

DIOCESE OF NEW JERSEY

Complainant

CASE NO 2021-1

v.

CASE NO. 2021-3

The Rev. Daniel Somers

Respondent

**ORDER AND OPINION RELATING TO PRODUCTION OF CERTAIN
PORTIONS OF THE REPORT OF THE INVESTIGATOR**

Background

On December 5, 2022, the Panel and the parties conducted a remote scheduling conference pursuant to Canon IV 13.5(c). In advance of the conference, Respondent's counsel advised the Panel that a dispute had arisen regarding the Church Attorney's objections to the production of a report prepared by Dianne Sammons, Esq. Both parties appear to agree that Ms. Sammons was appointed in March 2021 by the Reference Panel involved in one or more of these consolidated Title IV matters to investigate information received alleging that Respondent had engaged in misconduct in violation of the Canons. *See* Canon IV Section 6.8 (authorizing a Reference Panel to direct an investigation into allegations of misconduct). Ms. Sammons prepared and provided to the Reference Panel an 82-page Report after she completed her investigation (hereafter sometimes called the Sammons Report). She has also been identified by the Church Attorney as a possible witness to testify at any Hearing conducted in these matters regarding conversations she held with "witnesses, complainants and respondent." *See* Respondent's December 5, 2022 Letter quoting the objections raised by the Church Attorney.

Respondent argued during the December 5 conference that he would be prejudiced if he did not receive the Sammons Report in discovery because he would be unable to use it to cross examine Ms. Sammons should she incorrectly or incompletely testify to the information she gathered in her investigation. The Church Attorney responded by asserting the Sammons Report was exempt from discovery by, *inter alia*, the work product doctrine. Panel asked the parties to provide letter statements regarding this dispute so that it could make an informed decision.

On December 19, 2022, the Church Attorney submitted a letter informing the Panel that he had provided to Respondent pages 1-65 of the Sammons Report. He also represented (and

Respondent does not dispute) that these pages of the Report constitute Ms. Sammons recitation of the factual information she gathered during her investigation. Accordingly, the Respondent's December 5 argument regarding prejudice is now moot.

The Church Attorney claims the work product doctrine shields from discovery pages 66-82 of the Sammons Report, where the investigator analyzed how the results of her investigation might inform the Reference Panel's obligation to decide how to proceed under Title IV. Respondent now contends that he is entitled to the Sammons Report because her analysis of the Canons may have been wrong and that those errors may have tainted the Reference Panel's decisions regarding whether to refer the matter to the Conference Panel stage.

Panel's Decision and the Basis thereof.

The Panel denies Respondent's request for pages 66-82 of the Sammons Report and finds that any analysis or opinions contained therein are presumptively protected from discovery by the work product doctrine. The Report was prepared at the request of the Reference Panel in anticipation of potential Title IV proceedings and to facilitate Reference Panel decisions pursuant to Title IV Section 6.8.

Respondent argued that he will be prejudiced if not provided with pages 66-82 of the Sammons Report because he will be unable to establish, or even know, whether, Ms. Sammons analysis or opinions regarding the Canons was flawed. While a claim of prejudice may permit discovery of work product, Respondent has not met the high burden required before a decision maker will compel a party to produce its work product to another.

First, the Church Attorney states that Diane Sammons, if called as a witness, will testify about the information she obtained from witnesses, complainants, and the Respondent. She is not being offered to testify to her analysis and conclusions regarding Church Canons. Consequently, Respondent will suffer no prejudice in cross examination of a witness if he is not provided with pages 66-82 of the Sammons Report.

Second, and at least as far as the present record shows, any opinions and analysis contained in pages 66-82 of the Sammons Report are neither admissible in evidence nor reasonably calculated to lead to the discovery of admissible evidence. Consequently, Respondent will not be prejudiced because he is not provided the full Sammons Report. The investigator formed her conclusions based on facts gathered which, by Canon she was required to assume were true and under circumstances where she may have been unable to obtain the same information that might be adduced during discovery. Ms. Sammons was also engaged by the Reference Panel which sought to discharge its Title IV obligations. We have no information to suggest that the Reference Panel relied upon her conclusions or analysis. More importantly, her conclusions have no pertinence to the current proceedings where the Panel will determine facts based on its assessment of admissible evidence and testimony presented at the Hearing and subject to challenge and cross examination,

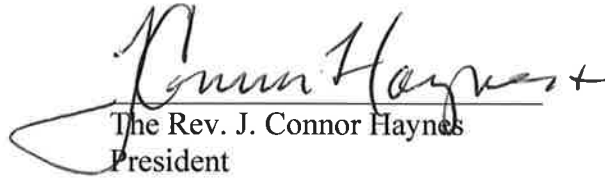
In addition, because the allegations against Respondent were not resolved by a conference panel, the Canons required the Church Attorney in his sole and independent

discretion to determine the contents of the Written Statement, including the facts constituting alleged violations of the Canons and the Canons which may have been violated by Respondent's conduct. The Church Attorney's decisions have therefore superseded and made no longer relevant any conclusions or analysis that Ms. Sammons offered to the Reference Panel.

Finally, Respondent claims that the protections of the work product doctrine were waived based on his belief that Ms. Sammons analysis and opinions formed the Church Attorney's Written Statement. Respondent thus claims that the current Title IV proceedings were brought to vindicate whatever conclusions Ms. Sammons expressed in her report. As noted in the preceding paragraph, however, the Written Statement is prepared by the Church Attorney. It reflects his independent analysis of how best to fulfill his obligations under our Canons, including his obligation to apply his independent judgment and discretion when preparing a Written Statement. The Church Attorney's discharge of his canonical obligations in preparing the Written Statement does not constitute a waiver of any work product protection.

We therefore deny Respondent's request for the production of pages 66-82 of the Sammons Report.

For the Panel



The Rev. J. Connor Haynes
President

3/15/2023