

PEP Argument Briefing Paper

Title: Analysis of Troublesome Proposed Changes
Applicable to: Changes to Constitution and Canons of the Episcopal Diocese of Pittsburgh as recommended by the Committee on Constitution and Canons and Addenda from Chancellor (Canons IV, V, XVII, XIX, XXVI XXVII, XXIX, XXX, XXXIII and Rules of Order B.1, B.3, C.4)
Author: Lionel E. Deimel
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Background

The Committee on Constitution and Canons and the Chancellor have proposed various changes to the diocesan constitution, canons, and rules of order. The reader is directed to Briefing Paper AC07-C01-01 to see the exact changes to be voted on at the 2007 annual convention. The proposals, as submitted, are available on the diocesan Web site and elsewhere. They are also, of course, in the pre-convention journal (pages C5–C25).

Some of the proposed changes, PEP believes, are innocuous. They are analyzed separately in Briefing Paper AC07-C01-02. More complex or troubling proposals are analyzed in other briefing papers. In this paper, we analyze the remaining proposals.

Proposed Changes by Committee

4. **Canon IV, Section 2**

The proposed change would allow the Nominating Committee to offer only one nominee for trustee-at-large, rather than “at least two.” Like several other proposed changes, this makes the diocese slightly less democratic. We are told that the change is being made “to reflect current practices.” Rather than modifying this canon, it would be better to work harder to find additional candidates.

5. **Canon IV, Section 4**

This section is new and specifies that mid-term vacancies on the Board of Trustees are to be filled in accordance with Article IX, Section 5 of the diocesan constitution. Seemingly, this provision allows the Standing Committee to fill vacancies, at least of elected, but not appointed, trustees. In any case, the Standing Committee should not be given additional powers at the expense of more representative bodies, and its ability to fill its own vacancies is, in itself worrisome, particular if our bishop and some, but not all, members of the Standing Committee should leave The Episcopal Church. If vacancies in elected positions are to be filled between conventions, the power to do so should be given to Diocesan Council, which represents Convention in recess, not to the Standing Committee.

6. **Canon V, Section 3**

This proposal affects the way districts elect representatives to Diocesan Council. Like proposal #4, the changes are said “to reflect current practices. At present, the canon calls for the District Commission to nominate at least two persons for a vacancy; deputies who take office immediately after the convention may run. The change would require only one nominee, but it eliminates an explicit provision allowing a deputy taking office after the convention to run. More explanation from the Committee would have been helpful here. Finding deputies willing to run is surely a problem, and one the Committee seems to have recognized. Why then, did it choose to restrict the pool of candidates?

13. **Canon XIX**

This proposed change is curious indeed. It basically does two things. A new Section 1 identifies the Standing Committee as the Diocesan Review Committee, essentially the body that acts as a grand jury in assessing charges that might be brought against a member of the clergy. A revised Section 5, now renumbered as Section 6, declares that disciplinary procedures, formerly specified in Title IV of Episcopal Church canons, is now specified in a “Disciplinary Appendix, attached to these Canons.” To have some idea of what is going on here, one has to realize that the “Disciplinary Appendix” is a word-for-word copy of Episcopal Church Canon IV.1. This canon specifies offenses and certain, but not all, disciplinary procedures. The proposed changes are all about retaining disciplinary regulations as the diocese divorces itself from The Episcopal Church. Episcopal Church Canon IV.1 refers to a Diocesan Review Committee, but it does not define it. That is done in Canon IV.3.1, which designates the Standing Committee as the Diocesan Review Committee in the absence of a canon providing otherwise. Since the change is tossing all of Title IV overboard except its first canon, the diocese must provide for a Diocesan Review Committee. The relationship of the diocese to The Episcopal Church aside and despite the fact that Episcopal Church canons offer the Standing Committee as the default Diocesan Review Committee, this arrangement has to be seen as a bad idea. Although the Standing Committee is not necessarily a party to charges brought against a member of the clergy, it often is, and, acting in a reviewing capacity, it faces a certain conflict of interest, in that it might have to rule on its own charges, to which one might expect it to be unusually sympathetic.

One has to be even more concerned with two facts, only one directly involves the proposed change. Both involve the quality of justice for members of the clergy accused of misdeeds. First, the diocese, having, at its last convention, declared (illegally, we think) that it is no longer part of Province III, presumably will no longer allow appeals from decisions of the local Ecclesiastical Trial Court to the appeals court at the provincial level. We should ask if this means that there no longer is a mechanism of appeal from local court decisions. Apparently, there is not. Second, there is a question of just how judicial processes will operate if the proposed canonical change is approved. The diocese is adopting a single Episcopal Church canon to specify its disciplinary procedures, but Title IV of those canons, which is concerned exclusively with disciplinary matters, consists of 16 canons and two appendices. Thus, by adopting the proposed change, the diocese is exchanging 61 pages of regulations on ecclesiastical discipline for approximately 3 pages of regulations. Moreover, since those three pages to be carried over into an appendix to the canons, it is not at all clear who has the ability to change these regulations and how. Other than voting for the elimination of the accession clause to the Episcopal Church’s constitution and canons, voting for this change has to be one of the most irresponsible acts a deputy can perform at the upcoming convention.

The disciplinary appendix has one other troubling aspect: The appendix includes part of the instructions for the trial of a bishop. This section includes reference to a Committee of Review. Under the badly cobbled-together appendix, it would appear that the Committee of Review used for the trial of a bishop is the same as the diocesan Committee of Review. In the Episcopal Church canons, however, this committee is appointed by the Presiding Bishop and President of the House of Deputies, and it is comprised of 5 bishops, 2 clergy, and 2 lay members.

20. **Canon XXVI, Section 1** (also addressed by Chancellor)

The changes proposed by the Committee, will, according to Bishop Duncan, not be considered, and the change proposed by the Chancellor will be discussed instead. (See #2, below)

21. **Canon XXVII**

This canon, labeled “Of the Removal of Churches, or Chapels, to Nearer Sites,” provides assurances to existing churches or chapels that their concerns will be considered before another worship site is relocated to their neighborhood. The proposed change removes safeguards, giving more power to the bishop and less to individual congregations that might be affected. In the proposed wording, only the Standing Committee can stop the bishop from approving a proposed relocation. The bishop can consult with whatever congregation he or she chooses (or not) and seems to have no particular obligation to listen to what their leaders have to say. The Committee says that it proposed the change to “simplify” the canon, but the effect is to gut it. The change is bad polity and represents a potential threat to every parish of the diocese.

22. **Canon XXIX, Section 2** (also addressed by Chancellor)

As is the case for proposed change #20, the changes proposed by the Committee, will, according to Bishop Duncan, not be considered, and the change proposed by the Chancellor will be discussed instead. (See #3, below.)

25. **Canon XXXIII**

The addition of Canon XXXIII is curious. It purports to clarify the meaning of “constitution” and “the bishop.” Since Canon XXIII is used to define such terms as “rector” and “priest-in-charge,” it would seem reasonable to clarify other terms in that canon, rather than in a new one, thus collecting all definitions in one place. It is worrisome that this canon refers to the “Diocese of Pittsburgh,” not the “Episcopal Diocese of Pittsburgh.” This seems to anticipate a time when the diocese will not be part of The Episcopal Church. As an aside, it is interesting to note that the pre-2004 version of diocesan rules as provided in a PDF file on the diocesan Web site carried the title

Constitution
& Canons
Rules of Order &
Financial Regulations

November 2001 Revision
The Episcopal Diocese of
Pittsburgh

The present PDF file carries no title whatever. This was probably an early indication that diocesan leaders were planning to divorce the diocese from The Episcopal Church.

26. **Rules of Order, C.4 (Parliamentary Procedure)**

The Committee here proposes that it be made more difficult to demand a roll-call vote by Convention. Such a vote, which now can be forced by ten clergy and ten laypeople, would, if the proposal is adopted, require a majority of members of the Convention present. (Notice that this is an even stronger requirement than a majority of votes cast.) The justification advanced by the Committee is to guarantee that it is the will of the majority that the Convention’s precious time be spent in this manner [taking a roll-call vote].” *Robert’s Rules of Order*, §45, provides a direct answer to this “justification”: “In a representative body, if there is no legal or constitutional provision specifying the size of the minority that can order a roll-call vote, the body should adopt a rule fixing the size of such a minority—for example, *one-fifth of those present*, as in Congress, or some other portion of those present that is less than a majority. In the absence of such a special rule, a majority vote is required to order the taking of a vote by roll call—in which case a motion to do so is likely to be useless, since its purpose is to force the majority to go on record.” In other words, a roll-call vote provides protection for the minority, and the proposed change eliminates that protection. The proposal should be defeated.

Proposed Changes by Chancellor

1. **Canon XVII, Section 7**

A brief section about property insurance is here expanded to cover “insurance protection for personnel, property and contents, and liability,” the details of which are to be at the discretion of the Director of Administration. Adding insurance for contents and liability is certainly understandable, and it is reasonable to expect that O&D (officers and directors) insurance, as well as conventional liability insurance, will also be required, in anticipation of widespread lawsuits that might well be in the diocese’s future. The “personnel” insurance the Chancellor has in mind—unlike the Committee, the Chancellor has provided no rationale for his proposals—is likely health and life insurance, the requirement for which, for lay employees, he has proposed eliminating from Canon XXIX (see #3, below). The proposed change clearly intends to tighten administrative oversight of insurance, which, likely, is a good thing. Parishes might well worry about additional costs they may be asked to bear, and lay employees might well worry about the future of their employee benefits.

2. **Canon XXVI** (also addressed by Committee)

In 2006, convention voted to remove the diocese (improperly, we believe) from Province III of The

Episcopal Church. The Committee tried to modify Canon XXVI so as to make it meaningful, irrespective of the church of which the diocese is a member. The Chancellor, apparently, recognized the futility of such an abstract enterprise, and his suggestion that the canon be deleted is, under the circumstances, not unreasonable. If the diocese is not going to participate in Province III affairs, it makes no sense to elect deputies and demand reports of the provincial synod. The Chancellor failed to note what is to be done with the numbering of canons following Canon XXV. Are they to be renumbered, or are we simply going to jump from Canon XXV to Canon XXVII?

3. **Canon XXIX** (also addressed by Committee)

Canon XXIX deals with the Church Pension Fund. The proposal from the Chancellor mostly removes requirements from this canon. It retains the Church Pension Fund as the provider of pension plans for clergy and lay employees, while removing any references to the General Convention or The Episcopal Church. This seems to be a matter of taste, rather than substance, however. The elimination of the diocesan Committee of the Church Pension Fund seems to have the effect of providing less information to clergy and laypeople participating in pension plans, which can hardly be seen as a good thing. It is not clear whether removal of requirements to inform the Church Pension Fund of various matters is intended to withhold information or (more likely) to place the obligation on individuals to do what is necessary to protect their investment. The elimination of Section 5 of the canon is worrisome. That section specifies what benefits must be provided to lay employees. One would like to assume that the proposed change to Canon XVII (#1, above) would lead to requirements being articulated by the Director of Administration that would compensate for the loss of Section 5, but the proposed changes do not protect the interests of lay employees explicitly. Thus, changes #1 and #3 are inextricably linked. Taken together, the proposed changes seem to endanger pension plans for lay employees.

4. **Canon XXX, Section 1**

Canon XXX is about the Commission on Ministry. This proposal is a straightforward instance of detaching the diocese from The Episcopal Church, eliminating obligations of the Commission in the constitution and canons of The Episcopal Church in favor of those of the diocese. Should the diocese depart from procedures specified by “the Constitution and Canons of the Episcopal Church in the United States of America,” of course, persons responsible for such a departure would be subject to the disciplinary procedures of The Episcopal Church.

5. **Rules of Order, B.1 (Admission to Convention)**

The proposed change would eliminate the seating (generally without voice or vote) of Episcopal Church clergy not canonically resident in the diocese to the Convention should the diocese claim not to be in full communion with The Episcopal Church. Were the diocese able to remove itself from The Episcopal Church, it would likely *not* consider itself to be in communion with The Episcopal Church and might reasonably bar Episcopal clergy from the convention. This raises an interesting question that should be asked: does the diocese *now* consider itself not to be in full communion with The Episcopal Church? The meaning of the proposal hinges on this question. The existing wording should have a comma after “if they are not Deputies.”

6. **Rules of Order, B.3 (Nominations)**

This proposal would eliminate the requirement that each nominee for diocesan positions be a “Communicant in good standing of the Episcopal Church.” This is yet another instance of decoupling the diocese from The Episcopal Church. The Episcopal Church constitution and canons demand allegiance from all clergy and all lay officeholders, so, as long as the diocese is in The Episcopal Church—forever, we assert—the elimination of the words “of the Episcopal Church” is irrelevant.