POST-TRIAL BRIEF OF THE CHURCH ATTORNEY
IN THE TITLE IV CASE AGAINST RESPONDENT BISHOP J. JON BRUNO
SUBMITTED APRIL 24, 2017

"Whoever you are, and wherever you find yourself on the journey of faith, we welcome you and invite your participation in today's worship."

Except at St. James the Great Episcopal Church in Newport Beach which is closed.

There the Bishop (Respondent) tells his vicar "you're letting your pastoral brain get in the way of your business brain" (Tr 501) and refers to a consecrated church as "an asset" that he needs to "liquidate." Ex 29; Tr 551, Depo Tr 125-126.

And Respondent excludes 150 faithful people from celebrating mass in "the asset" for over two years, for no reason but out of stubbornness and his vindictive view of Reverend Voorhees as "disobedient" (Depo Tr 158-159), for which he threatens to punish her when this proceeding is complete. Depo Tr 165-166. Rather than opening the church and seeking reconciliation, he attacks Reverend Voorhees, Bishop Matthews, David Beers, Bishop Glasspool, and the church attorney.

Isn't this conduct, by any standard, the very definition of Conduct Unbecoming a member of the clergy?

Cindy Voorhees, Evangeline Andersen, Bruce and Merilee Bennett, Patrick DiGiacomo, Kathi Lieberman, Michael Strong (and 100 others) were told in no uncertain terms they are not wanted by the Episcopal Church. Their pain and tears were obvious at trial. Their pain was magnified by the growing realization in 2015 that Respondent had previously deceived them and was making false statements to justify his sale of the Church.

The evidence shows that Respondent was seduced by the dollars – both the $15 million to be received for sale of the church property and the possibility of growing

Anaheim to enhance "his legacy" by adding money to Corp Sole. There is not a single document, nor any corroborating testimony, that Respondent actually considered the parking license, the financial "sustainability" of St. James, or the supposed $9 million in legal expenses (a falsehood in and of itself) in making his decision. His after the fact claims were false, and proven so at trial.

"Encouraging" people to donate, volunteer, and put their hearts and souls into St. James the Great – while at the same time secretly paying for an appraisal, retaining Cushman to find a buyer, and executing a Purchase and Sale agreement destroying everything the congregation had achieved was dishonest and cruel. Kathi Liebermann, one of the parishioners, when asked what she remembered about what Respondent said on October 6, 2013, when he re-opened St. James as an Episcopal church, testified: "I remember him saying that we were to support Reverend Cindy. She had the heart of a lion, and that he wanted a vibrant, you know, congregation for years to come." Tr 446. When asked about her reaction on learning that Respondent had sold the church, in May 2015, she said through her tears: "I must say I thought the worst was in 2004 when the Anglicans took the church away. But when our own Bishop did it, I mean, it was just - I felt like we were his faithful followers who had grew the church and did exactly what he asked us to do. And then just with no warning came in. It was disbelief. It was - it was all over. I was blindsided." Tr 448.

Respondent, at trial, did not claim his statements about parking, sustainability, or legal expenses were true in fact. Instead he claimed he relied on his staff – not a defense - he had a mandatory duty to "refrain" from "conduct involving misrepresentation". Blaming staffers is certainly not conduct becoming a bishop. Or he excused his conduct by claiming he didn't have monthly financials so had insufficient information. The proof showed he had

plenty of financial information about St. James. And, obviously – if he had cared – he could have obtained a prompt update. As to the parking issue, there was no support for his written representation that the solution required buying land – not even from his staff. And the claim of $9 million in "legal expenses" was at best a gross exaggeration.

Respondent claimed he did not need prior Standing Committee approval to sell the consecrated church because it was held in Corp Sole. This is a theory contrary to the canons. His rationale would allow him unilaterally to sell the 20 parishes and 23 missions currently held by Corp Sole (Ex. 175, pages 021-026). This is the kind of monolithic power and lack of transparency about which the committee of the diocese recently reported on and expressed concern (Ex. 163). Respondent's lawyers have made the further specious argument that as the buyer eventually decided not to finalize the sale, Canon II.6.3 did not apply. Wow! Only a lawyer could think up that argument. That interpretation would give all power to the secular buyer. It cannot be correct.

A troubling aspect of Respondent's conduct has been his repeated and continued inconsistent statements and misrepresentations, including statements to Bishop Matthews, his disclosures in this case and his testimony, which was often evasive. His attack on everyone who disagrees with him, including, during trial, accusing Bishop Matthews and Beers of violating his Title IV rights, was very troubling.

This brief refers the panel to specific paragraph numbers ("Fact __") in the Statement of Proposed Facts submitted concurrently, but also includes other facts with direct references to the record. "Tr" refers to the trial transcript. "Depo. Tr" refers to Respondent's deposition transcript. "Ex" refers to trial exhibits. "ASWS" refers to Respondent's Amended and Supplemental Witness Statements filed and served on January 3, 2017. We suggest the panel read the

Statement of Proposed Facts first because it is in chronological order and is more complete. We suggest using it as a reference while reading this brief. We now address in order the six charges against Respondent.

I. RESPONDENT DID NOT HAVE PREVIOUS STANDING COMMITTEE CONSENT TO SELL ST. JAMES

Respondent admitted in his brief before the Hearing that he did not have the consent of the Standing Committee when he signed the legal agreement to sell St. James the Great on April 10, 2015. Respondent Pre-Trial Brief 3. He and the President of the Standing Committee, Melissa McCarthy, confirmed this. They each opined that Standing Committee consent was not necessary. Tr 716-17; Respondent Depo Tr 17. Only two sets of Standing Committee minutes were presented to the Hearing Panel; those of March 9, 2009, and June 8, 2015. The March 2009 minutes do not contain any approval to sell St. James; on the contrary, they quote Respondent as saying that "it was too soon to discern what may occur" for St. James. Fact 11; Ex 35. The June 8, 2015 minutes do not approve the Purchase and Sale agreement; they merely "concur" in the signed Purchase and Sale agreement and note that "the Standing Committee has no authority over Corporation Sole." Fact 71; Ex 19. The Hearing Panel requested, but Respondent did not provide, Standing Committee minutes for April and May 2015; it seems safe to assume that these minutes do not help the Bishop's case. (Tr 714-715)

The central canonical provision is clear. Canon II.6.3 provides that "no dedicated and consecrated Church or Chapel shall be removed, taken down, or otherwise disposed of for any worldly or common use, without the previous consent of the Standing Committee." There is no question that St. James the Great was and is a consecrated Church; Respondent himself consecrated it in 2001, upon completion of the new church complex.

Respondent presents two defenses. The first is that he did not *need* the consent of the Standing Committee because the April 10 Legacy Purchase and Sale agreement was just an agreement; he would not need approval unless and until the property was "disposed of." The defense fails because the agreement which Respondent signed on April 10 was a full, binding agreement to sell the St. James the Great property. Ex 25. There was no condition in the agreement that allowed Respondent to change his mind if the Standing Committee disagreed with his decision to sell St. James. Indeed there were almost no conditions at all in the agreement on Respondent's duty to deliver the church property at closing. His duties were to provide information and access to the buyer so it could perform its due diligence. If Legacy showed up on the closing date, with the $15 million purchase price, Corp Sole was legally required to transfer the property to Legacy. Fact 54; Ex 25. So the Bishop's suggestion, that he could obtain the consent of the Standing Committee between signing and closing the agreement, is absurd: he would have been presenting the Standing Committee with a *fait accompli* and subjecting Corp Sole to a lawsuit for specific performance. See Ex 25, section 16.1 (Buyer could obtain specific performance if Seller failed to deliver property at Closing). This is not what Canon II.6.3 requires; it requires the *previous* consent of the Standing Committee before one sells consecrated property.

This case provides a perfect example of why Standing Committee review and approval is required before the sale of consecrated Church property. If Respondent had presented the proposed Legacy Purchase and Sale agreement to the Standing Committee, as Bishop Glasspool recommended, before he signed the agreement, the Standing Committee would have had the independent opportunity (and duty) to investigate. It would not have taken much investigation to reveal all the problems with the proposed sale of St. James the Great, including the donor's use

restriction on the property, the restrictive zoning in the general plan, community and political opposition, congregation opposition, the solid financial footing of St. James the Great, and the dedication of its congregation.

If there was any doubt that Canon II.6.3 requires Standing Committee consent before a binding agreement is signed, the doubt is removed by Canon II.6.2. That provision applies to any entity authorized by state law to hold property for the Church; Corp Sole is such an entity under California law. Canon II.6.2 provides that one may not "encumber or alienate" sacred property "without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese." Even assuming for the sake of argument that signing the binding legal agreement to sell St. James to Legacy was not disposal under Canon II.6.3, it was surely an "encumbrance" or "alienation" under Canon II.6.2.

The Bishop's own Chancellor, Richard Zevnik, expressed the same view on this issue in 2014, in an email exchange with one of the complainants, Strong. See Fact 31; Ex 82. If Zevnik believed that the prior bishop needed Standing Committee approval to send a mere letter restricting his rights with respect to church property, then Respondent surely needed Standing Committee approval before signing a legally binding contract to sell a consecrated church building in active congregational use. Fact 31

The reason Respondent did not seek Standing Committee approval for the St. James sale was that he believed that he did not *need* their approval for Corp Sole transactions. "Corp Sole" is the shorthand used in Los Angeles to refer to "The Bishop of the Protestant Episcopal Church in Los Angeles, a corporation sole." Corp Sole is a California corporation, of which the sole shareholder and sole director is the current bishop of the diocese of Los Angeles. It is a religious nonprofit corporation, the sole purpose of which is to hold property for the Episcopal Diocese of

Los Angeles. Most Episcopal dioceses do not have Corp Soles; only a few states have laws that provide for such corporations and even in those states there are many dioceses (San Diego for example) that do not have Corp Soles. The Los Angeles Corp Sole is a large and wealthy corporation; according to the most recent financial statements it holds more than $40 million worth of real estate. See generally Exs 163, 175. St. James the Great is not the only consecrated church property owned by Corp Sole. There are 20 parish congregations and 23 mission congregations worshipping in properties owned by Corp Sole. Ex 163; Ex 175 at pages 175, 021 - 026.

Only after the contract to sell St. James was signed and effective, and after the sale became public and controversial, did Respondent discuss the sale with the Standing Committee, on June 8, 2015. Fact 71; Ex 19. Both Respondent and Melissa McCarthy, head of the Standing Committee, confirmed that they believed that the Standing Committee had no authority over Corporation Sole. Tr 716-17; Respondent Depo Tr 17.

This understanding, however, is surely incorrect with respect to consecrated church property. There is no exception to the important national requirement for previous consent for transactions involving properties owned by Corp Sole. The requirement for previous Standing Committee approval, before the sale or destruction of consecrated property, is a central element of the Episcopal structure; it has been in place for generations; it applies regardless of local practices. Before signing the binding legal agreement to sell the St. James the Great property, Respondent had a canonical duty to obtain the previous consent of the Standing Committee. It had a duty to exercise their independent, informed judgment on the proposed sale.

II. RESPONDENT MISREPRESENTED HIS PLANS FOR ST. JAMES BEFORE MAY 17, 2015

In the course of the long Anglican litigation, Respondent repeatedly said that his goal was to recover St. James for the Episcopal Church, so that St. James could once again be used for Episcopal worship services. Facts 6 and 7; Exs 60 and 61. He claimed at trial, however, that the St. James congregation knew that he would sell rather than re-open the St. James site. Tr 496. That clearly was an overstatement. At most it was a possibility known to insiders. Somehow Kathi Lieberman, her family, and everyone else missed that. No one except Respondent so testified. In any event, once he reopened the church, Respondent admittedly did not inform the congregation he was still considering a sale. Fact 27.

In the summer of 2013, the California Superior Court ordered the Anglicans to return St. James to the Episcopal Church. Fact 15; Exs 64 and 65. Reverend Voorhees suggested the new name, as a way to distinguish between the Episcopal congregation and the Anglican congregation, worshipping nearby as St. James Anglican. Tr 231. Respondent appointed Reverend Voorhees as the vicar of the congregation. Fact 15. She had a previous and deep connection to the building; she had worked, as a liturgical consultant, on the redesign and reconstruction in the late 1990s and early 2000s. Reverend Voorhees made several changes to her life so that she could better serve the congregation. She and her husband purchased a home in Newport Beach and moved there; they did *not* move into the vicarage, so that it would be available to be rented and provide income for the congregation. Fact 27. Reverend Voorhees closed down her long-time for-profit architectural consulting business, Voorhees Design. Tr 195-97. She agreed with Respondent that her position would be, at least initially, non-stipendiary, because she was confident the congregation would grow to a point where it could compensate its priest. Tr 236. She would never have taken all these major life steps if

Respondent had told her on her appointment that he might sell the St. James properties after the congregation was restarted, that the St. James the Great congregation was a "month-to-month" proposition. Respondent admitted on questioning by the panel that he did not "explicitly" tell the congregation the church might be sold. Instead, on October 6, 2013, he "was trying to encourage the congregation to make a miracle". Tr 511:21, 512:16

On October 6, 2013, Respondent, assisted by two other Bishops (including Bishop Glasspool), re-opened St. James the Great as an Episcopal church. Respondent challenged the congregation to build a new church "for years to come." Facts 15 and 19; Ex 22. The trial testimony was clear. None of those involved in the early days of the congregation would have made their volunteer commitments, financial pledges, or capital improvements if Respondent had told them that the property was for sale, that the congregation was temporary. Fact 27. This is simple common sense; one does not invest one's heart, soul and money into a temporary organization.

But Respondent and his key aides were secretly planning the sale of St. James the Great, if they got the right price. Facts 12 and 13. Respondent insists that Reverend Voorhees "knew of the consistent interest and offers regarding the NPB Property and Bishop's willingness to consider them." Respondent Pre-Trial Brief 7. Respondent presented no evidence of this at trial. The evidence is overwhelming that, after Respondent asked her to become the vicar of St. James the Great, he did the opposite – encouraging her and keeping secret the sale process – including not responding to her when possible clues arose. Reverend Voorhees was not aware of the Bishop's plans to sell the property. Two specific incidents (supported by contemporaneous documents) demonstrate this.

In October 2014, after receiving a telephone call from a real estate broker, saying that he had information for Forbath regarding the sale of St. James, Reverend Voorhees asked Respondent and his senior staff whether there was something she should know, whether she was wasting her time. He did not bother to respond. "If I answered every email where somebody has a concern or worry, and it's not addressed to me, I would not sleep". Fact 36, Tr 618-619. Is that an example of Respondent's idea of pastoral care? Fact 36; Ex 21. In February 2015, after asking Reverend Voorhees the "odd question" whether he should sell St. James or St. Michael's, Respondent reassured her; he would not sell St. James the Great. Facts 41 and 42; Exs 55 and 56.

This was not a case, then, in which Respondent was simply silent about his plans, while encouraging the congregation to believe their church would be permanent. No - this was a case in which the Respondent made misrepresentations to the priest, such as his statement that St. James would not be sold, even as his staff was working towards the sale. Respondent's failure to respond to the October 2014 email, in which Reverend Voorhees asked him whether there was something about a sale which she needed to know, is itself a misrepresentation. Canon IV.4.1(h)(6) imposes a high standard upon members of the Episcopal clergy; they "shall . . . refrain from . . . conduct involving dishonesty, fraud, deceit or misrepresentation." That means not just avoiding misrepresentations; that means avoiding conduct by silence which (in all the circumstances) would naturally be interpreted as misrepresentations. Respondent did not live up to this standard; he misrepresented his plans for St. James the Great in violation of the canons.

III. RESPONDENT MISREPRESENTED IN MAY AND JUNE OF 2015 THAT ST. JAMES WAS NOT A SUSTAINABLE CONGREGATION

When he announced the sale to the congregation, on May 17, 2015, and in several follow-up communications, Respondent misrepresented his reasons for making the sale. He claimed St. James was not sustainable for three reasons. Parking issues were intractable, the congregation was costing the diocese too much money, and he needed to compensate for the $9 million spent in legal expenses in his suit against the Anglicans. He omitted any mention that $6.3 million of the sale proceeds would go straight into the purchase of commercial property.

A. PARKING.

On May 17, 2015, when he announced to the congregation that he had sold St. James the Great, Respondent mentioned as one of his reasons that the church did not have enough parking spaces to satisfy city requirements. Bennett, who had worked on the parking issue during his time as Bishop's Warden, and who had kept current on the issue with Reverend Voorhees, challenged Respondent on this point, saying that parking was not a serious problem, that there was a solution, that parking could not be the real reason for the sale. Fact 62.

Respondent reiterated and expanded on his parking argument in a letter to the Diocesan Council, sent on May 19, 2015. Fact 65; Ex 65. However, on June 5, 2015, Respondent omitted his parking claim, that is, that to solve the parking problem he would have to purchase land, likely because public officials would have known this claim was false. Fact 70. Ex 29.

In fact the issue had been worked on and solved. An agreement had been in front of Respondent's senior staff and his chancellor, James Prendergast, since January. Fact

39. If Respondent really cared about the parking issue, he would have asked Chancellor Prendergast about it; the chancellor had worked on and approved the agreement, after consulting with an attorney who had local knowledge of Orange County and specialized in non-profits. Fact 39. Respondent's failure to present testimony from his chancellor, who actually worked on the parking issue, demonstrates his consciousness of the falsehood of his statements. It is hard to escape the conclusion that Respondent, Tumilty and Forbath delayed signing the parking license agreement with a developer because they knew the agreement would complicate sale of the St. James property. So when Respondent told the congregation, on May 17, and the Diocesan Council on May 19, that parking was a major reason to sell the property, he misrepresented.

B. ANGLICAN LEGAL COSTS

Respondent also often mentioned, to justify selling St. James the Great, that he had to recoup the legal expenses of the Anglican litigation. His June 5 letter to Mayor pro tem Dixon stated that he had incurred "$9 million in legal costs related to securing four parish properties at which members disaffiliated from the Episcopal Church." Fact 70; Ex 29. But the $9 million "cost" figure was, at best, a gross exaggeration, as the real legal expense was less than $5 million. Fact 13. The way Respondent used it as a persuasive effort to a public official was a clear misrepresentation, especially since he omitted to mention that by the summer of 2015 he had already recovered $5 million by sale of one of the properties recovered from the Anglicans (St. David's North Hollywood) and more than $3.5 million through a long-term lease and then sale of another such property (All Saint's Long Beach). Fact 14; Ex 66.

C. ANAHEIM

Respondent was conspicuously silent, both on May 17 and thereafter, about what the record later revealed was a significant reason for selling St. James: He wanted to use $6.3 million from the sale of St. James to purchase commercial real estate in Anaheim. Facts 9, 42, 45, 47, 48, 53 and 61. When Respondent signed the agreement on March 20 to purchase the Anaheim interest, Corp Sole did not have $6.3 million in cash to pay the purchase price. Fact 48; Ex 175 (showing cash balance of only $3.4 million as of the end of 2014 and $843,000 as of the end of 2015). But on April 1, Corp Sole received an offer of $15 million from Legacy for the Newport Beach property. Ex 100. The question of how to fund the Anaheim purchase was solved; the Diocese would sell sacred property in Newport Beach, to purchase a further interest in commercial property in Anaheim.

Respondent misled the St. James congregation about the connection between the two transactions. A member of the congregation asked the Bishop on May 17 whether there was some urgent financial crisis, some pressing need for the sale proceeds from St. James. Respondent responded no, the diocese was in good financial shape. Facts 62 and 63 ("diocese did not lack for funds"). But Respondent had recently seen Forbath's April 9 email in which he expressed concern that any delay in closing the St. James sale would have a "significant impact" on funding the Anaheim purchase. Fact 53. Respondent knew that when he answered the question on May 17.

The financial connection between the two transactions was clear from the Forbath email (Ex 23), Respondent's letter to Foss (Ex 24) and Tumilty's own handwritten notes (Ex 44). Fact 61. The real question is why Respondent felt and *still feels* the need to hide the connection. In January of this year, in the disclosures in this case, Respondent

claimed that witnesses would testify to "the lack of any relation between the Anaheim transactions, and the Lido Isle sale, other than the coincidental proximity in time." Respondent had the same response when first asked about this issue at his March deposition; he asserted that there was *no connection* between the two transactions, other than a coincidence in time. Respondent Depo Tr 101- 107. He testified none of the money from the sale of St. James was going to be used for the purchase of Anaheim. Respondent Depo Tr 13. Only when confronted with documents did Respondent reluctantly concede that the Newport Beach proceeds were one way in which the Anaheim purchase could be funded. Respondent Depo Tr 101-104. Even at the trial, Respondent resisted admitting the connection between the two transactions, insisting that the St. James sale was only "one of several different funding possibilities" for the Anaheim purchase. Tr 579. However, the documents show that, until the St. James sale fell apart, the sale of St. James was *the way* by which Respondent intended to fund the Anaheim purchase.

So why has he been so careful to avoid or mitigate this funding connection? The most likely reason is he understood the significance of selling consecrated property in order to buy commercial land. He realized the outrage people would feel, as demonstrated by Reverend Voorhees when she reported on learning in court that "we were part of another land purchase, where St. James the Great proceeds are intended to complete another transaction" (Ex 14).

D. RESPONDENT'S CLAIM THAT ST. JAMES WAS NOT FINANCIALLY SUSTAINABLE WAS FALSE

Starting on May 17, 2015, Respondent claimed that one reason he had to sell St. James the Great was that the congregation was not financially sustainable. Facts 62, 65, 68, 70 and 95; Ex 29 and 123.

The Hearing Panel heard extensive testimony from Andersen and Voorhees, but *not* from Forbath,[1] about the finances of St. James the Great. Andersen and Voorhees showed that the finances of St. James the Great were strong; that it was on track to achieve financial independence by the end of 2015 or 2016. None of the documents from 2014 or early 2015, before the Purchase and Sale agreement was signed, suggest that Respondent or his staff were concerned about the finances of St. James the Great. Surely, if "sustainability" was, as Respondent later claimed, a major reason to sell the St. James property, there would be some hint of this in Respondent's files and emails from before he signed the Purchase and Sale agreement.

One cannot resolve the question of the "sustainability" of St. James the Great just by looking at budgets, receipts and expenses. One also needs to ask: What would have happened if Respondent had informed the St. James congregation that he would have to close down its congregation and sell their building *unless* it became financially independent? For example, what would have happened if, instead of granting the $48,000 subsidy to St. James the Great for calendar year 2015, the Diocese had denied the request, told the congregation that it would have to increase contributions and reduce expenses in order to balance its budget? (We note that it

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1 In his pre-trial disclosures Respondent promised that Forbath would "testify as to the financial contributions to the congregation of St. James the Great by the Corporation of the Diocese of EDLA, and of Corporation Sole during the period October 2013 to the present." But Forbath did not testify *at all* at the Hearing about the "sustainability" issue. Instead, Respondent testified in an utterly conclusory fashion – supposedly from memory – that the St. James cost the diocese $237,000 in the first three months. Tr 514. He provided no documentation to support that assertion, nor did Forbath. It is inconsistent with all financial records in this case. If true, no doubt Respondent would have put in evidence contemporaneous financial records from the diocese showing it. No such documents exist – and were not provided in discovery.

was not until January 2015 that the diocese finally informed Reverend Voorhees that the $48,000 would be granted. Fact 38; Ex 93.) Andersen testified that the congregation would have found a way to balance the budget, even without the $48,000 subsidy from the diocese. Andersen testified that "we were going to be in a net position of very, very low dollars in 2015" and that St. James would "maybe go to zero in 2016" in other words need no diocesan support whatsoever, and pay its mission share pledge to the diocese. Tr 133-134. The congregation's ability to "stand on its own" is proved not just by testimony, but by what has happened since the lockout, when the St. James the Great congregation has managed to survive on its own without any financial or other help from the diocese. As Andersen testified and proved by documents, St. James was costing the diocese very little. And it was contributing its full Mission Share Pledge. Ex 158.

The claim that St. James was costing the diocese too much money, so was not sustainable, was not the real reason why Respondent sold the St. James the Great property; it was an excuse devised after the Purchase and Sale agreement was signed.

IV. RESPONDENT MISREPRESENTED THAT REVEREND VOORHEES HAD RESIGNED HER POSITION AS VICAR OF ST. JAMES THE GREAT

The day after the sale was announced on May 18, 2015, Reverend Voorhees began to write a series of pastoral letters to her congregation. Fact 64; Ex 179. She testified that, by late June, she was "overwhelmed with pastoral care," talking with the upset, tearful members of her flock. Tr 293 - 294.

On June 25, on the eve of what she believed would probably be the last church services in the building, she sent, and included in the bulletin, what she termed her "last pastoral letter" to the congregation. Fact 83. Like the previous letters, she did not send this letter to Respondent, but he received a copy of it by email on June 25, in Salt Lake City, where he was attending the

general convention. Fact 84; Ex 30. After the June 28 services, the congregation asked her to remain its vicar, and she agreed. Fact 86.

On June 29, Respondent emailed Reverend Voorhees a letter in which he said "I consider the correspondence your letter of resignation as my Vicar for the congregation effective at midnight on Sunday June 28, 2015." Fact 88; Ex 32. Reverend Voorhees emailed Respondent at once: "I have not resigned, I have not tendered my resignation to you, nor have I ever communicated to you that I was resigning from St. James the Great. I intend to continue to serve as vicar of St. James the Great as long as the congregation continues." Fact 88; Ex 32. When they received this letter in Salt Lake City, Tumilty advised Respondent that he should "stand his ground" on the resignation issue. Fact 89; Ex 33. Later in the day, the same day that Respondent locked the church and grounds, Reverend Voorhees received an email from Tumilty, referring to her resignation, telling her that the locks on the building had been changed. "Any and all church property, including but not limited to books, minutes, passwords, rosters, records, stationery, business cards and the like, as well as any vestments or liturgical hardware etc that are in your possession are to be returned directly to Clare." Reverend Voorhees replied immediately, insisting that she had not resigned. Fact 89; Ex 34.

Although Respondent, in his email letter to Reverend Voorhees, said that he would "consider" her letter a resignation, he and his staff stated in fact that she had resigned in other communications. On June 29, the same day, in a conversation in Salt Lake City, Respondent told Bishop Matthews that Reverend Voorhees had resigned "without his asking her to do so". Fact 91; Ex 143. Also, on June 29, writing on behalf of Respondent, Tumilty informed Crowell, a leader of the St. James the Great congregation that Reverend Voorhees "has resigned her position as Vicar of the St. James the Great mission congregation and the Bishop has accepted

her resignation effective midnight Sunday June 28." Fact 87; Ex 141. Neither communication contained any mention that she had denied she had resigned or that Respondent had unilaterally deemed her pastoral letter to her congregation a resignation.

Reverend Voorhees did not resign; she was terminated. Reverend Voorhees did not send a resignation letter to Respondent, and when he claimed that she had resigned, she immediately disputed that. In Respondent's own words, "Rev. Voorhees was terminated." Respondent Pre-Trial Brief 11. Respondent and his staff did all the things one does when one terminates an employee; they made the termination retroactive; they denied the employee access to the office and the computer system; they demanded the return of all company property; they terminated all her benefits. Resignation, under the missions manual, requires a resignation letter from the vicar to the bishop and sixty days of notice. Ex 3 page 003-014. When the Hearing Panel asked Reverend Voorhees whether she believed she had been terminated, she responded "it felt like that, yes. And so I wrote back and said "I think there's been a misunderstanding". Tr 385-86. Resignation and termination are different, and this was plainly a termination. During his deposition, Respondent admitted that Reverend Voorhees was "effectively fired". Depo. Tr 200: 4 – 201:4.

The question, in this Title IV case, is not whether Respondent was within his rights to terminate Reverend Voorhees as his vicar (although he did not follow the proper procedures). The question is whether, when Respondent told Matthews, Crowell and others that Reverend Voorhees had resigned, he was misrepresenting the facts. He clearly was. And he has now admitted she was terminated.

V. RESPONDENT MISREPRESENTED HOW LONG THE CONGREGATION COULD REMAIN IN THE CHURCH

On May 17, 2015, when Respondent informed the congregation of the sale to Legacy, he represented that he had negotiated a lease-back provision in the Legacy Purchase and Sale agreement that would allow the congregation to remain in the church until October 2015 to hold a wedding. Tr 535, 621 ("I knew there was a wedding coming up in October"). On the afternoon of May 17, in an email describing Respondent's remarks, Strong noted that "escrow could close as early as October although four months in the summer to sort out a new location seems completely unreasonable." Fact 63; Ex 110. Strong recalled Respondent's comments: "He then later on said – someone asked him was it in escrow? And he said no. And then he said that the property would be not – we'll occupy the church at least until October, and then seek a three month lease back period after the first of October". Tr 434, 16-20. On June 9, 2015, Respondent and Tumilty met with Reverend Voorhees and four members of the St. James congregation who were serving as the "transition team." For the congregation to remain in the building after June 28, Respondent claimed that he would need to consult with Legacy or his attorneys, and he doubted whether the congregation could continue in place beyond June. Fact 72; Ex 180.

Respondent's statements to the congregation, and his statement in June, that the congregation could not remain after June 28 without the consent of Legacy, are inconsistent, but both were false. The Legacy Purchase and Sale agreement gave the Bishop the option to lease the St. James property back for three one-month terms, starting on the closing date, set for June 24, 2015. Ex 25 – 006,014, paragraph 5.1.6 and 050; (Ex H to Ex 25). If the sale had closed on June 24, and if Respondent had exercised the options, the *latest* date by which Respondent would have had to turn over the property to Legacy would have been September 24, 2015. So his claim

on May 17, that he had "negotiated" that the leaseback would allow the congregation to remain into October for a wedding, was false. And he was wrong again when he said, on June 9, that he would need to consult with Legacy about letting the congregation remain, for he had the *right* to possession of the building until September 24 if he paid $20,000 per month under the Purchase and Sale agreement. It is important to note that the congregation did not have access to the Purchase and Sale agreement at that time, so, had to take Respondent's word as to what it said.

Respondent had a duty to refrain from conduct involving misrepresentation. Respondent failed to do that on the important issue of how long the congregation could remain in their building.

VI. RESPONDENT ACTED IN A MANNER UNBECOMING A MEMBER OF THE CLERGY

Respondent's conduct violated another fundamental canon, the requirement that any Member of the Clergy refrain from any Conduct Unbecoming a Member of the Clergy. Canon IV.4.1(h)(8). The Episcopal canons define "Conduct Unbecoming a Member of the Clergy" as "any disorder or neglect that prejudices the reputation, good order and discipline of the Church, or any conduct of a nature to bring material discredit upon the Church or the Holy Orders conferred by the Church." Canon IV.2. The prohibition against Conduct Unbecoming is an ancient, basic provision of the Episcopal canons, one that first appeared in 1892, and one that has been used often since that time, including in the case of Bishop Charles Bennison. See *Bennison v. Protestant Episcopal Church* (Court of Review for Bishops, 2010) (especially pages 19-20 regarding the meaning of Conduct Unbecoming).

Respondent engaged in Conduct Unbecoming when he locked St. James the Great and has kept the doors locked for nearly two years. Facts 87, 90, 92, 93, 94, 96, 99 and 103. Church

buildings do not belong to any one priest, congregation, bishop or diocese; they belong to the entire Church. The Dennis Canon declares that "all real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located." Canon I.7.4. Respondent himself relied upon the Dennis Canon, in his 2004 lawsuit against the St. James Anglicans, and in the other lawsuits he filed against the other seceding congregations. In the verified complaint in the St. James case, Respondent wrote movingly about the plight of the Episcopal congregation in exile, denied the use of the St. James church for baptisms, weddings and funerals. Fact 7; Ex 61. Respondent's current conduct is utterly inconsistent with his sworn verified complaint in 2004. Kathi Liebermann provided a concrete, human example of the continuity of the St. James congregation, from the Episcopal congregation in the building before 2004, to the Episcopal congregation in exile during the Anglican litigation, to the Episcopal congregation back in the building from late 2013 through early 2015, and now in exile again.

By locking the doors of St. James the Great, and keeping them locked, Respondent is treating the St. James church campus as if it were his personal business asset (which is how he views assets held in Corp Sole), rather than property held in trust for the entire Episcopal Church. He refers to the building as an asset; at his deposition on May 17, Respondent testified:

Q: Did you talk about – at the meeting – that the church was unaffordable and wasn't sustainable financially?

A: I said it was a bad use of such an asset. I did say that.

Q: The asset being the church?

A: The building.

Q: So the bad use was using it as a church?

A: No, I didn't say bad about anything. I said that the fact was that it was not a good use

of that asset. Depo Tr 125: 12-21.

He used similar language in his letter to Dixon, writing that he knew "the time was right to liquidate this asset". Fact 70, Ex 29.

Although the building is an asset, Respondent is not the CEO of a commercial, for-profit company. The "asset" is a consecrated church that should be used for the glory of God and worship by a congregation, rather than sold to build condos and then left idle and useless. To keep a consecrated church building locked for no reason is to engage in Conduct Unbecoming. Respondent's conduct has created immense public outcry, town hall meetings, city council meetings, neighborhood surveys, breaking of contracts, lawsuits and media attention. See Facts 67, 68, 70, 71, 73, 75, 76, 77, 79, 80, 81, 82, 85, 90, 92 and 99. Having the church locked has created disorder and prejudiced the reputation of the Episcopal Church.

There was no good reason to lock the church on June 29, 2015; they could have remained open while the legal issues played out in the two court cases pending at that time. That indeed was the request of one lay leader of St. James, Crowell, in an email on the morning of June 29 to Respondent. Fact 87; Ex 141. The response from Tumilty, on behalf of Respondent, was curt. "The date for the last service was set by Cindy+ as June 28th. She has resigned her position as Vicar of the St. James the Great mission congregation and the Bishop has accepted her resignation effective midnight Sunday June 28. The Bishop has not made a determination as to whether a member of the clergy will be assigned by him to the congregation. In any case, the last worship service to the held at the church facility was this past Sunday." Ex 141.

But the propriety of Respondent's conduct in locking the congregation out of the church cannot be considered simply as of June 29, 2015. Respondent has kept the gates and doors of St.

James the Great locked for almost two years, and there is no indication that he intends to open them any time soon. If Respondent locked the church because he anticipated that he would sell the property to Legacy, and needed to prepare for that, the Legacy agreement terminated by its terms on July 6, 2015. Fact 94. As of November 28, 2016, Legacy obtained its deposit back from escrow. Fact 102. Nor is there any prospect of a similar sale at this time; because the General Plan of Newport Beach limits the use of the property, to church and educational uses, any sale is likely to be at a low price.

There have been two brief exceptions to the congregation's exile from their church: Respondent allowed the Connolly family to use the church for a wedding in October 2015 and for a funeral in December 2015. But even these exceptions prove Respondent's unreasonable, unfeeling conduct. Kathi Liebermann described how, starting at the time of the late June lockout, she tried to contact Respondent to see whether he would allow the wedding, already planned, to proceed as planned in St. James. She sent him letters, she called his office, she called his cell phone, she sent him text messages. Respondent did not respond. Finally, about 15 days before the wedding, she learned through Reverend Voorhees that Respondent would allow the wedding to proceed in the church. Tr 449.

Another defense apparently, on the lockout issue, is that there are other Episcopal congregations not too far from St. James the Great, and that the members of the St. James congregation could and should go to those sites. Respondent Pre-Trial Brief 8 ("the number of Episcopal churches in the vicinity). These churches were all in place during the time that St. James the Great was worshipping and growing in its building. Each Episcopal congregation is different, and people love one congregation, and dislike another, for many reasons. Some of those who attend services at St. James the Great were not Episcopalians before they started

attending services there, such as Andersen's husband and Patrick DiGiacomo. Perhaps the clearest proof of the determination of the St. James the Great congregation to remain a congregation, not to attend services elsewhere, is that they have managed to stay together for many months in exile, in spite of all the difficulties of worshipping in rented space. The Episcopal Church should not tell these faithful Episcopalians to "go elsewhere"--they should be invited in.

Respondent also testified that he had kept it closed because Reverend Voorhees was "disobedient". Depo Tr 158-159. Further, he strongly suggested his intent to punish her when this proceeding is over. Depo Tr 165-166. Respondent's conduct, locking the St. James the Great congregation out of their church, and keeping them locked out month after month, has been the subject of extensive press coverage, both local and national. Almost all of this coverage has been critical of Respondent and some has been critical of the Episcopal Church generally. None of it is good for the Church. It is hard for anyone to understand why a Bishop would lock a congregation out of a church. Isn't it likely that the reason Respondent keeps the doors locked to punish Reverend Voorhees and the St. James congregation, for what he views as their defiance of him? More recently, the testimony of Reverend Voorhees, that Respondent "scared the sh**" out of Bishop Glasspool, has also been the subject of extensive press coverage. See Episcopal News Service March 30, 2017. Respondent also attacks in this case Bishop Matthews and Beers for violating his Title IV rights. Tr 687

Short of physical violence or sexual impropriety, it is hard to imagine conduct more harmful to the good reputation of the Episcopal Church than that of Respondent in this case. Respondent's conduct has gone on for two years, creating a spectacle and public controversy.

The Hearing Panel should have no difficulty in concluding that Respondent's conduct was Conduct Unbecoming a Member of the Clergy.

Respondent's continued conduct including his statements to Bishop Matthews, his incomplete and false disclosures, his inconsistent and often evasive testimony at depositions and in trial, and his attacks on others, all reflect Conduct Unbecoming a Clergy person.

We have previously cited several statements to Bishop Matthews that were demonstrably false. Reading Exhibits 143 and 152 after knowing the facts is jarring. Such a reading reveals a deliberate effort by Respondent to mislead Bishop Matthews on multiple points. Just to cite a couple of examples: "Jon said that he had told the vicar that the likelihood when she went there, a few years ago, was that the property would be sold. He felt that she should not have been surprised by this decision but found out that she was!" Ex 143. "Jon said the vicar, Cindy Voorhees, was aware from the time she was placed at the church that it would likely be sold." Ex 152. But in his deposition he admitted such conversations only occurred before he decided to reopen St. James and appointed Reverend Voorhees vicar. Depo Tr. 671-675. All the evidence shows that once Reverend Voorhees was appointed, there was not only no mention of sale to her, but it was kept secret. Common sense would indicate making use of your vicar, a person with local knowledge and a contractor's license, to assist in the discussion about the sale, but Respondent did not. She was kept in the dark until after the Purchase and Sale agreement was signed.

He also led Bishop Matthews to believe his agreement was only to look into sale of the church. Respondent told Bishop Matthews: "On May 17th a process of 'due diligence' was started to determine if the sale of the church was appropriate and a transition committee was created". Ex 152. He made a similar claim in his deposition testimony, saying the Purchase and

Sale agreement was only to "explore the sale of the church". Depo Tr 96. The Purchase and Sale Agreement was an executed binding contract, not a time for Respondent to explore selling the church. Ex 25.

Respondent's disclosures of intended proof led the church attorney to expend huge efforts and hours running down proof to test the assertions – only to learn in depositions of Respondent and Tumilty that there was no support for the claims. For example, according to his disclosures, Respondent would testify at the hearing "as to Reverend Voorhees' serial acts without proper authority, including opening bank accounts, unilateral entering into contracts, etc." ASWS 3. Tumilty, according to the disclosures, would testify "as to Reverend Voorhees serial unilateral acts without notice to or authority from Respondent and/or EDLA staff with respect to opening bank accounts, entering into contracts, in particular, contracts....these include the kitchen rental and the Holy Coding agreements...." ASWS 6. Neither Respondent nor any of his other witnesses testified at the hearing confirming these claims, undoubtedly because the proof showed constant email contact with the diocese about the contracts for the kitchen lease, Holy Coding and parking, *e.g.*, Ex 53. Again, there was nothing about this in Tumilty's direct testimony at the March hearing.

The disclosures claimed that Respondent would testify about "the failure of Reverend Voorhees to grow into her responsibilities as the head of a congregation of EDLA, and how these issues factored into his decision to negotiate for the sale of and to enter into the sales agreement for the Lido Isle property." ASWS 3. Again, there was no hint of this at the hearing; on the contrary, among the exhibits was Respondent's May 19 letter thanking Reverend Voorhees "for doing a magnificent job in bringing new life to the congregation." Ex 26.

Forbath, according to the disclosures, would "testify as to the financial contributions to the congregation of St. James the Great by the Corporation of the Diocese of EDLA, and of Corporation Sole during the period October 2013 to the present." ASWS 7. Forbath did not testify about this issue—the central question of sustainability—at all. The disclosures also said that Forbath would "testify as to elements of the budget of St. James the Great that the congregation showed as income to the congregation that were in fact income to Corporation Sole, and that the line items for those matters (chiefly rental income from the rectory, kitchen, Holy Coding, and other agreements) and thus subsidization of the St. James the Great budget *in addition* to its Mission Development grants." ASWS 7-8. Again, Forbath did not so testify.

Reverend Kelli Grace Kurtz, according to the disclosures, would testify to "the general lack of compliance by St. James the Great with its obligations under the missions manual with respect to interactions with the Program Group during the period October 2013 to the present, including the unilateral cancellation by Reverend Voorhees of not less than three scheduled meetings with Reverend Kurtz regarding St. James the Great." ASWS 9. Reverend Kurtz did not testify about the supposed failures of St. James the Great to fulfill its obligations under the missions manual. She did testify that St. James did not need to submit monthly minutes of a bishop's committee. Tr 730-731. She confirmed she and Reverend Voorhees were friends and she suggested meetings in that context.

> "And I said, 'I'm going to come down your way. I'm going to take you out to lunch'. We're friends and colleagues. And so – so the emails were of friends and colleagues. But I'm also the convening chair of the Program of Capital Mission Congregations. And I have experience as a vicar.
>
> And so we set a date to meet. And a couple of days before we were to meet, she emailed me and said that she was quite busy for her trip to Africa and that she would need to cancel that meeting.

And I wished her well on her trip and said that we would – when she got back, to contact me and we'll reschedule that meeting.

She did not contact me. And we saw each other a couple of times after that and I said, 'I really want to still take you out to lunch and talk about vicar stuff'.

And she said, 'that would be great. I'm very very busy'. And that was – that was the extent of it.

Q: OK, was – did you subsequently have another conversation with her at Diocesan convention 2013, still pursuing that goal of meeting with her?

A: Yeah. That was one of the times when, you know, I talked to her. She had just gotten back from Africa.

My daughter was getting ready to go to Africa. 'Let's talk about that, and let's talk about being a vicar'.

We both agreed that that would happen.

I said, 'send me some dates that work for you' – and that's where it was left". Tr 740-741.

This testimony fell far short of that advertised in Respondent's disclosures and in fact, simply confirmed Reverend Voorhees memory of an informal effort of friends to meet.

It is also worth noting that Respondent and his counsel claimed, in their disclosure statement, that there would be testimony at the hearing from Bishop Matthews from former Presiding Bishop Katherine Jefferts Schori, and from Beers. ASWS 10. They called none of these witnesses.

Respondent not only has the general duty, under the canons, to avoid conduct involving misrepresentations. (Canon IV.1(h)(6)). He has a more specific duty, under Canon IV.3.1, against "knowingly providing false testimony or false evidence in any investigation or proceeding under this Title." And the disclosure provisions make clear that not only Respondent's counsel but also the Respondent himself can be sanctioned for conduct which is "disruptive, dilatory, or otherwise contrary to the integrity of the proceedings." Canon IV.13.9.

We are not suggesting, at this late stage, sanctions under Canon IV.13.9. We are suggesting that the Hearing Panel, as it considers whether Respondent has engaged in misrepresentations, and in Conduct Unbecoming, should consider the way in which he and his counsel (Chancellor) litigated this Title IV case, including their failure to make timely disclosures, the dramatic differences between their disclosures and the proof, and their attacks on others.

Finally, the evasive nature of Respondent's testimony in deposition and trial on cross-examination should have been apparent to anyone. He rarely answered questions directly. He often volunteered comments he thought were good for his defense, for example, repeatedly stating that he relied on staff.

VII. REMEDIES AND SANCTIONS

The Hearing Panel's task, under the Canons, is not simply to determine whether Respondent has violated the Canons; the Panel must also devise an appropriate remedy or sanction. The Hearing Panel has broad authority. Canon IV.14.6 provides that

> "an Order issued by a Conference Panel or Hearing Panel may (a) provide any terms which promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among the Complainant, Respondent, affected Community and other persons; (b) place restrictions on the Respondent's exercise of ministry; (c) recommend to the Bishop Diocesan that the Respondent be admonished, suspended or deposed from ministry; (d) limit the involvement, attendance or participation of the Respondent in the Community; or (e) any combination of the foregoing."

This is relatively new language; it was added in the general revision of Title IV in 2009. Before that, for many decades, the Canons provided for only three possible sanctions: Admonition, Suspension or Deposition. See Canon IV.12.1 (2006 version). The purpose of the 2009 revision, in this respect, was to give Hearing Panels broad, flexible authority to "promote healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation."

Canon IV.1.

Canon IV.14.5 tracks, literally in part Canon 1 of Title IV:

> **"Of Accountability and Ecclesiastical Discipline**
>
> By virtue of Baptism, all members of the Church are called to holiness of life and accountability to one another. The Church and each Diocese shall support their members in their life in Christ and seek to resolve conflicts by promoting healing, repentance, forgiveness, restitution, justice, amendment of life and reconciliation among all involved or affected. This Title applies to Members of the Clergy, who have by their vows at ordination accepted additional responsibilities and accountabilities for doctrine, discipline, worship and obedience."

The only way theses goals can be met in this case is to craft an order which, while punishing Respondent's conduct, looks forward creatively to heal the division existing now in the Los Angeles Diocese (as evidenced by media attention and the need at the hearing for Bishop Hollerith having to divide the room into bride and groom sides).

An easy item is rejecting Respondent's arguments with respect to the Standing Committee. The violation of Canon II.6.2 and 3 is obvious. And a clear message must be sent that consecrated churches cannot be sold without a true, independent examination by the Standing Committee. That a consecrated church is held in Corp Sole does not excuse this conical requirement. The Hearing Panel should find that Respondent violated these canons.

Similarly, the order must find a way to reopen St. James the Great, and reinstate Reverend Voorhees – free of retribution. The church attorney submits that Respondent is guilty of serious misconduct. If a parish priest had conducted himself (or herself) similarly, a long suspension would undoubtedly follow. The closest bishop case we have found involved Bishop Douglas Hahn who was suspended for one year for failing to disclose a previous sexual relationship with a parishioner when applying for a position as a bishop. Respondent's conduct

was not a one-off event – it was calculated, pervasive, and long-running. Today he shows no signs of recognizing even the possibility of his misconduct. Accordingly, the church attorney recommends at least a one year suspension.

But a stiff sentence by itself would not help the congregation, the diocese, or the church, and likely would exacerbate the situation. It would invite an appeal, further delay and controversy. It is in the best interest of everyone to bring about prompt reconciliation. Therefore, the church attorney recommends that the penalty be stayed if Respondent agrees to forego any appeal. If he so agrees, the church attorney recommends the following:

1. Restrict Respondent's ministry with respect to St. James the Great's congregation. He is to play no future role of any kind in its administration, unless specifically requested to do so.

2. Require St. James reopened for Episcopal worship promptly under the auspices of an independent member of the Los Angeles Diocese – perhaps the incoming bishop, acting on the advise of a newly formed committee he chooses but which has members from St. James the Great and the Diocese.

3. That Reverend Voorhees be the paid vicar for at least the remainder of 2017 and 2018, subject to termination for cause, with credit toward pension, etc. for the last two and one half years.

4. Finding that Respondent in fact violated Canons IV.4.1(a)(6) and IV. and 4.1(a)(8), which ordinarily would mandate a sanction at least of suspension, but recognizing Respondent's many years of service, and the overarching need for everyone to move on to

promote healing, forgiveness, justice and reconciliation among all in the community, no such sanction is imposed other than an admonishment to Respondent to work with the new leader to effect reconciliation of all parties in the Diocese, as and if that person requests.

Respectfully submitted,

Jerry Coughlan

Church Attorney