



Anglican Church in North America

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April 17, 2023

Re: In re: the Rt. Rev. Stewart Ruch, III

Dear Bishop Dobbs and other members of the Provincial Tribunal:

Greetings in the name of our Lord and Savior, Jesus Christ.

I have received your email sent Monday, April 10, 2023 with the attached one-page PDF document titled “**ACNA Provincial Tribunal Conference for Mediated Settlement between Parties *In Re Bishop Stewart Ruch.***” (hereinafter the “*Tribunal Settlement Proposal*”). I write in response as you requested. This response is subject to our Special Appearance previously filed.

The respondents do not agree to the *Tribunal Settlement Proposal*. To do so would require that the Archbishop “negotiate away” with Bishop Ruch and Mr. Philbrick the faithful discharge of his duties and those of a Board of Inquiry under the Canons. The *Tribunal Settlement Proposal* asks the Archbishop to secretly stop a Presentment that has arisen from third party investigations originally initiated by Bishop Ruch and Mr. Philbrick, that was recommended by a body of impartial independent members of the Province based upon their review of the evidence, and that was signed by three Bishops based upon their independent review of the evidence. Such matters should be resolved by following the full Title IV process. And the *Tribunal Settlement Proposal* asks the Archbishop and Board of Inquiry to cut short this process in a way that hides in secret rather than addresses publicly and in writing the reasonable questions about the impartiality of a majority of the members of the Tribunal who signed the “Stay Order” (and who now put forward this *Tribunal Settlement Proposal*) and the very serious questions about the Tribunal’s jurisdiction and violations of the Canons and its own Rules.

Beyond that, the *Tribunal Settlement Proposal* itself raises very concerning questions.

First, it is not clear on what basis the Tribunal as currently constituted can even propose a mediated settlement of any kind. The Tribunal has never addressed, let alone ruled on, the serious issues about its impartiality and serious questions about its jurisdiction. It should do so in writing publicly.

Second, in its *Settlement Proposal*, the Tribunal *sua sponte* discusses at length **sections 4 and 5** of Canon IV:4. But neither of those sections is the focal point, or even clearly at issue, in either the +Ruch/Philbrick *Amended Petition for Declarations* or the Archbishop’s and Provincial Officers’

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Motion to Disqualify and *Motion to Dismiss*. For the Tribunal to propose a settlement on grounds different than those raised by the parties before the Tribunal is beyond the scope of its authority under the Canons and its own Rules.

Third, the Tribunal invokes Canons IV:4:4 and IV:4:5 to recommend that Bishop Ruch's Rumor Request under Canon IV:4:2 should go forward instead of the Presentment under Canon IV:4:1. But the Tribunal's recommendation highlights one of the clear conflicts of interest that require recusals here: **two of the bishops who signed the Ruch Rumor Request under Canon IV:4:2 are the same bishops now putting forward this *Tribunal Settlement Proposal* calling for that Ruch Rumor Request to move forward instead of the Presentment.** The *Tribunal Settlement Proposal* demonstrates how directly conflicted both bishops are and why recusals are essential for there to be an impartial Provincial Tribunal. The PT's *Proposal* itself puts that conflict front and center.

Fourth, we also respectfully suggest that the Tribunal should reconsider its analysis of sections 4 and 5 of Canon IV:4 set forth in the *Tribunal Settlement Proposal*. That entire discussion is gratuitous and without any legal effect as the *Proposal* is not a written opinion of the Tribunal, the Tribunal does not have jurisdiction (and is not impartial), and sections 4 and 5 were not raised and were not briefed by +Ruch/Philbrick or by the Respondents. But beyond that, the *Proposal*'s textual analysis is simply wrong on its face, as it selectively ignores the actual text of sections 4 and 5. It would be premature to explain why at this time and in this context, but we are fully prepared to do so should this analysis reappear in any future action by the Tribunal.

Fifth, the only basis for its jurisdiction that the Tribunal has in any way put forward is the single sentence in the "Stay Order" asserting that it has jurisdiction under Canon IV:5:4:1: "(a) to hear and decide matters in dispute arising from the Constitution and Canons of the Province." As we have explained at length in our *Special Appearance / Motion to Dismiss*, this language does not support jurisdiction here. But even assuming solely for the sake of argument that it did, the purported issue upon which the Tribunal asserts jurisdiction is **not** about **sections 4 and 5** of Canon IV:4 but about **section 1**: specifically, the language in section 1 of Canon IV:4 that "Such charges shall be in writing, signed and sworn to by all the accusers..." Not only has the Tribunal never addressed the serious problems with its assertion of jurisdiction, but now the Tribunal has ***expanded*** the scope of its asserted jurisdiction in the course of issuing its *Settlement Proposal*.

Sixth, the substantive content of the *Tribunal Settlement Proposal* bears little resemblance to an actual mediated settlement. The *Tribunal Settlement Proposal* basically gives Bishop Ruch and Mr. Philbrick everything that they have requested: the end of the Presentment before it reaches a Board of Inquiry and the "conver[sion] of the empaneled BOI into one settling rumors *only* per Canon IV.4.2 and IV.4.5..." [emphasis in the original *Tribunal Settlement Proposal*]. And it does so while allowing the Tribunal to hide from its duties under the Canons and under its own Rules to act at all times "consistent with principles of fairness, due process and natural justice," to be impartial, to address issues of actual or apparent bias, partiality, conflicts of interest, and recusals, to substantively address its asserted jurisdiction, and to do so in written opinions that are publicly available to the Province.



Seventh, the *Tribunal Settlement Proposal* invokes Matthew 5:25: “Come to terms quickly with your accuser while you are going with him to court, lest your accuser hand you over to the judge, and the judge to the guard, and you be put in prison.” It is unclear who the Tribunal considers to be “your accuser” and the accused here. But this verse is generally understood to be about Christians going before civil (secular) magistrates. In contrast, the Archbishop and all respondents are following a biblically based canonical church discipline process that follows biblically mandated principles of impartiality and justice. They do not seek to go before civil judicial authorities, nor even the Tribunal itself, but have been dragged before the Tribunal by the Ruch/Philbrick *Petition* and the Tribunal’s improper “Stay Order.” To the extent that Matthew 5:25 may be relevant, it would more appropriately have been directed at Bishop Ruch and Mr. Philbrick at the time they first filed their *Petition for Declarations*.

The foregoing concerns are not an exhaustive list but will suffice for present purposes of saying that the *Tribunal Settlement Proposal* is at best premature. But the *Proposal* appears to be something worse: an attempt to stop in secret ongoing Title IV disciplinary processes before they can reach a Board of Inquiry. That is contrary to the Tribunal’s express duties under the Constitution and Canons, particularly (but not only) the express duty that “The Provincial Tribunal ... shall establish [its] own procedures [that ...] shall be consistent with principles of fairness, due process and natural justice....”

There is a simple, straightforward, and just process for the Tribunal to move forward in this proceeding consistent with the Canons and its own Rules.

- 1) First, the Tribunal must schedule oral argument on, and then directly address and resolve by written opinion as a matter of public record, the serious issues about its impartiality, including:
 - a) full disclosure by all members of the Tribunal and by Bishop Ruch and Mr. Philbrick of all ex parte communications about this matter between any member of the Tribunal and +Ruch, Mr. Philbrick, and any of their legal and other advisors and representatives;
 - b) the voluntary recusal from *all* proceedings – including *all discussions* – about this entire controversy of the four members of the Tribunal whose impartiality could reasonably be questioned: Bishop Dobbs, Bishop Lowenfield, Attorney Dague, and Canon Ashley; and
 - c) to the extent that any one of these four members, or any other member whose impartiality could reasonably be questioned, does not recuse, the resolution of the pending *Motion to Disqualify* by all other non-compromised members of the Tribunal.
- 2) Second, only after these serious issues of impartiality have been resolved properly, the impartial Tribunal must schedule oral argument on, and then directly address and resolve the pending *Motion to Dismiss* for lack of jurisdiction filed by the Archbishop *et al.* Any resolution of that *Motion to Dismiss* that does not vacate the “Stay Order” and dismiss the entire proceeding but rather that asserts jurisdiction must be in a written opinion publicly available.

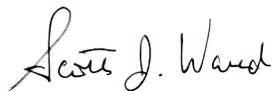


- 3) Third, only if an impartial and unbiased Tribunal determines that there is a proper basis for jurisdiction would it even be appropriate for anyone to consider either:
 - a) whether to address before the Tribunal the procedural issue under Canon IV:4:1 noted in point (3) above, and/or
 - b) whether there is anything about that issue that could be settled consistent with the faithful discharge of their canonical duties by the Archbishop and a Board of Inquiry.

If these issues are addressed in the proper order, point #1, the *Motion to Disqualify*, and point #2, the *Motion to Dismiss*, can be handled in sequence with minimal further factual development beyond the full disclosure of all ex parte communications with members of the Tribunal and other facts going to the impartiality and bias of Tribunal members. The issue raised by item #3, the purported insufficiency of the Presentment, should not be reached at all by this Tribunal. Bishop Ruch can challenge in the Court for the Trial of a Bishop any purported insufficiency in the Presentment if the Board of Inquiry determines that there is probable cause / reasonable grounds for the Presentment to proceed to trial. That Trial Court decision – based on evidence and on the record – can then be reviewed by the Tribunal on appeal as is proper under Canons IV:4 and IV:5.

The Archbishop and other Respondents therefore respectfully decline the *Proposed Tribunal Settlement*. Please schedule oral argument on the *Motion to Disqualify* at the first possible date that all counsel are available, followed by a separate oral argument on the *Motion to Dismiss*, before seven impartial members of the Tribunal.

Respectfully submitted,



Scott J. Ward, Esq.
Chancellor, Anglican Church in North America

