

CANA CONGREGATIONS' PROPOSED PRETRIAL SCHEDULING ORDER (OTHER THAN CHURCH OF OUR SAVIOR AT OATLANDS)

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

In re Multi-Circuit Episcopal Church Property )  
Litigation: ) Case Nos.: CL 2007-248724,  
) CL 2007-1235,  
) CL 2007-1236,  
) CL 2007-1238,  
) CL 2007-1625,  
) CL 2007-5250,  
) CL 2007-5364,  
) CL 2007-5682,  
) CL 2007-5683,  
) CL 2007-5684, and  
) CL 2007-5902

**ORDER**

This Order shall apply to the following cases:

*Omnibus case: CL 2007-248724;*

*The Episcopal Church v. Truro Church, et al.: CL 2007-1625;*

*The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Epiphany, Herndon, et al.: CL 2007-1235;*

*The Protestant Episcopal Church in the Diocese of Virginia v. Truro Church, et al.: CL 2007-1236;*

*The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Apostles, et al.: CL 2007-1238;*

*The Protestant Episcopal Church in the Diocese of Virginia v. The Church at the Falls - The Falls Church, et al.: CL 2007-5250;*

*The Protestant Episcopal Church in the Diocese of Virginia v. Church of Our Savior at Oatlands, et al.: CL 2007-5364;*

*The Protestant Episcopal Church in the Diocese of Virginia v. St. Margaret's Church, et al.: CL 2007-5682;*

*The Protestant Episcopal Church in the Diocese of Virginia v. St. Paul's Church, Haymarket, et al.: CL 2007-5683;*

*The Protestant Episcopal Church in the Diocese of Virginia v. Church of the Word, et al.: CL 2007-5684; and*

*The Protestant Episcopal Church in the Diocese of Virginia, et al. v. St. Stephen's Church, et al.: CL 2007-5902.*

For good cause shown, the Court orders the following:

1. Service of Pleadings & Other Papers to Be Served

All service of pleadings and other papers required to be served per Va. Sup. Ct. R. 1:12 in this matter shall be effected by (i) mailing a copy of the pleading, filing, etc. via first class mail to the designated lead counsel at each firm of record, and (ii) sending an electronic correspondence (“e-mail”) to all counsel of record with an attachment of the particular pleading, filing, etc. With respect to large and/or lengthy pleadings and exhibits or other papers, counsel shall use their best efforts to effect service by e-mail, including (if necessary) sending such pleadings and/or exhibits in multiple e-mails such that no attachment to an e-mail exceeds 10 megabytes in size. If a document cannot be e-mailed, the party serving such document shall notify opposing counsel by e-mail of such fact and send the document by overnight delivery to lead counsel on the opposing side.

2. Electronic Correspondence (“e-mail”)

All counsel of record who have not previously provided the Court a current e-mail address are ordered promptly to do so. E-mail addresses may be sent to the Court’s law clerk, Ms. Caitlin Fields, at [Caitlin.Fields@fairfaxcounty.gov](mailto:Caitlin.Fields@fairfaxcounty.gov). All counsel of record should be included in all electronic correspondence with Ms. Fields if it pertains to this matter.

3. Filing Procedures

(a) All filings, motions, briefs, memoranda, etc. should be filed with the Clerk of Court, attention [Mr/Ms.]\_\_\_\_\_. When a pleading or other filing pertains to more than one case, counsel are required to file only one complete copy of such pleading, filing, etc. The copy should list all appropriate case numbers which to which it applies. This complete filing will be filed in the omnibus case file.

Counsel also shall file the appropriate number of copies of a coversheet reference pleading corresponding to the number of cases to which the filing relates, not including the omnibus case file, which will be filed in each other case file to which the complete filing corresponds. For example, if a brief is filed in three individual cases, the original brief shall be filed in the omnibus case file, CL 2007-248724, and counsel shall provide three copies of a coversheet, which shall make reference to the pleading filed in the omnibus case file and shall include the following information from that pleading: its full title / name, the complete case style and case numbers listed on it, and the date of the filing. Coversheets need not and shall not contain their own certificates of service, and counsel shall use their best efforts to ensure that coversheets are no more than one page in length.

Counsel shall also send courtesy copies of all filings to the Court’s law clerk, Ms. Fields. Unless the Court requests otherwise, a courtesy copy must be

delivered to her attention in Circuit Court Chambers and shall also be e-mailed to Ms. Fields's attention at the e-mail address above.

- (b) The text of all filings, including all footnotes, must be in at least twelve (12) point type font. The margins of all filings must be standard one inch margins.
- (c) The style of each filing should include the omnibus style and corresponding case number and the case numbers of each individual case to which the filing relates. All filings should indicate the party or parties on whose behalf the filing is made at the beginning of the filing.
- (d) The parties shall adhere to the page limitations set forth in the Fairfax County Circuit Court manual absent leave from the Court. The Court may direct, or a party may request, extended briefing on particular issues, with page limitations set at that time. If any party believes it needs more than five (5) pages to brief any particular motion or issue, or additional pages beyond another limit set by the Court, it shall seek leave for such extended briefing through a writing filed with the clerk and sent to Ms. Fields, to which the Court will respond in due course.
- (e) Each party may file its own motions, memoranda/briefs, pleadings, and/or other papers, or it may choose to adopt the position articulated in another party's filing. When a party chooses to adopt a position advanced in another party's filing, this may be reflected either by (i) submitting a separate filing with the Court stating that the particular party chooses to adopt another party's position, or (ii) including a reference in the adopted filing stating which parties are adopting such filing or position. Motions, memoranda/briefs, pleadings, and/or other papers adopted by other parties should include a reference at the beginning of the document that lists the parties who are adopting the filing. At the end of the filing, the attorney who is submitting the filing should include his or her signature block and signature. The adopting parties' signature block should also be included at the end of the filing. The adopting attorneys may do one of the following to satisfy the signature requirement and to preserve rights and objections: (i) sign the filing in their appropriate signature block (the Court will accept faxed or scanned signatures, if necessary), or (ii) give permission to the submitting attorney required to sign the filing to also sign the filing on the adopting attorney's behalf.

#### 4. Attendance At Hearings

Should a party desire to file a written response or memorandum, but not participate at a hearing, the party may file its memorandum and not attend the hearing.

5. Trial Dates

The Court reserves the following dates for trial of the above cases: \_\_\_\_\_.

6. Prior Trial Evidence

No party shall be required to re-authenticate any document previously admitted into evidence.

Any party which intends to rely on evidence which has previously been admitted in this matter must file and serve a specific designation of such evidence on counsel for all parties to the trial to which such evidence will be applied, no later than twenty-eight (28) days before the Trial Start Date. Objections to such evidence must be served no later than twenty-one (21) days before the Trial Start Date, including relevance objections, or such objections shall be waived.

7. Dispositive motions

All dispositive motions shall be presented to the Court for hearing as far in advance of the trial date as practical and must be filed no later than forty-five (45) days before the Trial Start Date.

8. Discovery

Discovery concerning all issues related to this litigation may resume immediately upon entry of this Order. The parties shall complete discovery by forty (40) days before the Trial Start Date and shall complete depositions by thirty (30) days before the Trial Start Date. "Complete" means that all interrogatories, requests for production of documents, requests for admissions, and other discovery requests must be served sufficiently in advance of trial to allow a timely response by at least forty (40) days before the Trial Start Date. Depositions taken in lieu of live testimony at trial shall be completed no later than twenty (20) days before the Trial Start Date. Depositions may be taken after the specified time period by agreement of counsel of record or for good cause shown, provided, however, that the taking of a deposition after the deadline established herein shall not provide a basis for continuance of the trial date or the scheduling of motions inconsistent with the normal procedures of the Court.

The fact that a person was deposed previously in this litigation shall not excuse such person from being deposed a second time in connection with the remaining actions. Counsel shall make all reasonable efforts to consolidate depositions and thereby to avoid burden and inconvenience to party and third-party witnesses. This paragraph does not preclude any party or recipient of a subpoena from objecting to a particular deposition and seeking relief from this Court regarding such deposition.

Joint discovery requests are encouraged whenever practicable. All discovery must clearly indicate on its face the party or parties to whom the discovery request is made. If discovery is directed at more than one party, each party has an obligation to

respond to the discovery request, in accordance with the Rules of the Supreme Court of Virginia. Should parties serve separate but substantively identical discovery requests, the responding party or parties may respond jointly, but such responses must specifically and clearly identify all discovery being responded to and the party or parties responding. While the individual defendants have not been and will continue not to be served with discovery, the CANA Congregations will continue to seek, obtain, and produce from the persons identified in Exhibits A&B of the Stipulated Order entered August 28, 2007, such materials as may be responsive to the discovery served on the congregations. This paragraph does not preclude either depositions of individual defendants, clergy, or vestry members, or the service of subpoenas duces tecum on individual defendants, clergy, or vestry members. This paragraph also does not preclude parties, individual defendants, clergy, or vestry members from objecting to and/or seeking relief from this Court regarding any particular discovery requests or subpoenas.

If discovery requests are made or have been made in connection with particular cases, responses to those discovery requests and documents or materials produced in response to those discovery requests may be used in any of the proceedings before this Court, to the extent that the responses, documents, or materials meet the requirements of law with respect to evidence. Any party's responses to requests for admissions may continue to be used in any case involving that party. Depositions and other discovery previously taken in these consolidated actions may be used in the remaining actions.

With respect to discovery requests served prior to the Court's suspension of discovery in its September 3, 2008, Order, if the propounding party contends that the responding party's responses are inadequate or seeks responses to requests for which responses have not been served, the propounding party shall serve a notice of such inadequacy on the responding party. Such notice shall identify the discovery for which further response is sought, state the reasons such responses are inadequate, and request further response. Unless otherwise agreed, the responding party shall have 21 days from the date of service of such notice to respond further.

The parties have a duty to supplement timely and amend discovery responses, per Va. Sup. Ct. R. 4:1(e).

No provision of this Order supersedes the Rules of Supreme Court of Virginia governing discovery.

#### 9. Designation of Experts

Plaintiffs shall identify expert witnesses on or before 91 days before the Trial Start Date. Defendants shall identify expert witnesses testifying in support of their counterclaims by the same date. Opposing experts shall be identified on or before 60 days before the Trial Start Date. Experts or opinions responsive to new matters raised in the opposing parties' identification of experts shall be designated no later than 45 days before the Trial Start Date. All information discoverable under Rule

4:1(b)(4)(A)(1) of the Rules of Supreme Court of Virginia shall be provided, or the expert will not ordinarily be permitted to express any non-disclosed opinions at trial. The foregoing deadlines shall not relieve a party of the obligation to respond to discovery requests within the time periods set forth in the Rules of Supreme Court of Virginia, including, in particular, the duty to supplement or amend prior responses pursuant to Rule 4:1(e).

10. Exhibit and Witness Lists

Counsel of record shall exchange seventy (70) days before the Trial Start Date lists tentatively identifying the fact witnesses that they may call for trial. The list of witnesses shall include a brief summary of the subject matter of the expected testimony and/or nature of the testimony, and such witnesses shall be made available for deposition prior to the discovery cutoff.

Counsel of record shall exchange twenty-eight (28) days before the Trial Start Date a final list of witnesses to be called at trial, a final list specifically identifying each exhibit to be introduced at trial, and copies of all listed exhibits. The final lists of exhibits and witnesses shall be filed with the Clerk of the Court simultaneously therewith but the exhibits shall not then be filed. Any exhibit or witness not so identified and filed will not be received in evidence, except in rebuttal or for impeachment or unless the admission of such exhibit or testimony of the witness would cause no surprise or prejudice to the opposing party and the failure to list the exhibit or witness was through inadvertence. Any objections to exhibits or witnesses shall state the legal reasons therefor except on relevancy grounds, and shall be filed with the Clerk of the Court and a copy delivered to opposing counsel at least twenty-one (21) days before the Trial Start Date or the objections will be deemed waived absent leave of court for good cause shown.

11. Pretrial Conference and Motions in Limine

Pursuant to Rule 1:19, there shall be a final pre-trial conference on \_\_\_\_\_.

Motions *in limine* or other pretrial motions shall be filed no later than fourteen (14) days before the Trial Start Date. Oppositions to such motions must be filed within seven (7) days after such motions are filed. Such motions *in limine* or other pretrial motions may be heard at dates scheduled by the Court upon application of the parties or may be decided at trial, as the Court sees fit, or may be decided without a hearing with the consent of all parties interested in such motions.

12. Good Faith Efforts to Resolve Motions and Stipulations

Stipulations of fact previously entered into by two or more parties remain binding on those parties and may be introduced in evidence if they have not previously been introduced.

The Court appreciates counsel’s prior efforts to enter into stipulations, which were generally successful, and strongly encourages counsel for all parties to reach stipulations that streamline the presentation of evidence and/or narrow the issues to be decided. In particular, the Court is mindful that, although evidence regarding the “dealings between the parties” may be extensive (particularly for churches whose history dates back more than 100 years), in many instances the parties will dispute not the actual historical facts or documents but their relevance or legal significance. Accordingly, and in the interests of judicial economy, the parties are encouraged to streamline the presentation of evidence through stipulations.

13. Witness Subpoenas

Subpoenas should be served at least ten (10) days before the Trial Start Date.

14. Continuances

Continuances will only be granted by the Court for good cause shown.

15. Deposition Transcripts to be Used at Trial:

- (a) The parties shall exchange deposition designations no later than twenty-one (21) days before the Trial Start Date. Any objections to such designations shall be served no later than fourteen (14) days before the Trial Start Date.
- (b) Deposition testimony responsive to new matters raised in an opposing party’s deposition designation shall be designated no later than fourteen (14) days before the Trial Start Date with objections thereto being served ten (10) days before the Trial Start Date.

16. The Commonwealth of Virginia’s position in this litigation

The Commonwealth moved to intervene “for the limited purpose of defending the constitutionality of Va. Code 57-9(A),” and the Court granted the Commonwealth’s motion “solely for its requested purpose.” Letter Opinion (July 16, 2008) at 1 & n.1. That purpose has been fulfilled. The Commonwealth wishes to remain a party to this litigation solely for the purpose of defending the constitutionality of any other state statute, if some other statute’s constitutionality is challenged. Accordingly, the Commonwealth shall remain a party to this litigation for that limited purpose. The Commonwealth need not file any pleadings, and it is not required to respond to motions or other filings regarding any other issues. The Commonwealth shall not propound or be required to respond to discovery requests, except as all parties may agree or the Court shall further order. This order is without prejudice to TEC’s and the Diocese’s previously stated position that the Commonwealth should be allowed to participate only as an *amicus curiae*.

17. Waiver or Modification of Terms of Order

Upon motion, the time limits and prohibitions contained in this in this order may be waived or modified by leave of Court for good cause shown.

Entered this \_\_\_ day of \_\_\_\_\_, 2010.

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Randy I. Bellows,  
Circuit Court Judge

**Endorsement of this Order by counsel of record for the parties is waived in the discretion of the Court pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.**

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