

## A Refutation of Metropolitan Philip's Fourteen Points

Prior to the most recent meeting of the Board of Trustees of the Antiochian Orthodox Christian Archdiocese of North America, its President, Metropolitan Philip (Saliba) took the unprecedented step of asking all non-trustees in the room to leave, other than a lawyer he had specially invited to be present and to whose presence no other trustee objected. Although no non-trustees were present in the room, many heard the conversation via trustees' active cell phones. Others kept detailed notes of the meeting. Between these sources and personal conversations with trustees, we have been able to piece together some exact quotes and corroborate other statements made by +Philip in his "fourteen points" which attempted to refute the Chancellors' opinion. This document provides a refutation of each of the fourteen points.

**Point #1.** +Philip accused the Chancellors as follows: *"The Chancellors violated an ethical rule and professional conduct and breached their duties of loyalty to me as required-- who appointed them to their positions as Chancellors-- when they rendered this opinion at the request of a member of the Board of Trustees."*

**Point #2.** +Philip further accused them of failing to withdraw, in accordance with legal ethics rules, from representing "their client" at the point of reaching a disagreement with such client. He stated, *"The opinion of the Chancellors throughout this document challenges the position of the Metropolitan and the authority and position of the Archdiocese Synod, our Local Synod-- attacks which strongly suggest that the Chancellors are at odds with their client."* In addition, he accused them of unprofessionally taking a "public stand" regarding an issue that threatens the unity of the Archdiocese.

New York law distinguishes very clearly between the trustees and officers of a religious corporation and the religious corporation itself, providing that the trustees are simply representatives of the corporation.<sup>1</sup> Neither +Philip nor any trustee has the legal authority to act individually, with regard to temporal matters of the Archdiocese.<sup>2</sup>

Thus, under any professional ethical standard applicable to the Chancellors,<sup>3</sup> the Archdiocese as a whole constitutes their client, not +Philip or any other individual. The Archdiocese had not expressed a point of view with respect to the Holy Synod's February 24, 2009 action. In fact, the Archdiocese, through its legal representatives (the trustees), evidenced significant confusion as to what its obligations were with respect to this action and properly requested clarification from the Archdiocese's counsel. The Chancellors would have been negligent in their professional duties by

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<sup>1</sup> *Walker Memorial Baptist Church v. Saunders*, 1941, 285 N.Y. 462, 35 N.E.2d 42, reargument denied 286 N.Y. 607, 35 N.E.2d 944, motion denied 286 N.Y. 707, 37 N.E.2d 147, motion denied 287 N.Y. 679, 39 N.E.2d 294. See, also, *Beulah Wesleyan Methodist Church v. Henry*, 1946, 187 Misc. 502, 62 N.Y.S.2d 297.

<sup>2</sup> *People's Bank of City of New York v. St. Anthony's Roman Catholic Church of Brooklyn*, 1888, 109 N.Y. 512, 17 N.E. 408. See, also, *Hart v. Congregation Shearith Israel*, 1883, 49 N.Y.Super.Ct. 523; *Congregation Aushe Kesser v. Jewish Community Center of Corona, L.I., Inc.*, 1958, 5 A.D.2d 1011, 174 N.Y. S.2d 178; *Bernstein v. Friedlander*, 1968, 58 Misc.2d 492, 296 N.Y.S.2d 409; *Krehel v. Eastern Orthodox Catholic Church in America*, 1959, 22 Misc.2d 522, 195 N.Y.S.2d 334, affirmed 12 A.D.2d 465, 207 N.Y.S.2d 93, affirmed 10 N.Y.2d 831, 221 N.Y.S.2d 724, 178 N.E.2d 428.; *Hart v. Congregation Shearith Israel*, 1883, 49 N.Y.Super.Ct. 523.

<sup>3</sup> See [Michigan Rule of Professional Conduct Rule 1.13](#); [California Rules of Professional Conduct 3-600](#); [New York Rules of Professional Conduct 1.13](#).

not issuing the requested opinion, regardless of whether the opinion happened to coincide with +Philip's point of view.

Furthermore, the Chancellors issued their opinion directly to the trustees. They did not take a "public stand" on the matter; their opinion only became public after its release by one or more trustees. The Chancellors are not culpable under any standard of professional conduct applicable to them.

**Point #3.** *+Philip said that the Chancellors' opinion "insults the Patriarch, the Metropolitan, and the Holy Synod" and that the Archdiocese is dependent on the Patriarch of Antioch and not an "independent Church."*

See the discussion regarding point nine, below, with respect to +Philip's accusation of insults. Furthermore, the Chancellors never claimed that the Archdiocese was an "independent Church" or that it was not a part of the Church of Antioch.

**Point #4.** *+Philip criticized the Chancellors for unduly emphasizing "legalism."*

One should not reasonably expect anything less from a legal opinion written by the duly appointed lawyers of the Archdiocese who have a professional duty to advise the Archdiocese as to its legal situation – not its ecclesial situation. We doubt that any Orthodox Christian in North America would disagree with +Philip's implication that the Church should not be subject, in ecclesial matters, to secular law.<sup>4</sup> However, under +Philip's guidance, the Archdiocese voluntarily shackled its own ecclesial hands with secular laws and created an unworkable, unhealthy, and unprecedented model for the future by inserting rules governing ecclesial matters into the legal documents of the Archdiocese unnecessarily.<sup>5</sup> If the Chancellors have advised its client with respect to ecclesial matters, it is only because +Philip has insisted on intermingling the legal with the ecclesial, complicated matters by deceiving the General Convention (in defiance of the Patriarch and the Holy Synod) into adopting a legal Constitution that differed from that approved by the Holy Synod, and created a need for the Chancellors to issue such advice, even though most reasonable minds believe that a separation between the legal and ecclesial would be ideal.

**Point #5.** *+Philip said that the Chancellors were wrong to conclude that the Holy Synod's February 24 decision was "invalid" on procedural grounds. After rebuking them by asking, "How dare you question*

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<sup>4</sup> To date, no one has suggested, as +Philip intimated in his presentation to the Board of Trustees, that Orthodox Christians should "worship a Constitution."

<sup>5</sup> +Philip wrote in an April 6, 2005 letter to the Board of Trustees: "The Department of Legal Affairs, with their usual spirit of diligence and attention to detail, has continued to review all of the documents of this Archdiocese in light of the implementation of our Self-Rule status. In the course of this review it was discovered that our Certificate of Incorporation with the State of New York contains language that must be brought into conformance with our Constitution that was approved in Pittsburgh in July 2004. As such, I have directed the Department of Legal Affairs to update this Certificate of Incorporation so that it will be in full conformance with our Constitution." This document, [Exhibit 46.9](#) to the helpful Timeline prepared by the [Association of Orthodox Christian Attorneys](#), contains the proposed amendments. These amendments add new text to, rather than change existing text of, the Archdiocesan Certificate of Incorporation. These changes were not necessitated by any state of New York requirement. Further, the laws of the State of New York do not even require the Constitution itself to be a legally binding document—except as regards management of the Archdiocese's income and assets and the minimal requirements for corporate governance of the Archdiocesan corporation (voting, trustees, etc.).

*the validity of this decision? Why did you not ask me about the validity of this decision, especially after I approved it? . . . ,” he claimed that the total number of votes on the Holy Synod is 19 and that 12 of the members of the Holy Synod approved of the decision. He asked rhetorically, “Doesn’t that consist of a quorum?”*

The answer to +Philip’s question is, “No.” Section 13 of the Patriarchal Bylaws provides that a meeting of the Holy Synod is valid only if *attended* by a majority of its members. According to Section 16, a decision of the Holy Synod may be taken only by affirmative votes of a majority of the members present.

By +Philip’s own admission at the Board of Trustees meeting, the Holy Synod was not attended by a majority of its members (the Holy Synod consists of twenty members, including the Patriarch<sup>6</sup>; a majority would consist of eleven of its members). Had at least eleven members of the Holy Synod attended the February 24, 2009 meeting, the purported action would have been valid if only six of those members had voted in favor of it. Although nine members of the Holy Synod were present and in favor of the action taken, the Bylaws of the Patriarchate expressly state that the action those members took *was not an action of the Holy Synod*. Admittedly, this is a technicality of the law, but the Patriarch, +Philip, and the other members of the Holy Synod must not think North Americans so naïve as to believe that words mean nothing. The Holy Synod surely realizes that, if it ignored even so small a portion of its own Constitution, it would proclaim itself to North America (and the rest of the world) as duplicitous and untrustworthy, particularly given its own insistence for years on changes to the wording +Philip made to the Archdiocesan Constitution prior to its approval by the people.

**Point #6.** *+Philip stated, “The distinguished Chancellors do not know the difference between the basic Constitution of the Patriarchate and the Bylaws of the Patriarchate. It is true that to amend the Constitution of the Patriarchate it takes a 2/3 majority of the members of the Holy Synod. But to amend the Bylaws of the Patriarchate, there is no such 2/3 vote required.” +Philip clearly implied that the Chancellors concluded that a 2/3 vote was necessary to amend the Bylaws.*

Technically, the Patriarchate does not have a Constitution. Rather, the following two documents govern the Patriarchate: (1) the “Bylaws of the Patriarchate of Antioch and All the East” (which is commonly referred to as the “Patriarchal Constitution”) and (2) the “Internal Regulations of the Antiochian Chair” (which is commonly referred to as the “Patriarchal Bylaws”). The Patriarchal Bylaws implement the Patriarchal Constitution and may be amended by an affirmative vote of majority of members present, so long as there are sufficient members present for the Holy Synod to take official action. Any amendment of the Patriarchal Constitution requires an affirmative vote of 2/3 of the total members (regardless of their presence at a meeting of the Holy Synod). In this, +Philip is correct.

However, +Philip’s implication reveals that he is, at a minimum, unfamiliar with the content of the Chancellors’ Opinion. The Chancellors did not conclude that a 2/3 vote was necessary to amend the Patriarchal Bylaws. Rather, they concluded that the Patriarchal Bylaws deal with administrative matters of the Antiochian See, are subject to the Patriarchal Constitution, and that a deposition of bishops from their sees could not be accomplished simply by an amendment to the Bylaws but would, at the very least, be a substantive issue that would require amendment of the Patriarchal Constitution—which would require a 2/3 vote.

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<sup>6</sup> Note that the Patriarch is a voting member of the Holy Synod pursuant to Section 17 of the Patriarchal Bylaws and that he may cast an additional vote in the event of a tie.

**Point #7.** +Philip said that Holy Synod's granting of self-rule to the Archdiocese was not "irrevocable," and he specifically emphasized that the word "irrevocable" does not appear in the Holy Synod's 2003 Resolution. He said that the February 24 decision had no effect on self-rule. Furthermore, he said, "It is inconceivable that the articles of any Constitution can be irrevocable. Even the Constitution of the United States of America has been amended so many times. Constitutions are not gospels or sacred documents. Constitutions are man-made documents, and they can be amended according to the needs of people at a definite time and place."

Fundamentally, +Philip confused "self-rule" with the Constitution itself. The Chancellors argued that self-rule - including the right of the Archdiocese to have bishops on the ground in bishoprics, rather than auxiliary bishops - was granted irrevocably. They did not even imply, however, that the Constitution was somehow irrevocable or unchangeable, being fully aware of the legally proper means for its amendment.

Regarding the irrevocability of self-rule, +Philip himself wrote the following to the Patriarch on February 11, 2005:

*According to our registered constitution, neither the Holy Synod, nor the Metropolitan, nor the Local Synod can impose any amendment to the constitution without the approval of clergy and laity, i.e., the General Assembly of the Archdiocese. Sayedna, the American people are consumed with democracy. When the Americans revolted against the British Crown in 1776, they wrote a constitution, which starts with these words: "We the people."*

Minutes from the Board of Trustees meetings and various other official statements of the Archdiocese further reveal +Philip's personal view (at least when he was protesting the Holy Synod's insistence on the Archdiocese's adoption of the Damascus Constitution) that the Constitution of the Archdiocese may not be altered except by a General Assembly. After +Philip's speech, the Chancellors reminded +Philip of his own insistence to them, in personal conversations, that the Holy Synod's grant of self-rule was irrevocable, and of Albert Laham's assurances that the Holy Synod held a similar view.

No one has suggested that the Archdiocesan Constitution cannot or should not be amended. Indeed, many in North America wish that it would be amended by a General Assembly to take into account the revisions made by the Holy Synod in 2005. However, there is a procedure, set forth in legal documents, for amending the Constitution, and the Chancellors were observing that, legally, that procedure must be followed.

**Point #8.** +Philip claimed that Orthodox Christian liturgical books contain services for enthronements only for the Patriarch and that newly consecrated bishops and Metropolitans are simply presented to their congregations at hierarchical liturgies or vespers services.

The liturgical history of enthronements is complicated.<sup>7</sup> Typically, a bishop, regardless of title, was consecrated by multiple hierarchs at the cathedral within his bishopric. Following his consecration, he ascended his throne, at which time he assumed the authority over his bishopric. A previously consecrated bishop who transferred from one bishopric to another (a common occurrence for a bishop elected to a Patriarchal throne) would assume authority over his new bishopric by ascending the throne in his new cathedral. Thus, a ceremonial enthronement is

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<sup>7</sup> An excellent article on enthronements, written by Dr. Klentos of the Greek Archdiocese, may be found [here](#).

liturgically appropriate for bishops (such as our Diocesan Bishops) who are not consecrated in their diocesan cathedrals, and the Orthodox Church makes this a regular liturgical practice in its many jurisdictions.<sup>8</sup> Regardless of the words to which he treated the Board at this time, +Philip's actions in the past, in approving the text for and attending the enthronements of our bishops, speak loudly of his true beliefs in this regard, as do his words in 2004 upon Bishop Joseph's enthronement:

*With the enthronement of our brother, Bishop Joseph, we take the first step in applying our Self-Rule status. Thus, Bishop Joseph's enthronement is truly an historic occasion.*

**Point #9.** +Philip claimed that the Chancellors insulted the Holy Synod and the Patriarch Ignatius IV by alleging that the February 24, 2009 decision constituted "folly."

Text without context is, of course, a pretext for dissembling. In context, the Chancellors Opinion actually recognized the members of the Holy Synod for their wisdom and holiness and observed how unimaginable it would be for them to engage in folly.

**Point #10.** The Chancellors quoted the Holy Synod's 2003 Resolution, which said, "The Antiochian Orthodox Christian Archdiocese of North America is and shall remain self ruled within its present jurisdiction." He went on to say, "The Chancellors want us to believe that the words 'shall remain' mean 'eternal, forever and ever and unto ages of ages, Amen.' This is indeed ridiculous."

To avoid repeating further discussion regarding "irrevocability," please see the discussion, above, with respect to Point 7.

**Point #11.** +Philip protested the Chancellors' statement, "If the bishops sitting on the Local Synod cannot vote as they feel they should but must vote in agreement to the will of the Metropolitan, then the Local Synod, if it exists at all as a local synod is only a façade or a rubber stamp." +Philip attempted to refute this statement by referring to the refusals of Bishops Basil, Mark, and Alexander to sign +Philip's Bright Friday Resolution.

+Philip's Archpastoral Directive dated March 3, 2009, explicitly states that, according to Article 78 of the amended Patriarchal Bylaws, "The Metropolitan defines the responsibilities of the bishops and the place where they should serve. The bishop does not do anything contrary to the will of the Metropolitan." Consequently, it is disingenuous that +Philip attempts to use the refusals of three bishops to sign the Bright Friday Resolution as evidence that the bishops, as auxiliaries, actually had the right to refuse. In advance of the Bright Friday meeting, +Philip wrote to senior clergy in the Diocese of Toledo and the Midwest and assured them that "[s]ubsequent to our meeting, we will

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<sup>8</sup> See, for instance, the following links: [Metropolitan Philip Saliba \(Antiochian Patriarchate, 1966\)](#), [Bishop Nicholas \(American Carpatho-Russian, 1985\)](#), [Bishop Jovan \(Serbian, 1994\)](#), [Metropolitan Nikitas of Hong Kong \(Ecumenical Patriarchate, 1997\)](#), [Archbishop Demetrios \(Greek Archdiocese, 1999\)](#), [Metropolitan Sergios of Cape Town \(Patriarchate of Alexandria, 2000\)](#), [Bishop Joseph \(Antiochian Archdiocese, 2004\)](#) [Bishop Tikhon \(OCA, 2005\)](#), [Bishop Irinej \(Serbian, 2006\)](#), [Metropolitan Polykarpos of Spain & Portugal \(Ecumenical Patriarchate, 2007\)](#), [Metropolitans Panteleimon and Ignatios \(Church of Greece, 2007\)](#), [Metropolitan Hilarion \(ROCOR, 2008\)](#), [Bishop Macarie \(Romanian, 2008\)](#), [Metropolitan John Yazigi \(Antiochian Patriarchate, 2008\)](#), [Bishop Daniel \(Ukrainian, 2009\)](#), [Bishop Daniel, again](#) (referring to enthronement as "one of the most ancient rites of the Holy Orthodox Church"), and [Metropolitan Silouan \(Antiochian Patriarchate, no date\)](#)

issue a statement signed by me and the bishops to the entire Archdiocese.”<sup>9</sup> In contrast to the Patriarch’s principled refusal to speak for other members of the Holy Synod regarding the potential outcome of the upcoming June 16 meeting of the Holy Synod, +Philip had no reluctance to predict that *all* of the members of the Archdiocesan Synod would sign the Bright Friday Resolution. This is no doubt because +Philip fully expected that all of the bishops would obey him by signing the Resolution.

**Point #12.** *+Philip disputed the Chancellors’ statement, “The decision does not apply to North America because if it did it would violate the Constitution of the irrevocably self-governing Archdiocese.” He argued that the Archdiocese is not autocephalous and is subject to the authority of the Holy Synod, including the February 24 decision.*

The same Holy Synod granted self-rule to the Archdiocese, thereby voluntarily placing limitations on its own authority within the Archdiocese.

**Point #13.** *+Philip took issue with the statement of the Chancellors that the Holy Synod’s February 24 decision was “ill-advised.” He told the Board, “Is it ill-advised for a deacon to obey? Is it ill-advised for a priest to obey a bishop? Is it ill-advised for a Metropolitan to obey the Patriarch and the Holy Synod? God knows during my past 43 years of my position, I have had many disagreements with our Patriarch, but I have never, never disobeyed the Patriarch or the Holy Synod.*

The answer to +Philip’s questions is not simply a rhetorical, “No,” as he implied. The answer depends on what sort of obedience the authority figure is demanding. The history of the Church is rich in saints who have been glorified precisely for their disobeying their hierarchy. One might recall (a) St. Maximus the Confessor’s response to the synod that promulgated monothelitism; (b) Theodore the Studite, who not only disobeyed the Patriarch of Constantinople but who issued a call for all Christians to revolt against the decrees of the iconoclast synod convened by Theodotos; (c) the laity who stood their ground against the Uniate bishops who, assured by Rome that they could retain their Orthodox beliefs, had convinced themselves that they were simply making an “administrative” decision by joining themselves to Rome; and (d) those members of the Russian Orthodox Church who resisted the “administrative” reforms of the Soviet-backed Living Church, which claimed to be the rightful Russian Holy Synod. Obedience is not, of itself, a virtue; it can be a path to Paradise or a path to Hell.

Furthermore, +Philip was wrong when he stated that he had “never, never disobeyed the Patriarch or the Holy Synod.” One need only recall his threats to take the Archdiocese into another jurisdiction if the Holy Synod would not consecrate Bishop Antoun, or, later grant self-rule to the Archdiocese (“This is it. We have other choices. The choice is yours now, to grant us self-rule or not to. If you don’t, then I will return to the United States of America and tell my people that you refused to grant us self-rule and we will take it from there.”<sup>10</sup>), let alone his active refusal to bring the Damascus Constitution, approved by the Patriarch and the Holy Synod, to a vote at a General Convention.<sup>11</sup> Unfortunately, +Philip is no model of obedience, and we in North America, at least, are aware of that.

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<sup>9</sup> See [Exhibit 76](#) to the Timeline on the Orthodox Attorneys Association website.

<sup>10</sup> Full document is available here: [2003 Toledo Blade Interview](#).

<sup>11</sup> This story is detailed in the exchange between +Philip and Damascus available at the following links: [Feb 16, 2004 Letter](#), [April 2004 Letter](#), [May 3 Letter](#), [Minutes of the June 2004 Board of Trustees Meeting](#), [+ Philip's](#)

**Point #14.** *In conclusion, +Philip urged the Board to accept the February 24 decision. He stated, “We do not worship our Constitution. This Archdiocese was not made for the Constitution; the Constitution was made for this Archdiocese.” When the Board vacillated on the vote, +Philip told them that the Patriarch was waiting for them to affirm the February 24 decision.*

Whether the Patriarch was, in fact, waiting for an affirmation by the Board is known only to +Philip and His Beatitude. No one has suggested that we “worship our Constitution” – only that good order reign in our Church, that our hierarchs (from our Diocesan Bishops to the Patriarch) hold fast to Scripture, Tradition, and the Holy Canons to which they each swore obedience upon consecration, and that the breach in relations between North America and Damascus, created over so many years of threats, concealed information, disinformation, and manipulation, be healed so that we may be drawn together more closely in the bonds of love and freedom that should characterize relationships between Orthodox Churches, clergy and people—that Antioch should shine brilliantly throughout the world to all other jurisdictions as a model Church, rather than fading into the background as an embarrassment.

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[Address to Pittsburgh Convention](#) (“I made some minor corrections to the Synodal Document which do not violate its substance.”), [October 2004 Announcement](#), [January 2005 Message from Archdiocesan Department of Legal Affairs](#). The Board of Trustees, of which +Philip is President, officially recognized and voted (with only three dissenting votes and without objection by +Philip) to continue this disobedience to the Holy Synod in the [Minutes of the June 2005 Board of Trustees Meeting](#).