

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

Bishop Stewart Ruch, III and)	
Chancellor Charles L. Philbrick,)	
)	
Petitioners,)	
)	
v.)	PT-2023-1
)	
Archbishop Foley Beach, Bishop Todd)	
Hunter, Bishop Kenneth Ross, and)	
Bishop Charles Raymond Gillin,)	
)	
Respondents.)	

**MOTION FOR SUMMARY JUDGMENT AS TO COUNT I
OF THE AMENDED PETITION**

NOW COMES 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, hereby move pursuant to Rule 10 of the Rules of Procedure of the Provincial Ecclesiastical Trial Courts for summary judgment as to Count I of the Petitioners’ Amended Petition For Declaration. In support of this motion, Petitioners state as follows:

INTRODUCTION

On January 31, 2023, Archbishop Foley Beach provided Bishop Ruch and Chancellor Philbrick with two self-styled documents: a “Presentment” and an “Addendum” against Bishop Ruch. Exhibits A and B of Petitioners’ Amended Petition. Both documents appear to be signed by three Bishops having jurisdiction, the Rt. Rev. Bishop Todd Hunter, the Rt. Rev. Kenneth Ross, and the Rt. Rev. Charles Raymond Gillin (the “Accusing Bishops”). While the Accusing Bishops may have signed the purported presentment, they did not “swear to” the charges contained in the purported presentment. In addition, the Accusing Bishops signed the accompanying “Addendum”

in which they disavow some and possibly all of charges contained in the purported presentment. In the Addendum, they also explain that they did not prepare the accusations themselves, but rather some unknown person(s) prepared the documents and solicited their signatures.

Regarding Count I of the Amended Petition, there is no genuine issue of any material fact that Exhibit A to the Amended Petition (the “purported Presentment”) does not meet the requirements of Canon IV.4.1, which requires a presentment to be “signed and sworn to” by the accusers. Accordingly, Petitioners respectfully ask this Tribunal to grant this motion for summary judgment as to Count I of the Amended Petition, declare that the purported Presentment is invalid, and enter a permanent injunction against the Archbishop and his Board of Inquiry from taking any action with respect to the purported Presentment.

The Canon IV.4.1 requirement that the Accusing Bishops “sign and swear to” their charges mandates that they verify under oath the truth of the matters asserted. Here, the Accusing Bishops may have signed¹ but do not swear to the allegations of the purported Presentment. Worse yet, they state in Exhibit B of the Amended Petition (the “Addendum” to the purported Presentment) that they do not believe, have no personal knowledge of, or a good faith basis for the belief that their charges are true. Accordingly, Petitioners ask this Tribunal to grant their Motion For Summary Judgment as to Count I of the Amended Petition and enter a permanent injunction against the Archbishop and his Board of Inquiry from taking any action with regard to the purported Presentment.

¹ Petitioners qualify whether the Accusing Bishops actually "signed" the purported Presentment. A signature indicates that the signor has read, understood and agreed to the content of the document. Based on the content of the Addendum, that it is unclear whether the Accusing Bishops actually “signed” the purported Presentment. However, for the purpose of this motion, Petitioners stipulate that the purported Presentment is "signed" as contemplated by Canon IV.4.1. This motion turns on the legal implications of the undisputed fact that the Accusing Bishops did not swear to the contents of the purported Presentment.

THE UNDISPUTED MATERIAL FACTS

1. On December 22 and 23, 2022, the Accusing Bishops signed a document containing accusations against Bishop Ruch for violations of Canon IV.3.1. See Exhibit A to Petitions' Amended Petition at 8 and 9 (the "purported Presentment").

2. The Accusing Bishops signed, but do not swear to the statements, allegations and charges contained in the purported Presentment. *Id.*

3. On December 24 and 26, the Accusing Bishops disavowed their signatures to the purported Presentment by stating:

In signing this Presentment, we do not presume guilt upon Bishop Ruch. Such a judgement was not asked of us. We simply assert that the canonical process should continue. We believe this is the only way to have trusted, godly outcomes for Bishop Ruch and the various publics and stakeholders to which we owe an answer on these matters.

See Exhibit B of the Amended Petition at 1 (the "Addendum").

ARGUMENT

I. Under Canon IV.4.1, A Presentment Must Be "Signed and Sworn To."

The requirements for a valid presentment are:

Section 1 - Concerning Requirements for Presentment

A Bishop may be charged under Canon IV.2 by three Bishops of this Church with jurisdiction, *Such charges shall be in writing, signed and sworn to by all the accusers* and shall be presented to the Archbishop, the Archbishop's delegate, or the College of Bishops. The grounds of accusation must be set forth with reasonable certainty of time, place and circumstance. The charges shall be referred to the Board of Inquiry. (Emphasis added)

Canon IV.4.1. The requirement that accusations against a bishop be "sworn to" is a material requirement. In order for traditional notions of substantial justice, fair play, and due process to be met, charges and accusations must be made by individuals with personal knowledge. More importantly, charges and accusations should not be made by any person before fulfilling our Lord's

mandate that individuals meet personally at least twice to resolve conflicts before taking the dispute to the Church. Matthew 18:15-17.² If accusers were to fulfill this mandate, then they would have the requisite personal knowledge to bring sworn charges “to the church.” *Id.* Thus, the canonical requirement that charges and accusations be “sworn to” ensures that accusers are “witnesses” to the sinful conduct. In order to be competent, a witness must have personal knowledge of the conduct for which they testify.

Therefore, accusations that are not “sworn to” do not constitute a “presentment” as contemplated by Section 1 of Canon IV.4.

II. The Purported Presentment Is Not “Sworn To.”

The persons bringing charges against Bishop Ruch are three bishops having jurisdiction. The Accusing Bishops have signed the purported Presentment, but they do not swear to the validity of its contents. Exhibit A to the Amended Petition. This shortcoming, alone, renders the purported Presentment invalid. The Archbishop admitted this point of law at oral argument on the Archbishop’s Motion to Dismiss, Vacate.

During the argument, the panel asked what would happen if the purported Presentment was not signed. Counsel for the Archbishop explained that the Archbishop would return it to the accusers because an unsigned presentment is not valid. The same is true for a presentment that is not sworn. In such a circumstance, the Archbishop would not be in a position to proceed with the appointment of a Board of Inquiry because no “presentment in accordance with Section 1” of

² “If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every charge may be established by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church. And if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector.” (Matt. 18:15-17, *English Standard Version*)

Canon IV.4 had been provided to him. By why did the Accusing Bishops fail to swear to their charges?

The Accusing Bishops made clear their reasons for not stating under oath that the accusations are true:

First, the Accusing Bishops say that even though they signed the Presentment, they do not believe that Bishop Ruch is guilty of the charges they have signed: “In signing this Presentment, we do not presume guilt upon Bishop Ruch.” Exhibit B of the Amended Petition. By their own account, they did not “swear to” the contents of the purported Presentment because they do not believe that Bishop Ruch is guilty of the charges. *Id.* Thus, they defeat the very purpose of a presentment, which sets forth “charges” against an accused bishop that the accusers believe to be true. Canon IV.4.1.

Second, the Accusing Bishops admit that their signatures were solicited by an unidentified person(s): “Such a judgement was not asked of us.” Exhibit B of the Amended Petition. Apparently, someone solicited the Accusing Bishops to sign the purported Presentment. In order to obtain their endorsement, these unnamed persons sought the signatures of bishops who lacked knowledge of or belief in the truth of accused’s guilt. However, a presentment consists of “charges,” not simply suspicions or even accusations. *Compare* Canon IV.4.1 with Canon IV.3.1.1.

Third, the Accusing Bishops assume for themselves an extra-canonical purpose: “We simply assert that the canonical process should continue.” Exhibit B of the Amended Petition. Apparently, the Accusing Bishops misapprehend the “canonical process.” There has been no “canonical process” in regard to Bishop Ruch. The Provincial Response Team, the Provincial Investigative Team and the Morning Team are all non-canonical bodies. Moreover, a presentment

is the beginning of the canonical, disciplinary process. That process starts with signed and sworn to charges of guilt. No such thing exists here.

III. Under Canon IV.4.3, The Archbishop Has No Authority To Take Any Action Concerning The Purported Presentment.

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 under the canon.

As explained above, 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. Amended Petition, Exhibit A. Two inescapable legal conclusions follow: (1) the Accusing Bishops have not “presented to the Archbishop” a “presentment under Section 1;” and (2) the Archbishop does not have authority under Canon IV.4.3 to “select a Board of Inquiry” because he has not received a “presentment under Section 1.” Canon IV.4.3.

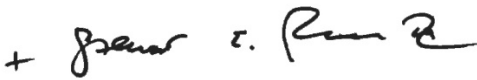
In summary, the Canons require a presentment against a bishop to be both signed and sworn to by the accusers. Canon IV.4.1. The purported Presentment is not sworn to. Exhibits A and B of the Amended Petition. The Archbishop has no authority to proceed with a presentment that does not satisfy the requirements of Section 1 of Canon IV.4. Therefore, Petitioners are entitled to summary judgment as to Count I of their Amended Petition.

WHEREFORE, Petitioners pray for an order from this the Provincial Tribunal:

- (1) Granting its Motion For Summary Judgment as to Count I of Petitioners’ Amended Petition;

- (2) Entering judgment in Petitioners' favor and against each Respondent as to Count I of Petitioners' Amended Petition;
- (3) Declaring the purported Presentment against Bishop Ruch is invalid;
- (4) Permanently enjoining the Archbishop or a Board of Inquiry from preceding upon, investigating, ruling on or taking any action with respect to the purported Presentment; and
- (5) Awarding such other relief as the Tribunal deems just and proper.

Respectfully submitted,

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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 Motion For Summary Judgment as to Count I of the Amended Petition by electronic mail on this June 9, 2023 upon:

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By: /s/ Charles L. Philbrick