

## Constitutional Musing #19

### Process for a Presbytery taking Original Jurisdiction of Session for Judicial Process

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A governing body may inquire into an allegation that a member of the governing body has committed an offense. The Rules of Discipline describe this process as almost identical for a session and a presbytery.

Chapter X of the Rules of Discipline states that when a governing body receives a written statement that a member or officer has committed an offense (any act or omission by a member or officer that is contrary to Scriptures or the Constitution of the PC(USA)<sup>i</sup>), it shall refer the written statement to an investigating committee<sup>ii</sup>.

When a Session receives a written allegation that a member or officer of the congregation has committed an offense, then the Session shall refer the written statement to an investigating committee of the session.<sup>iii</sup> The session shall not appoint members of the session as members of the investigating committee.<sup>iv</sup>

The investigating committee shall have no more than five, but no fewer than three members and may include members from another governing body if the allegation involves another governing body.<sup>v</sup>

The investigating committee shall make a thorough inquiry into the facts and circumstances of the alleged offense<sup>vi</sup> in order to determine whether there are probable grounds or cause to believe that an offense was committed by the accused<sup>vii</sup> and whether any charge based on the offense could be reasonably proven<sup>viii</sup> and proven beyond a reasonable doubt.<sup>ix</sup> If the investigating committee answers the inquiry in the affirmative, then it will file charges on behalf of the PC(USA) against the person accused, alleging that the individual committed an offense against Scripture or the PC(USA) Constitution that, if the person is found guilty, would result in a community wide censure. A disciplinary case under the Rules of Discipline is begun when an investigating committee files charges.

After receiving charges, under Chapter IV of the Rules of Discipline [D-4.0000 et al], a session may request a reference to the permanent judicial commission of the next higher governing body for trial and decision in a disciplinary case not yet decided.<sup>x</sup> If the permanent judicial commission of the next higher governing body accepts the reference, all proceedings, including the trial, shall thereafter be held in the higher governing body.<sup>xi</sup>

Additionally, if a session fails to act for a period of 90 days after the filing of charges in a disciplinary case, the higher governing body (through its permanent judicial commission) may assume jurisdiction of the case upon request of any party.<sup>xii</sup>

The problem arises when a session is unable to field 3-5 people to serve on an investigating committee preliminary to a disciplinary case. The appointment of an investigating committee is

a procedure prior to any potential disciplinary case. Chapter IV of the Rules of Discipline [D-4.0000 et al] and D-3.0101 provide procedures for reference in a disciplinary case after charges have been filed.

**Presbyteries are often approached with the question, how can a session refer the preliminary process to a disciplinary case to a presbytery?**

There is no authoritative interpretation on this question at all.

The Office of the General Assembly has given the advice that since Chapter IV applies only to disciplinary **cases**, any request for a reference for assistance by a higher governing body in the procedure prior to a disciplinary case would have to be treated under the administrative functions in the Form of Government. Namely, the presbytery would have to take original jurisdiction of the session for the purpose of judicial process.<sup>xiii</sup>

How does the presbytery go about taking original jurisdiction of the session for the purpose of judicial process so that the presbytery may appoint an investigating committee necessary to the preliminary inquiry and determinations prior to a disciplinary case?

We think that a presbytery has several options if the request to assume original jurisdiction in judicial process comes from a session.

1. The presbytery may assume original jurisdiction over the session for purposes of judicial process at its regularly stated or specially called presbytery meeting.<sup>xiv</sup>
2. The presbytery may have a standing rule that automatically approves the assumption of original jurisdiction over a session for purposes of judicial process when the session sends a written request to the stated clerk of the presbytery.<sup>xv</sup>
  - a. Prior to approving such a standing rule, the presbytery will need to discuss whether there may be any instances in which the presbytery would not assume original jurisdiction over a session for judicial process as a result of a written request from the session.
  - b. The presbytery may include in the standing rule the assumption that the session will reimburse the presbytery for the expenses of the resulting inquiry if able.<sup>xvi</sup>
  - c. The presbytery would then follow its standing rule for the appointment of an investigating committee.<sup>xvii</sup>
3. The presbytery may delegate to an Administrative Commission the power to assume jurisdiction of a session for purposes of judicial process when the session sends a written request to the stated clerk of the presbytery.<sup>xviii</sup>

**Endnotes**

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<sup>i</sup> D-2.0203b

<sup>ii</sup> D-10.0101, D-10.0103, D-10.0201

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- iii D-10.0101, D-10.0103, D-10.0201
- iv D-10.0201a
- v D-10.0201a
- vi D-10.0202c
- vii D-10.0202f
- viii D-10.0202g
- ix D-11.0403
- x D-4.0101
- xi D-4.0103
- xii D-3.0103
- xiii G-11.0103s to assume original jurisdiction in any case in which it determines that a session cannot exercise its authority.
- xiv G-11.0103s
- xv Sample Rule may be:  
“When the Stated Clerk of the Presbytery receives a written request from the clerk of Session of a congregation requesting that the Presbytery take original jurisdiction of the Session for purposes of judicial process, the Presbytery agrees to assume original jurisdiction of that particular Session for the limited purpose of performing the functions of the Session required under the Rules of Discipline. The request should be from the Session and should include reasons for the request. The Session will reimburse the Presbytery for any costs of the inquiry if the Session is able. The Session may request a waiver of this cost requirement to the Presbytery. Upon assumption of original jurisdiction of a Session for Judicial Process, the Presbytery will form an investigating committee according to its rule under D-10.0201b.”
- xvi D-10.0201c states that if the written statement results from information presented to a governing body other than the one having jurisdiction over a member, the governing body within whose bounds the alleged offense occurred shall pay for the expenses of investigating within its bounds. This can be construed in this context as mandating that the session within whose bounds the alleged offense occurred shall pay the presbytery which has assumed jurisdiction over the member for the expenses of investigating within its bounds. This should be balanced with the duties of the presbytery to provide resources to its member churches (G-11.0103r) and be in covenantal relationship with its member churches (2004, *Minihan v. Pby of Scioto Valley*, Remedial Case 216-1).
- xvii D-10.0201b
- xviii PJC (2010, *Sundquist v. Heartland Pby*, Remedial Case 219-03) The functions of an administrative commission are limited by the appointing body and may include any function that the appointing body wishes to delegate (with few exceptions). Powers delegated to administrative commissions must be specifically described (G-9.0502).