Dear Bishop Doyle,

We thank you for your thoughtful letter and for your obvious concern that under the canons the Bishops of our church be enabled to discharge their pastoral responsibilities. We share your concern for an adequate pastoral response to the behavior of clergy. We nonetheless believe that the three basic points you make in your letter actually indicate points in the new Title IV that serve to weaken rather than strengthen the pastoral care a bishop is called upon to offer his or her clergy.

The three points you make are these:

1. The new Title IV is “more pastoral” and “the Bishop has the affirmative responsibility of ensuring that pastoral care is provided;”

2. The new Title IV “provides multiple opportunities for resolving complaints without having to subject the parties involved to the rigors of a trial,” including dismissal of the charges, voluntary agreements and mediation;

3.“While trials under new Title IV will be different in several respects, nevertheless new Title IV contains many provisions that ensure that the respondent will be given a fair trial.”

We propose to consider each of these points in order and in each case point out our concerns that the new Title IV both hinders effective pastoral care and places in extreme jeopardy an clergy person’s ability to defend him or herself against charges that may or may not be valid. Here, once again, are the points you make, this tine accompanied by a list of our concerns.

1. The new Title IV is “more pastoral” and “the Bishop has the affirmative responsibility of ensuring that pastoral care is provided”:

* The new provisions in fact make the bishop the chief prosecutor in that the bishop and the “Intake Officer” appointed by the bishop sit as two of the three members of the panel that determines whether to prosecute. The Diocesan Review Committee--typically the Standing Committee, formerly performed that function. The bishop was not involved at this early stage. Nothing could be less pastoral than blurring the role of the bishop between that of pastor and prosecutor.
* Under the current provisions, the bishop could not himself prefer a charge, but only refer to the Review Committee “without judgment or comment on the allegation.” (IV.3.5 & 7.) Also the bishop must disqualify himself if he is to be a witness. Under the new provisions, the bishop may initiate the charge and serve as a witness without disqualification. This creates a potential for conflict between the bishop’s pastoral and prosecutorial/adversarial roles. Again, this makes the new provisions less, not more, pastoral.

2. The new Title IV “provides multiple opportunities for resolving complaints without having to subject the parties involved to the rigors of a trial,” including dismissal of the charges, voluntary agreements and mediation;

* These same opportunities are already available, either formally or as a matter of fact. Under the current provisions, the Review Committee can dismiss the charges if they do not meet the “reasonable cause” standard. Under the new provisions the Intake Officer can decide not to proceed only with the approval of the bishop and the two of them constitute a majority of the three members of the Reference Panel that next considers whether to proceed. And the standard for going forward has been weakened from “intentional, material and substantial” to “material and substantial *or* of clear and weighty importance to the ministry of the Church.”
* Current canon IV.2 already provides for a voluntary agreement between the accused clergy and the bishop to avoid a trial, but this is done in the more productive posture when the bishop has not been involved in decisions to prosecute, as he will be from the outset under the new provisions.
* Mediation, which requires the consent of both sides to be effective, is always a possibility whether it is provided for specifically in the rules or not. Mediation is most likely to be successful when it is undertaken with the willing participation of both sides, which is possible now without a rule, rather than when it is done as a matter of formality as a stage in the process required by the rules. This is not meant to denigrate the mediation process, but only to acknowledge that a formal mediation process is not clearly that much of an advance over the informal process that has always been available.

3. “While trials under new Title IV will be different in several respects, nevertheless new Title IV contains many provisions that ensure that the respondent will be given a fair trial”:

* No one is contending that *all* due process has been removed under the new provisions, only that the rights of accused clergy have been eroded unnecessarily. Indeed, the first procedural right specified, the standard for prosecution is, as already noted, one that has been *weakened* from the current rules. And we acknowledge that notice of the charges and the opportunity to be heard, the most basic of due process rights, have not been removed.
* Our concerns center, however, on protections that have been eliminated. One example of wide concern is that clergy may be required to testify against themselves. Also, well-known rules of evidence have been replaced by discretionary rulings by the president of the Hearing Panel.
* These procedural concerns are heightened by the re-definition of offenses for which clergy can be charged. These include not only violating but “attempting to violate” directly or “through the acts of another person” the Constitution or Canons of the Church or of any Diocese; failing to report (oneself or another for) “all matters which *may* constitute an offense”; failing to cooperate with a Title IV investigation or proceeding; and failing to “safeguard the property and funds of the Church and Community.” This latter offense is of particular concern to us because it permits the bishop to second guess the use of parish funds and take actions against possible uses of which he or she does not approve*.*
* The net effect of these provisions is that vaguely defined offenses are combined with the duty to self-report anything that “may” be an offense, reduced procedural rights and a prosecutorial role for the bishop from the outset. It is difficult to see how this will not affect the pastoral relationship between the bishop and all clergy, not just those charged with an offense.
* Finally, the bishop is not only the chief prosecutor under the new provisions, he also has the power “at any time” to restrict the ministry of a clergy (inhibit) without prior notice *without regard to whether a canonical offense has been committed.* Under the current Title IV a bishop could issue a temporary inhibition only if a charge of an offense had been made or serious acts complained of “to the bishop” that would constitute a basis for a canonical charge. Under the new rules the bishop can restrict the ministry at any time without ever even specifying a charge of canonical violation. All that is required is that the bishop “determine” that the clergy “*may* have committed any offense” or that “the good order, welfare or safety of the Church or any person or Community may be threatened.” We note with concern that it might be determined that the “good order, welfare or safety” of the church is under threat even if no canonical violation has been committed or even alleged.

In short, it is our view that the new Title IV both undermines the pastoral capacity of our bishops and erodes the necessary canonical protections that are the right of the clergy of our church. Given these concerns, we are grateful for your offer to meet with us and will soon be in touch to arrange such a meeting.