

Diocese of New Jersey Report of the Standing Committee on Constitution and Canons 2009

Introduction

In addition to matters carried over from last year, the Committee reviewed requests for changes in the constitution and canons of the diocese. Proposals affecting voting rights in Convention are presented first. If passed, they will go into effect immediately, enabling those affected to vote at this Convention.

Part I Constitution Article II, Section 2

Diocesan Convention 2008 passed Implementing Resolution III, a first reading of an amendment to Article II of the Constitution for the purpose of providing for voting participation in our Convention for clergy of the Evangelical Lutheran Church in America and of other denominations that are in communion with The Episcopal Church who are serving Episcopal congregations in the Diocese of New Jersey:

Resolved, That Section 2 of Article II of the Constitution of the Diocese of New Jersey be amended, pursuant to Article XIII, Section 1 of the Constitution, to insert a new fourth paragraph to read as follows:

Members of the clergy ordained by bishops of churches in communion with The Episcopal Church who are serving in the Diocese but who are not canonically resident in the Diocese shall have seat and vote to the extent provided by canon.

Amendments to the diocesan Constitution are governed by Article XIII, Section 1 of the Constitution:

Any proposed amendment to this Constitution which may be approved by a majority vote at any meeting of the Convention shall lay over to the next annual meeting. It shall then be acted upon, and if approved by a Vote by Orders shall become a part of this Constitution.

As explained in last year's Report, Episcopal Church Canons provide in Canon III.10.2 for either occasional or extended service in Episcopal congregations, with the approval of the diocesan bishop, by clergypersons who have been ordained in churches in communion with The Episcopal Church. In addition to ELCA clergy, the canon's list of such churches includes the dioceses and provinces in communion with the See of Canterbury, the Old Catholic Churches of the Union of Utrecht, the Philippine Independent Church, and the Mar Thoma Syrian Church of Malabar.

If this proposed constitutional amendment is approved at this meeting, the Standing Committee on Constitution and Canons will propose the canonical amendment in Part II of this Report in order to implement the change in voting rights.

It should be noted that the Rev'd Elmer L. Sullivan has submitted to the Committee a proposal to amend the Diocesan Constitution as regarding voting rights of ELCA clergy (but not of clergy of other churches in communion with TEC) who may be serving Episcopal congregations in the diocese, which proposal is included in Part X of this Report. Whether or not the implementing resolution of this Part I is passed, Fr. Sullivan's proposal can be considered independently thereafter.

The Committee therefore moves the following resolution:

Implementing Resolution I: *Resolved*, That the new fourth paragraph of Section 2 of Article II of the Constitution of the Diocese of New Jersey as authorized by the 224th Convention of the Diocese be approved by this 225th Convention.

The Standing Committee on Constitution and Canons recommends the adoption of this implementing resolution.

Part II Canon 2, Section 1

Canon 2, Section 1 governs clergy voting rights in diocesan conventions. It currently provides:

SECTION 1. The Ecclesiastical Authority, one week before the date set for any meeting of the Convention, shall certify to the Secretary the names of all clergy canonically resident in the Diocese, annexing the names of their respective cures or stations or engagements, specifying those who have been ordained, or received in the Diocese, within the year immediately preceding, with the dates of their ordination or reception; from which list the Secretary shall prepare, in conformity with the constitution, a roll of all the clergy entitled to votes or seats in the Convention.

Should any dispute arise as to the status of any member of the clergy, it shall be referred to a special committee appointed by the President, which shall report on each case immediately, and the action of the Convention thereon shall not be called in question during the same session.

If the Part I proposed amendment to the Constitution is approved at this convention, a canonical amendment will be necessary in order to implement voting rights for members of the clergy serving in the diocese who are ordained in churches in communion with The Episcopal Church.

Episcopal Church Canon III.10.2 sets forth generally the requirements to be met before an Episcopal bishop can certify a priest or deacon from such a church to officiate occasionally or for an extended period of time in an Episcopal congregation, as well as requirements for reception into The Episcopal Church. The *Principles for the Orderly Exchange of Pastors and Priests* issued by the Episcopal Church Office for Ministry Development with respect to clergy ordained in the Evangelical Lutheran Church in America notes that in order to serve as rector of an Episcopal parish, an ELCA priest must first be received into TEC, thus relinquishing membership in the ELCA and becoming canonically resident in the Diocese. Such reception is not necessary, however, for a clergyperson to serve an Episcopal congregation "as vicar, curate, on-going supply pastor, interim, assistant or pastor-in-charge

for a specified term under a contractual arrangement." It is in these capacities, then, that an ELCA clergyperson, or a clergyperson from another church in communion with TEC, might possibly be given voting rights.

For priests ordained in TEC, as reflected in the first paragraph of Diocesan Canon 2 Section 1, the right to vote in Diocesan Convention is keyed to canonical residence. Clergy canonically resident outside the Diocese of New Jersey are permitted to serve here as interims, assistant priests, or temporary priests-in-charge without transferring residence to the diocese and thus gaining the right to vote here. The Committee's position is that non-TEC priests should not be given greater voting rights than TEC priests.

Accordingly, if the resolution in Part I of this report is passed, the Committee moves the following resolution:

Implementing Resolution II: *Resolved*, That Section 1 of Canon 2 of the Diocese of New Jersey be amended to insert a new second paragraph to read as follows:

The Ecclesiastical Authority shall at the same time also certify the names of all members of the clergy ordained by bishops of churches in communion with The Episcopal Church who are serving as vicars within the Diocese under certificate issued pursuant to Episcopal Church Canon III.10.2(a)(i), who shall also be entitled to have seat and vote at the Convention, annexing the names of their respective congregations and the date of their certification to serve in the Diocese.

The Standing Committee on Constitution and Canons recommends the adoption of this implementing resolution.

Part III Constitution Article VII, Section 1

Dr. Jim Sullivan has proposed the lifting of a restriction on reelection to the Standing Committee by those members elected to fill a partial term. Article VII, Section 1 of the Constitution provides in pertinent part:

. . . the successors of those whose terms expire as aforesaid shall be elected for a term of four years. No members elected by the Convention shall be eligible to succeed themselves.

Section 3 of the same Article provides:

The Standing Committee shall have power to fill vacancies which may occur in their own body or in any body elected or appointed by Convention until the next annual meeting of Convention, unless otherwise provided for by articles of this Constitution, Canons adopted thereunder, or special acts taken by Convention.

When a vacancy occurs, the Standing Committee can fill the vacancy until the next Convention, at which time the Convention elects a member to fill the unexpired portion of the four-year term. Under Section 1, such persons are not eligible to be elected to a full term upon the expiration of the partial term.

This limitation does not exist for the Diocesan Council. Canon 19, Section 2(a) provides in pertinent part:

Members elected by the Convention for a full term shall not be eligible to succeed themselves. Vacancies among the members elected by the Convention, created by death, resignation, removal, incapacity, deposition, ordination of a lay member, or removal from the Diocese may be filled by the Council until the next annual meeting of the Convention.

Thus members of Diocesan Council completing a partial term are eligible for election to a full term. Dr. Sullivan proposes that this rule be extended to the Standing Committee as well.

The Committee recommends against such a change. The Standing Committee is a much smaller body than Diocesan Council, eight members as opposed to eighteen voting members plus bishops and nonvoting members, and its members serve for terms of four years rather than three. Giving any one member of the Standing Committee the possibility of extended tenure beyond four years opens the possibility of undue influence on the other members. In addition, since the primary purpose of Standing Committees is to serve as a council of advice to the Bishop, we feel that adding a fresh voice every year is better for diocesan administration.

To implement Dr. Sullivan's proposal the Committee moves the following resolution:

Implementing Resolution III: *Resolved*, That the fifth sentence of Section 1 of Article VII of the Constitution of the Diocese of New Jersey be amended to read as follows (added language underlined): "No members elected by the Convention for a full term shall be eligible to succeed themselves."

*The Standing Committee on Constitution and Canons recommends **against** the adoption of this implementing resolution.*

Part IV References to The Episcopal Church

Numerous references are made in our diocesan canons to "the national Episcopal Church" or to "national Canons". Chancellor John Wood Goldsack has objected to such terminology on grounds that The Episcopal Church is a province not limited to the geographic territory of the United States of America but includes Haiti, the Convocation of American Churches in Europe, Taiwan, and dioceses in Ecuador, Honduras, Colombia, Venezuela, and the Dominican Republic. He has requested that such canonical references be amended to refer simply to The Episcopal Church.

The Committee has no objection to such amendments and accordingly moves the following resolution:

Implementing Resolution IV: *Resolved*, That the following Canons of the Diocese of New Jersey be amended as follows (deletions shown by strikethrough, insertions by underline):

Canon 14, Section 1, second sentence: "The purpose of the Budget is to enable the Diocese to carry on ministries, provide support to the Diocesan Congregations, meet its obligation to ~~the national~~ The Episcopal Church, and finance its administration."

Canon 16, Section 1(a): "A tithe, which shall be ten percent of each Diocesan Congregation's Income Base, shall be requested to support the basic obligations of the Diocese, which shall include the cost of supporting the Bishop, the diocesan staff and facilities, legal and insurance requirements, direct support payments to mission congregations, funding for social and ethnic ministries, gatherings in the Diocese and of the church, and an amount equal to a tithe of total Fair Share Pledges to the Domestic and Foreign Missionary Society (~~"the National~~ The Episcopal Church".) Each Diocesan Congregation shall pay its tithe unless for good cause prevented."

Canon 16, Section 1(b), second sentence: "Such mission and ministry shall include all programmatic activities and ministries that are not included in Section 1(a), support for the development of clergy, the amount by which the asking from ~~the national church~~ The Episcopal Church exceeds the amount allocated in Section 1(a), and such other initiatives as are approved by the Bishop and the Diocesan Council or by the Convention."

Canon 16, Section 2, first sentence: "By March 1 of each year, each Diocesan Congregation shall submit an annual Parochial Report for the prior year to the Diocese, as required by ~~national canons~~ Canons of The Episcopal Church."

Canon 67, Section 1, first sentence: "There shall be a Diocesan Review Committee for the Diocese consisting of four lay persons and five clergy persons each to be elected for staggered three-year terms by the Convention of the Diocese, to have such responsibilities as may be provided for by canon, including the responsibilities set forth in ~~National~~ Canon IV.3 of The Episcopal Church."

Canon 67, Section 1, last sentence: "Any vacancy caused by reason of death, incapacity, resignation, or any disqualification under ~~National~~ Canon IV.14.13 of The Episcopal Church must be promptly filled by the Standing Committee of the Diocese from a qualified person of the same order, to serve until the next meeting of the Convention, at which time an election will take place to fill the balance of any unexpired term together with the election of full-term members."

Canon 73, Section 2(a): "Every Minister in charge of a Congregation, or, if there be no such Minister, a Warden thereof, shall prepare annually for the year ending December 31st preceding, a report of the Congregation, upon the form as provided by ~~National~~ Canon I.6.1 of The Episcopal Church, and shall send the said report, not later than March 1st, to the Bishop."

Canon 74, Section 2: "In accordance with the provisions of ~~National~~ Canon I.7.1(j) of The Episcopal Church, all churches in the Diocese shall set the compensation for all clergy employees according to a fiscal year that begins on January 1."

Canon 75, Section 4: "Following each meeting of the General Convention, the Standing Committee on Constitution and Canons must (a) review any changes to ~~National~~ Canons of The Episcopal Church approved by such meeting and (b) propose to the next diocesan Convention amendments to Diocesan Canons so as to conform them to such changes in ~~National~~ Canons of The Episcopal Church."

The Standing Committee on Constitution and Canons recommends the adoption of this implementing resolution.

Part V
Canon 10

Canon Kep Short, Director of Youth Ministry for the Diocese, has proposed language changes to Canon 10, which provides for youth deputies to Diocesan Convention. The former Diocesan Youth Commission has been renamed to be the Diocesan Youth Council, and it is led by two Co-Chairs instead of the former officers.

The Committee approves his proposal and moves the following resolution:

Implementing Resolution V: *Resolved*, That Diocese of New Jersey Canon 10 be amended as follows (deletions shown by strikethrough, insertions by underline):

CANON 10

Diocesan Youth ~~Commission~~ Council

The Diocesan Youth ~~Commission~~ Council shall be entitled to seat, voice and vote at Diocesan Convention. The Youth ~~Commission~~ Council shall elect three persons, who are at least 16 years of age and who are communicants in good standing of a parish within the Diocese, to serve as deputies to Diocesan Convention. The ~~President and Secretary of the Youth Commission~~ Co-Chairs of the Youth Council or the Director of Youth Ministry shall certify the election of the deputies to the Secretary of Diocesan Convention.

The Standing Committee on Constitution and Canons recommends the adoption of this implementing resolution.

Part VI
Canon 49, Section 2

Ann Notte, Diocesan Office Manager, has brought to the Committee's attention a discrepancy between some congregations' election practices and the provisions of Section 3 of Canon 49, which governs the election of parish officers, including Deputies and Alternates to Diocesan Convention:

SECTION 3. At said annual meeting the qualified voters shall elect by ballot, by a majority of the votes cast, to serve for the ensuing year, from among the voters in the Parish, three Deputies and three alternate Deputies to the Diocesan Convention, and a Warden or Wardens, who shall all be communicants in good standing; and also such other Members of the Vestry and other officers as may be provided for by the Charter of the Parish, who shall be communicants if such suitable for the office can be found.

The date of the annual meeting of congregations is generally set by their incorporation papers. Some colonial parishes had charters providing for a meeting during Easter week. During much of the twentieth century, New Jersey statute required the meeting date to be during the first week of Advent. And some parishes have meetings as late as February. Some of those congregations holding elections just before Diocesan Convention have adopted a practice of electing Deputies and Alternates for the next following Convention, so that the meeting of February 2008 elected Deputies and Alternates for the present Convention held February 27-28, 2009. While this practice allows parish representatives to receive preconvention mailings, which begin in August, and to participate in preconvention meetings, which this year start on February 3, it is contrary to the terms of the canon's requirement of election "to serve for the ensuing year".

Annual meetings of congregations serve other purposes than the election of Convention Deputies: Often congregations are informed of parish finances including past results and future budgets, and these kinds of information are generally not available until around the end of the calendar year. While it makes some sense to allow for advance election of the congregation's election of its representatives to Convention in a manner allowing them to participate in the nomination process and other preconvention activities, the Committee believes that the current mailings to "Deputy #1", *etc.*, at the church's address is sufficient to inform deputies once elected, and that changing the current system to allow advance election would introduce too much variation in election practice that could lead to further administrative confusion. If a particular congregation feels prejudiced by holding its annual meeting in February, it can change the date by amending its certificate of incorporation. The Committee therefore moves the following resolution:

Implementing Resolution VI: *Resolved*, That Diocese of New Jersey Canon 49, Section 3 be amended by adding the following sentence:

Notwithstanding the provisions of the preceding sentence, a congregation whose annual meeting is held between the First Sunday in Advent and the opening of the annual meeting of the Diocesan Convention may provide by bylaw for the election at its meeting of Deputies and alternate Deputies to the second following Diocesan Convention rather than the immediately following Diocesan Convention.

*The Standing Committee on Constitution and Canons recommends **against** the adoption of this implementing resolution.*

Part VII
Matters Carried Over from 2008

For the last two years the Committee had reported on possible proposals for revisions of Canon 13, governing trustees of diocesan trust funds, and Canon 36, governing health insurance. We have received no further proposals on these subjects in the past year and will not report further on them until proposals are received.

Part VIII
Constitution Article II, Section 2, First Paragraph

The Rev'd Elmer L. Sullivan has proposed the following amendment to the first paragraph of Article II, Section 2 of Constitution of the Diocese (deletions shown by strikethrough, insertions by underline):

The Bishop of the Diocese; the Bishop Coadjutor, if there be one; and Suffragan Bishops, if there be any, ~~and all other bishops to the extent provided by canon~~ shall each have a seat and vote.

He notes that no canon has been adopted since this constitutional text came into effect that gives seat and vote to Bishops Suffragan or Coadjutor and proposes that their right to vote be placed in the Constitution.

Prior to 1996, however, this sentence had read: "The Bishop, the Bishop Coadjutor and the Suffragan Bishop shall each have a seat and vote." It was changed in that year to provide for the adoption of new Canon 11, titled "Retired Bishops in Convention", which provides: "A Bishop who shall have retired as a bishop of the Diocese of New Jersey and who is canonically residing within the Diocese shall be entitled to a voice, seat and vote at the Convention." Prior to that change, retired Suffragan Bishop Vincent Pettit was given seat and vote by acclamation at the opening of each Convention.

The Diocese of New Jersey has had no Suffragan Bishop since 1991 and no Bishop Coadjutor since 1994.

Rather than amending the Constitution, the Committee recommends instead expanding the current Canon 11 to cover active bishops other than the Diocesan, and at the same time suggests conforming the language for retired bishops to the usual canonical language for granting seat, voice, and vote in Convention. The Committee notes that Assisting Bishops such as Bishop Romero are qualified to vote by virtue of Episcopal Church Canon III.12.8(j) along with other clergy, so no special provision for such bishops is needed in diocesan canons. The Committee accordingly moves the following resolution:

Implementing Resolution VIII: *Resolved*, That Diocese of New Jersey Canon 11 be amended as follows (deletions shown by strikethrough, insertions by underline):

CANON 11

~~Retired~~ Voting Rights of Bishops Other than Diocesan Bishops in Convention

Any Bishops Suffragan or Bishop Coadjutor of the Diocese shall have seat, voice, and vote at the Convention. A Bishop who shall have retired as a bishop of the Diocese of New Jersey and who is canonically residing within the Diocese shall be entitled to ~~a voice, seat, voice,~~ and vote at the Convention.

The Standing Committee on Constitution and Canons recommends the adoption of this implementing resolution.

Part IX
Constitution Article II, Section 2, Second and Third Paragraphs

Fr. Sullivan had also proposed an amendment to the second and third paragraphs of Article II, Section 2, which proposal he has withdrawn following consideration by the Committee.

Part X
Constitution Article II, Section 2, Paragraph 4

As noted in Part I of this Report, last year's Convention passed Implementing Resolution III, a first reading of an amendment to Article II of the Constitution for the purpose of providing for voting participation in our Convention for clergy of the Evangelical Lutheran Church in America and of other denominations that are in communion with The Episcopal Church who are serving Episcopal congregations in the Diocese of New Jersey:

Resolved, That Section 2 of Article II of the Constitution of the Diocese of New Jersey be amended, pursuant to Article XIII, Section 1 of the Constitution, to insert a new fourth paragraph to read as follows:

Members of the clergy ordained by bishops of churches in communion with The Episcopal Church who are serving in the Diocese but who are not canonically resident in the Diocese shall have seat and vote to the extent provided by canon.

Fr. Elmer L. Sullivan has found this language possibly confusing and has voiced to the Committee objections as to its approval at last year's Convention, and he has proposed an alternate constitutional amendment to deal with voting rights of ELCA clergy, also to be inserted as (or replace, if Part I of this Report is implemented) the fourth paragraph of Article II, Section 2 of the Constitution:

The Ecclesiastical Authority of the Diocese may, at the Ecclesiastical Authority's discretion, direct that a member of the clergy of the Evangelical Lutheran Church in America who serves a congregation of the Diocese of New Jersey be included in the roll of clergy entitled to seats and votes in the Convention; *Provided, however,* that clergy so listed shall not be deemed qualified to serve as members of the Standing Committee of the Diocese.

The Committee has reviewed Fr. Sullivan's proposal and believes that it is inadequate for several reasons. First of all, it is limited in scope to ELCA clergy only and does not apply to clergy of any of the other churches with which The Episcopal Church is in communion (noted in Part I). Secondly, it makes eligibility to vote dependent upon the sufferance of the Bishop at the time. This is inconsistent with the "fully interchangeable" status of clergy entailed by the Concordat as adopted by TEC and under the regulations set forth in TEC Canons. Thirdly, it proposes to adopt into the Constitution a procedure (certification of the roll of clergy

having votes or seats in Diocesan Convention) that is set forth only in Canon (and also changing "seats or votes" to "seats and votes"). Finally, it includes a purported blanket disqualification of these clergypersons from serving on the Standing Committee of the Diocese. (Article VII of the Constitution provides that "clerical members [of the Standing Committee] must be of those entitled to seats in the Convention".) It is poor drafting to place a specific disqualification from an office in a separate article from the general qualification for that office. It is questionable whether such a disqualification is even necessary or desirable other than to create a "second class citizenship" among otherwise "interchangeable" clergy. If Convention so decides, however, the Committee feels that such qualifications as pertain to eligibility for election to the Standing Committee be placed in Article VII of the Constitution rather than in Article II.

Accordingly, to implement Fr. Sullivan's proposal the Committee moves the following resolution:

Implementing Resolution X: *Resolved*, That a fourth paragraph of Section 2 of Article II of the Constitution of the Diocese of New Jersey be added [or if the proposal in Part I of the Report is adopted, then that the existing fourth paragraph be deleted and replaced with a new fourth paragraph] to read as follows:

The Ecclesiastical Authority of the Diocese may, at the Ecclesiastical Authority's discretion, direct that a member of the clergy of the Evangelical Lutheran Church in America who serves a congregation of the Diocese of New Jersey be included in the roll of clergy entitled to seats and votes in the Convention; *provided, however*, that clergy so listed shall not be deemed qualified to serve as members of the Standing Committee of the Diocese.

*The Standing Committee on Constitution and Canons recommends **against** the adoption of this implementing resolution.*

Conclusion

The Committee has received no further proposals for consideration this year other than two timely proposals as to which the proposer needs to consult other bodies and which may if not withdrawn be contained in a Supplemental Report of this Committee. The Committee reminds members of Convention that proposals for amendments to the constitution or canons must be submitted to the Committee at least sixty days prior to the opening day of the next convention, or by around the beginning of January 2010.

The Committee appreciates the input it receives from other diocesan bodies within the areas of their expertise.

Respectfully submitted,

The Reverend Terence Blackburn, Vice-Chair
The Reverend Frank B. Crumbaugh, III
The Reverend Petrina M. Pyatt
Paul De Sarno, Esq., Secretary
Paul Ambos, Esq., Chair