitutional check on any abuse of power by the Provincial Council (the legislative authority) or

the Office of the Archbishop (the executive authority). Otherwise, the Tribunal is a paper tiger. Therefore, the Archbishop's motion to Vacate should be denied.

As to the Archbishop's Motion to Disqualify, the Archbishop has no leg to stand on. Every member of the Provincial Tribunal has substantially greater relational contacts with the Archbishop than do Bishop Ruch or Chancellor Philbrick, yet Petitions see no reason for recusal.

Moreover, the Archbishop barks up the wrong tree. He proposes that the Tribunal follow the Federal Court Rules for Judicial Conduct, over and above the Canons. But this is not federal court. This is the Body of Christ, the family of God. In recognition of the relational and professional intimacy of this family, which would inevitably lead to innumerable "conflicts" under secular standards, the Canons call for the appointment of individuals to the Tribunal by the Provincial Council. Undoubtedly, the Provincial Council has appointed individuals who are known and respected for their integrity and sound judicial temperament. Likewise, the Canons leave the matter of recusal to the subjective discretion of the person, be it a bishop or a member of the Tribunal. Therefore, the Motion to Disqualify should be denied.

ANALYSIS

I. Petitions' Response to The Motion To Dismiss: This Tribunal Has Original Subject Matter Jurisdiction To Hear Disputes That Arise Out of The Constitution And Canons.

The Provincial Tribunal need not consider the Canons to conclude that it has original subject matter jurisdiction over the claims set forth in Bishop Ruch's and Chancellor Philbrick's Amended Petition for Declarations against the Archbishop and the presenting Bishops Ross, Gillin and Hunter. Article XI.1 of the Constitution provides:

The jurisdiction of the Provincial Tribunal shall be to determine matters in dispute arising from the Constitution and Canons of the Province and such other matters as may be authorized by canon.

In this case, the matter in dispute is the legitimacy of a purported presentment that is signed but not sworn to by Bishops, Ross, Gillin and Hunter against Bishop Ruch. The presenting bishops admit that “there are some problems in the Presentment,” but “believe the process of adjudication should continue.” (Addendum at 1) Notwithstanding the obvious deficiencies of the presentment, the Archbishop has seated a Board of Inquiry and intends to proceed with another investigation (See Chancellor Philbrick’s March 17, 2023 Letter to Bishop Kevin Allen, attached as Exhibit 1)

The Archbishop argues at length that the phrase “matter in dispute” has a technical meaning. (Motions at 14) According to the Archbishop, the phrase limits the Tribunal’s subject matter jurisdiction to the review of existing disputes that reach the Tribunal via its appellate jurisdiction. *Id.* at 14-15. Not so.

To start, “matter in dispute” is not a term of art. The Archbishop quotes a definition of the phrase purportedly from Black’s Law Dictionary. (Motions at 14) But he does not provide a citation to his quoted definition. *Id.* Actually, the current edition of Black’s Law Dictionary does not recognize the phrase “matter in dispute.” See Exhibit 3, which is a screen shot of the 11th Edition of Black’s Law Dictionary as now found on Westlaw. The phrase “matter in dispute” does not appear and the phrase “matter in controversy” means “amount in controversy.” Black’s Law Dictionary, 11th Ed. It is unclear what the Archbishop has quoted, but it is clear that “matter in dispute” is not a recognized term of the legal arts.

The Archbishop’s interpretation is also incorrect because: (1) it is contradicted by the Canon IV.5.4.1 and 2; (2) it violates the rules of constitutional, statutory, and contractual construction; and (3) it confers on the Archbishop monarchical authority to act without any constitutional check on the exercise of his authority.

According to the Archbishop, the use of the phrase “matter in dispute” means “[t]he Tribunal has jurisdiction only after a conviction in a trial court of a member of the clergy and only to act as a court of review.” (Motions at 11) That is patently false. The Provincial Tribunal enjoys both appellate and original jurisdiction. Canon IV.5.4.1(1) and (2). Furthermore, the Archbishop’s interpretation violates fundamental rules of statutory construction because it renders the entirety of Canon IV.5.4.2 surplusage. *Halliburton, Inc. v. Admin. Review Bd.*, 771 F.3d 254, 264 (5th Cir. 2014) (quoting *In re McBryde*, 120 F.3d 519, 525 (5th Cir.1997) (“[W]e must construe statutes so as to give meaning to all terms,’ and ‘we cannot accept’ a construction that renders statutory text ‘mere surplusage.’”). If the Archbishop were correct, then the Tribunal would serve solely as a court of review. It would have no “original” jurisdiction.¹ But that is not the case. Canon IV.5.4.1(2).

The Constitution creates two separate bases for subject matter jurisdiction. *First*, the Constitution itself, as quoted above, imposes on the Tribunal exclusive authority to “determine” matters in dispute that arise from of the Constitution and Canons.” Art. XI.1. *Second*, the Constitution extends the initial grant of jurisdiction to “such other matters as may be authorized by Canon.” *Id.* Specifically, Canon IV.5.4.1, expands and delineates the types of jurisdiction of the Provincial Tribunal, which are “as a court of review” pursuant to Canon IV.5.4.1(1) and as a court of “original jurisdiction” pursuant to Canon IV.5.4.1(2). One of the four areas for which the Tribunal shall serve “as a court of original jurisdiction” is “to hear and decide matters in dispute arising from the Constitution and Canons of the Province.” Canon IV.5.4.1(2)(a).

¹ “The original jurisdiction of a court (as distinguished from appellate jurisdiction) is its power to hear and decide a case from the beginning.”
<https://www.encyclopedia.com/politics/encyclopedias-almanacs-transcripts-and-maps/original-jurisdiction>.

Petitioners' original Request and Amended Petition is precisely that: Petitioners assert claims against the Archbishop and the presenting bishops that arise from of the Constitution and Canons. Petitioners' first claim is that the Archbishop has exceeded his canonical authority by submitting a purported presentment, which is not "sworn to," to a Board of inquiry. Whether an archbishop can seat a board of inquiry to investigate an unsworn presentment is clearly a question that arises from the Constitution and Canons. The Archbishop concedes this point. His 20,000 word submission is silent on this material point.

Petitioners' second claim challenges the validity of the purported presentment, regardless of whether it was sworn to, in light of the process the Archbishop orchestrated prior to soliciting three "stranger" bishops to sign the matters contained in the purported presentment. Again, the Archbishop concedes that Petitioners' second claim also arises from the Constitution and Canons because his Motion to Dismiss is silent on this material point.

The Archbishop attempts to support his interpretation that "matter in dispute" must mean an entire separate case by looking to the use of the phrase in the Judiciary Act of 1789. (Motions at 14) The reference is misleading. To start, the phrase at issue is "matters in dispute," not "matter in dispute." This *matters* because context *matters*. For instance, the Judiciary Act of 1789 dealt primarily with the establishment of inferior courts over which the Supreme Court would have appellate jurisdiction. Thus, Congress repeatedly used the phrase "matter is dispute" in the context the inferior court's original jurisdiction and the Supreme Court's appellate jurisdiction.

The Archbishop concludes his discussion of the Judiciary Act of 1789 by stating: "Under the Judiciary Act of 1789, one party could not invoke the jurisdiction of the Supreme Court simply by asserting that the party had a disagreement with someone else about the matter with legal or even constitutional significance."(Motions at 14) This assertion is not true.

Under the Supreme Court's original jurisdiction, one party could, and often does, invoke the jurisdiction of the Supreme Court by asserting that the party had a disagreement with someone else about a matter. So long as the parties qualify under the Constitution's grant of original jurisdiction under U.S. Const. Art. III, § 2, then such parties can and do immediately invoke the original jurisdiction of the Supreme Court. *See, Kansas v. Nebraska*, 574 U.S. 445 (2015).

That is precisely what Petitioners have done here. They have a disagreement with the Archbishop and the accusing bishops that arises from of the Constitution and Canons of the Province. Again, the Archbishop does not dispute that the claims in the Amended Petition “arise from the Constitution and Canons of the Province.” Hence, Petitions’ claims are “matters is dispute” that fall squarely within the Provincial Tribunal’s original jurisdiction.

The Archbishop argues that “The Tribunal’s *proper* basis to exercise jurisdiction over a Title IV discipline process comes at the conclusion of the process.” (Motions at 11, emphasis in original) This argument falsely assumes that a Title IV disciplinary process has started. A Title IV disciplinary process has not begun because no one has submitted to the Archbishop a presentment that complies with the requirements of Canon IV.4.1. Yet, the Archbishop is attempting to proceed as if a Canon compliant presentment has been submitted to the Archbishop. Exhibit 1.

Title IV disciplinary process against a bishop begins with the submission of a “presentment” that meets the requirements of Canon IV.4.1. Then the Archbishop submits the “presentment under Section 1” to a Board of Inquiry to investigate the written, signed, sworn, and detailed charges made by the accusers. Canon IV.4.1, 3 and 4. Such a presentment must be “signed and sworn to” by either ten members of the accused bishop’s diocese or “signed and sworn to” by three bishops having jurisdiction. Canon IV.4.1.

The Archbishop has turned the Title IV disciplinary process on its head. The Canons call for, in this order, (1) the submission of sworn charges; (2) then an investigation by a Board of Inquiry; and (3) if warranted, a trial. That is not what the Archbishop has orchestrated. Instead, he conducted multiple non-canonical “investigations” before receiving a presentment. After Bishop Ruch and Chancellor Philbrick to take voluntary leaves of absence, the Archbishop seated non-canonical investigative bodies known as the Provincial Review Team, the Provincial Investigation Team. He also hired two separate law firms to conduct multiple investigations, whom the Archbishop controlled and directed. This process has taken over one year. It has had no clear focus except to generate complaints against Bishop Ruch that might be assembled as Canonical offenses. Finally, the Archbishop drafted a presentment and then solicited bishops to sign his presentment concerning matters the signers had little personal knowledge. In truth, the signing Bishops are strangers to the entire affair.

The Archbishop also contends that “[f]or the Tribunal to purport to consider, let alone determine, whether a presentment is flawed...would be to usurp the jurisdiction and authority of that other canonical actor.” (Motions at 12) Not so.

Canon IV.4.3 states: “[t]he Archbishop upon receipt of a presentment under Section 1... shall select a Board of Inquiry...” Receipt by the Archbishop of “a presentment under Section 1” is a condition precedent to the Archbishop’s authority to seat a Board of Inquiry.

Petitioners contend that the Archbishop has not received “a presentment under Section 1.” Why? Because a “presentment under Section 1” must meet the following criteria: “Such charges shall be in writing, signed and sworn to by all the accusers...” Canon IV.4.1. On its face, the purported presentment is not sworn. Therefore, the accusers have not “presented to the Archbishop” a “presentment under Section 1,” so the Archbishop does not have authority under

Canon IV.4.3 to “select a Board of Inquiry.” Because the Archbishop does not have authority to seat a Board of Inquiry, this Tribunal is not usurping any canonical actor’s proper role or authority. Rather, the Tribunal serves the purpose of its original jurisdiction by acting as the constitutional check on an abuse of power by the executive branch of the Province.

Under the Archbishop’s logic, a bishop who is suffering under the non-canonical actions of an archbishop is without redress until the unlawful, uncanonical Canon IV disciplinary proceeding culminates in a conviction and appeal. (Motions at 12) That is an unacceptable result and one that the Constitution and Canons are designed to prevent. In fact, the Tribunal’s exercise of jurisdiction over questions arising from the Constitution and Canons is mandatory. The Canon states that there “shall be” a Provincial Tribunal and it “shall serve... as a court of original jurisdiction... to hear and decide matters in dispute arising from the Constitution and the Canons of the Province.” Canon IV.5.4.1.

The Province’s Constitution and Canons is structured to provide a separation of powers between the legislative provincial authority, the Provincial Council, the executive authority, the Archbishop, and the judicial authority, the Provincial Tribunal. According to the Archbishop, this Tribunal has no authority to check his exercise of disciplinary enforcement. But Province is not a monarchy and the Archbishop is not a king.

Who serves as the check on the Archbishop’s abuse of authority when he flouts the plain requirements of a canon, or in this case Canon IV.4.1? The Archbishop contends that the Board of Inquiry serves that function. (Motions at 12) But the Archbishop gets to choose who sits on the Board of Inquiry. We cannot expect a Board of Inquiry selected by a rogue archbishop to do anything other than his bidding. In this case, Chancellor Ward’s conduct proves the point. Archbishop Beach assigned the task of seating a Board of Inquiry that will investigate the

purported presentment against Bishop Ruch to Bishop Kevin Allen. See Exhibit 1. Bishop Allen has informed Petitioners that he has selected the members of such Board of Inquiry and that Chancellor Ward will provide an orientation to that Board of Inquiry. *Id.* How can Petitioners not question the integrity of these actions, all made after this Tribunal issued its February 4, 2023 Order?

In summary, the Tribunal's original subject matter jurisdiction over this dispute is plain, and mandatory. The Archbishop's contention that this Tribunal only serves as an appellate court of last resort is contradicted by the Constitution and the Canons. Moreover, the Archbishop concedes that this matter in dispute arises from the Constitution and Canons. Accordingly, the Motion to Dismiss should be denied.

II. The Motion To Vacate: The Tribunal's Stay Order Fairly and Effectively Preserved The Status Quo.

The Archbishop contends that neither the Constitution, Canons, nor the Tribunal's own Court Rules permit the Tribunal to enter a Stay or otherwise prevent the Archbishop from usurping his Canonical authority. (Motion at 15-19) Hence, the Archbishop has moved to vacate the Tribunal's February 4, 2023 Order directing the him temporarily stay the proceeding of any Board of Inquiry concerning the unsworn presentment against Bishop Ruch.

The Motion to Vacate should be denied because the Constitution and Canons plainly designate the Tribunal as the first and last word on disputes arising from the Constitution and Canons. Moreover, the Constitution commands the Tribunal to "determine" disputes arising from the Constitution and Canons. Likewise, the Canons empower the Tribunal to "hear and decide" disputes arising from the Constitution and Canons. Neither the Constitution nor the Canons place any restrictions on the Tribunal's decision-making authority to "determine" or "hear" or "decide." Rather, in order for the Tribunal to serve its constitutional mandate as a check on the authority of

the Archbishop and the Provincial Council, the Tribunal must enjoy the power to fashion a remedy necessary to enforce its decisions.

The Archbishop claims that “neither the Canons nor the Rules of Court give the tribunal any authority to order a stay.” (Motions at 15) Actually, both the Constitution and the Canons give the Tribunal plenary authority to “determine matters in dispute arising from the Constitution and Canons of the Province.” Const. Art. XI.1, which provides:

There shall be an ecclesiastical court of final decision to be known as the Provincial Tribunal consisting of seven members, both lay and clergy, who shall be appointed by the Provincial Council on such terms and conditions as determined by canon. **The jurisdiction of the Provincial Tribunal shall be to determine matters in dispute arising from the Constitution and Canons** of the Province and such other matters as may be authorized by canon. (Emphasis added)

Const. Art. XI.1. Under this grant of Constitutional authority, if the Tribunal cannot fashion appropriate remedies, it cannot “determine matters in dispute concerning the Constitution and Canons.” The same is true for the Tribunal’s grant of authority under the Canons:

Section 4 - Concerning the Provincial Tribunal

1. There shall be a Provincial Tribunal as provided in the Constitution of the Church. The Provincial Tribunal shall serve: (1) as a court of review in the case of a conviction after trial of a Bishop, Presbyter, or Deacon; and (2) as a court of original jurisdiction: (a) to hear and decide matters in dispute arising from the Constitution and Canons of the Province, (b) to hear and decide disputes between Dioceses, (c) to hear and decide appeals by a bishop pursuant to Canons I.3.3(d) and III.8.7(d) and (d) to issue nonbinding advisory opinions on issues submitted by the College of Bishops, the Provincial Council, or the Provincial Assembly. (Underscore added for emphasis)

Canon IV.5.4.1. The existence of the Tribunal is not optional. A Provincial Tribunal as called for in the Constitution must exist and function. Also, the Tribunal’s duties are not optional: “The Tribunal shall serve...as a court of original jurisdiction...to hear and decide matters in dispute arising from the Constitution and Canons of the Province. *Id.* Not only does the Tribunal have original jurisdiction over matters in dispute arising from the Constitution and Canons, but it must

“hear and decide” such disputes. If such a Tribunal cannot fashion appropriate remedies, it cannot “decide” disputed matters within its original jurisdiction. Therefore, the Constitution and the Canons require that the Tribunal enjoy full judicial discretion of fashion remedies needed to determine disputes.

The Archbishop declares: “the power to issue a stay should not be assumed, implied, or arrogated. It should be established by legislation (such as the canons) or by properly adopted court rules of procedure.” (Motions at 16) Everything about this statement is incorrect.

First, neither the Constitution nor the Canons delineate any “powers” enjoyed by the Tribunal. Under the Archbishop's logic, because no powers are delineated, no powers are conferred. That contradicts the Constitution, which mandates that the Tribunal serve as both the first and the final word on all disputes arising from the Constitution and Canons. Art. XI.1. It also contradicts the Canon IV.5.4.1 which confers original jurisdiction² on the Tribunal to hear and decide all matters in dispute arising from the Constitution and Canons. The Tribunal is not intended to be impotent or strictly advisory. Rather, the Tribunal “shall be an ecclesiastical court of final decision.” As such, the Archbishop (*i.e.* the executive branch of the Province) and the Provincial Council (*i.e.*, the legislative branch of the Province) must submit to the determinations of the ecclesiastical authority on all disputed matters arising from the Constitution and Canons.

Second, the Archbishop does not cite any legal authority for the proposition that a court’s “power to issue a stay should not be assumed, implied, or arrogated. (Motions at 16) No authority is cited because no authority exists.

² As previously discussed, “original jurisdiction” means the Tribunal is both the first and the final ecclesiastical authority to “hear,” “decide” and “determine” disputed matters arising from the Constitution and Canons. Art. XI.1; Canon IV.5.4.1.

Actually, the contrary is true. For example, the Constitution of the United States confers both original and appellate jurisdiction on the Supreme Court. U.S. Const. Art. III.1, but does not confer on the Court any specific powers. Yet, in all cases where original jurisdiction is given by the Constitution, the Supreme Court has authority “to exercise it without further act of Congress to regulate its powers or confer jurisdiction, and that the court may regulate and mould the process it uses in such manner as in its judgment will best promote the purposes of justice.” *Kentucky v. Dennison*, 65 U.S. 66, 98 (1862), *reversed on other grounds*, *Puerto Rico v. Branstad*, 483 U.S. 219, 227 (1987); *Kansas v. Nebraska*, 574 U.S. 445, 454 (2015).

The Constitution and Canons impose on the Tribunal the responsibility to both “determine” and “decide” all disputes arising out of the Constitution and Canons. To properly interpret these Constitution and Canons, they must be read as a whole and individual words should not be given a meaning that renders other terms surplusage. *See Halliburton, Inc.*, 771 F.3d at 264. Hence, the Tribunal’s responsibility to “determine” as opposed to its responsibility to “decide” should not be read as merely synonymous.

In fact, the terms “determine” and “decide” have distinctive meanings. To “decide” means to “come to a resolution in the mind as a result of consideration,” while the meaning of “determine” goes further and means to “cause (something) to occur in a particular way.”³ Because the Tribunal is constitutionally mandated to “determine” questions arising from the Constitution and Canons, it therefore must decide or answer those questions, as well as exercise the authority to cause its decisions to occur in a particular way. Hence, just as the United States Supreme Court to impose a suitable remedy, so too this Tribunal has the responsibility to “decide” whether the Archbishop's

³ See, <https://www.google.com/search?client=firefox-b-1-d&q=decide+meaning>
And see, <https://www.google.com/search?q=determine+meaning&client>

actions are in violation of his canonical authority and the power to determine a suitable remedy to which the Archbishop must submit.

In addition, the Archbishop hoists his own petard by criticizing the Tribunal for taking action in a manner inconsistent with Fed.R.Civ. 65(b). (Motions at 18) Under Rule 65(b), a District Court cannot issue an *ex-parte* temporary restraining order unless the moving party submits documentation, which is sworn to by affidavit and verification under oath. Hence, the requirement that accusations must be verified and sworn is a condition precedent to the government authority's ability to act. The same is true here. The Archbishop cannot act on a presentment unless the accusations are "sworn to." Canon IV.4.1. Hence, the requirement that a pleading be sworn is a material requirement.

The accusing bishops did not swear to their accusations against Bishop Ruch. Worse yet, they disclaimed knowledge of whether the accusations were true. (Addendum at 1) Just as a District Court should deny a motion for a temporary restraining order that is not sworn to, so too the Archbishop should have defenestrated the purported presentment because the accusing bishops did not swear to their accusations.

The Archbishop complains that the Tribunal has acted *ex-parte*. However, he has not articulated any harm even if the Tribunal's Order of February 4, 2023 was issued *ex-parte*. Moreover, the Order clearly stated that the Tribunal had not prejudged the matter and was simply maintaining the status quo until it could consider the matter on the merits.

Finally, the Archbishop claims the Tribunal's Order of February 4, 2023, is not a stay, but a temporary restraining order. As such, he complains that "the Tribunal engaged in absolutely none

of the analysis required for issuance of a TRO.” (Motions at 17) He then articulates the elements of a TRO, but the facts and law of this dispute clearly meet each element needed to issue a TRO:

- (1) “whether the stay applicant has made a strong showing that he is likely to succeed on the merits.” (Motions at 17) Here, a viable presentment must be “sworn to.” Canon IV.4.1. The purported presentment is not sworn to. Petitioners are more than likely to succeed on the merits.
- (2) “whether the applicant will be irreparably injured absent a stay.” (Motion at 17) Here, Bishop Ruch will suffer irreparable harm to his reputation and substantial prejudice if he must endure a trial for which there was no canonical basis to submit the presentment to a Board of Inquiry in the first instance.
- (3) “whether issuance of the stay will substantially injure the other parties interested in the proceeding.” (Motion at 17) Here, what is the rush? The Archbishop took over a year to orchestrate his investigations of Bishop Ruch and the Diocese of the Upper Midwest. He can show no harm or prejudice due to the stay while the Tribunal decides whether he can initiate a Canon IV disciplinary process; and
- (4) “where the public interest lies.” (Motion at 17) Here, no one has an interest in a miscarriage of justice. It is in all person’s interest, especially the laity of the Church as a whole and the Diocese of the Upper Midwest to ensure that the Archbishop’s authority to proceed with an unsworn presentment is consistent with the Canons. If not, it is in everyone’s interest, including the Archbishop’s that he be constrained.

Whether the Tribunal’s Order of February 4, 2023 is an Order to Stay or a TRO, it is a reasonable and responsible exercise of the Tribunal’s original jurisdiction to “determine” disputes arising from the Constitution and Canons.

III. The Motion To Disqualify: Respondents Protest Too Much.

In addition to moving to dismiss and to vacate, the Archbishop also moves to disqualify four members of the Tribunal: specially, Bishop Dobbs, Bishop Lowenfield, Raymond Dague; and Canon Phil Ashey. (Motions at 23-29)

The Archbishop leads with the pronouncement that “[n]either the ACNA Constitution and Canons nor the Rules of Court of the Provincial Tribunal provide specific standards for recusal.”

(Motion at 23) The Archbishop has jumped the gun in his race to impose 28 U.S.C. § 455 standards for disqualification upon the Provincial Tribunal.

The correct starting point are the Canons, and in particular Canon IV.3.1.4, which provides:

Whenever the bishop believes he cannot fairly assess the credibility of the accuser(s), the accusation(s), or the accused, or fairly impose sentence, he shall recuse himself and delegate the investigation, presentment, and/or sentencing to another bishop having jurisdiction.

Canon IV.3.1.4. Recusal under Canon IV.3 is a matter of subjective self-assessment and personal integrity. It is not a matter of objective criteria or external appearances. Nor could it be. This is the Church and the members of her body. We count on each other to act with integrity. When anyone fails to act with integrity, she or he jeopardizes the well-being of the entire body.

Here, it is the integrity of the Archbishop that is at issue, not the integrity of the members of the Tribunal. The Archbishop and the other signers to his Motions have spent the over a year and untold amount of Provincial dollars attempting to muster viable accusations of canonical violations against Bishop Ruch. What does the Archbishop have to show for it? Nothing – just an unsworn, purported presentment to which no bishop was willing to sign and swear. Having failed to meet the canonical requirement to initiate a Canon IV disciplinary process, the Archbishop should have stopped. Instead, he has made clear his determination to proceed in violation of the Canon. He has become his own rule. He has instructed Bishop Allen to seat a Board of Inquiry, which apparently has been done. Bishop Allen has informed Petitioners that Chancellor Ward has either or intends to conduct an “orientation” to the Board of Inquiry. Exhibit 1.

Further, Petitioners have repeatedly asked Chancellor Ward whether he and the Archbishop are honoring the Tribunal’s Order of February 4, 2024. See Chancellor Philbrick’s March 25, 2023 Letter to Chancellor Ward, attached as Exhibit 2. Chancellor Ward has not responded. Thus, Petitioners ask the Tribunal to order the Archbishop and the Chancellor to make a full and detailed

report, which is sworn to and under oath, concerning their efforts to seat, instruct and oversee a Board of Inquiry to address their accusations against Bishop Ruch.

In conclusion as to the Motion to Disqualify, “one would think,” to quote the Archbishop, that as Archbishop of the Province, he would studiously follow the canonical requirements concerning Church discipline. But this is not the case. Instead, the Archbishop and his advisors are running roughshod over the Constitution and Canons by running an illegitimate investigation, prosecuting an invalid presentment, and then questioning the jurisdiction of this Tribunal and disparaging the integrity of its members.

IV. Bishops Hunter, Ross and Gillin Are In Default.

The motions to which Petitioners now respond was filed by the Archbishop and only the Archbishop. Other members of the Provincial executive team have signed on. But they are interlopers, who are not named in the petition, and they have not attempted to intervene as interested parties. They have no legitimate voice in this matter.

By contrast, the bishops who have signed but not sworn to the accusations in the purported presentment, and who have been named as parties in this dispute, have not appeared and have not attempted to oppose the relief sought by Petitioners Bishop Ruch and Chancellor Philbrick. As indicated in this Tribunal’s Order, by failing to respond, they are subject to default judgment. Their silence and their apparent indifference to these proceedings speaks louder than any default judgment. They have made no defense because they have no defence and apparently no objection to the relief sought.

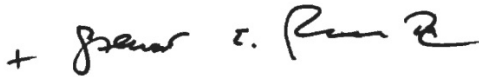
Accordingly, Petitioners will file a separate motion for the entry of default judgment against the accusing bishops.

CONCLUSION

Petitions respectfully pray for an order from this Tribunal: (1) denying Respondent's Motions To Dismiss, To Vacate, and To Disqualify; (2) ordering the Archbishop and Chancellor Ward to submit to Petitioners and this Tribunal sworn affidavits that delineate with specificity all actions they and Bishop Allen have taken to seat, instruct, or otherwise supervise a Board of Inquiry as to the purported presentment against Bishop Ruch; and (3) any such further relief this Tribunal deems just and proper.

Dated: April 4, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stewart Ruch, III". The signature is written in a cursive style with a plus sign to the left.

The Rt. Rev. Stewart Ruch, III
Bishop, Diocese of the Upper Midwest

Charles L. Philbrick

Charles L. Philbrick
Chancellor, Diocese of the Upper Midwest

PROOF OF SERVICE

I swear under penalty of perjury that I served a true and correct copy of the forgoing Petitioners' Response Respondent's Motions To Dismiss, To Vacate and To Disqualify, with attachments by electronic mail on this April 4, 2023 upon:

The Most Rev. Foley Beach
367 Athens Highway
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The Rt. Rev. Todd Hunter
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The Rt. Rev. Raymond Gillin
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The Rt. Rev. Julian Dobbs
bishop.dobbs@adlw.org

By: /s/ Charles L. Philbrick



Anglican Diocese of the Upper Midwest

935 W. Union Avenue, Wheaton, Illinois 60187 | 630.480.7122

March 17, 2023

The Right Reverend Kevin Bond Allen
7625 Central Valley Road NE
Bremerton, WA 98311
bishopkevin@cascadiadiocese.org

Re: Appointment and Seating of A Board of Inquiry

Dear Bishop Allen:

Greetings in the name of our Lord and Savior, Jesus. I am the Chancellor of the Diocese of the Upper Midwest. I write with regard to two issues. *First*, to provide you with a copy of the February 4, 2023 Order of the Provincial Tribunal staying any proceedings of a Board of Inquiry with regard to the purported presentment against Bishop Stewart Ruch. *Second*, Bishop Ruch and I object to any involvement of Chancellor Scott Ward with respect to the Board of Inquiry that you have apparently recruited and/or seated.

The Provincial Tribunal's Order of February 4, 2023

It is my understanding that Archbishop Beach appointed you to oversee the selection of a Board of Inquiry concerning a purported presentment against Bishop Stewart Ruch. I further understand from Bishop Martyn Minns that you have over the past few weeks taken steps to recruit and seat a Board of Inquiry to address the purported presentment against Bishop Ruch. Finally, it is my understanding you are unaware of the February 4, 2023 Order from the ACNA Provincial Tribunal staying any proceedings of "any such Board of Inquiry." A copy of the Order is attached for your review. I note that the Provincial Tribunal not only stayed any proceedings of a Board of Inquiry, but also instructed the Archbishop "to communicate this order at once to any such Board of Inquiry he may have selected in this matter." Clearly, the Archbishop should have provided you with this order in early February.

Please confirm in detail whether and to what extent any proceedings have taken place concerning a Board of Inquiry seated to address a purported presentment against Bishop Ruch. I further ask that you honor the Order of the Provincial Tribunal and halt any further actions in regard to such Board of Inquiry. Please confirm in writing your willingness to do so.

Objection to Chancellor Ward Having Any Involvement With A Board of Inquiry

Bishop Minns informs me that Chancellor Ward is about to or has already had an "orientation" meeting with a Board of Inquiry that you have helped recruit and seat. Perhaps you are not aware that the Board of Inquiry that you were asked to seat would address not only a purported presentment against Bishop Ruch, but also Bishop Ruch's Canon IV.4.2 Request for Investigation. A copy of that Request and its accompanying exhibits is attached.



Anglican Diocese *of the* Upper Midwest

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As you will see, Chancellor Ward is a respondent to Bishop Ruch's Request for Investigation. Chancellor Ward is specifically accused of disseminating false information about Bishop Ruch and improperly manipulating the Husch Blackwell and Telios investigations, as well as the information provided to the Provincial Investigative Team, for the purpose of developing false accusations against Bishop Ruch. See pages 1, 2, 5, 7, 8 and 10.

Given that Chancellor Ward's own conduct is the subject of Bishop Ruch's Request for Investigation, it is highly improper for Chancellor Ward (or any person identified in Bishop Ruch's Request) to have any involvement in the selection, seating or "orientation" of a Board of Inquiry who will be evaluating the propriety of Chancellor Ward's actions.

Please provide me with a detailed account of any and all involvement Chancellor Ward has had in your efforts concerning the Board of Inquiry that would review Bishop Ruch's Request for Investigation. Along these lines, please provide me with all written communications evidencing any involvement by Chancellor Ward with regard to the Board of Inquiry. This includes emails, text messages, letters or other written communications.

I am hopeful that we can work cooperatively as to my objections and requests for documentation and information in this letter. Our goal is the same, to bring about the justice and righteousness that the family of God owes to one another.

Respectfully submitted,

Charles L. Philbrick

Charles L. Philbrick
Chancellor of the Diocese of the Upper Midwest

Attachments: February 4, 2023 Order of the Provincial Tribunal
Bishop Ruch's January 31, 2023 Request For Investigation with Exhibits

cc: The Rt. Rev. Stewart Ruch III (w/o exhibits)
Scott Ward, Esq. (w/o exhibits)
The Rt. Rev. Martyn Minns (w/o exhibits)
The Most Rev. Foley Beach (w/o exhibits)



Anglican Diocese of the Upper Midwest

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March 25, 2023

Scott Ward, Esq.
Gammon & Grange, P.C.
1945 Old Gallows Road, Suite 650
Tysons, VA 22182
SJW@GG-Law.com

Re: *Bishop Stewart Ruch, III, et al. v. Archbishop Foley Beach, et al.*

Dear Scott:

Greetings in the name of our Lord and Savior, Jesus. As you know, I am the Chancellor of the Diocese of the Upper Midwest. I have two questions:

(1) Would you agree to a briefing schedule on the Archbishop's motions to dismiss and to disqualify. I suggest that petitioners have 45 days, until May 10, 2023, to respond to your motions and objections. Ordinarily, I would suggest 30 days, but the volume of what you have submitted requires additional time. Also, Bishop Ruch will be in Africa until April 25, 2023, so an additional two weeks for us to work together on our response is appropriate and not excessive. I do not believe that a reply by respondents is warranted given that you have submitted a thirty-eight page, single space document, which is over 20,000 words. There is not a court in this nation that would accept such a lengthy submission. The longest permissible brief in the entire Federal Court system is 13,500 words. Once petitioners file their response, I propose that we ask the Tribunal to set a hearing date. If this schedule is acceptable to you, please advise and I will prepare a proposed order that we can submit jointly.

(2) As you know from my letter of March 17, 2023 to Bishop Allen, it is unclear to me whether the respondents are complying with the Tribunal's February 4, 2023 Order. Moreover, the motions that you submitted to the Tribunal yesterday contest the Tribunal's jurisdiction, but are silent as to whether the respondents are conducting themselves in a manner consistent with the Tribunal's Order. Are you, Bishop Allen, and all other persons concerned complying with that Order? I ask in part because Bishop Allen has given us concern that you are about to or have already had an "orientation" meeting with a Board of Inquiry concerning Bishop Ruch. I am hopeful that you can quickly put our concerns to rest.

As always,

Charles L. Philbrick

Charles L. Philbrick
Chancellor of the Diocese of the Upper Midwest

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- 681. **MATERIA**
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...or skill. **Matter**; substance...
- 682. **MATERIAL**
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...or involving **matter**; physical <material...
- 683. **MATTER**
Black's Law Dictionary (11th ed. 2019)
...Maxims Bibliography **matter** n. (13c...
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- 684. **MATTER IN CONTROVERSY**
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- 688. **MATURE-MINOR DOCTRINE**
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...on those **matters**. • The mature...
- 689. **MAYOR OF THE STAPLE**
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...to hear **disputes** arising between...
- 690. **MEANS-PLUS-FUNCTION CLAUSE**
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...as a **matter** of law...
- 691. **MEDIATE**
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...settle (a **dispute**) by intervention...
- 692. **MEDIATION**
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...of nonbinding **dispute** resolution involving...
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- 693. **MEDIATION AND CONCILIATION SERVICE**
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...settling their **disputes** through mediation...
- 694. **MEDIATION-ARBITRATION**
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...An alternative- **dispute**-resolution process...
- 695. **MEDIATORS OF QUESTIONS**
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...to settle **disputes** between merchants...
- 696. **MEDLETUM**
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...a business **matter**...
- 697. **MEETING**
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...act on **matters** in which...
...an urgent **matter**. — Abbr. EGM...
- 698. **MEETING OF THE MINDS**
Black's Law Dictionary (11th ed. 2019)
...and subject **matter**. • Although a...
- 699. **MELIUS INQUIRENDUM**
Black's Law Dictionary (11th ed. 2019)
...investigate a **matter** further, as...
- 700. **MEMORANDUM**
Black's Law Dictionary (11th ed. 2019)
...contract's subject **matter**, (3) contain...

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