

HEARING PANEL
OF
DISCIPLINARY BOARD OF THE DIOCESE OF VIRGINIA
IN THE TITLE IV MATTER OF
THE REVEREND LURA KAVAL, RESPONDENT

RESPONDENT’S BRIEF IN OPPOSITION
TO CHURCH ATTORNEY’S MOTION TO DISMISS
REQUEST FOR REVIEW

Placing form over substance, the Church Attorney has moved to dismiss Respondent’s Request for Review on the ground of alleged lack of jurisdiction. Under his misinterpretation of the Canons, a Bishop may restrict the ministry of a Member of the Clergy so long as she packages the restrictions within a Pastoral Direction, and may even impose restrictions for an alleged offense without prior notice, hearing, or disclosure of reasons to do so. The Church Attorney further contends that even if this Panel has general jurisdiction, it lacks specific jurisdiction because conditions may have changed since imposition of the restrictions. For the reasons presented below, the Panel should deny the Motion and proceed to hear the Request.

1. Rev. Kaval’s Ministry Has Been Restricted.

In her letter of October 24, 2019 (the “Letter”), Bishop Goff not only said she was not renewing Rev. Kaval’s appointment as Vicar of the Church of the Incarnation, but that she was issuing a Pastoral Direction, which included a dictate that Rev. Kaval was to “adhere to the letter and spirit of the Diocesan Policy on Resigning Priests.” Despite the lack of any resignation, “the same **restrictions** on interaction with parishioners after your departure must guide your behavior.” (Emphasis added.) The Policy, converted into an Order, sets forth several other restrictions. Despite its label, one cannot logically claim the Pastoral Direction was free of restrictions on Rev. Kaval’s ministry. And they continue, for the Letter dictates they are to remain in place until December 2022.

2. The Request Centers On The Imposition Of Restrictions.

The Church Attorney's Brief ("Brief") exclusively is premised on a misapplication of Respondent's Request. His apparent assumption is that the Request is directed to seeking review of Bishop Goff's directed sanctions captioned as a Pastoral Direction. The Brief is silent as to Bishop Goff's imposed determination that Respondent may have committed a Title IV Offense or engaged in threatening conduct. That determination having been made without prior notice or hearing, it is set out in the Letter only in a conclusory manner. Without even one disclosed reason or specific example, the allegation is that Respondent's "leadership caused division and ... failed to live up to [her] ordination vow to 'minister the Word of God and the sacraments of the New covenant, that the reconciling love of Christ may be known and received.'" Bishop Goff makes a point of saying that failure to abide by the Pastoral Direction requirements may be a "separate Offense under Title IV. [Canon IV.4.1(d)]." And such a separate Offense has since been charged and is pending before this Hearing Panel. Somewhere below the rhetoric apparently is Bishop Goff's belief of a preceding Offense. The reasons for that belief, however, have yet to be identified.

The very first sentence of Respondent's Request states: "Pursuant to Canon IV.7.10, Respondent requests review of the **imposition** of ministry restrictions and terms and conditions thereof set forth in the Pastoral Direction issued by letter dated October 24, 2019" (Emphasis added.) It is the imposed determination that Respondent may have committed a Title IV Offense or engaged in other unjustified conduct leading to restrictions that is the heart of the Request for Review. As pointed out above, the Brief is silent as to this substance of the Request.

3. A Pastoral Direction And Restrictions Are Not Mutually Exclusive.

The Church Attorney argues that in paragraphs 10 through 16 of the Request Respondent "conflates the requirements for Pastoral Directions and those for restrictions on ministry and Administrative Leaves." (Brief at 3) He appears to have overlooked the significant procedural principle of Canon IV.7.6 that "Pastoral Directions, restrictions on ministry and Administrative Leaves . . . (b) may be issued and imposed concurrently;" Nor does he appear to appreciate the implications of that trilogy of terms. Although Administrative Leaves are not at issue here, the distinction between a Pastoral Direction and restrictions on ministry is.

The Church Attorney cites Canon IV.7.2 as providing a definition for a Pastoral Direction, but it is important to recognize the definition simply uses the same word: “direction.” Thus, a Pastoral Direction is nothing more than “a written direction given by a Bishop to a Member of the Clergy which meets the requirements of Canon IV.7.” A “restriction on ministry” is not defined, and thus, as in the case of “direction,” the normal meanings must apply. One issuance may “direct,” another may “restrict,” and a third may do both. There is no conflation, for they serve different purposes. Indeed, it is the Church Attorney who has conflated, for he is contending that a restriction be merged into a direction and thus escape the strictures of Canon IV.7.4.

Respondent remains mystified by the failure of the Bishop to disclose specific reasons for the restrictions. Nevertheless, that is not the immediate question before the Panel, for it must first confirm its jurisdiction. Following a confirmation Respondent is asking the Panel to address Canonical requirements for imposing a Title IV Offense determination without notice or hearing, or imposing restrictions on some other unidentified basis, again without notice or hearing, in either case in conflict with Canon IV.7.4(g)’s specified right to be heard.

4. A Hearing Panel Does Not Lose Jurisdiction If Circumstances Change.

The Panel is, of course, aware of Canon IV.7.3’s narrow authorization for restricting the exercise of ministry without prior notice or hearing. This may be done only if the Member of the Clergy “may have committed any Offense, or that the good order, welfare or safety of the Church of any person or Community may be threatened by that member of the Clergy.” Following that limitation is Canon IV.7.4(b)’s requirement that the restriction “set forth clearly the reasons for which it is issued.” It is the lack of any clear reasons that led to Respondent’s Request for Review under Canon IV.7.10, which is properly before this Panel under Canon IV.7.11.

Yet the Church Attorney contends the Panel lacks jurisdiction to review “this particular Pastoral Direction.” (Brief at 3) This is because, he asserts, “conditions may have changed after imposition by the Diocesan Bishop of the original restriction on ministry or Administrative Leave.” (*Id.*) But that possibility cannot defeat jurisdiction. If the Church Attorney were to allege such a change, it would be up to the Panel to address it, not run away from it. If his argument were accepted, it would apply not only to the Pastoral Direction at issue here but to all others imposing restrictions concurrently.

Contrary to the Church Attorney’s argument, the references in Canon IV.7.11 to the “time of review” and “information then available to the Panel” do not preclude examining the circumstances that gave rise to the restrictions. Indeed, those have to be examined in order to address any alleged change in circumstances. The Canon wisely recognizes possible changes, for in applicable cases any properly directed restrictions might have been mooted by later developments.

The Hearing Panel now has all needed information for the requested review. Canon IV.7.4(a) requires that any restriction on ministry imposed pursuant to Canon IV.7.3 be made in writing, which for present purposes is the Letter already of record. That constitutes the subject matter of the review.

CONCLUSION

In sum, jurisdiction to rule upon Respondent’s Request, pursuant to Canon IV.7.11, resides with the Hearing Panel at least because of: (1) the Bishop Diocesan’s imposed determination, without notice or hearing, that Respondent may have committed a Title IV Offense or threatened the order, welfare, or safety of the Church or others; (2) Respondent’s requested review of whether that imposed determination complied with Canon IV.7.4; and (3) Respondent’s Request having been made after a previous referral to the Hearing Panel.

Therefore, for the reasons presented above, to be further explained during oral argument, Respondent asks the Hearing Panel to deny the Church Attorney’s Motion to Dismiss by confirming the Panel’s jurisdiction to proceed to decide Respondent’s Request for Review.

Dated: June 17, 2021

Respectfully submitted,

The Reverend Lura Kaval

By /s/ Daniel A. Carrell
Counsel

Daniel A. Carrell
Carrell Blanton Ferris & Associates, PLC
7275 Glen Forest Drive, Suite 310
Richmond, VA 23226
Tel: 804-285-7900
Email: dancarrell@carrellblanton.com

Counsel for Respondent