

Court of Review  
of the Episcopal Church

**THE REV. EDWARD R. MONK**

*Respondent/Appellant*

v.

**THE EPISCOPAL DIOCESE OF DALLAS**

*Appellee*

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APPEAL from an Order of the Disciplinary Board for the Episcopal Diocese of Dallas.

BEFORE Laura A. Russell, Esq., President; Sharon Henes, Vice President; D.C. “Woody” Bradford, Esq.; the Rev. Cn. Maricclair Partee Carlsen; the Rev. Dr. Karen Coleman; Dr. Delbert C. Glover; the Rev. Terry Howell; the Rev. Cn. Gregory Jacobs, Esq.; the Rev. Dr. Giovan Venable King; the Rt. Rev. Frank S. Logue; the Rt. Rev. Elizabeth Monnot; Russell V. Randle, Esq.; Sra. Grecia Christian Reynoso, Esq.; the Rt. Rev. Kathryn Ryan; the Rt. Rev. E. Mark Stevenson; Matthew D. Taylor, Esq.; the Rev. Dr. Marisa Tabizon Thompson; and the Rev. Margaret Thor.

Barry Black, Esq, for Respondent and Appellant.

Geroge Carlton, Jr., Esq., Church Attorney for Appellee.

Rev. Cn. Michael Ambler, Esq. served as Advisor to the Court.

Opinion of the Court by Russell, Henes, Bradford, Carlsen, Coleman, Howell, Logue, Monnot, Randle, Reynoso, Ryan, Taylor and Thor.

Concurring opinion by Jacobs.

Dissenting opinion by Glover, King, Stevenson, and Thompson.

The Court notes that although all members of the Court took part in the deliberations, the Alternates on the Court (Bradford, Logue and King) were not part of the numerical count to determine the majority opinion of the Court.

## OPINION OF THE COURT

The Rev. Edward R. Monk has appealed the May 28, 2025 decision by a Hearing Panel of the Disciplinary Board of the Diocese of Dallas finding that he committed financial misconduct, violating multiple canons. The Hearing Panel recommended that he be immediately deposed from the ordained ministry of The Episcopal Church.

The Rev. Monk is also under criminal indictment with respect to the same alleged conduct involved in the May 27 hearing. The criminal matter has not yet come to trial. The charges are very serious.

On June 6, 2025, the Rev. Monk filed a timely notice of appeal. The parties have briefed the matter, and it was argued to this Court in a virtual hearing on December 10, 2025.

Pursuant to Canon IV.15.14, we remand for a new hearing because of serious errors in the conduct of the hearing, but reject the other grounds asserted in the Rev. Monk's appeal.

The Hearing Panel's conduct of the May 27, 2025 hearing violated Canon IV.13.6, in multiple ways, especially in the arbitrary exclusion of the Rev. Monk's counsel from the hearing itself, and the improper use of the criminal prosecutor to present selective grand jury information from an undisclosed expert forensic accounting report that had not been provided to the Rev. Monk or his counsel in advance of the hearing. Those canonical violations were highly prejudicial and require us to order a new hearing.

### **Procedural History**

In spring and early summer 2024, the Diocese of Dallas received complaints about potential financial irregularities by the Rev. Monk, then Rector of St. John's Episcopal Church in Corsicana, Texas. A diocesan investigator, the Rev. Timothy Cherry, was appointed to investigate these allegations. The Rev. Cherry met with the Rev. Monk, reviewed financial documents, and discussed these matters with him.

On July 15, 2024, Bishop George Sumner of the Diocese of Dallas placed the Rev. Monk on Administrative Leave. At or around this time, St. John's leadership changed the locks, secured documents, and apparently referred this matter to the police, who began a criminal investigation. The Rev. Monk was not permitted to enter his former church office or remove documents from it.

By e-mail dated July 25, 2024, the Acting Intake Officer informed the Rev. Monk that canonical charges were being brought, alleging misappropriation of substantial sums of money and conversion for personal use, among other canonical violations.

Pursuant to Canon IV.6.8.d., the Reference Panel sent the matter to the Conference Panel, which met on September 17, 2024, with the Rev. Monk in virtual attendance. The Panel recommended his immediate deposition. The Rev. Monk objected, so the matter was referred to a Hearing Panel. The Rev. Monk retained counsel around this time.

The Hearing Panel proceeded and the Church Attorney provided a Statement of Offenses on September 30, 2024. The Church Attorney attached the Diocesan Investigator's lengthy reports from the prior portion of this Title IV matter in what he provided to the Hearing Panel.

On November 3, 2024, the Rev. Monk responded to the charges, denying all the allegations and asking for access to the documents in his office to assist in his defense.

In December 2024, the Rev. Monk was indicted by the grand jury for Navarro County, Texas, for financial misconduct. The Rev. Monk sought a stay of the canonical proceedings from the Hearing Panel until the criminal proceedings were resolved. After briefing, in February 2025, the Hearing Panel rejected the request for a stay.

In March 2025, the Rev. Monk filed an interlocutory appeal with this Court, seeking to stay the Hearing Panel's proceedings until pending criminal charges against him were resolved. On April 21, 2025, this Court declined to enter such a stay, holding that Canon IV.15 does not authorize interlocutory appeals except in cases where the Hearing Panel has unreasonably delayed action. As this Court had no jurisdiction, it expressed no opinion on the merits of canonical charges.

The Church Attorney produced documents for trial in mid-April 2025; he had listed witnesses in March 2025. The Hearing Panel extended the hearing date by 30 days, until May 27, 2025, the day after Memorial Day to allow Respondent's counsel to review the documents produced by the Church Attorney.

Around mid-May 2025, the lead attorney representing the Rev. Monk left the firm representing him in the canonical matter, leaving his colleague, Mr. Barry Black, to defend the Rev. Monk in the canonical matter.

On May 21, 2025, a superseding indictment was handed up by the grand jury, alleging that the Rev. Monk had committed three felonies involving misappropriation of substantial church funds and defrauding an elderly parishioner by using a credit card improperly obtained by the Rev. Monk in the parishioner's name.

The Hearing Panel's conduct of the May 27, 2025 hearing is a key focus of this appeal and is examined in detail below.

The Hearing Panel's order was entered the next day, May 28. The Panel found that The Rev. Monk's conduct had violated the following canons:

Title IV.3.1 (a) knowingly violating or attempting to violate, directly or through the acts of another person, the Constitution or Canons of the Church or of any Diocese in that he violated Canon I.7.1(e) by failing to

- keep books of account so as to provide a basis of satisfactory accounting, and
- obtain at least two signatures on withdrawals of funds as required by Canon I.7.1.(b).

Title IV.3.2, in that he breached the following Standards of Conduct set forth in Canon IV.4, namely:

(a) Title IV.4.1 (e) in that he failed to safeguard the property and funds of the Church and Community,

(b) Title IV.4.1 (h) (6) in that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation and

(c) in that he engaged in Conduct Unbecoming a Member of Clergy under Title IV. 4.1 (h)(9), to wit:

- (i) He failed to report certain financial information to the vestry;
- (ii) He withheld information from church accountants;
- (iii) He misused a credit card for which a parishioner was liable;
- (iv) He misused the ministry fund of St. John's Church;
- (v) He failed to document the purpose of expenditures; and
- (vi) He misappropriated church funds for personal use.

The Hearing Panel recommended to the Bishop Diocesan pursuant to Canon IV.14.7 that the Rev. Monk be immediately deposed from the ordained ministry of The Episcopal Church. The Rev. Monk appealed to this Court on June 6, 2025.

The Rev. Monk appeals the Hearing Panel's decision pursuant to Canon IV.5.15(b) on the following grounds:

- I. The Hearing Panel's conduct of the May 27 hearing violated multiple canons and in so doing, substantially prejudiced the Rev. Monk's right to a fair trial;
- II. The Hearing Panel had no jurisdiction because the identity of the Complainant changed several times during the pretrial proceedings;
- III. The Hearing Panel was obliged to stay the canonical proceeding during the pendency of unresolved criminal charges against the Rev. Monk;

- IV. The Hearing Panel limited the Rev. Monk's discovery in a fashion that substantially and materially prejudiced the preparation of his defense case at the hearing, specifically that depositions and interrogatories of Complainants were limited by the Board.

## **DISCUSSION**

### **I. The Hearing Panel's Conduct of the May 27, 2025 Hearing Violated Multiple Canons.**

The Hearing Panel's conduct of the May 27 hearing erred<sup>1</sup> and those errors substantially prejudiced the Rev. Monk in three respects:

First, its decisions to deny a short continuance and to insist on proceeding with the hearing after it became clear that the Rev. Monk's counsel, who was participating virtually because of illness, could not hear, deprived the Rev. Monk of counsel. The Hearing Panels action not only violated Diocese of Dallas Canon 25.11, governing virtual participation in proceedings, but more importantly, the Hearing Panel effectively excluded counsel, and in so doing, denied the Rev. Monk his canonical rights to present evidence, cross examine witnesses, and present argument and rebuttal, a significant violation of Canon IV.13.10.b.6.

Second, the Church Attorney improperly presented the criminal prosecutor as a witness to summarize an expert's testimony from secret grand jury proceedings closed to the Rev. Monk. The prosecutor did so without providing the Rev. Monk or his counsel either the actual expert to testify or the forensic report compiled by that expert. The use of the prosecuting attorney in this fashion violated Canon IV13.10.b.6., in that the Rev. Monk was deprived of the right to object effectively, to cross-examine, and to move to exclude such evidence because of the failure to produce that expert report either in advance of the hearing or during the hearing.

Third, the Hearing Panel compounded these errors by compiling a shambolic and unreliable transcript and record of the hearing, in violation of Canons IV.13.8 (verbatim written transcript), and IV.15.6 (Hearing Panel's duty to compile a complete record), impairing this Court's ability to review the proceeding below, and violating the Rev. Monk's right to appeal under Canon IV.15.2.

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<sup>1</sup> Though our dissenting colleagues reach a different result, they agree that the hearing panel made serious errors in conducting the hearing. We specifically agree with footnote four of the dissent, which calls for training of hearing panels, and we join them in urging The Episcopal Church to take prompt steps to meet that need.

These errors were highly prejudicial to the Rev. Monk and deprived him of the right to present his defense.

In addition, the Church Attorney's action in adding the Investigator's lengthy reports to the Statement of Offenses provided to the Hearing Panel plainly violated Canon IV.13.2.a., which provides that "no other material from any prior proceedings under Title IV shall be provided to the Hearing Panel." The policy behind this rule is to avoid prejudicing the Hearing Panel by presenting evidence prior to the hearing, where it would be subject to appropriate objection, cross-examination, and rebuttal. This premature presentation is barred in order to keep the Hearing Panel a neutral and unbiased fact finder. The improper provision of these lengthy reports to the Hearing Panel almost eight months before the hearing appears to be highly prejudicial.

In this case, the Rev. Monk's counsel failed at any time from October 2024 through the start of the Hearing on May 27 to object to this canonical violation, or to move to have a new Hearing Panel appointed to cure this prejudice. Neither was this issue raised on appeal. Because we are reversing on other grounds, we note this serious canonical violation to avoid its repetition on remand.

**A. The Rev. Monk Appeared in Person until His Counsel, Appearing Virtually Because of Illness, Was Effectively Excluded by the Hearing Panel, in Violation of Canon IV.13.8 and of Diocese of Dallas Canon 25.11.**

On May 27, 2025, the Rev. Monk personally appeared, and his counsel virtually appeared before the Hearing Panel. The Rev. Monk and his counsel departed after it became clear that his counsel could not hear the proceedings, an assertion supported by the very poor quality of the transcript with numerous entries of "inaudible."

The Board set the hearing date as Tuesday, May 27, the day after Memorial Day. On Thursday, May 22, the Board was advised by e-mail that counsel was ill, and a short continuance was requested. The Board denied the request that day without a hearing. The request was repeated May 24 by e-mail but was again denied.

On Saturday evening, May 24, counsel asked the Hearing Panel to reconsider

your denial of this shortest of adjournment requests or, in the alternative, I ask that, under these unfortunate circumstances, I be allowed to examine or cross-examine witnesses remotely. Since a court reporter will be in attendance, I would be happy to have my office reach out to the court reporter and cover all the costs associated with a remote examination option.

The Rev. Monk's counsel affirmed under penalty of perjury that he had tested positive for covid and noted that the Hearing Panel might not want him to be physically present while he was still potentially contagious.

On Sunday, May 25, the President of the Hearing Panel responded, again denying the requested continuance. She stated that

the Hearing Panel would be willing to consider your suggested alternative of allowing you remote access for purposes of examining or cross-examining witnesses appearing at the Hearing. Any such remote access procedures must be: (1) described in sufficient detail prior to the day of the Hearing [Memorial Day] to allow the Hearing Panel to assess their impact on the efficiency, dignity, transparency and orderly conduct of the Hearing; (2) accomplished without the involvement of personnel or contractors of the Diocese or St. Mary's Cathedral; (3) accomplished solely at the expense, and through the efforts of the Respondent or his counsel; and (4) otherwise acceptable to the Hearing Panel in its sole discretion. We do wish you a complete and speedy recovery.

The President provided the Wi-Fi password in a later e-mail but did not acknowledge counsel's request for the identity of the court reporter who was supposed to transcribe the proceeding so that Mr. Black could coordinate arrangements.<sup>2</sup>

Unfortunately, in this case, the Hearing Panel either failed to arrange for a court reporter or the court reporter failed to appear and they did not try to secure a replacement before proceeding with the hearing.

At the May 27 hearing, the first business day after Memorial Day, the Rev. Monk appeared and brought a laptop computer so that his counsel could appear virtually. Participating through the laptop, counsel again requested a continuance on account of his illness, providing details, but the President of the Hearing Panel again denied the motion without elaboration. May 27 Transcript, pp. 4-7. Counsel has stated under penalty of perjury in his written filings that he was very ill at the time of the May 27 hearing, a fact the Church Attorney has not disputed.

Very early in the hearing, Respondent's counsel interrupted the Church Attorney's opening statement stating that "I am incapable of hearing him at all." Tr. 8, ll. 19-20.

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<sup>2</sup> Since the onset of the pandemic in 2020, court reporters have routinely accommodated attorneys in taking virtual depositions and participating in secular virtual court hearings and are usually equipped to do so.

In response, the President of the Hearing Panel stated: “Well, then I guess the technology isn’t working. Perhaps well – so I don’t have any solutions here (inaudible) if can’t resolve this. Mr. Black the technology for conductivity (inaudible). Mr. Carlton, do you want to continue.” Tr. 8, ll. 21-25.

At oral argument, Respondent’s counsel asserted that the word transcribed “conductivity” was in fact “connectivity” and that the Hearing Panel President said in essence that the connectivity issues and his inability to hear were his problem and not the Hearing Panel’s problem.

At the conclusion of the Church Attorney’s opening statement, which he repeated in the hope that Respondent’s counsel could hear him, the President of the Hearing Panel invited Respondent’s counsel to make an opening statement. He again stated that he could not hear the proceedings and in light of that continued problem and his inability to participate, directed the Rev. Monk to leave.<sup>3</sup> Tr. 14-16.

As discussed below, the transcription problems, with several hundred entries of “inaudible” in a seventy-seven page transcript, as well as the many transcription errors, and the identification of some speakers as “Unidentified Speaker,” support Respondent’s contention that his counsel could not hear the proceedings well enough to participate and try to defend his client.

Section 25.11 of the Canons of the Diocese of Dallas provide in connection with disciplinary proceedings that “Any meeting required under this Canon 25, other than a hearing where evidence may be taken or examined, may be conducted either in person or through telephonic or other electronic communications equipment by means of which all persons participating in the meeting can hear each other at the same time.”<sup>4</sup>

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<sup>3</sup> Mr. Black: Okay. In light of the untenable circumstances and in light of a whole bunch of surprises that have been flung upon us even this morning **including information I’m hearing third hand, because I was not able to hear Mr. Carlton’s statement**, I have instructed my client to no longer partake in the proceedings he will be leaving and the proceedings would of course proceed I absentia. [He made various complaints about violations of his client’s rights.] . . . **I wish I would’ve been able to be there in person, properly participated in the proceedings. Unfortunately, I was not given the opportunity to do so.** (emphasis supplied).

<sup>4</sup> Similar provisions are found in the By-Laws of the Executive Council of the Episcopal Church, By-Laws of Executive Council, Art. VI.8.a.i <https://extranet.generalconvention.org/staff/files/download/29692> (“The means of communication used allow all members participating in the meeting to hear each other at the same time and give each member the ability to participate in the discussion and voting.”), as well as in the rules of other Episcopal dioceses. See, e.g., Canon 23, Diocese of Virginia (“each member entitled to vote can hear clearly and can be heard by the other attendees”), <https://episcopalvirginia.org/wp->

Continuation of the hearing without resolving the problem failed to meet the Diocese of Dallas' canonical standard of allowing all persons participating to hear each other at the same time. The result was effectively to exclude – essentially to disqualify - Respondent's counsel from the proceedings. This de facto exclusion is contrary to Canon IV.13.8, which guarantees the right of Respondent's counsel to be present, even where proceedings are closed to the public. This exclusion of counsel prevented the Rev. Monk from presenting a defense in a factually complicated case and did so with no notice or time for him to prepare to represent himself without counsel.

As explained below, the effective exclusion of the Rev. Monk's counsel was highly prejudicial. It prevented the Rev. Monk from objecting to the extremely unusual use of the prosecutor as a witness, as well as cross-examining the prosecutor on his selective testimonial disclosure of secret grand jury proceedings closed to the Rev. Monk.

**A. The Standard of Review Is Set in Canon IV.15.5(b), Requiring This Court to Grant Relief If the Hearing Panel's Canonical Violations or Procedural Errors Substantially Prejudiced the Rev. Monk.**

Canon IV.15.5 sets the standard for review, with Canon IV.15.5(a) setting a more rigorous standard for reversal of the Hearing Panel's decision if the Respondent did not appear at the hearing or participate. Canon IV.15.5(b) provides that this Court must reverse if, as we find in this case, the Hearing Panel's violations of the "Canons of the Church or the Diocese," IV.15.5(b)(1), or the Hearing Panel's procedural errors, IV.15.5(b)(5), substantially prejudiced the Respondent.

The Church Attorney argues here that The Rev. Monk failed to participate, thereby restricting this Court's review to plain error under Canon IV.15.5(a), as supported by this Court's decision in *Watkins v. Diocese of Alabama*, where the respondent's counsel withdrew four days before the hearing and Respondent failed to show up at the hearing.

The Church Attorney's reliance on *Watkins* is misplaced because in that case, it was "undisputed that the Respondent did not appear before the Hearing Panel on January 9, 2023 [the hearing date.] **Respondent did not explain his failure to appear to the Hearing Panel or in his appeal. . . . Respondent has not provided any reasons for his failure to appear. . .** *Watkins*, p. 9 (emphasis supplied).

Canon IV.3.1.b. states "A member of the Clergy shall be subject to proceedings under this Title for failing without good cause to cooperate with any investigation or proceeding conducted under authority of this Title." We read the "good cause" exception to full participation in the hearing under this Canon slightly more broadly than the dissent does.

Consistent with Canon IV.3.1.b., this Court noted in *Watkins* that there were circumstances where good cause could be shown as to why a party did not participate fully in a hearing, but that the party had to provide an explanation for their failure to participate. *Watkins, supra*, at p. 9. The Rev. Monk's appeal argues in essence that he had "good cause" not to participate further in the proceeding when he had appeared personally, but his counsel could not hear what was happening sufficiently to defend his client.

Unlike the situation in *Watkins*, where counsel's withdrawal was sudden and unexplained, the Rev. Monk's counsel made substantial efforts to participate virtually, consistent with his serious illness. In similar circumstances, the Executive Council of the Episcopal Church provides that quarantine is "good cause" to appear virtually at a meeting that is required to be in person. By-Laws of Executive Council, Art. VI.8.d.i.

<https://extranet.generalconvention.org/staff/files/download/29692> Those same By-Laws require every person to be able to hear each other. *Id.*, Art. VI.8.a.i ("The means of communication used allow all members participating in the meeting to hear each other at the same time and give each member the ability to participate in the discussion and voting.")

The Rev. Monk physically appeared at the hearing. The illness of counsel in these circumstances, coupled with the Hearing Panel's insistence on proceeding despite knowing that counsel was (a) quite ill, and (b) could not hear the proceedings, meets the definition of "good cause" for the Rev. Monk not to participate further. The Rev. Monk was suddenly faced with the situation of having relied upon counsel to present his defense in a factually complicated case and then amid the hearing having to assume that defense without warning and without time to prepare.

The Court stresses that this is a highly unusual situation and one that could have been readily avoided with a short continuance, or with the use of a court reporter equipped to handle virtual proceedings. Absent exigent circumstances such as occurred here, we read Canon IV.15.5(a) to require a member of the clergy facing a Title IV hearing to appear and to participate in the hearing to the best of their ability and to remain through the entire proceeding.

The Court finds that the standard of review governing this decision is that stated in Canon IV.15.5(b).

**B. The Hearing Transcript's Many Errors and Omissions, Arising from Decisions within the Exclusive Control of the Hearing Panel, Make It Unreliable, in Violation of Canon IV.13.8 and IV.15.6.**

Under the canons, the Hearing Panel, and not the parties, is responsible for the transcript: "It shall be the duty of the Hearing Panel to produce the record on appeal, consisting of a transcript of the proceedings before the Hearing Panel together with documentary and tangible evidence received by the Hearing Panel." Canon IV.15.6.

The canons are specific that a verbatim record is required: "A record of the hearing shall be made by such means as to enable the creation of a verbatim written transcript of the hearing." Canon IV.13.8.

A reliable hearing transcript is not a mere formality, but an essential element of the canonical right of a member of the clergy to appeal an adverse ruling of a hearing panel. Canon IV.15.2, 4 (appeal heard based on the record). The transcript is indispensable to this Court's work and to protecting the right of a Respondent to appeal, even a Respondent who chooses not to participate.

The transcript in this matter is very poor. This Court was advised at the scheduling conference that there was no trained court reporter and that the Hearing Panel tried to use two mobile phones as recording devices, only one of which worked, and worked badly judging by the resulting transcript. At the hearing, Tr. 7, Ms. Adele Ichilian, who is not otherwise identified was apparently designated to take notes – as an "interim reporter" and a few pages later, there is reference to another "reporter," Ms. Amy Maceo, Tr. 17, but it is unclear if these individuals' notes were provided to the court reporter who later tried to transcribe the poor recording of the proceeding. At oral argument, the Church Attorney had no explanation of why there was no actual court reporter at the hearing.

The seventy-seven page transcript contains several hundred gaps noted by the term "inaudible." Some of the transcribed terms are nonsensical and in at least one key instance – "conductivity" rather than "connectivity" - vehemently disputed by Respondent.

It is impossible to determine from the transcript where or indeed if each or any of the voluminous document packages presented as the record by the Hearing Panel were in fact moved into evidence during the hearing. Whether the absence of anything in the transcript showing that the documents were admitted into evidence is a transcription problem or an error made by the Church Attorney is unclear.

It appears that some of the documents offered by the Church Attorney have significant annotations. For the most part, the documents themselves are not self-explanatory but require witness testimony to be understood in the context of these canonical charges.

Although documents are not automatically inadmissible as hearsay, Canon IV.10.b.5., the President of the Hearing Panel is required to regulate the admission of documentary evidence, Canon IV.10.b.1-3, and to do so clearly enough that the record will at least reflect what documents were in fact admitted into evidence for the panel's consideration. The President failed to do so here.

The transcript contains a certification by the reporter that he transcribed it "from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken . . ." Tr. 77. This was dated July 10, 2025. He makes no reference to having reviewed any notes by anyone at the hearing, whether taken by the "interim reporters" or someone else.

It is undisputed that the court reporter who long after the hearing transcribed the recording was not present at the hearing and that no court reporter was present to swear in the witnesses<sup>5</sup> even though Canon IV.13.10 requires that "all testimony shall be given under oath or solemn affirmation and be subject to cross examination." Thus, it is unclear if the testimony was in fact sworn.

After the Court Reporter's July 10 certification, the transcript shows that numerous additions were made by the President of the Hearing Panel on July 12, 2025, additions primarily consisting of names. At the oral argument before this Court, the Church Attorney also stated that he assisted in filling in gaps in the transcript, though it is unclear if he did so with the reporter or with the President of the Hearing Panel after the reporter's certification.

The Rev. Monk's counsel made clear at oral argument that he was not included in this process and disputed the transcription regarding a key exchange by him with the President of the Hearing Panel. The failure to give prompt notice to Rev. Monk's counsel of the proposed changes by the Church Attorney in the transcript would have been improper in most courts, and it is improper here.

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<sup>5</sup> The transcript states that witnesses were "sworn by the notary public," Tr. 17, ll. 4-5, (Meredith Blitz); Tr. 29, ll. 7-9 (The Rev. Cherry); Tr. 43, ll. 24-25 to 44, l. 1 (Ginger Roper); Tr. 52, ll. 20-22 (William Thompson). However, since there was no court reporter present, it is unclear whether in fact these witnesses were sworn in by anyone or whether the court reporter transcribing from the digital recording simply used the ordinary form for such matters.

The presence of several hundred gaps in the seventy-seven page transcript, the many nonsensical renderings of words in it, the absence of testimony showing which documents were admitted into evidence, the doubts about whether the witnesses were even sworn in, coupled with the one-sided compilation of the transcript, mean that the transcript is unreliable.

An unreliable transcript fails to meet the canonical standard for a verbatim transcript. The Hearing Panel thus violated the requirements for a verbatim transcript for appellate review in Canons IV.13.8 and IV.15.6, thereby substantially prejudicing the Rev. Monk's right to appeal under Canon IV.15.2.

**C. The Church Attorney's Use of the Prosecutor as a Witness Was Improper, Violated Canon IV.13.10.b.6, and Highly Prejudicial to the Rev. Monk.**

**1. Improper Use of Prosecutor as a Fact Witness.**

The Church Attorney presented four witnesses at the May 27, 2025 hearing. One of them was William Thompson, the district attorney for Navarro County, Texas, who had sought and obtained an indictment against the Rev. Monk for three felonies. Tr. 52, 54-55. Even though indictments are not generally admissible to prove the allegations they assert, the prosecutor presented the two-page indictment, and it was included in the record as the Church Attorney's Exhibit 5. Capable counsel for the Rev. Monk would have objected strongly to its admission in evidence.<sup>6</sup>

The Church Attorney used the prosecutor in the pending criminal matter to testify at this hearing about the substance of secret grand jury testimony.<sup>7</sup> It is unclear on what legal basis the prosecutor testified to the Hearing Panel about important parts of the grand jury proceedings.

As the canonical hearing took place only six days after the superseding indictment, there is no reason to believe that the Rev. Monk had access to the subpoenaed documents or to the witness transcripts. Without that information to prepare for a hearing, the Rev. Monk's ability to prepare to cross-examine or rebut the prosecutor's testimony was unfairly limited. The Church Attorney's action here, skirting the rules governing grand juries, was improper.

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<sup>6</sup> The document is undated, so it is unclear whether this was the December 2024 indictment or the superseding May 2025 indictment. For reasons of likely prejudicial effect on lay people in juries, Indictments are usually excluded from evidence since they are unproven allegations of criminal misconduct.

<sup>7</sup> Grand jury proceedings in Texas are secret. Vernon's Texas C.P.P. Art. 20A-202(a). Improper disclosure of such materials is punishable as contempt of court. 20A-203, 204. Prosecutors have been removed for improperly disclosing such grand jury materials. See, e.g., *Stern v. State ex rel Ansel*, 869 S.W. 2d 614 (Texas App Houston (14<sup>th</sup> District) 1994) (Upholding removal of the prosecutor).

Under the ethical rules governing attorneys, it is extremely unusual for a district attorney in a pending criminal matter to testify as a fact witness on the merits in a related and concurrent civil proceeding, especially where the prosecutor has no first-hand knowledge of the disputed facts.

The Texas Model Rules of Professional Conduct, 3.08, which follow the American Bar Association rules in this regard, forbid attorneys from being a witness and an advocate in the same proceeding, other than testifying about certain uncontroversial matters such as authenticating documents and the value of legal services the attorney has rendered.<sup>8</sup>

The fact issues in this canonical case overlap substantially with the fact issues in the pending criminal matter. The rule against attorneys serving as fact witnesses in the same proceeding, or in this case, a factually related proceeding, exists because the roles of witness and advocate are supposed to be kept quite separate, especially where lay people

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<sup>8</sup> **Rule 3.08. Lawyer as Witness** (a) A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;
- (3) the testimony relates to the nature and value of legal services rendered in the case;
- (4) the lawyer is a party to the action and is appearing pro se; or
- (5) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the matter and disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that the lawyer will be compelled to furnish testimony that will be substantially adverse to the lawyer's client, unless the client consents after full disclosure.

(c) Without the client's informed consent, a lawyer may not act as advocate in an adjudicatory proceeding in which another lawyer in the lawyer's firm is prohibited by paragraphs (a) or (b) from serving as advocate. If the lawyer to be called as a witness could not also serve as an advocate under this Rule, that lawyer shall not take an active role before the tribunal in the presentation of the matter.

(non-attorneys) are the finders of fact as was apparently the case here for the members of the Hearing Panel.<sup>9</sup>

The Rev. Monk's reply brief states that after testifying at the May 27 hearing Mr. Thompson has since recused himself from the pending criminal investigation against the Rev. Monk. Appellant Reply Brief 16-17. Capable counsel would and should have moved to exclude the prosecutor from testifying here.

By definition, the prosecutor was an advocate against the Rev. Monk. For the reasons set forth in the Texas ethics rule, there was a serious risk that non-attorneys on the Hearing Panel would confuse the prosecutor's testimonial advocacy for unbiased factual information. This problem is especially significant here, where the prosecutor did not prepare the accounting report which he testified about, did not know how the computer program the accountant used to help prepare it worked, and had no personal knowledge of the disputed facts.

Had the Rev. Monk's counsel been able to participate in the hearing, he could have objected to the prosecutor as a witness. If the prosecutor's testimony were allowed despite such objections, the Rev. Monk's counsel could have vigorously cross-examined the prosecutor to demonstrate that because of the attorney client privilege, the prosecutor could not testify to facts adverse to his client, the State of Texas. Cross-examination was also needed to demonstrate that the prosecutor had a strong personal interest in helping the Church Attorney establish the canonical charges against the Rev. Monk, an interest that might skew his testimony.

Bringing out these complicated legal issues would be critical to the determination of the witness's knowledge and credibility. Given the legal knowledge needed to bring out these problems when a prosecutor is presented as a fact witness, the effective exclusion of the Rev. Monk's counsel by the Hearing Panel was especially prejudicial when it came to the

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<sup>9</sup> **Comment 4 by the Texas State Bar on Rule 3.08.** In all other circumstances, the principal concern over allowing a lawyer to serve as both an advocate and witness for a client is the possible confusion that those dual roles could create for the finder of fact. Normally those dual roles are unlikely to create exceptional difficulties when the lawyer's testimony is limited to the areas set out in sub-paragraphs (a)(1)-(4) of this Rule. ***If, however, the lawyer's testimony concerns a controversial or contested matter, combining the roles of advocate and witness can unfairly prejudice the opposing party. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof. (emphasis supplied).***

prosecutor's testimony. The Church Attorney's use of this witness violated Canon IV.13.10.b.6.

## 2. Improper Presentation of Forensic Accounting Expert Testimony

Mr. Thompson testified at length about an investigation he did not supervise or conduct, an accounting investigation carried out by Ms. Dos Remedios, apparently an experienced forensic accountant on the staff of the State of Texas' Office of Attorney General. Tr. 56, l. 11 – p. 58, l. 21. “She actually came and appeared and testified before the grand jury when we presented the case to them. Tr. 57, ll. 22-24.

Ms. Dos Remedios was asked to testify by the Church Attorney but was not permitted to do so by the Attorney General's office, because this was not a state court proceeding. Tr. 57, l. 25 – p. 58, l. 8.<sup>10</sup>

The Church Attorney sought to present the results of Ms. Dos Remedios' forensic review of the banking records through Mr. Thompson's testimony as well as selected examples of documents Mr. Thompson offered to support her reported conclusions. He testified in detail about checks the Rev. Monk had written and about credit card statements for a parishioner's credit card the Rev. Monk reportedly controlled. Tr. 58, l. 9 – p. 72, l.8. The testimony is very damaging to the Rev. Monk.

The prosecutor also appears to have presented demonstrative exhibits summarizing what he claimed were the findings: “I have highlighted in **red** the accounts where I concluded most of the malfeasance happened.” Tr. 59: ll. 14-16. The demonstrative exhibit or exhibits that the prosecutor presented as **his** conclusions do NOT appear to be part of the record but appear likely to have been quite influential with the finders of fact. The prosecutor appears to have acted as an advocate rather than a fact witness in presenting this report.

The use of the prosecutor – or any witness who did not prepare the forensic report - as a witness in the canonical proceeding placed the Rev. Monk at a serious and unfair disadvantage. This approach allowed the selective presentation of Ms. Dos Remedios' investigation without providing the Rev. Monk a chance to question the expert accountant who in fact reviewed the financial documents, used a computer program to do so, drew conclusions, and compiled the report. According to the prosecutor, Ms. Dos Remedios

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<sup>10</sup> The Hearing Panel's March 21, 2025 Scheduling Order allowed the Church Attorney to take the depositions of Mr. Thompson and Ms. Dos Remedios, but it does not appear from the record that they occurred and no transcripts from these depositions are part of the record here. There is reason to believe Ms. Dos Remedios' deposition did NOT occur, given that the Attorney General's Office forbade her from testifying at trial.

referred to expenses as “undocumented,” Tr. 58, ll. 15-21, not “malfeasance” as the prosecutor asserted as fact a few minutes later in his testimony. Tr. 59, ll. 14-16.

This approach was also quite prejudicial because the underlying expert report was apparently not provided either before or during the May 27 hearing. Without that report, effective cross-examination would have been extremely difficult. The actual report is not among the documents found in the record presented to this Court by the Hearing Panel President.

Nor could the Rev. Monk reasonably expect to know which documents Ms. Dos Remedios relied upon in reaching her opinions, a critical piece of information needed in connection with expert testimony.

Unlike secular courts, the Canons have no rule specifically governing the use of expert witnesses.<sup>11</sup> But Canon IV.13.10.b.6 states that the Hearing Panel President “shall afford to . . . the Respondent reasonable opportunity to present evidence, argue and respond to argument, **conduct cross-examination and submit rebuttal evidence.**” (Emphasis supplied).

By failing to use the person who prepared the accounting report as the witness, and by failing to provide the underlying forensic report well in advance of the hearing, the Church Attorney’s use of the prosecutor to present the results effectively prevented the Rev. Monk from cross-examining about Ms. Dos Remedios’ methods (including the unnamed computer program “to scan thousands of documents and look for specific things,” Tr. 57<sup>12</sup>), their accuracy, and her experience using those methods, and her experience as an expert. Those are all standard lines of inquiry with an expert witness. Those questions help the trier of fact to decide whether to accept the person as an expert, and if so, how much weight to give their findings and opinions.

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<sup>11</sup> In both the federal and state courts advance disclosure of a testifying expert’s report and detailed identification of the documents relied upon is mandatory. This advance disclosure and document identification is done so opposing counsel can cross-examine the expert and opposing experts can present rebuttal testimony. These steps are very important to help the trier of fact determine the weight to give an expert’s opinions. Put differently, these steps are critical for the trier of fact to make a fair determination of the factual issues in a case. These are not “mere formalities,” but important to get to the truth where complicated factual issues are in dispute.

<sup>12</sup> “They also have software that will sort through and look for specific things in statements. . . . ***I’m not an IT person, but as I understand it***, they can scan in hundreds of pages of statement and then tell their program to look for certain things and it will help sort through the thousands of pages of documents a lot faster than Will Thompson and his glasses, his readers can.” Tr. 57, ll. 5-12. (emphasis supplied).

Equally important, without advance disclosure of the forensic report and the transactional documents examined by the accountant to reach her conclusions, it was nearly impossible for the Rev. Monk to prepare proper expert accounting rebuttal testimony.

While the President of the Hearing Panel must not exclude evidence solely because it is hearsay, Canon IV.13.10.b.5., the use of Mr. Thompson's testimony, which was not based on personal knowledge, about the Dos Remedios investigation was improper and should have been excluded. It effectively deprived the Rev. Monk of his rights to cross examination and to present rebuttal testimony on critical factual issues in this case. Had the Rev. Monk's counsel been present, he could have objected to this testimony because it was not on personal knowledge.

Similarly, the President of the Hearing Panel must exclude privileged evidence, Canon IV.13.10.b.2: "shall exclude privileged evidence." In this instance, privilege may have been used as a sword instead of shield, with selective disclosure of damaging information by a witness whose professional obligations under the attorney client privilege would require him not to disclose information adverse to his prosecution of the parallel criminal case.

#### **D. Substantial Prejudice Analysis.**

As noted above, the Court finds that the Hearing Panel violated the canons requiring that in any virtual proceeding the parties must be able to hear each other, and that a reliable verbatim transcript be compiled and presented to the Court of Review. So did the admission of the prosecutor's testimony, as explained above.

The Court of Review Canon provides in part that "no order or determination of a Hearing Panel shall be overturned solely for technical or harmless error." Canon IV.15.10. This canon is another expression of the requirement that the Rev. Monk show substantial prejudice from the Hearing Panel's mistakes as grounds for this Court to reverse the Hearing Panel's decision including the proposed removal of him from ordained ministry.

In this case, the Rev. Monk contends that the Hearing Panel's refusal to either postpone the hearing to allow his counsel to recover from illness, or to at least allow his counsel to participate virtually in a way that would allow him to hear the proceedings, substantially prejudiced him.

At oral argument, defense counsel responded to questions about what case he would have presented and what witnesses he would have examined to support the Rev. Monk's defense. In response, he stated that he would have cross-examined the four Diocesan witnesses, put the Rev. Monk on the stand to testify, and called at least one accounting witness whom he identified. Defense counsel asserted that he would have presented

testimony seeking to explain the challenged expenditures and to provide factual context about the Rev. Monk's actions.

In essence, the Rev. Monk contends that the constructive exclusion of defense counsel by the Hearing Panel deprived him of his rights under Canon IV.13.10.b.6. for a "reasonable opportunity to present evidence, argue and respond to argument, conduct cross-examination and submit rebuttal evidence." He is correct. We find that these violations of his canonical rights substantially prejudiced him.

The effective exclusion of defense counsel made the improper presentation of the prosecutor's testimony discussed above even more prejudicial, since counsel's exclusion made it impossible for him to argue that any testimony by the prosecutor was improper. If the Hearing Panel had allowed the prosecutor to testify over defense counsel's objection, the exclusion of defense counsel prevented him from objecting to the specific aspects of his testimony, such as the presentation of an expert report's conclusions without providing the underlying report or making the expert who prepared it available to testify. It also prevented him from objecting to the improper use of the indictment and use of potentially inflammatory demonstrative exhibits. Even if those objections were overruled, they are very important to making the record for a proper appeal. Thus, defense counsel's exclusion from the proceeding impaired the Rev. Monk's right to appeal under Canon IV.15.2.

The exclusion of defense counsel also made it impossible to cross-examine the prosecutor, as well as the other witnesses. The inability to cross-examine the prosecutor was especially prejudicial because defense counsel could not show the lay people (non-attorneys) on the Hearing Panel that the attorney-client privilege prevented Mr. Thompson from giving any testimony adverse to his client's interest in convicting the Rev. Monk.

From this Court's review of the transcript, unreliable as it is, there is doubt about whether the documents presented by the Church Attorney were ever properly admitted into evidence and whether the witnesses were in fact sworn in. The transcript testimony is hard to connect to the documents in the record in part because of significant gaps in the transcript.

Presumably, defense counsel would have objected to the admission of the indictment, as well as any other documents if their provenance were uncertain (as might be the case with those that were annotated or produced for the first time at the hearing.) Competent defense counsel would have insisted that witnesses be properly sworn and would move to strike their testimony if they were not.

Exclusion of defense counsel from the proceedings also prevented the Rev. Monk from presenting any rebuttal accounting testimony from the accounting witness he identified at oral argument.

Given the unreliable record presented here, it is impossible for the Court of Review to determine whether the proffered documents or potentially unsworn testimony are sufficient to find that the Hearing Panel's clear procedural errors and canonical violations were harmless under Canon IV.15.10.<sup>13</sup> What is clear is that the errors in conducting the hearing, particularly the effective exclusion of defense counsel, substantially prejudiced the Rev. Monk since improper documents and testimony were presented without objection, cross-examination, or rebuttal.

The transcript problems here result from bad decisions by the Hearing Panel, either not employing a proper court reporter or not delaying the hearing long enough to find a substitute if the one they had hired failed to show up. Indeed, had the Hearing Panel even agreed to use a conventional zoom call with recording, the testimony almost certainly would be better and more accurately preserved than is the case here.

The Court of Review is well aware that the Rev. Monk faces felony criminal charges allegedly arising out of some of the same alleged conduct at issue here. If convicted in the criminal matter, the Rev. Monk may go to prison for a long time.

But the Canons clearly say that the Rev. Monk is entitled to a presumption he did not commit the offense and does not bear the burden of proving his innocence. Canons IV.19.16, IV.19.17. He is entitled to a fair opportunity to put on his defense case as provided in Canon IV.13.10.b.6. Indeed, where the charges are so serious it is especially important that the accused be given a fair chance to present his side of the story before a Hearing Panel renders its decision.

We find that the Hearing Panel's conduct of the May 27 hearing substantially prejudiced the Rev. Monk because it deprived the Rev. Monk of his right under our canons to put on **any** defense case. He was deprived of the opportunity to test the provenance and admissibility of the documents presented as exhibits (some of which appear heavily annotated), to cross-examine the witnesses about the assertions they made in their testimony based on other people's review of the documents, to challenge the appropriateness of allowing a prosecutor to testify about closed grand jury proceedings off limits to the defendant, to present his explanation of his handling of these financial matters, and to call possible supporting accounting witnesses.

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<sup>13</sup> Secular courts have also concluded that in the case of a seriously defective hearing transcript, they cannot resort to documents and testimony that is in the record to decide that errors in the trial were harmless.

**E. The Church Attorney Improperly Attached Title IV Materials to The Statement of Offenses In Violation of Canon IV.13.2.a.**

Canon IV. 13. 2.a expressly prohibits the Church Attorney from submitting “any materials from any prior proceedings under Title IV.” In this matter, the Church Attorney impermissibly sent the Hearing Panel the ten reports submitted by the Diocesan Investigator to the Intake Officer. He did so with the Statement of Offenses to the Hearing Panel, the first document the Hearing Panel saw in this matter, more than six months before the hearing. The Statement of Offenses added the following language:

The Rev. Tim Cherry was appointed Diocesan Investigator. After reviewing the material Fr. Cherry contacted Fr. Monk. After an investigation and interview with Fr. Monk, Fr. Cherry did not find Fr. Monk’s explanations, or lack of, to be satisfactory and so reported to Fr. Lee [previously identified as “Acting Title IV.2 Intake Officer”] **in the “Report #10 For Ministry Funds Abuse” which is attached to this Statement. Reports 1-9 covers the additional issues.** Statement of Offenses ¶13, (emphasis added).

The ten reports submitted by the Diocesan Investigator to the Intake Officer during the Title IV investigation were clearly considered by the Reference and Conference panels in this matter (Statement of Offenses ¶1). The “Cherry Investigative Report” referenced by the Church Attorney and attached to his statement to the Hearing Panel plainly constitutes “material from any prior proceedings under Title IV.” As such, it was expressly barred from disclosure to the Hearing Panel by Canon IV.13.2.a.

The point of Canon IV.13.2.a is to assure that the Hearing Panel remains neutral and only considers properly submitted evidence for the first time at the hearing. The Church Attorney is canonically required to discharge his burden of proof by presenting all evidence of misconduct at the time of the hearing. To permit otherwise undercuts Canon IV.19.16’s “presumption that the Respondent did not commit the offense.”<sup>14</sup>

This serious canonical violation would ordinarily be grounds for reversal by itself. It occurred, however, when counsel represented the Rev. Monk, and his counsel did not challenge this violation at any time from October 2024 until the start of the hearing on May 27, 2025. Neither did counsel raise this canonical violation on appeal.

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<sup>14</sup> In secular proceedings, presentation of such evidence to the finders of fact would be grounds for a mistrial and starting over.

Counsel should have raised the canonical violation in the fall of 2024 under Canon IV.19.15, asking to replace the Hearing Panel with personnel from the Disciplinary Board members who had not been given the opportunity to review the Investigator's Report.

In most circumstances, the failure of a represented party failure to raise a serious canonical issue at some point below or on appeal would foreclose our consideration of the issue here. In this case, however, where we are reversing on other grounds, we note the error to assure that it is not repeated on remand and to assure that the Hearing Panel on remand is composed of members whose opinions are not skewed by the presentation of improper materials before the hearing even occurs.

## **II. Other Grounds for Appeal**

The Rev. Monk's appeal also contended that the Hearing Panel did not have jurisdiction, that the Hearing Panel was obliged to stay the proceeding until the criminal trial had taken place, and that he was so prejudiced by the Hearing Panel's pretrial decisions about discovery that the Hearing Panel's decision should be reversed. We find those grounds to be without merit.

### **A. The Hearing Panel Had Jurisdiction.**

The Rev. Monk complains that the identified Complainant changed multiple times and that without a "genuine" and knowledgeable Complainant there is no canonical jurisdiction over him.

Canonical proceedings are ecclesiastical in nature and not secular. Canon V.19.1<sup>15</sup>. The Rev. Monk accepted that canonical jurisdiction when he was ordained a priest in this Church. Like disciplinary processes before some secular professional licensing bodies, a formal complaint and complainant are not necessary to initiate and maintain a disciplinary proceeding under Title IV.

Unlike U.S. federal court, the canons do NOT have a formal "case or controversy" jurisdictional requirement where there is no jurisdiction unless there is an identified litigant who brings claims against another party, in this case the member of the clergy. Rather, the issue is the conformity of clergy conduct to the Canons, and the member of the clergy's fitness to remain ordained in the light of such conduct. The claim that there is no

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<sup>15</sup> Proceedings under this Title are neither civil nor criminal but ecclesiastical in nature. These proceedings represent the responsibility of the Church to determine who shall serve as Members of the Clergy of the Church, reflecting the polity and order of this hierarchical church. Members of the Clergy have voluntarily sought and accepted positions in the Church and have thereby given their consent to subject themselves to the Discipline of the Church. They may not claim in proceedings under this Title constitutional guarantees otherwise associated with secular court proceedings.

jurisdiction here because the Complainants changed or were not knowledgeable about all aspects of the claims against the Rev. Monk is without merit.

**B. There Is No Requirement to Stay Canonical Proceedings Where There Are Pending Criminal Charges Against the Member of the Clergy Involved.**

Nothing in the language of the Canons requires the stay of canonical proceedings when there are pending criminal charges against a member of the clergy arising from the same alleged misconduct as the canonical proceedings do.

The Rev. Monk argues that he risks being impeached with testimony he gives in this canonical proceeding in the pending criminal proceedings involving many of the same events at issue here. As the Church Attorney points out, Canon IV.19.1 greatly undercuts that argument, because it states that no member of the clergy may “claim in proceedings under this Title constitutional guarantees otherwise associated with secular court proceedings.”

While entry of such a stay in canonical proceedings may often be wise, circumstances surrounding such criminal charges will vary. Any decision to stay canonical proceedings where criminal charges or a criminal investigation are pending will require consideration of the interests of the Church, of the Community, potentially of Injured Persons, as well as those of the accused member of the clergy. This Court finds that in this case that neither the Bishop nor the Hearing Panel abused their discretion by declining to stay the canonical proceedings against the Rev. Monk.

**C. Discovery Issues on Remand.**

This Court has found that the Church Attorney’s failure to produce the forensic accounting report used by the prosecutor in his testimony was improper and prejudicial. As this Court is remanding the matter for a hearing, and to provide guidance to the parties, this Court’s order directly addresses the accounting discovery appropriate on remand. The use of multiple depositions of various individuals designated as the Complainant, as the Rev. Monk’s counsel tried to do, is not the appropriate means to do so.

**CONCLUSION**

Accordingly, this Court orders that case be remanded to the Diocese of Dallas for a new hearing.

To guide any such hearing, and to avoid a repetition of the issues leading to this appeal, this Court further orders that in any such hearing:

- a. The Investigative Reports shall not be provided to the Hearing Panel.
- b. The Hearing Panel shall not consist of members of the Disciplinary Board who participated in the May 27, 2025 hearing.
- c. From the time the charging document is sent to the new Hearing Panel, the Hearing Panel shall make a detailed index of each item received by the Hearing Panel from either the Rev. Monk's counsel or the Church Attorney, listing the party, author, title of the document, date filed, and length in pages, to be used to determine the record filed with any appeal of the Hearing Panel's decision;
- d. No attorney who has worked on or is working on the criminal prosecution of the Rev. Monk shall be permitted to testify;
- e. If no criminal trial has been concluded by the time a new hearing starts, the fact of the indictment and the felony charges may be presented, but the indictment is inadmissible, since it consists of unproven allegations;
- f. Presentation of testimony about accounting matters must come from a person or persons who personally examined the financial documents that form the basis for their findings, and any accounting report and documents examined by the person testifying must be provided to the other side as provided below, to give time to prepare rebuttal testimony and cross-examination;
- g. At least 60 days before any hearing, the Church Attorney shall specify the financial accounts, transactions, dates, and documents that will be presented to support contentions that the Rev. Monk violated the Canons and produce those documents to counsel for the Rev. Monk.
- h. At least 30 days before any hearing, the Rev. Monk shall specify any additional accounts, transactions, dates, and documents that he will present in defense or in mitigation of the claimed violations of the Canons and shall produce the supporting documents to the Church Attorney.
- i. The depositions of accounting witnesses may be taken after the receipt of their reports and the underlying documents, and these depositions shall not be counted in the limitation of two depositions of fact witnesses in Canon IV.13.5.d.
- j. The Diocese shall employ a trained, neutral court reporter to swear in the witnesses, compile the exhibits, and complete the transcript. Counsel for both sides shall be provided with the draft transcript for the purpose of identifying any transcription errors, and shall provide opposing counsel

with the same list of proposed corrections at the same time the list is provided to the court reporter for action;

- k. Each party shall designate backup counsel in advance to take over if lead counsel is unavailable;
- l. The hearing shall be in person;
- m. If sworn testimony subject to cross-examination by the Rev. Monk's counsel is taken in the criminal proceeding and is admitted into evidence in that proceeding, relevant portions of that sworn testimony admitted into evidence in the criminal trial are admissible before the Hearing Panel, and relevant portions of such sworn testimony designated by the Rev. Monk are admissible in rebuttal.
- n. Any certified copy of a judgment, verdict, or final order in the criminal matter shall be admissible at the Hearing.

IT IS SO ORDERED.

Laura A. Russell, Esq., President  
Sharon Henes, Vice President  
D.C. "Woody" Bradford, Esq.  
The Rev. Cn. Mariclaire Partee Carlsen  
The Rev. Dr. Karen Coleman  
The Rev. Terry Howell  
The Rt. Rev. Frank S. Logue  
The Rt. Rev. Elizabeth Monnot  
Russell V. Randle, Esq.  
Sra. Grecia Christian Reynoso, Esq.  
The Rt. Rev. Kathryn Ryan  
Matthew D. Taylor, Esq.  
The Rev. Margaret Thor

JACOBS CONCURRING:

**The Statement of Offenses submitted by the Church Attorney lacked the requisite specificity necessary to provide Respondent with fair notice of the alleged offenses.**

I concur in the result reached by the majority in the present matter. However, I wish to provide further comment with respect to the Statement of Offenses submitted by the Church Attorney to the Hearing Panel.

Following the referral of this case by the Conference Panel, the Church Attorney filed a Statement of Offenses as required by Canon IV.13.2. While the statement apparently attempted to allege the commission of certain canonical offenses by Respondent,

specifically, instances of misappropriation of church funds and unauthorized use of a parishioner's credit card, these allegations noticeably lacked any specific details concerning the alleged misconduct. No dates, places, amounts alleged to have been misappropriated, nor the circumstances concerning the alleged wrongful acts were contained in the Statement of Offenses submitted to the Hearing Panel. Nor did the Church Attorney specifically cite which canonical offenses the Respondent was alleged to have committed.

The Church Attorney instead attached to the Statement of Offenses copies of the reports created during the Title IV investigation, an act which the majority properly determined constituted a submission of "materials from proceedings conducted under Title IV" in clear violation of Canon IV.13.2.a, warranting a reversal of the Hearing Panel's decision solely on this ground alone.

The Respondent's counsel argues that he was thus placed in the untenable position of having to defend himself "against unspecified charges, quite literally not knowing who, what, when, or where the allegations would have occurred" (Respondent/Appellant's brief, p.2). I believe Respondent counsel's contention has merit.

**A. The Church Attorney's conduct violated his obligations under the canons.**

While the canons acknowledge that we sit as an ecclesiastical court and therefore our proceedings are neither criminal nor civil in nature (Canon IV.19.1), nevertheless there is similarly in our canons a presumption of non-commission of the offense by the Respondent in Title IV matters that is also recognized in secular proceedings. Canon IV.19.16 provides:

There shall be a presumption that the Respondent did not commit the Offense. The standard of proof required for a Hearing Panel to find an Offense by the Respondent shall be that of clear and convincing evidence.

Further, the standard of proof in all matters under Title IV requires the Church Attorney to assume the burden of establishing the commission of an offense by the Respondent. That is, to establish by clear and convincing evidence that the Respondent committed the offenses for which he/she is charged:

In all matters under this Title, it shall be the burden of the Church through the Church Attorney to establish an Offense by any Respondent. (Canon IV.19.17).

In the instant case, the Statement of Offenses presented by the Church Attorney provides neither the Respondent nor the Hearing Panel sufficient notice of the alleged offenses. Following a recitation of the procedural history of the matter, the Church Attorney provided no dispositive facts in support of his general allegations. Those general allegations are not substantiated by any dates, places, names of injured parties, or even the particular circumstances under which the alleged misconduct occurred.

Following a referral of the matter from the Conference Panel, the Church Attorney is required to determine whether to proceed with the matter or decline to advance proceedings in the matter (Canon IV.13.2). Should the Church Attorney determine to proceed to hearing, only the statement of alleged offenses is to be provided to the Hearing Panel. No other material pertaining to any prior Title IV proceedings may be submitted.

If proceeding with the matter, the Church Attorney shall provide to the Hearing Panel the statement of the alleged Offense(s), updated as needed. No other material from any prior proceedings under Title IV shall be provided to the Hearing Panel. ...  
(Canon IV.13.2.a)

Where a hearing based on the allegations set forth in the Statement of Offenses is imminent, the canons place the burden on the Church Attorney to provide the specific framework within which the offenses will be presented and subsequently considered by the Hearing Panel.

**B. The Statement of Offenses provides the procedural framework within which the hearing proceedings are to be conducted.**

As a critical part of the procedural conduct of the hearing, the Statement of Offenses is meant to act as a procedural check on the Church Attorney's evidentiary presentation. Consistent with the ends of justice recognized in Canon IV.19.16 to avoid the submission of surprise and potentially prejudicial evidence at the hearing, the Church Attorney is precluded from proffering documentary and testimonial evidence beyond the scope of what has been timely alleged in the Statement of Offenses. What is pled must be proven.

It is the Statement of Offenses that provides the evidentiary framework within which all parties and the hearing panel itself are apprised of the allegations to be proven at the hearing by the Church Attorney. The Statement of Offenses thereby establishes the parameters for consideration of only those allegations clearly stated and later proven by the evidence presented at the hearing.

**C. The Church Attorney's failure to provide both the dates on which the alleged offenses occurred as well as the date of the initiation of the Title IV proceedings, prevented the Hearing Panel from determining whether the alleged violations were in fact timely brought pursuant to Canon IV.19.4.e.**

The Church Attorney is similarly bound to present his case within certain time limits prescribed by the canons:

No proceedings under this Title shall be initiated for acts which are alleged to violate Canon IV.3.1.a or to constitute a breach of Canon IV.4.1.b, c, e, or h.2 unless the acts were committed within or continued up to two years immediately preceding the time the proceedings are initiated. (Canon IV.19.4.e).

Here, the Church Attorney did not allege when the canonical offenses were committed nor when the Title IV proceeding itself commenced. Yet, the Hearing Panel nevertheless specifically found violations of Canon IV.3.1.a and Canon IV.4.1.e. in its decision and order. The consideration of such offenses is specifically identified as procedurally time limited in Canon IV.19.4.e. Here, the necessary inclusion in the Statement of Offenses of the critical dates of the commission of the offenses and the commencement of the Title IV proceedings would have provided notice to the Hearing Panel of the issue of timeliness, and permitted it to consider that procedural matter. However, nothing in the record indicates that the Hearing Panel was aware that due consideration of that issue was mandated by the canon, bringing into question the validity of the Hearing Panel's findings of violations of Canon IV.3.1.a and Canon IV.4.1.e. Substantial prejudice to the Respondent is clearly demonstrated here in light of the procedural error committed by the Hearing Panel (Canon IV.15.5.b.5).

**D. The Respondent was denied fair notice of the offenses allegedly committed.**

A review of the record here reveals that the Statement of Offenses submitted to the Hearing Panel did not provide fair (and possibly timely) notice to the Respondent nor to the trier of fact, the Hearing Panel.

Based on the absence of any notice regarding the specific nature and circumstances involving the alleged offenses as presented in the Statement of Offenses, neither the Respondent nor the Hearing Panel were fully apprised of the timeliness, relevance, materiality, possible undue repetition, or the potential privileged nature of the evidence that was to have been submitted by the Church Attorney at the hearing, a duty

necessitated in light of the discharge of the hearing panel's duties pursuant to Canon IV.13.10.

A Statement of Offenses commensurate with the responsibility of the Church Attorney to promote justice (Canon IV.1) and to "establish an Offense by any Respondent" (Canon IV.19.17) requires that sufficient factual details be recited so as to give Respondent fair notice of the exact nature of the alleged offenses as well as setting forth the circumstances underlying the alleged misconduct.

In the exercise of this Church's ecclesiastical discipline of clergy, which may include deposition, fair notice requires that clergy be provided with specific, detailed notice of the offenses for which they have been charged before a hearing is held. Our canons clearly intend that it is at the hearing itself that the Church Attorney is called upon to present evidence to sustain his required burden of proof under Canon IV.19.17. To require less than fair notice would effectively deprive Respondents of the presumption of non-commission of an offense recognized in Canon IV.19.16.

The Statement here itself lacked sufficient specificity of the offenses of which the Respondent was to be charged. On its face it did not identify any dates, places, or indeed the specific offenses allegedly committed. Respondent was therefore fundamentally deprived of fair notice of the offenses that were required to be proven by the Church Attorney at the subsequent hearing.

Such unsubstantiated allegations without providing any detail concerning the circumstances under which the offenses were said to have been committed equally undermines the very purposes of Title IV's evidentiary and discovery canons (Canons IV.13.5,9 and 10) which seek to prevent the introduction of surprise evidence of which the Respondent is unaware prior to the hearing. Respondent in this matter was clearly "substantially prejudiced" by the impermissible conduct of the Church Attorney, justifying this Court's decision to return this matter to the Hearing Panel for a new hearing.

In sum, I would have found a violation of Canon IV.13.2.a on the above-stated grounds in addition to the majority's specific finding of a violation of this canon by the Church Attorney's impermissible attachment of the Title IV proceedings to the Statement of Offenses.

The Rev. Cn. Gregory Jacobs, Esq.

## GLOVER, KING, THOMPSON, AND STEVENSON DISSENTING:

This case involves substantial allegations of serious financial misconduct and fraud, which if proven may well rise to the level of criminality. To the best of our understanding, all members of this Court share the opinion that if the charges are true, the sanction of deposition from ordained ministry is appropriate. The Hearing Panel determined that the charges were indeed true. The majority finds that the hearing was so procedurally deficient that the Panel's findings can not stand.

We disagree: unlike the majority, we believe that the Respondent failed to participate in the hearing, and is therefore entitled only to a much less exacting level of review than that applied by the majority. Under that more limited standard of review we find that, despite the Panel's many procedural failures, the ultimate result was not "clearly wrong" so as to require reversal.

### **The Scope of Review: "Participation" in the Hearing Panel is Crucial**

Under the Canons, clergy who are accused of violating Title IV are entitled to a range of procedural and other safeguards. These safeguards are meant to restrain possible abuses of authority by bishops or other ecclesiastical authorities, and ensure that no cleric is subject to arbitrary or capricious discipline. Those procedural rights come with a corresponding duty to participate in the proceedings. These rights and duties are conjoined in Title IV; they are two sides of a single coin.

Canon IV.15 embodies and elaborates this standard in the context of this Court's review of matters decided by Hearing Panels. It provides in pertinent part as follows:

#### **Sec. 5.**

The standards for and conditions of appeal to the Court of Review shall be as follows:

- a.** Where an Order is issued against a Respondent who fails to appear before the Hearing Panel or who otherwise fails to participate in proceedings before the Hearing Panel, such Order shall be upheld unless a review of the record on appeal shows the Hearing Panel made a clear error that substantially prejudiced the Respondent. The Court of Review shall review the facts and record in the light most favorable to the Respondent.
- b.** In all other appeals, the Court of Review shall grant relief to the appealing party only if, on the basis of the record on appeal, it determines that the party seeking review has been substantially prejudiced by any of the following:
  1. The action taken below violates the Constitution and Canons of the Church or the Diocese;

2. The Hearing Panel has exceeded the jurisdiction conferred by this Title;
3. The Hearing Panel has not decided all of the issues requiring resolution;
4. The Hearing Panel has erroneously interpreted or applied the Constitutions or Canons of the Church;
5. The Hearing Panel has committed a procedural error or engaged in a decision-making process contrary to this Title;
6. The factual determinations of the Hearing Panel are not supported by substantial evidence when viewed in the whole light of the record on appeal.

The majority describes numerous procedural failures by the Hearing Panel, and concludes that those failings were so substantial that they (a) excuse the Respondent's non-participation before the Panel, and (b) require the case be sent back for a new hearing.

We would agree with the majority on the second point: the hearing was profoundly flawed, and if the Respondent had participated, he would absolutely have been entitled to relief in the form of a fresh hearing. But we do not reach that issue because, unlike the majority, we think it is exactly this sort of process failure that is open to review only for those who participate—and that it is illogical to conduct the very review that is available only to participants, in order to decide whether non-participation was somehow excused.

This may sound like a narrow legalism or a technicality. It is neither. It is an application of what it means to be ordained, and of the nature of the Hearing Panel (as well as all the other participants in the disciplinary process) as a council of the Church, and of the fundamental nature and goals of the Title IV disciplinary process.

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No one becomes a Priest<sup>16</sup> by accident. There is a long and exacting process of discernment, both by the individual and by the Church. There are a multitude of questions to be answered, many prayerful conversations along the way, Commissions on Ministry and Standing Committees and Bishops, and only after all of these prayers and conversations and inquiries is a member of the Body of Christ ordained to a particular ongoing role in the leadership of the Church.

The Church's mission is to follow in the footsteps of Jesus, who came not to be served but to serve. The leaders of the Church are themselves called to be servants. In the service for the ordination of a Priest, the ordinand is reminded that "[y]ou are to love and serve the people among whom you work... [i]n all that you do, you are to nourish Christ's people from

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<sup>16</sup> Or a Deacon, or a Bishop; but since this case is about a Priest, our discussion is likewise.

the riches of his grace....” Book of Common Prayer, p. 531. People who choose, and who are chosen, to be ordained give up a lot. They promise to obey their Bishop — a promise almost scandalous in the current age. They promise to live their spiritual lives publicly, for the benefit and edification of others. And they “solemnly engage” to “conform to the doctrine, discipline and worship of The Episcopal Church,” BCP p. 526, an engagement so serious that the ordinand actually signs a document attesting to it, in public, as part of the service of ordination.

The “discipline” of the Church includes, though is not limited to, the disciplinary standards and processes contained in Title IV of the Canons. Clergy subject themselves to Title IV by virtue of their ordination. They voluntarily take on obligations and accountability that other Christians do not have. Some of these obligations are substantive: for instance, clergy (but not other Christians) are required to refrain from “holding and teaching publicly or privately, and advisedly, any Doctrine contrary to that held by the Church,” Canon IV.4.1(h)(2). Others are procedural: for instance, clergy (but not other Christians) are required to “cooperate” in any inquiry into their conduct under the process set forth in Title IV, Canon IV. See Canon IV.3.1(b). This ongoing accountability is part and parcel of what it means to be an ordained person in this Church.

Even though Title IV borrows some of its concepts and procedures from secular law, its purposes and practices are very different from either a civil or a criminal case. The purpose of a secular legal case is to find facts, apply the law, and thereby do justice to the parties before the court. Within the limits created by court rules, a civil or criminal defendant is responsible only for their own interests; they have no broad duty of cooperation. Some bedrock rights, such as the Fifth Amendment privilege against self-incrimination, exist to safeguard defendants’ right *not* to cooperate. It may or may not be good trial strategy, but a defendant in a secular case is basically entitled to sit back and say, “prove it.”

Title IV is radically different. It is rooted not in the secular law but in the Gospel. Its values go far beyond those of a secular legal case, and include “healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among all involved or affected,” Canon IV.1. Everyone involved, including a member of the clergy who may have committed an offense, shares the responsibility for upholding those values and taking part in the Church’s process for accountability. With the single exception of the Church Attorney, the Canons do not require or assume the presence of lawyers in the process, because the Title IV process is not a legal proceeding. Rather it is a “council of the Church,” in which an ordained person is called by ordination itself to take part.

For that reason, clergy are required to “cooperate” with proceedings under Title IV. See, e.g., Canon IV.3.1(b) (clergy liable to discipline for “failing without good cause to cooperate

with any investigation or proceeding conducted under authority of this Title”); Canon IV.6.7 (initial notice from intake officer to respondent required to “remind the Member of the Clergy of his or her duty under [Canon IV.3.1.b](#) to cooperate in the subsequent proceedings”); Canon 19.1 (Title IV is exercise of Church’s responsibility “to determine who shall serve as Members of the Clergy of the Church,” to which members of the clergy have voluntarily subjected themselves; accordingly they can not claim “constitutional guarantees otherwise associated with secular court proceedings,” such as the right to remain silent).

Clergy can be held accountable to that duty of cooperation in at least two ways. First, failure to cooperate is itself an Offense under the Canons, which can be the subject of discipline. And second, when a matter has proceeded all the way to a Hearing Panel, failure to appear at and participate in the hearing significantly limits the scope of any appeal the clergy person may make to this Court.

Under the provisions of Title IV, a Respondent who has appeared and participated fully before the Hearing Panel is entitled to a more rigorous review than one who has not. See *Watkins v. Diocese of Alabama* (2024) at p. 10 (Respondent who fails to appear or who fails to fully participate is entitled only to the more limited scope of appellate review for “clear error”).

The limited scope of review for non-participants is not a punishment but a consequence. A clergy person who does not appear and participate in a Hearing Panel deprives the Church of the opportunity for the fullest and fairest process as it asks “who shall serve as Members of the Clergy.” They increase the risk of procedural or other mistakes which they might have prevented by a timely objection. A clergy person who takes this stance is still entitled to justice, which is itself a declared value of Title IV, and so can call on this Court to review the “bottom line” decision of the Hearing Panel to ensure that it is not clearly wrong. But they are not entitled to a searching review of the process leading up to that result unless they took their part in the process.

As this Court in *Watkins* explained,

Although failure to appear for hearing before a Hearing Panel “shall not, in itself, provide the basis for a finding that any Offense has been committed” (Canon IV.19.6), it may, and should, have consequences. The Canons specifically provide that a Hearing Panel may proceed to hearing in the absence of a Respondent. The Canons also provide that a Respondent who fails to appear for hearing before the Hearing Panel forfeits most grounds to appeal the Hearing Panel’s Order. The purpose of Title IV is not merely to determine whether a Member of the Clergy did or did not commit an alleged Offense. Rather, the purpose includes the broad goal of promoting “healing, repentance, forgiveness,

restitution, justice, amendment of life and reconciliation among all involved or affected.” Canon IV.1. The Respondent who fails or refuses, without good cause, to participate and continue to participate during the whole Title IV process does not only forego their opportunity to present their side of the case or cross-examine witnesses or object to procedural decisions of the Hearing Panel. They also undermine the broader ecclesiastical goals of the proceeding and further harm all involved by limiting the possibilities of resolution. As a result, failing to appear for hearing before the Hearing Panel necessarily limits what issues can be considered on appeal. *Id.*, p.8.

This embodies a basic fairness. A member of the clergy who fully participates in the Hearing Panel has kept faith with the process. They have taken their part in a council of the Church in which they have a unique interest and perspective. They should be and are entitled to ask this Court to review whether the Hearing Panel has likewise followed the process. That is, broadly speaking, what the scope of review under Canon IV.15.5(b) provides.

By contrast, a member of the clergy who has not fully participated before the Hearing Panel should not be and is not entitled to a close review of a process they chose to not take part in. This Court too is a “council of the Church,” and even when the member of the clergy failed to participate, we will review the entire record, see *Watkins*, to ensure that we do not endorse an outcome that is clearly wrong. That is what Canon IV.15.5(a) provides.

We believe that the rule, rooted in the nature of the Church and the meaning of ordination, and clearly stated in the Canons, is simple: a Respondent who appears and fully participates before the Hearing Panel is entitled to the fullness of review provided by Canon IV.15.5(b). One who does not<sup>17</sup> is not left without recourse, but it is a very narrow recourse: under Canon IV.15.5(a) the Court of Review will provide relief only if it is left with a “definite and firm conviction” that the outcome at the Hearing Panel was wrong. See *Watkins*, p. 13.

Such a bright line standard benefits the process as a whole by declining to incentivize games-playing by Respondents: there can be no advantage to non-participation, and facts which might have given rise to “good cause” are preserved for review on appeal. It benefits Respondents by ensuring that no Respondent, or counsel, should ever have to wonder if they forgo some tactical advantage by faithfully participating to the best of their ability. And it benefits this Court, by sparing it the logical gymnastics involved in reviewing procedural failures to see whether they are serious enough to justify non-participation, thus allowing for review of procedural failures.

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<sup>17</sup> We do not consider here a case where *force majeure* makes it impossible for the clergy person to participate but a Hearing Panel goes ahead anyway. We trust that such a case will never arise. We simply say that where participation is possible it is required, and it is by continuing to participate that the member of the clergy preserves the full scope of review.

Applying that clear standard, it is undisputed that the Rev. Monk left the Hearing Panel immediately after the Church Attorney's opening statement. He (either personally or through counsel) made no opening statement, cross examined no witnesses, presented no evidence or testimony of his own and objected to none of the Church Attorney's, and in every respect left the Church Attorney as the only party-participant in this matter. He therefore "otherwise fail[ed] to participate in proceedings before the Hearing Panel."

We believe the forgoing is enough to conclude that the limited standard of review under Canon IV.15.5(a) should apply. We recognize, though, that *Watkins* left the door open to the possibility that the broader standard of review might apply if non-participation were excused by "good cause," *id.* p. 8.

For all the same reasons we discuss above, we believe that any "good cause" exception to the general rule of participation should be narrowly drawn. We would find good cause for non-participation only where circumstances, rather than choices by a Respondent or counsel, preclude such participation.

In this case, the Rev. Monk argues that the illness of Mr. Black, one of his counsel, constituted good cause for his non-participation. There is no dispute that the illness was real. But Mr. Black explicitly said that he was prepared to go forward if necessary. We do not defend the Panel's decision to proceed. But we are not prepared to say that the Panel's decision to hold the hearing as scheduled despite Mr. Black's illness gave the Rev. Monk good cause for his non-participation.

That is all the more clear given that the Rev. Monk had not one, but three lawyers representing him. We are told that Mr. Byrnes left his firm shortly before the hearing, but that does not in itself mean that he could not have continued to represent his client. In fact Mr. Black represented to the Hearing Panel that Mr. Byrnes was available and could have been added to the call:

Mr. Byrnes can -- I think can be added to the call. And I would, you know, if we had to do it I would certainly want to add him to the call, but I am one who have -- who my client has designated to conduct a -- to defend represent his interest in the hearing, to examine witnesses and such for a variety of reasons, including unique experiences I have both as a trial law lawyer and for other specific reasons that are uniquely important for this particular hearing.

Tr. p. 6 lines 12-20.

Moreover, the Rev. Monk was represented by a Texas lawyer, Ms. Cobb. She was not present at the hearing, but presumably could have been; nothing in the record explains her absence.

The Canons provide that :

In all proceedings under this Title whenever a Respondent or a Complainant is required or permitted to appear or to participate or to be heard or to be present, they each shall have the right to be accompanied by and to be represented by counsel of their choice.

Canon IV.19.12.

Respondents in Title IV proceedings have the right to retain counsel if they wish, freedom to choose whom to retain, and the right to bring and be represented by their lawyers at hearings. A Hearing Panel may not interfere with those rights. But there is no suggestion that the Panel here did any such thing. The Respondent chose his counsel. One of them was present; one of them could have been present, and the absence of the third was unexplained. The Hearing Panel has the responsibility and authority to regulate proceedings before it, Canon IV.13.10(b)(1), and this Court has recognized that “[t]he decision to grant or deny a request for a continuance of hearing is within the sound discretion of the Hearing Panel,” *Watkins* p. 18. The Hearing Panel was not required to delay its proceedings because of his three lawyers, the one who was tasked with the Hearing was also the one who was sick. That the Rev. Monk did not agree with that decision does not constitute “good cause” for his decision not to participate.

Respondent also argues that he had good cause to depart from the hearing because his counsel, Mr. Black, could not hear what was being said. Specifically, Mr. Black was unable to hear the Church Attorney’s opening statement. He made that inability known to the President of the Hearing Panel, but the President said that she had no remedy for the problem and directed the Church Attorney to continue. At the end of the opening statement, Mr. Black reiterated his complaint and then immediately logged off the Zoom link, thereby departing from the hearing, and directed the Respondent likewise to depart.

A hearing where not everyone can hear is an outrage. We do not condone or excuse it. But the question is not whether the hearing was a fiasco; the question is whether the fiasco justified the Rev. Monk’s decision to eschew it. We think not.

Until shortly before the Hearing Panel took place, it was apparently assumed that all participants would be present in person. When Mr. Black became ill, he requested permission of the Panel to appear remotely. The Panel granted that request subject to certain enumerated conditions. One of the conditions was that the Respondent or his attorneys bear the cost and take responsibility for setting up the remote access.<sup>18</sup>

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<sup>18</sup> In a May 25, 2024 email responding to Mr. Black’s request for delay because of his illness, or alternatively for permission to appear remotely, the President of the Hearing Panel specified that “Any such remote access procedures must be: (1) described in sufficient detail prior to the day of the Hearing to allow the Hearing Panel to assess their impact on the efficiency, dignity, transparency and orderly conduct of the Hearing; (2) accomplished without the involvement of personnel or contractors of the Diocese or St. Matthew’s Cathedral; (3) accomplished solely at the expense, and through the efforts of the Respondent or his counsel;

Section 25.11 of the Canons of the Diocese of Dallas provide in connection with disciplinary proceedings that “Any meeting required under this Canon 25, other than a hearing where evidence may be taken or examined, may be conducted either in person or through telephonic or other electronic communications equipment by means of which all persons participating in the meeting can hear each other at the same time.”

The Hearing Panel was, of course, a “hearing where evidence may be taken or examined,” so under sec. 25.11, electronic appearance was not permissible at all. Appellant’s counsel effectively asked the Panel to set aside the provisions of sec. 25.11. The Panel acceded to that request, provided that Appellant and his counsel assume responsibility for implementation. No one objected to that proviso, and all parties apparently proceeded on that understanding.

The Rev. Monk or his counsel chose the technology they were using. It evidently worked poorly. They complained to the Hearing Panel that they could not hear the Church Attorney’s opening, and the Panel’s response was that it had no solution to offer. That was the moment in which “full participation” would have called on the Rev. Monk and his counsel to try to reposition the equipment, or alert the Panel to the continuing difficulties, or otherwise seek a solution. Maybe it would have made no difference; maybe it would have. We will never know, because the Rev. Monk’s counsel instead, after a brief recess, simply announced their departure as a *fait accompli*.

We sympathize with the Rev. Monk and his counsel. As the majority opinion sets out in detail, they were in a terrible position: Mr. Black was genuinely sick, and the failure of the Zoom hookup was a disaster. We differ from the majority only in this: we believe that when hearings go awry, even seriously so, that does not create “good cause” for a Respondent to refuse participation.

We will never know how this hearing would have come out if the Rev. Monk had participated. If it had come out exactly as it did, the Rev. Monk would have been entitled to ask this Court for a searching review under the standards of Canon IV.15.5(b), and we would agree with the majority’s analysis under that standard. But he did not participate, and our review is therefore limited to the “clear error” standard of Canon IV.15.5(a).

### **The Hearing Panel’s Order was not Clear Error**

The question before this Court is therefore whether the Hearing Panel “made a clear error that substantially prejudiced the Respondent.” We think that it did not.

We join with the majority opinion concerning issues of jurisdiction, the failure to stay canonical proceedings pending criminal proceedings, and issues related to discovery. Assuming (without deciding) that these matters are all reviewable under the standard of

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and (4) otherwise acceptable to the Hearing Panel in its sole discretion.”

Canon IV.15.5(a), we would find that none of the Hearing Panel’s decisions pertaining to those matters are “clear error” requiring reversal.

#### A. The Transcript and the Record on Appeal

We agree with our colleagues in the majority with respect to their description and general characterization of the transcript and the record. The transcript of the Hearing Panel is deplorable. It appears to have been created after the fact, based on recordings from one or possibly two iPhones. It is riddled with notations of “(inaudible),” and it is impossible to know what was said, or how much was said, during any of those gaps. Where we differ from the majority is that we are not prepared to say that the Panel committed clear error that substantially prejudiced the Respondent by proceeding as it did.

The Panel did, it appears, make efforts to provide for transcription. There is reference in the Transcript to the presence of an “interim reporter,” Tr. p. 6 lines 2-3. And while ultimately less than successful, the Panel also made an effort to set up iPhones as recording devices. This was clearly far from a best practice, but we do not find the Panel’s decision to proceed with these measure in place to be clear error. See also *Watkins*, holding that where “Respondent failed to appear for hearing before the Hearing Panel and therefore his appeal is limited to ‘clear error,’ procedural violations are generally outside the scope of the Court’s review,” *id.* p. 19.

Likewise the Record on Appeal is difficult to untangle. Canon IV.15.4 provides that

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.

Ideally, the Record would be clear and well delineated. It would consist most importantly of the transcript of the Hearing Panel, and documents or other items of evidence considered by the Panel. That would allow this Court efficiently and effectively to carry out its review of the decisions of the Hearing Panel based on the evidence that was before it. The record in this case falls far short of such an ideal.

In this matter, both parties have designated various materials as part of the “record.” It is not always clear whether those items were in fact offered before the Hearing Panel, and whether they were “received” or “excluded” under Canon IV.13.10(b). However, among the most important items of evidence may have been the exhibits attached to the investigator’s report, including multiple checks written by and payable to the Respondent, see Tr. p. 32 line 2 *et seq.* Likewise, a Ms. Ginger Roper, a partner and Chief Financial Officer of a local CPA firm, testified about her review of various bank statements, identified as “Exhibit 4” in the Transcript, Tr. p. 45 line 25 *et seq.*

Whatever the flaws in the Record, those documents and materials were clearly before the Panel. As we discuss below, we can not reach a “firm conclusion” that the Panel erred in

finding that these materials were sufficient to establish that Respondent had committed an Offense and to order that he be deposed.

#### B. The Hearing Panel's Order disposing of this Matter was not Clear Error

We come at last to the substance of this matter: the Hearing Panel's finding that the Rev. Monk committed offenses under the Canons, and its order that he be deposed.

As in every matter under Title IV, an Offense is proven only by "clear and convincing evidence," Canon IV.19.16. And on this ultimate matter, the Canons extend a measure of protection even to the appellant who was a non-participant at the Hearing Panel: we are to "review the facts and record in the light most favorable to the Respondent," Canon IV.15.5(a).

This Court described the nature of review under Canon 15.5(a) in *Watkins*:

The factual findings of the Hearing Panel which are "clearly erroneous" are those that, after review of the whole record, leave us with "a definite and firm conviction that a mistake has been committed" by the Hearing Panel, because their "interpretation of the facts is implausible, illogical, internally inconsistent, or contradicted by documentary evidence." *Id.* p. 13.

This means that the Court of Review will review the whole record. If it is clearly convinced that the Hearing Panel made finding of fact irreconcilable with the record, this Court will correct the error. To that standard as articulated in *Watkins*, we would add that ambiguities are to be analyzed in the light "most favorable to the Respondent." That does not mean that we are to imagine explanations that were not provided, or hypothesize rebuttals that were not offered; but that if there is genuine doubt about fact, we are to resolve it with a bias towards the Respondent. We have reviewed the whole record, messy as it is, and we do not have a "definite and firm conviction that a mistake has been committed" in the Hearing Panel's Order.

The evidence at the Hearing Panel included testimony by the investigator, the Rev. Timothy Cherry, describing how the Rev. Monk had near total control of parish funds with extremely limited oversight by others, *Tr.* p. 40; that he wrote numerous checks to himself in a way that was inconsistent with normal church practice, *id.*, that he held a credit card on which personal and church expenses were commingled, *id.* p. 41, and that he solicited a gift of about \$60,000 to pay off both personal and church charges to that card, *id.* p. 41-42.

The Panel also received testimony from Ms. Ginger Roper, a partner and Chief Financial Officer at a local accounting firm. Ms. Roper testified that based on her review of bank statements (which were identified in the transcript as “exhibit 4,” Tr. p. 45 line 24-46 line 1), there was a “gross misappropriation of funds... [of] over \$400,000,” Tr. p. 46 lines 11-14.

The District Attorney also testified about the results of an investigation his office was conducting in parallel with the Title IV proceeding. He presented evidence to the Panel that the Rev. Monk had misappropriated funds in at least three ways: first by simply writing checks to himself from the so-called “ministry fund,” Tr. p. 61 line 14 *et seq.*; second by depositing funds in a church account and then electronically moving them to personal accounts, Tr. p. 61 line 24 *et seq.*, and third, by making charges on a credit card opened in the name of a parishioner without that person’s knowledge, Tr. p. 62 line 13 *et seq.*

And the Panel heard testimony from a Ms. Meredith Blitz that the Rev. Monk took active and ongoing steps to conceal his misappropriation, by misrepresenting to the congregation the level of scrutiny being applied to parish accounts by the retained accounting firm:

A. He knew that they were not providing the level of service that he represented in the annual parish reading by keeping the Ministry Fund account off the books and by not reporting bank activity in the Vera Bank account and ultimately taking it off the books in early 22, Edward was able to receive and disperse funds without Vestry oversight. (Inaudible) By hiring AFairchild CPA in early 22, not disclosing these accounts to them and overstating the level of services provided Monk gave a false impression of accurate financial reporting to the vestry and the (inaudible) congregation.

Q Did it -- (inaudible). So in other words, in layman's terms, what he was doing was removing all impediment that he himself being (inaudible) controlled finance the church; is that correct?

A Yes.

*Tr. p. 25 lines 9-25.*

There was a great deal of other evidence and testimony at the hearing, and efforts to establish other instances of financial misconduct by the Rev. Monk. We are mindful of our obligation to review the record “in the light most favorable to the Respondent.” The many

gaps, obvious inaccuracies, and other failures of the transcript create ambiguities which, viewed in the light most favorable to the Rev. Monk, mean that we can not rely on such evidence or testimony.

Nevertheless, while much must be discounted, enough remains that we can not form a definite and clear conviction that the Panel made a mistake in finding that the Rev. Monk misappropriated funds, misled his parish about his behavior, and violated the canons as alleged.

## **Conclusion**

We would affirm the decision of the Hearing Panel because the Rev. Monk did not participate in the hearing, and we do not have a “definite and firm conviction” that the Panel’s Order represented a mistake.

We hasten to add, however, that this result does not constitute endorsement of the way in which the hearing was conducted.

Hearing Panels are not made up of lawyers; as we note above, the Church has not required any of the participants in the Title IV process, other than the Church Attorney, to have legal training.<sup>19</sup> It would be inappropriate to demand that Hearing Panels scrupulously follow the norms of secular legal proceedings. Even so, the Canons themselves require, for instance, that evidence be received or excluded, which implies some process for evidence to be offered and ruled upon; that a verbatim transcript of the hearing be created, which implies the presence of someone who can accomplish that transcription; and that witnesses be sworn, which implies the presence of an officer who can administer oaths. Furthermore, the Panel’s authority to regulate proceedings before it does not mean that it can exercise discretion arbitrarily or capriciously; the Panel is bound by the values that underlie all of Title IV, and must conduct its work with those values in mind.

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<sup>19</sup> Not only are Hearing Panels not made up of lawyers, there is as far as we can see no training available for Hearing Panels. Title IV training as conducted by dioceses and provinces mostly seems to focus on the early stages of the process, including intake and referral. Hearing Panels have detailed and complex procedural responsibilities, and it is unrealistic to expect them to succeed without focused and timely training. We urge The Episcopal Church to remedy this lack as a matter of urgency.

In this case, we are deeply troubled by the Panel's refusal to delay its proceedings in light of Mr. Black's illness. We do not believe that refusal excused the Rev. Monk from participating, but that is a separate question. We believe that where lead counsel is, because of illness or otherwise, unable to fully function, and where there is no suggestion that inability is manufactured, strategic, or otherwise less than genuine, the Hearing Panel upholds the Gospel values of Title IV by delaying the proceedings.

We are even more troubled by the Panel's apparent indifference to the fact that Mr. Black could not hear what was happening. Once again, we decline to find there an excuse for the Rev. Monk's failure to participate, but once again, that is a separate question. The order allowing Mr. Black to appear remotely did indeed put the burden on arranging the technology on the Rev. Monk and his team. They brought a laptop and a cell phone, which may have been the best they could do under the circumstances. When it became apparent they could not hear, the Panel should have cooperated in seeking a pragmatic solution. The fact that it did not is unseemly at the very least, and inconsistent with the values of Title IV.

We are finally troubled by the way the hearing was conducted even after the Rev. Monk and his lawyers left. While we can say with confidence that some evidence was received by the Panel, and that on the basis of that evidence we lack a clear conviction that the ultimate result was wrong, the Panel's procedures would not have withstood stricter scrutiny had the Rev. Monk actually participated. In particular, we can see no sign of any process for the offering and evaluation of evidence, and we share the majority's criticism pertaining to testimony by the District Attorney. The transcript is a fiasco, and resulted directly from the Panel's decision to proceed without a court reporter. And the "record" is a confused jumble of documents whose status as evidence is often far from clear. The fact that we dissent does not mean that we minimize any of these failures.

If the Rev. Monk had participated as best he could under the circumstances, we would have joined our colleagues in the majority and sent the matter back for a new and proper hearing. It is only because he did not, and that under the resultant narrow scope of review we can not say that we have a definite and firm conviction that the end result was wrong, that we dissent.

Dr. Delbert C. Glover  
The Rev. Dr. Giovan Venable King  
The Rt. Rev. E. Mark Stevenson  
The Rev. Dr. Marisa Tabizon Thompson