

ECCLESIASTICAL TRIAL COURT RULES OF PROCEDURE

Rule 1: Application and Scope of Rules

A. Application and Scope. These Rules govern procedure in the Ecclesiastical Trial Court (Court) in all presentment actions of the Anglican Diocese of San Joaquin. They shall be construed and administered to secure the just, speedy, and cost-effective determination of every such action. The Rules shall be interpreted in light of the Canons of the Anglican Church in North America (Appendix 1) and of the Anglican Diocese of San Joaquin (Appendix 2), which shall respectively govern their application and implementation. In the event of any ambiguity or discrepancy, the Bishop of San Joaquin shall have discretion to resolve any such ambiguities.

B. Presumption of Innocence and Burden of Proof. In any presentment action, the accused cleric (hereinafter referred to as “the Respondent”) shall be presumed to be innocent until the contrary is proven by clear and convincing evidence, as defined in California law: a fact, or set of facts, is proved by clear and convincing evidence when the finder of fact is convinced that it is highly probable that such fact, or set of facts, is true.

C. Right to Counsel. The Respondent shall have a right to be represented by the counsel of his or her choice at his or her own expense. The diocese shall also appoint a canonical advisor (hereinafter referred to as the “Advisor”) to assist the Respondent during the course of the proceedings before the Court (ACNA Canon IV.3.3.6).

Rule 2: Institution of Presentment Action

A. Form. A presentment proceeding shall be commenced by the service of a Summons, together with a copy of the Articles of Presentment and Ecclesiastical Trial Court Rules of Procedure, upon the Respondent. The Summons and Articles of Presentment shall be signed by the Church Advocate. The Summons shall: (1) provide the mailing address of the Court and identify the names of the judges to hear and consider the presentment; (2) identify all parties to the proceeding, including the Respondent; (3) state the name and address of the Church Advocate who shall represent the Diocese (ACNA Canon IV.3.3.5); (4) advise the Respondent of his or her right to engage his or her own legal counsel; (5) state the name and address of the Advisor appointed by the Diocese to assist the Respondent; (6) clearly state the time within which the Respondent must file with the Court an Answer to the Articles of Presentment; and (7) notify the Respondent that his or her failure to timely file an Answer to the Presentment may result in a Judgment by the Court that the offenses set forth in the Presentment were committed by the Respondent, and that the Judgment of the Court will be forwarded to the Bishop for imposition of sentence. The Court may, upon application by the Church Advocate, allow the Summons to be amended.

B. Service. The Summons and Articles of Presentment shall be personally served upon the Respondent. Personal service shall include “signature required” delivery by courier service to the Respondent. The Respondent may waive personal service in writing.

C. Proof of Service. The person effecting service of the Summons and Articles of Presentment on behalf of the Diocese shall make proof of service by affidavit or declaration under penalty of perjury to the Court and the Church Advocate. In the event service is effected using “signature required” courier service, the official record generated by the courier verifying delivery and signature of the Respondent shall constitute proof of service. If service is waived, the written waiver of service shall be filed with the Court and Church Advocate.

D. Scheduling Order. The Court shall within twenty (20) days of receiving proof of service of the Presentment issue a scheduling order setting the date of trial and all other pertinent dates under these rules. The court shall send a copy of the scheduling order using the procedure set forth in Rule 3 herein.

Rule 3: Service and Filing of Pleadings and Other Papers

Except as otherwise expressly provided in these Rules, every pleading, paper, motion, and notice subsequent to the

Summons and Articles of Presentment required to be served on the other party, or his or her legal counsel in the case of the Respondent, shall be sent by First Class United States Mail addressed to the party at his or her address of record on the Summons and deposited into the United States Mail. A Proof of Service by First Class Mail (California Judicial Counsel Form POS-030) shall be completed and attached to each such document. Service by mail is complete upon mailing. The filing of papers with the Court shall be made by mailing them to the Presiding Judge at the address stated in the Summons, unless otherwise directed by the Court. The parties may, by agreement approved by the Court, also provide for service by other means such as electronic mail and/or facsimile transmission.

Rule 4: General Rules of Pleading

A. Articles of Presentment. The Articles of Presentment shall contain a short and plain statement of each Offense with express reference to applicable provisions of Canon 2 of Title IV of the Canons of the Province, and a plain and concise statement of the facts upon which each such allegation is made. The Articles of Presentment shall contain sufficient allegations so as to place the Respondent on notice as to what offenses he or she is charged with and the basis for such charges.

Rule 5: Defenses and Objections

A. When Presented. Unless a different time period is prescribed by the Court in its scheduling order, a Respondent shall file his or her Answer within fifteen (15) calendar days of the date the Presentment was served on the Respondent. The Respondent may, in writing to the Court and the Church Advocate, request a ten (10) day extension of time to file his or her Answer, which request shall be granted unless good cause exists to deny the same.

B. How Presented. The following affirmative defenses may be asserted in the Answer:

- (1) insufficiency of service or process;
- (2) lack of jurisdiction;
- (3) failure adequately to state a sufficient factual basis for an Offense arising under canon law; and,
- (4) expiration of the applicable period of limitations as stated in Canon 3 of Title IV of the Canons of the Province.

C. Bill of Particulars. Within ten (10) days of being served with the Presentment, the Respondent may move the Court for a bill of particulars, demanding that the Church Advocate provide a more specific statement of fact, before filing an Answer to the Articles of Presentment. The Court may, in its sole discretion, grant the Respondent's motion for a bill of particulars if the Court has concluded that the factual basis stated in the Presentment is so vague, ambiguous, or unintelligible that the Respondent cannot reasonably be expected meaningfully to respond to it. If the Court finds that the bill of particulars clarifies the factual uncertainties, it shall order the Respondent to file an Answer to the Presentment within ten (10) days of the date the order to Answer is served upon the Respondent.

D. Challenges for Cause. If a party believes that good cause exists that a member of the Court cannot fairly and impartially judge the Presentment, he or she shall file with the Presiding Judge a challenge for cause against said member or members of the Court. The challenge for cause shall be reviewed and ruled upon by the remaining members of the Court not subject to the challenge, who shall determine whether the challenge for cause is well taken based upon the evidence presented in support of the challenge.

Rule 6: Amended and Supplemental Pleadings

The Court may, in the interest of justice, permit the filing of amended and supplemental pleadings.

Rule 7: Evidence and Witness Statements, Discovery

A. Evidence due. All evidence and witness statements shall be submitted in writing. The Court's scheduling order shall set the date that all evidence and briefing shall be submitted to the Court by the parties. If additional testimony is required in any Hearing, it shall be taken orally in open Court by the Recorder of Proceedings. All testimony shall be given under oath, solemn affirmation, or, in the case of written statements, by affidavit or declaration under penalty of perjury.

B. Extensions. The Court may, in its sole discretion upon application by either of the parties, grant reasonable extensions of time for good cause shown.

C. Discovery. The parties may conduct discovery through written or oral depositions or written interrogatories. The Court may limit the number, length, and scope of depositions or interrogatories and shall so state the same in its scheduling order.

D. Privileges. The Respondent shall be entitled to exercise his or her privilege against self-incrimination, under the Fifth Amendment to the Constitution of the United States, in the event he or she has reason to believe that his or her response to a question or interrogatory might tend to self-incrimination under state or federal criminal laws. Additionally, the parties may avail themselves of the attorney-client privilege, the clergy-penitent privilege, psychotherapist-patient privilege, and the physician-patient privilege, as those privileges are defined in the Federal Rules of Evidence or in canon law, in all proceedings before the Court.

Rule 8: Summary Judgment of Offense

A. How Made. If the Respondent fails or refuses to Answer the Articles of Presentment or otherwise respond by motion, except for reasonable cause to be allowed by the Court, the Church Advocate may, no sooner than forty (40) calendar days after the Respondent is served, move with or without supporting affidavits for Summary Judgment. A Respondent may also move, with or without supporting affidavits, for Summary Judgment on part or all of the allegations of the Articles of Presentment.

B. Opposing Affidavits. Prior to the day of any hearing set by the Court on a Motion for Summary Judgment, the Respondent may submit affidavits in support of his or her response to the Motion.

C. Proceedings Thereon. The court shall convene a hearing to consider any Motion for Summary Judgment. If the Articles of Presentment, together with affidavits, if any, and any oral testimony or other admissible evidence presented to the Court show that there is no genuine issue as to any fact material to a determination that the Respondent committed an Offense, the Court shall render Summary Judgment as sought by the Motion for Summary Judgment.

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

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

Rule 9: Hearings

A. Quorum. Two-thirds of the judges of the Court, who have not been disqualified for cause, constitute a quorum to hear and adjudge cases. At least three (3) judges are required to hear and adjudge a case pending before the Court. A judge who has not attended all hearings in a matter may not vote on the case and shall be disqualified

from adjudicating the matter.

B. Recorder. The Court shall appoint a Recorder of Proceedings (Canon 38.02, ACNA Canon IV.5.7). Each Respondent is entitled to a speedy and just trial of the allegations set forth in the Articles of Presentment. Each Respondent is entitled to confront and test the evidence against him or her. The facts alleged in the Articles of Presentment must be proved by clear and convincing evidence and the Church Advocate bears the burden of going forward and of proof as to each and every allegation in the Articles of Presentment. Hearings shall be governed by the Federal Rules of Evidence, the ACNA canons, and the canons of the Diocese of San Joaquin.

Rule 10: Judgment

The Court shall render its Judgment no later than thirty (30) days after the date of the conclusion of the hearing upon a trial or Motion for Summary Judgment. The affirmative vote of not fewer than a majority of the sitting members of the Court shall be required for any determination by the Court (Canon 38.03). A written statement of Judgment, along with a recommended sentence (ACNA Canon IV.8.3), shall be signed by the Presiding Judge and delivered to the Bishop. A written and signed statement of Judgment shall also be delivered to the Respondent, his or her legal counsel and to the Church Advocate.

Rule 11: Sentencing

The Church Advocate may, within ten (10) days of receiving service of a Judgment finding the Presentment true, forward to the Bishop and to the Respondent a sentencing memorandum, in which the Church Advocate offers his or her recommendation regarding an appropriate sentence based upon the evidence offered in the proceedings before the Court. In the event the Church Advocate prepares a sentencing memorandum, the Respondent may, within ten (10) days of being served with the sentencing memorandum, serve the Bishop with his or her reply to the sentencing memorandum. The sentence memorandum shall be advisory only. The Bishop shall have sole, and exclusive, discretion to impose a sentence that he, in his own pastoral and prudential judgment, believes is just in view of the Judgment rendered by the Court (ACNA Canon IV.8.1).

APPENDIX 1: ACNA CANONS TITLE IV Ecclesiastical Discipline *as related to Diocesan trial courts and appeal*

Canon 1

Of the Nature of Discipline in the Church

The Church has its own inherent right to discipline the faithful who commit offenses. Penalties are established only insofar as they are essential for repentance, reformation, and ecclesiastical discipline and order.

Canon 2

Of Charges against Bishops, Presbyters, or Deacons

The following are the charges or accusations on which the Archbishop, a Bishop, a Presbyter, or a Deacon in this Church may be presented:

1. Apostasy from the Christian Faith;
2. Heresy, false doctrine, or schism;
3. Violation of ordination vows;
4. Conduct giving just cause for scandal or offense, including the abuse of ecclesiastical power;
5. A conviction by a court of competent jurisdiction for felony or other serious offenses;
6. Sexual immorality;
7. Acceptance of membership in a religious jurisdiction with purpose contrary to that of this Church;
8. Violation of any provision of the Constitution of this Church;
9. Disobedience, or willful contravention of the Canons of this Church or of the constitution or canons of the

Diocese in which he holds office;

10. Habitual neglect of the duties of his Office;

11. Habitual neglect of public worship, and the Holy Communion, according to the order and use of this Church;

12. Willful refusal to follow a lawful Godly Admonition.

A Godly Admonition is a written directive from a Bishop with jurisdiction to a member of the Clergy under his jurisdiction. Such admonition shall not be issued until the Bishop shall have met personally with the member of the Clergy – unless for valid reason the Bishop shall have delegated such meeting to another Bishop – and the issues have been clearly and fairly discussed. The written admonition shall be specific concerning the matter complained of and the canonical or theological basis for the complaint, and shall provide a reasonable time for the required action to be taken.

Canon 3

Of Presentments of Presbyters and Deacons

Section 1 - Concerning Accusations

An accusation of conduct believed by the accuser(s) to be in violation of Canon IV.2 may be brought against a Presbyter or Deacon. The accusation(s) shall be in a writing that contains the facts supporting the allegations of wrongdoing and shall be signed and sworn to by the accuser(s) and delivered to the Bishop. If the Bishop deems the accusation(s) not to be frivolous, he shall cause an investigation to be made by a canonical investigator. During the pendency of the investigation, the details of the accusation(s) and the investigation shall be maintained in appropriate confidence.

Section 2 - Concerning Voluntary Submission to Discipline

At any time after the receipt of an accusation(s), the accused may confess to the truth of the allegation(s) and submit to the discipline of the Church.

Section 3 - Concerning Canonical Investigation

1. Each Diocese shall appoint a canonical investigator to ascertain the merit of the accusations and make a recommendation to the diocesan authority as to whether further juridical process should be pursued.

2. (a) No presentment shall be made or conviction had for any offense under Canon IV.2 unless the offense shall have been committed within five years immediately preceding the time of the presentment. Such time may be extended by written permission of the Archbishop.

(b) For any offense covered by Canon IV.2.5, a presentment may also be made at any time within one year after such conviction.

3. The accused shall be entitled to notice of an ongoing investigation and to have the aid of counsel or an agent and may submit his defense in writing. The presenters also may be aided by counsel, and be represented by any agent they may appoint.

4. If it is determined by the diocesan authority that a trial should occur, then a presentment shall be prepared and procedures followed according to the norms of ecclesiastical law.

5. Each Diocese shall have a person (lay or ordained) appointed by the Bishop for the drafting of presentments and the presentation of the same before the diocesan trial court.

6. Each Diocese shall appoint an advisor to assist the Presbyter or Deacon who is the subject of an accusation and his or her counsel or agent. The advisor shall be knowledgeable in canon law and shall be available to advise the Presbyter or Deacon and his or her counsel or agent on issues relating thereto. All such advice as shall be given shall be confidential to the accused and his or her counsel or agent.

Section 4 - Concerning Requirements for Presentment

1. When, after investigation of an accusation, the diocesan authority has determined that the matter should proceed forward, Articles of Presentment shall be prepared and personally served upon the Presbyter or Deacon against whom the accusation has been made.

2. The Articles of Presentment shall be made in a writing signed by a representative of the diocesan authority, wherein shall be specified all particulars of time, place, and circumstances alleged.

Canon 4
Of Presentments of Bishops

Canon 5
Of Courts, Membership and Procedures

Section 1 - *Concerning Courts for the Trial of a Presbyter or Deacon*

1. In each Diocese there shall be an ecclesiastical Trial Court for the trial of any Presbyter or Deacon subject to the jurisdiction of that Diocese.

2. It shall be the duty of each Diocese to provide by canon for the establishment of such court and the mode of conducting trials in the same.

3. In case of conviction by the Trial Court, the Bishop shall not proceed to sentence the accused before the expiration of thirty days after he shall have been served with notice of the decision of the court, nor in case an appeal is taken shall sentence be pronounced pending the hearing and determination thereof.

Section 2 - *Concerning Courts for the Trial of a Bishop*

Section 3 - *Concerning the Court of Extraordinary Jurisdiction*

Section 4 - *Concerning the Provincial Tribunal*

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

2. The Provincial Tribunal shall consist of seven members who shall be appointed by the Provincial Council. At least two members shall be Bishops; the senior Bishop in date of consecration shall serve as the President of the Court. At least two members shall be lawyers, knowledgeable in canon and ecclesiastical law.

Section 5 - *Concerning Appeal*

1. An appeal may be made within thirty days of the decision of a Court for the Trial of a Presbyter or Deacon, the Court for the Trial of a Bishop, or the Court of Extraordinary Jurisdiction. The appeal shall be made in writing to the Bishop who is the Presiding Officer of the Provincial Tribunal, stating the nature of the case and the reason(s) for the appeal.

2. The Provincial Tribunal shall, within thirty days, request the entire transcript of the trial and upon receipt of the transcript shall notify promptly all parties of the time and place for the hearing of the appeal which shall be within three months but not fewer than two months from the date of notification, unless agreed otherwise by all the parties.

3. The Provincial Tribunal shall render its decision on the appeal within thirty days of the hearing. The expenses of the appeal shall be paid by the appellant, unless the appellant is successful or the Provincial Tribunal orders otherwise.

Section 6 - *Concerning the Process of the Appeal*

1. The Provincial Tribunal shall hear the appeal based solely upon the record in the trial court. The parties may submit written briefs and may request oral argument. The Provincial Tribunal may reverse or affirm, in whole or in part, the appealed decision, or, if in its opinion justice shall require, may grant a new trial.

2. Should the appellant fail to appear for the hearing, the Provincial Tribunal shall, at its discretion, dismiss the appeal, or proceed to hear and determine the appeal.

Section 7 - *Concerning Procedures*

The Provincial Tribunal, the Court for Trial of a Bishop, the Court of Extraordinary Jurisdiction, and the Trial Courts of the several Dioceses shall establish their own procedures, to include the appointment of a recorder of proceedings. Such procedures shall acknowledge the presumption of innocence of the accused and the right to representation by counsel, and shall be consistent with principles of fairness, due process and natural justice and shall require expeditious handling consistent with those principles. No new rule of procedure shall be made while a matter is pending that would be affected by that rule. In all courts of original jurisdiction, the standard of proof shall be by clear and convincing evidence. Unless a higher standard is required by diocesan Canon for a Diocesan Trial Court, the affirmative vote of not fewer than a majority of the members of a Court shall be required for any

determination by that Court.

Canon 6

Of a Member of the Clergy in Any Diocese Chargeable with Offense in Another

If a member of the Clergy belonging to any Diocese shall have conducted himself in another Diocese in such a manner as to be liable to presentment under the provisions of Canon 2, the Ecclesiastical Authority thereof shall give notice of the same to the Ecclesiastical Authority where the member of the Clergy is canonically resident, exhibiting, with the information given, reasonable ground for proceeding. If the Ecclesiastical Authority of the alleged offender, after due notice given, shall omit, for the space of three months, to proceed against the offending member of the Clergy, or shall request the Ecclesiastical Authority of the Diocese in which the offense or offenses are alleged to have been committed to proceed against him, it shall be within the power of the Ecclesiastical Authority of the Diocese within which the offense or offenses are alleged to have been committed to institute proceedings as provided by the canons of that Diocese.

Canon 7

Of Renunciation of Ministry

If a member of the Clergy making a declaration of renunciation of the ministry under Canon III.6.4, be under accusation or presentment for any canonical offense, or if they shall have been placed on trial for the same, the Ecclesiastical Authority to whom such declaration is made, shall not consider or act upon such declaration until after the accusation or presentment shall have been dismissed, or the trial shall have been concluded and sentence, if any, pronounced. If the Ecclesiastical Authority to whom such declaration is made shall have ground to suppose that the member of the Clergy making the same is liable to presentment for any canonical offense, such member of the Clergy may, in the discretion of the Ecclesiastical Authority, be placed on trial for such offense, notwithstanding such declaration of renunciation of the ministry.

Canon 8

Of Sentences

Section 1 - *Concerning the Role of the Bishop in Sentencing*

The Bishop alone has the authority to pronounce sentence on a Presbyter or Deacon convicted as indicated in these canons. If there is no Bishop, the Archbishop or another Bishop designated by the Archbishop shall pronounce sentence.

Section 2 - *Concerning Pronouncement of Sentence-of Bishop*

Section 3 - *Concerning Range of Sentencing*

Sentence shall be:

1. Censure and/or admonishment;
2. Suspension, for a definite period, not to exceed five years;
3. Suspension for life; or
4. Deposition from the sacred ministry.

In addition, other measures for restoration of the accused may be required.

Section 4 - *Concerning Length of Sentences*

Upon a showing of good cause:

1. A sentence of suspension of a Presbyter or Deacon may be terminated or shortened by the Bishop of the Diocese in which the Presbyter or Deacon was convicted with the advice and consent of the Archbishop, in consultation with the Executive Committee;
2. A sentence of suspension of a Bishop may be terminated or shortened by the College of Bishops with the consent of the Archbishop.

Canon 9

Of Inhibitions

Section 1 - *Concerning Inhibition of a Presbyter or Deacon*

A Bishop may temporarily inhibit a Presbyter or Deacon from the exercise of ministry when the Bishop

believes, upon reasonable grounds, that the Presbyter or Deacon has engaged in conduct upon which a Presbyter or Deacon in this Church may be presented. With the advice and consent of the Standing Committee or its equivalent, such inhibition may be extended until such charge is dropped or action taken by a Trial Court. Upon application by a Presbyter or a Deacon who has been temporarily inhibited under this Canon and upon a showing of good cause, the Archbishop or his designate may modify or revoke the temporary inhibition. Such decision shall be rendered within thirty (30) days.

Section 2 - *Concerning Inhibition of a Bishop*

Canon 10

Of Notification of Disciplinary Action Taken

The Bishop or Archbishop pronouncing sentence shall within thirty (30) days of the sentence notify the Provincial Secretary who shall notify all Bishops with jurisdiction and shall maintain a permanent record of the action. Should a sentence be amended or terminated, notification of that action shall also be reported to the Provincial Secretary who shall promptly give notice of and record the amendment or termination in the permanent record.

APPENDIX 2: DIOCESE OF SAN JOAQUIN CANON XXXVIII

Sec.38.01

The forms and methods of Ecclesiastical Discipline in the Anglican Diocese of San Joaquin shall follow the provisions set forth in Title IV of the Canons of the Anglican Church in North America.

Sec.38.02

There shall be an Ecclesiastical Trial Court consisting of four (4) priests or deacons and three (3) lay communicants in good standing. The term of office for the clerical members shall be four (4) years. The term of office for the lay members shall be three (3) years. At each meeting of the annual Convention there shall be elected one (1) clergy and one (1) lay communicants in good standing. The Court shall elect a presiding judge and appoint a recorder of proceedings.

Sec.38.03

The Ecclesiastical Court shall adopt procedures that acknowledge the presumption of innocence of the accused and the right to representation by counsel. The procedures shall be consistent with principles of fairness, due process and natural justice and shall require expeditious handling. The standard of proof shall be by clear and convincing evidence. The affirmative vote of not fewer than a majority of the members of the Court shall be required for any determination by the Court.

Sec.38.04

Vacancies other than by challenge shall be filled by appointment by the Ecclesiastical Authority with consent of a majority of the Standing Committee.

Sec.38.05

Members of the Ecclesiastical Trial Court may be challenged by either the accused or the church advocate for cause. The method of challenge shall be in written form, addressed to the presiding judge of the Ecclesiastical Court.

Sec.38.06

Vacancies arising from challenges as to the members of the Ecclesiastical Court shall be filled by random draw from the members of the Standing Committee and Diocesan Council: Clergy names for a clergy vacancy and lay names for a lay vacancy.