

IN IN THE DIOCESE OF VIRGINIA
THE MATTER OF
THE REV'D DR. B. CAYCE RAMEY, RESPONDENT

Response to Motion for Sanctions

Respondent, the Rev'd Dr. B. Cayce Ramey, by counsel, responds to the Church Attorney's Motion for Sanctions as follows:

To characterize the Church Attorney's Motion for Sanctions as "lacking foundation" would be charitable. As demonstrated by the motion's attached Exhibit A, the Church Attorney's position is supported by nothing Respondent said or did, nor does it have any basis or support in the Canons of The Episcopal Church.

As the first of his grounds for the motion, the Church Attorney states:

"1. The Church Attorney has just learned that the Respondent has communicated with various individuals who are potential witnesses concerning activities in this case."

There is no provision in the Canons, or specifically in Title IV, prohibiting a Respondent (or anyone else for that matter) from "communicating" with any other person, whether or not they are a "potential" witness in any matter under Title IV. The Church Attorney himself has communicated with numerous individuals in this matter, specifically one of Respondent's identified witnesses, the Rev'd Dr. Kate Sonderegger. Respondent saw no impropriety whatever in that communication. It would be a practical impossibility for any party to prepare for a Title IV hearing where individuals might be called to testify without "communicating" with them beforehand.

The specific communication the Church Attorney objects to is from a September 23, 2023 email Respondent sent to a group of friends. Some of these individuals may be called to testify, but that decision is yet to be made. In that email Respondent stated,

On the off chance your name appeared in some email somewhere in the past few years and so you get contacted by the Diocesan attorney, Brad Davenport, please know you are under no obligation to speak with him or to not speak with him either way. If he does call you, I would appreciate knowing. Very few if any of you should get contacted.

Here the Church Attorney asserts that advising potential witnesses, some of whom may be members of the clergy, that they are under no obligation to speak with the Church Attorney, “exposes them to Title IV accountability themselves.” Canon IV.3.1(b) provides,

A Member of the Clergy shall be subject to proceedings under this Title for:
b. failing without good cause to cooperate with any investigation or proceeding conducted under authority of this Title.

There have been two complete investigations in this matter. The first was the report of David A. Penrod, Esquire dated February 21, 2023, and the second by the Rev'd Canon Richard H. Norman dated April 21, 2023. The matter has been thoroughly investigated and the reports made available to the Church Attorney. There has been no contention that anyone failed to cooperate with either investigation, and the email was written long after these investigations were completed. The investigations having taken place, the Church Attorney's Statement of Offenses having been filed, this matter is now before the Hearing Panel. There has been no contention that any person, witness, or potential witness, has failed to cooperate, as required by Canon, in connection with the proceedings of this Panel.

The obligations of all members of the Church are set forth in Canon IV.19.18 which provides: “...it shall be the duty of all members of the Church to appear and testify or respond when duly served with a notice to do so from any Panel in any matter arising under this Title.” No person has yet been duly served with a notice and no person has failed to respond or testify. Respondent's statement in his email did not state or even imply that anyone properly served with notice could choose to respond or testify before the Hearing Panel.

Respondent's statement in the September 23 email was both clear and innocuous. His statement was directed to a group of friends, some of whom may have previously been identified to the Church Attorney in documents exchanged during the mandatory disclosures. Respondent told them they might be contacted by the Church Attorney and they “are under no obligation to speak with him or to not speak with him either way.” He did not advise them not to speak with the Church Attorney nor did he advise them to speak with him. He simply said they were under “no obligation” to speak with him. Nowhere in the Canons is a mandate that any member of the Church, including any member of the clergy, has a duty to be interviewed by the Church Attorney in connection with his representation of his client to prepare his case in a matter referred to a Hearing Panel.

Canon IV.13.6 provides,

In all proceedings before the Hearing Panel, the Church Attorney shall appear on behalf of the Diocese, which shall then be considered the party on one side and the Respondent the party on the other.

Thus, when a matter has been referred to the Hearing Panel, the Church Attorney represents “the party on one side”, the other being the Respondent. Nothing compels any potential witness, regardless of order, to speak with the representative of a party in preparation of their case on behalf of that party. The only requirement, and mandate of Canon, is that members of the Church must appear and testify before the Hearing Panel when they are duly served notice. To advise potential witnesses that they have the right to choose, or not to choose, to speak with a party representative merely states the obvious.

To charge that Respondent’s innocuous statement to potential witnesses “constitute witness or attempted witness tampering” is preposterous. Respondent made it clear that any decision the individual made was their own, “either way.” He simply stated that they were under “no obligation.” His statement was not coercive, intimidating or even improper. It was a simple statement of fact which he made clear could be accepted or rejected. The Title IV process has a clear mechanism for the Church Attorney to obtain information from potential witnesses that do not involve informal interviews. There are provisions both for depositions and written interrogatories, which would be almost entirely unnecessary if potential witnesses were required to talk with the Church Attorney in the preparation of his case before the Hearing Panel.

Further, the Church Attorney contends the statement is sanctionable because, in his view, it constitutes conduct “disruptive, dilatory, or otherwise contrary of the integrity of the proceedings....” (Canon IV.13.11) How that conclusion flows from what Respondent wrote is, at best, a mystery. The Church Attorney offers no examples of how the statement is “disruptive” because there are none to offer. Neither has he provided any example of how the statement had a “dilatory” effect, causing delay or procrastination or in any way obstructing this proceeding. Similarly, there is no basis to suggest Respondent’s statement was “otherwise contrary to the integrity of the proceedings.”

In the penultimate paragraph of his motion the Church Attorney suggests that Respondent’s statement implied that those to whom the email was sent “need not appear and testify or respond at the hearing of this matter.” How such an implication can be made from any reading of Respondent’s words strains credulity. Informing a possible witness they have the right to speak with or not speak with a lawyer preparing a case for

his client is a far cry from saying they have a right to refuse to appear or testify at a hearing for which they have been properly noticed. Respondent did not and would not make any such suggestion or implication.

The Hearing Panel should deny the Church Attorney's motion. There is absolutely no prohibition in the Canons, explicit or implicit, prohibiting a Respondent in a case before a Hearing Panel from telling anyone, including members of the clergy, that they have a right to speak or not to speak, as they choose, to the Church Attorney in preparing his prosecution case before that Hearing Panel. Interpreting the Canons as broadly as the Church Attorney is doing also would call into question actions that the Diocese has already taken against the Respondent. For example, Respondent's credentials to participate in the recent Diocesan Convention were revoked, solely for his being a Respondent in this process. Punitive actions outside of this process are plainly "contrary to the integrity of the proceedings." Canon IV.19.16 is clear, "There shall be a presumption that the Respondent did not commit the Offense." The Church Attorney's client, not the Respondent, undermined the authority of the Hearing Panel.

This motion comes before the Hearing Panel without any factual or canonical basis. For all the reasons set forth above, the motion should be denied.

Respondent believes the issue presented here is clear. Both parties have set out their positions. Respondent does not believe that an oral argument is necessary for the Hearing Panel to make a determination on the Church Attorney's motion and, therefore, has no objection to the Hearing Panel withdrawing that part of its Notice which provides for oral argument.

Respectfully submitted,

/s/Jack W. Burtch, Jr.
Counsel to Respondent

Date: November 16, 2023

Burtch Law, PLLC
1802 Bayberry Court, Suite 302
Richmond, Virginia 23226
(804) 593-4004
jb@burtchlaw.com

I certify that a copy of this Response to the Church Attorney's Motion for Sanctions has been provided by email to The Rt. Rev'd E. Mark Stevenson, J.P. Causey,

Esquire, Bradfute W. Davenport, Esquire, The Rt. Rev'd Susan E. Goff, The Rev'd Edward O. Miller, Jr.

/s/Jack W. Burtch, Jr.

Date: November 16, 2023