

CM - Note 5 - Permanent Judicial Commission Review Teams

(See also ASC Handbook for Judicial Process, III. p. 33)

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The delegation of power to smaller entities of the judicial commission is fairly new to the Rules of Discipline. The use of smaller review teams is often very helpful in terms of efficiency and timeliness. The Rules of Discipline delegate to two members of the permanent judicial commission the power to review the work of investigating committees conducting an inquiry on behalf of the presbytery. In one instance, the review team has the responsibility of reviewing the investigating committee's processes, and then reports to the permanent judicial commission. In the second instance, the review team is given the power to determine whether the presbytery must reconvene another investigating committee.

The review team is empowered through D-5.0101 as follows:

"Two of the members of the presbytery commission shall be designated to review any petition for review of the procedures of the investigating committee while the investigation in a disciplinary case is in process (D-10.0204) and to review any petition for review of the decision not to file charges (D-10.0303). These two members shall not take part in any subsequent trial."

This language was added to the Rules of Discipline in 1999. We are now gaining some experience with these two circumstances.

D-10.0204 Petition for Review of the Investigative Procedures Process

During the course of an investigation, the person against whom an allegation has been made may petition the commission to review procedures of the investigating committee. "The review of the petition shall be done in a hearing conducted by the two members of the commission..." D-10.0204a. The hearing presumed by this section is limited to three subject areas:

1. Whether the committee has followed a proper trail of evidence;
2. Whether the evidence being considered is properly in the hands of the investigating committee;
3. Whether the committee has examined relevant evidence proposed by the accused.

The two designated PJC members are required to conduct the hearing within thirty (30) days of receipt of the petition. Both parties and/or their counsel may be present. Often counsels for the accused will attempt to expand such hearing well beyond those three subject areas. PJC review committee members are advised to restrain discussion to these three subjects and scrupulously avoid considering any substantive issues.

Within fifteen (15) days, the two PJC review committee members must inform the parties of the result that will be communicated in a report to the moderator of the PJC and used by the PJC.

The entire PJC will use the report to analyze challenges to the appropriateness of charges and to dismiss or amend the charges.

D-10.0303 Petition for Review of the Decision Not to File Charges Process

In cases where an investigating committee declines to file charges, the individual who filed the original allegation may petition the PJC to review the decision of the investigating committee not to file charges. The individual must file the petition for review within thirty (30) days of receipt of the report detailing the decision not to file charges from the investigating committee. The petition must allege each instance that the investigating committee failed to fulfill the following duties:

- a. provide the accused with a copy of the statement of alleged offense;
- b. make a thorough inquiry into the facts and circumstances of the alleged offense;
- c. examine all relevant papers, documents and records available to it;
- d. determine whether there are probable grounds or cause to believe that an offense was committed by the accused
- e. decide whether the charges filed can reasonably be proved having due regard for the character, availability and credibility of witnesses and evidence available;
- f. report to the governing body ...only whether or not it will file charges.

The investigating committee must submit a written response to the facts alleged in the petition for review.

The PJC members should start their review where investigating committees do: "Would the allegations (if proved) constitute an offense?" If the investigating committee determined that the allegations (if proved) do not constitute an offense, the PJC review team members should confine their analysis to this question only.

If the review committee sustains the petition after review under D-10.0303c, they simply inform the clerk of session or the stated clerk of the presbytery to initiate the appointment of a new investigating committee. If they do not sustain the petition, the matter is concluded and their determination is final and binding upon the session or presbytery. That determination is not attackable via remedial actions.¹

To date most petitions for review we have seen granted have been based on a failure to adequately carry out the responsibilities described in D-10.0202c&d. If a petitioner is able to show that an investigating committee has failed to interview essential witnesses or review essential documents, there is justification for ordering the appointment of a new investigating committee.

Endnote

¹ *Veldhuizen v. Presbytery of San Francisco* 1994, 139, *White v. Presbytery of Redwoods* 11.084, 1995, 120, 11.055, [207-3].