

Advisory Opinion: Note 13 **Duties of a Stated Clerk**

Issued April 2004
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With surprising regularity, the issue of a Stated Clerk's role in constitutional interpretation and the Stated Clerk's role in judicial process have been the focus of calls to the Office of the General Assembly. These roles are described in more detail in this Advisory Opinion.

I. The Stated Clerk as Constitutional Advisor

All Stated Clerks bear responsibility to serve as advisors and interpreters of the Presbyterian Church (U.S.A.)'s Constitution. All Stated Clerks are responsible to provide constitutional interpretations to their governing bodies, committees, or entities of those governing bodies. Stated Clerks often staff "bills and overtures" committees and other groups responsible for bringing recommendations on Proposed Amendment votes. The presbytery stated clerk has a role in helping such committees to share information the presbytery needs before they vote on these amendments. The stated clerk can assist the presbytery if it is considering sending an overture to the General Assembly.

The Stated Clerk of the General Assembly has a role as Constitutional Advisor to the Church. This role is described in the *Book of Order* at G-13.0112a. The Advisory Committee on the Constitution (ACC) provides advice to the General Assembly when questions requiring authoritative interpretation of the *Book of Order* are submitted to the GA Stated Clerk. The Stated Clerk of the GA is an ex officio member of the ACC without vote.

This role is also described in the Organization for Mission, part of the Manual of the General Assembly. Section IV.B.2.b. says, "As an officer of the General Assembly, the Stated Clerk shall preserve and defend the *Constitution of the Presbyterian Church (U.S.A.)*, and support the decisions, actions, and programs of the General Assembly. The Stated Clerk shall give advisory opinions concerning the meaning of the provisions of the *Constitution of the Presbyterian Church (U.S.A.)*, and shall give advisory opinions on the meaning of the actions of the General Assembly. ..." This is the authority that the Stated Clerk relies upon when Advisory Opinions are released (such as #8 on G-6.0106b and #19 on Implementing the Trust Clause for the Unity of the Church).

II. The Stated Clerk in Judicial Process

Basically a Stated Clerk's role in judicial process is to be absolutely non-partisan. The clerk cannot take sides, but can give impartial procedural help to both "sides" in a dispute. The Clerk's function is to facilitate smooth and efficient process, not to determine particular outcomes. The Clerk acts as staff to the permanent judicial commission, as a resource to committees of counsel in remedial actions, and a presbytery clerk acts as advisor to an investigating committee in disciplinary cases. The Clerk fields questions of process from the parties themselves and from the presbytery's counsel. In many ways the Stated Clerk in judicial process functions very much like a Clerk of Court in secular process: processes papers, gives procedural advice, communicates with all parties, and does what the judge (PJC) directs.

Below is an outline of the specifics of the Stated Clerk as "clerk of the court" taken from the Form of Government (G-) and from the Rules of Discipline (D-).

A. The Stated Clerk's role in remedial cases

1. The clerk must be neutral.
 - D-5.0105 Not eligible to be on a PJC
 - D-6.0302b May not serve on a Committee of Counsel

2. Keeper of the Record
 - G-9.0304a Receives Protests
 - D-6.0101 Remedial complaint filed with Stated Clerk
 - D-6.0301f Answer filed with Stated Clerk
 - D-6.0307a Lists all materials pertaining to case
 - D-6.0307b,c Receives Record of Notice of Appeal
 - D-7.0402d Decision filed with Stated Clerk
 - D-8.0201a,b,f Receives Notice of Appeal
 - D-8.0304a Receive Appellant's Brief
 - D-8.0305 Receive Appellee's Brief

3. Carries out Administrative Tasks on Behalf of PJC
 - D-5.0206a,b Addresses PJC quorum and roster issues
 - D-6.0304, D-6.0308 Transmits documents to officers of PJC
 - D-1.0103, D-6.0310 Reminds parties/PJC of Alternative Dispute Resolution Options
 - D-7.0201c Issues citations at direction of PJC
 - D-7.0601e Preserves record
 - D-7.0701 Reports PJC decision to governing body
 - D-8.0203 Transmits notice of appeal to PJC
 - D-8.0303c,e Notifies parties if appeal is accepted
 - D-8.0303g, D-8.0304b Grants extension of time limits
 - D-8.0306 Transmits case and record to PJC
 - D-8.0404e Reports decision of PJC to governing body

B. The Stated Clerk's role in disciplinary cases*

1. Must be neutral
 - D-5.0105 Not eligible to be on a PJC
Must not be on the investigating committee/prosecuting committee

2. Keeper of the record
 - D-10.0101 Receives allegations (Presbytery Stated Clerk)
 - D-10.0303 If no charges filed, receives petition for review
 - D-10.0404 Receives charges
 - D-11.0403f Receives decisions of PJC
 - D-11.0601e(2) Preserves record
 - D-12.0104h Receives requests for restoration
 - D-13.0201a Receives written notice of appeal
 - D-13.0201b Receives copy of notice of appeal
 - D-13.0304 Receives appellant's brief
 - D-13.0305 Receives appellee's brief
 - D-13.0404e Receives PJC decision

3. Carries out Administrative Tasks on Behalf of PJC
 - D-10.0103 Reports to governing body and "without delay" refers to investigating committee (Presbytery Stated Clerk)

D-10.0105	Informs that transfer is prohibited.
D-10.0301, D-10.0303	Investigating Committee reports through Stated Clerk (Presbytery)
D-1.0103, D-10.0202h	Reminds parties/PJC about Alternative Dispute Resolution options
D-11.0201c	Summons witnesses from other governing bodies
D-11.0701	Reports decision of PJC to governing body
D-12.0104g	Sends notice of censure to General Assembly Stated Clerk (Presbytery)
D-13.0203	Transmits record being appealed to PJC
D-13.0303c	Notifies that record complete
D-13.0303g, D-13.0304b, D-13.0305b	Grants extension of time
D-13.0306	Transmits record, briefs to PJC
D-3.0106	Reports renunciation to governing body

*Note: Synod and General Assembly Stated Clerks have jurisdiction and responsibility only in appeals in disciplinary cases. These clerks would not receive allegations that an offense has occurred (D-10.0102) nor a Petition for Review (D-10.0303).

III. Guidance from GAPJC on the Role of Stated Clerks in Judicial Process

The General Assembly Permanent Judicial Commission has offered guidance on the role of Stated Clerks in Judicial process. (Note that the advice was given prior to the adoption [in 1996] of the current Rules of Discipline but the advice remains apropos to this date):

“Minutes, 1990, p. 139

“Letter to Stated Clerks and to Moderators of PJC’s about implementation of judicial process.

“11.087

“The Permanent Judicial Commission is increasingly concerned about the manner in which the church is implementing judicial process.

“Recommendation

“11.088

“That the 202nd General Assembly (1990) instruct the Office of the General Assembly to send the following letter to all presbytery and synod stated clerks and to all moderators of presbytery and synod permanent judicial commissions.

“LETTER:

“11.089

“The power that Jesus Christ has vested in the church is one for building up the body of Christ. (Preamble, the Rules of Discipline.)

“11.090

“The Permanent Judicial Commission of the General Assembly communicates to the General Assembly, and through the General Assembly to the church at large, concern of the Commission for the exercise of this power given by our Lord.

“11.091

“There is a great need for the church to be aware that there are several avenues constitutionally available for principled resolution of difficulties and conflicts in the church in addition to judicial process. The *Book of Order* (G-11.0502 d and i) supports negotiations, mediation, and reconciliation among parties, as well as formal litigation in the judicial commissions of the church.

“11.092

“Those who sense conflict in the church need to be educated to the possibilities and limits of each of the above options, in order to insure the church is open and accessible to its members. Too often a lack of information about these options leads to frustration of efforts to seek reconciliation and to ever-engrossing procedural irregularities or misdirections. In particular, it should be noted that choosing judicial process forecloses all other operations (D-4.0200c.).

“11.093

“To further this building up of the church it is incumbent upon the stated clerks of the various governing bodies fairly, openly, helpfully, and impartially to guide the process and give instruction in its operation. Too often stated clerks have assumed the role of “protectors” of the church. In so doing stated clerks inappropriately become adversaries of those seeking to use the system, viewing them as troublesome intermeddlers or surfacers of embarrassment. Stated clerks have also presumed to arrogate to themselves responsibilities of the judicial commission, or those of the moderator or clerk of the judicial commission. The stated clerks have no ground to refuse to produce documents requested by any party, or to determine appropriate content of the record of a case, or to transmit to a judicial commission materials in addition to those requested by a party, or to offer advice on the disposition of a case which is a prejudgment of the merits of the case by the stated clerk.

“11.094

“Finally, the General Assembly’s Permanent Judicial Commission takes note of the great need for better training of our sister judicial commissions. Particular attention needs to be given to pretrial process. Further, inappropriate influences from secular law must be resisted. There is not, for example, any constitutional provision of the *Book of Order* for summary dismissal of any case. This commission finds that motions for such dismissals have become commonplace in the records before us, and judicial commissions need to be reminded that a dismissal is only appropriate after thorough examination of the record and opportunity for all parties to be heard.”