

### *Section 11 – Do’s and Don’ts When a Lawsuit is Filled – And Until It is Over*

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#### **I. When the papers arrive**

Lawsuits usually are initiated by the filing by a plaintiff of a summons and complaint with the court clerk’s office. It is the plaintiff’s responsibility to serve those papers on other parties. Depending upon the rules of that particular court, those papers may be served on you (if your council or congregation is a party to the lawsuit) by a process server, such as a sheriff’s deputy, or by mail. Here are things to consider when you are served:

1. Do not sign anything other than a simple messenger's receipt that acknowledges your receipt of papers from a process server or mailed to you from a party. Admit nothing, say nothing. If you are asked to sign for the papers read what the receipt says and sign to acknowledge receipt with your job title and date.
2. Keep the envelope or wrappers that the papers arrived in.
3. Date stamp the first page or write the date and time the documents were received and the method by which they were received (hand-delivery by a sheriff’s deputy or process server, mail, other — be specific).
4. Note the instructions on the summons or other papers that tell you how many days you have to respond and immediately put that date in your calendar with a reminder a week in advance so you do not default in responding.
5. Immediately call your insurance broker or agent. Forward a copy of the papers to your broker/agent, with a dated cover letter (save a copy of the cover letter too), and if you already have an attorney, inform the broker you plan to contact your attorney to provide the attorney a copy of the documents. Your insurer will decide if the claims in the complaint are covered by insurance and if the company will provide you with a defense, meaning that it will pay your attorney. It is possible you have a deductible to pay first, which means you pay the deductible by paying your attorney first and when the deductible is exhausted the insurance company pays the attorney. If your insurance company acknowledges that your council or church is covered, it has a list of attorneys it has approved to handle such cases. If the insurer denies coverage, you will need to hire an attorney to defend your organization.
6. Immediately call your attorney for instructions, note the date and time of the call.
7. Determine whether your organization has a policy already in place for what to do when a lawsuit is filed, make sure you follow the requirements outlined in such a policy, if it exists.
8. Deliver a copy of the papers to other leaders in your organization, as appropriate (check your bylaws for such instructions; if none, for example, , deliver the documents to the teaching elder/head of staff, the treasurer, the clerk of the session).
9. Notify your IT department or the employee in charge of your computer system or the vendor who handles your electronic systems and instruct them to protect e-mail and electronic documents which may have any relevance to the lawsuit. Bring your attorney into that conversation.
10. If the complaint names the Presbyterian Church (U.S.A.) or the General Assembly as a defendant, please contact the Legal Services Office immediately. (Michael Kirk (888)-728-7228 ext. 5390).

## II. The Next Steps . . .

1. Sit down immediately with your attorney and a small group of leaders (the group will vary depending on the nature of the lawsuit) and decide key strategy issues. Let your attorney be your guide on these issues:
  - a. Prepare for possible media interest and press statements, if necessary. Your attorney may want to be the point of contact.
  - b. Decide who is going to be the up-front person on the lawsuit to handle inquiries, to assist counsel, to follow what's happening, and so on. (Note: This person should be someone who has excellent follow-through skills, knows how to keep information in strict confidence, and who consistently uses good judgment about delicate matters.). Ensure that this person gets the training that they need on what is appropriate to say, when and to whom.
  - c. Discuss contacting all employees and members who might have documents and records relevant to the litigation and ask them to deliver their documents to the employee who is the principal contact with your attorney.
  - d. Ensure that a file of all documents (hard copy and electronic) is maintained. Decide who is going to maintain that file and be responsible for it.
  - e. Decide whether the congregation needs to be informed of the lawsuit, as applicable (again, be careful — seek legal advice).
  - f. Decide whether any local church pastoral care will be needed and develop a plan to address these needs.
  - g. Decide whether pastoral care will be important for anyone else — including yourself!
  - h. If the lawsuit is based on some type of misconduct of a teaching elder, determine whether there has been an internal disciplinary action filed and, if so, what is its status. If no action has been filed, decide whether it would be appropriate to pursue such an action at this time (again, be careful — seek legal advice). Consult with the pastor's presbytery of membership.
  - i. If you are a teaching elder, ruling elder, deacon or Certified Christian Education and the allegations involve sexual abuse of a minor or an adult who lacks capacity to consent, review the mandatory reporting requirements in the *Book of Order* (G-4.0302), and determine your mandatory reporting duties.
2. Preserve notes, correspondence, and files that relate to the matter.
3. Do not talk with anyone about the lawsuit, except your attorney and the small group of leaders who work together to develop a strategy for what to do next. Determine if the Session as a whole should be informed as the lawsuit progresses.
4. Do not call the plaintiff, his or her attorney, or anyone else who might be on the other side in this matter **and do not accept calls from them**. If they call refer them to your attorney. Once you have an attorney, the attorneys should contact each other, not the parties.
5. Do not call, write, or visit with the judge, at any time, for any reason.
6. Ask your attorney before you act.

**III. When You Meet with Your Attorney . . .**

1. Be completely open, truthful, and forthright. Your attorney cannot help you if you hide information. Do not try to decide what information is important or unimportant — let your attorney be the judge of that — tell everything you know.
2. Bring a copy of all documents, writings, and things that may have anything to do with the lawsuit. Keep the originals, unless your attorney asks for them.
3. Talk with your attorney about your insurance coverage.
4. Educate your attorney about the Presbyterian Church (U.S.A.) as a denomination. Make sure that the attorney understand the importance of the structure of the Church.
5. If you receive a "reservation of rights" letter — or a "denial of coverage" letter from your insurance carrier, you should obtain an opinion from a special insurance coverage attorney about whether there are steps you should take to protect your legal rights under the insurance policy(s).

**IV. As the Case Progresses . . .**

1. Remember the do's and don'ts from above!
2. Call your attorney immediately if you receive any additional official papers related to the lawsuit.
3. Make sure your up-front person is continually updated about the status of the case and has access to independent legal counsel to help answer questions about legal strategies and maneuverings and address concerns regarding insurance coverage or actions being taken in the lawsuit by your attorney or others.
4. Try to be patient: the court system is often very slow and cumbersome. It may seem like it's taking forever for your case to progress to resolution.