

**HEARING PANEL OF
DISCIPLINARY BOARD OF THE DIOCESE OF VIRGINIA**

IN THE TITLE IV MATTER OF:)
)
THE REVEREND LURA KAVAL, RESPONDENT)
_____)

**CHURCH ATTORNEY’S MOTION TO DISMISS RESPONDENT’S REQUEST FOR
REVIEW AND OPENING BRIEF IN SUPPORT THEREOF**

Motion to Dismiss

For the following reasons, the Church Attorney moves to dismiss the Respondent’s Request for Review of Bishop Goff’s Pastoral Direction of October 24, 2019 (“Pastoral Direction”) for lack of jurisdiction.

Brief in Support

(1) General Convention’s intention that Pastoral Directions are not reviewable is clear.

Title IV is entirely a creature of General Convention. The same is true of Hearing Panels. So, it is to the language of General Convention, as expressed in Title IV, that one must go to divine General Convention’s intent as to the jurisdiction of Hearing Panels, including this one.

As relevant to the Respondent’s Request for Review and this Hearing Panel’s review jurisdiction, the salient canons are Canons IV.7.10 through IV.7.12. Those canons empower Hearing Panels to review “restriction on ministry or Administrative Leave” no less than thirteen times. Not once do they empower

Hearing Panels to review Pastoral Directions. That silence on the part of General Convention with respect to review of Pastoral Directions is deafening.¹

Manifestly, General Convention knows how to address and confer jurisdiction when it wants to: it did it thirteen times for restrictions on ministry and Administrative Leave. And it did not for Pastoral Directions.

General Convention further expressed its intention with respect to review and distinguished between restrictions on ministry and placement on Administrative Leave, on the one hand, and Pastoral Directions, on the other, in Canon IV.7.4. Subparagraph (g) of that canon requires that restrictions on ministry and placement on Administrative Leave “advise the Member of the Clergy of his or her right to be heard in the matter as provided in this Canon.” There is no such requirement for Pastoral Directions. And that is precisely why Bishop Goff’s Pastoral Direction does not have such a clause in it. (Indeed, it would have been misleading for her to have included such a clause, since there is no such right.)

(2) The absence of review for Pastoral Directions makes sense.

There is a clear hierarchy and ascending order of gravity among Pastoral Directions, restrictions on ministry and Administrative Leave in Title IV. Canon IV.7.3 requires the commission of an Offense or a threat to the good order, welfare or safety of the Church or a person or Community in order for a Bishop Diocesan to place restrictions on ministry or Administrative Leave. The same concept is found in the definition of Administrative Leave in Canon IV.2. The bar for a Pastoral Direction is lower, as reflected in Canon IV.7.2 and the definition of Pastoral Direction in Canon IV.2. So, it makes sense that General Convention provided for review of the more grave restrictions on ministry and Administrative Leaves, but not Pastoral Directions.

¹ The civil courts have a rule of contract and statutory construction that is apt here. *Inclusio unius est exclusio alterius*. The inclusion of one thing excludes another. Here, the inclusion of restrictions on ministry and Administrative Leaves in the review canons of IV.7.10 – IV.7.12 means that Pastoral Directions are excluded from the review canons.

(3) The Respondent fails to appreciate the distinctions among Pastoral Directions, restrictions on ministry and Administrative Leaves.

In paragraph 9 of her Request for Review, the Respondent correctly sets forth some of the canonical requirements for a Pastoral Direction. But in paragraphs 10 through 16 she conflates the requirements for Pastoral Directions and those for restrictions on ministry and Administrative Leaves. In particular, she complains in paragraph 16 that Bishop Goff's Pastoral Direction did not advise her of her right to be heard as provided in Canon IV.7.4(g). As set forth above, that right pertains to restrictions on ministry and Administrative Leaves, not Pastoral Directions.

(4) The Hearing Panel lacks jurisdiction to review this particular Pastoral Direction.

Finally, even assuming for the sake of argument that the Hearing Panel has jurisdiction to review Pastoral Directions in general (which it does not), it lacks jurisdiction to review this particular Pastoral Direction. That is for the simple reason that Canon IV.7.11 is very specific and intentional in limiting the scope of review to conditions that may have changed after the imposition by the Diocesan Bishop of the original restriction on ministry or Administrative Leave:

The question before a Panel reviewing a restriction on ministry or Administrative Leave is whether, **at the time of the review and based upon information then available to the Panel**, the restrictions on ministry or Administrative Leave and the terms and conditions **are warranted**.
[Emphasis supplied.]

General Convention's use of the present, not the past, tense, is not an accident. Even for restrictions on ministry and Administrative Leaves (which this Pastoral Direction is not), the Hearing Panel does not have jurisdiction or power to look back to the situation that obtained when the Bishop Diocesan imposed the original restriction on ministry on Administrative Leave. Yet, that is precisely what the Respondent asks this Hearing Panel to do when she catalogs her complaints about the Pastoral Direction in paragraphs 11 through the conclusion of her Request for Review. All of the alleged flaws in the Pastoral Direction, even if they had merit (which they do not) relate to conditions on or before October 24, 2019, the date of the Pastoral Direction. They do not relate to conditions in 2021, which would be when the Hearing Panel would conduct its review.

Conclusion

For all these reasons, the Church Attorney requests that the Hearing Panel dismiss the Request for Review.

/s/ Bradfute W. Davenport, Jr.,
Church Attorney

June 3, 2021