

ASSOCIATION OF  
STATED CLERKS'

GUIDE FOR  
JUDICIAL PROCESS

**Sixth Edition, Revised, October 2011**

## **PREAMBLE TO THE RULES OF DISCIPLINE**

### **D-1.0101 Church Discipline**

Church discipline is the church's exercise of authority given by Christ, both in the direction of guidance, control, and nurture of its members and in the direction of constructive criticism of offenders. The church's disciplinary process exists not as a substitute for the secular judicial system, but to do what the secular judicial system cannot do. The purpose of discipline is to honor God by making clear the significance of membership in the body of Christ; to preserve the purity of the church by nourishing the individual within the life of the believing community; to achieve justice and compassion for all participants involved; to correct or restrain wrongdoing in order to bring members to repentance and restoration; to uphold the dignity of those who have been harmed by disciplinary offenses; to restore the unity of the church by removing the causes of discord and division; and to secure the just, speedy, and economical determination of proceedings. In all respects, all participants are to be accorded procedural safeguards and due process, and it is the intention of these rules so to provide.

### **D-1.0102 Power Vested in Christ's Church**

The power that Jesus Christ has vested in his Church, a power manifested in the exercise of church discipline, is one for building up the body of Christ, not for destroying it, for redeeming, not for punishing. It should be exercised as a dispensation of mercy and not of wrath so that the great ends of the Church may be achieved, that all children of God may be presented faultless in the day of Christ.

### **D-1.0103 Conciliate and Mediate**

The traditional biblical obligation to conciliate, mediate, and adjust differences without strife is not diminished by these Rules of Discipline. Although the Rules of Discipline describe the way in which judicial process within the church, when necessary, shall be conducted, it is not their intent or purpose to encourage judicial process of any kind or to make it more expensive or difficult. The biblical duty of church people to "come to terms quickly with your accuser while you are on the way to court . . ." (Matthew 5:25) is not abated or diminished. It remains the duty of every church member to try (prayerfully and seriously) to bring about an adjustment or settlement of the quarrel, complaint, delinquency, or irregularity asserted, and to avoid formal proceedings under the Rules of Discipline unless, after prayerful deliberation, they are determined to be necessary to preserve the purity and purposes of the church.

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## FOREWARD

The Guide for Judicial Process has been created by the Association of Stated Clerks to assist clerks in the Presbyterian Church (U.S.A.) in providing guidance to their councils (formerly governing bodies) and individuals within them regarding the judicial process.

The Association of Stated Clerks wishes to express its thanks to the General Assembly Stated Clerk and his staff in the Office of the General Assembly, Department of Constitutional Services, for their invaluable, insightful contributions and support to the development and updating of this Guide.

In July of 2011, the Revised Form of Government, voted by the 219th General Assembly and approved by the requisite number of presbyteries, went into effect. A number of the changes to this Guide were necessitated by the changes in nomenclature included in the new Form of Government. Governing bodies have become councils, ministers of the Word and Sacrament have become teaching elders, and elders have become ruling elders, to name some of the more obvious nomenclature changes. Some of the changes are the result of changes to the Rules of Discipline since the last edition of this Guide, which was then called a Handbook.

The fact that the Form of Government now lists responsibilities which were formerly assigned to the committee on ministry (COM) as responsibilities of the presbytery, means that presbyteries may develop different procedures for handling those responsibilities. Where this Guide formerly indicated the involvement of COM or the COM moderator, it now says, “the presbytery,” or “the appropriate person.”

## HOW TO USE THIS RESOURCE

The clerk at each council level usually oversees the functioning of the judicial procedures for that council. As a result, the clerk is usually seen as the “manager of judicial process” for that council. This Guide, therefore, is designed primarily as a resource for clerks to use in managing and assisting judicial process.

Almost all the paperwork involved in judicial process passes through the clerk’s hands. So part of the Guide’s goal is to help clerks track their role in the process. Almost all the chapters begin with a section dealing with the role of the clerk in that particular aspect of judicial process. In addition, other sections are intended to provide clerks with ideas and suggestions fulfilling the clerk’s responsibilities for judicial process.

The other goal of this Guide is to provide resources for clerks to use in training and coaching other participants in judicial process. **Clerks should feel free to copy and distribute portions of the Guide that may be helpful to the participants in a particular part of judicial process.**

The chapters on remedial process, disciplinary process, and the appeal process all contain an “Overview,” an “Outline,” and a “Flowchart” of that process. These three sections will assist the various participants in each of the judicial procedures to understand their part and responsibilities in the process. The three sections contain the same basic information presented in three different formats recognizing that people learn in different ways. The “Outlines” or Flowcharts” may also

serve as a quick reference for the clerks involved to ensure the timely handling of their responsibilities.

The “Guide for the Accuser,” page III-13, and the “Guide for the Accused,” page III-17, were designed specifically to enable those participants in a disciplinary process to understand the steps in that process. There are also sample decisions, sample transmittal certifications, and suggested room setups to assist the session/permanent judicial commission with those aspects of the process.

Because the disciplinary process for a church member, which is handled at the session level, and for a teaching elder (minister of the Word and Sacrament), which is handled at the presbytery level, are much the same, most of the information about the disciplinary process is in Chapter III, Disciplinary Process. When seeking resources for disciplinary process at the local church level, review both Chapter III and Chapter VI of this Guide.

The “Table of Contents” provides a good listing of the topics included in this Guide. Clerks can pick the materials under each type of judicial process that might be helpful for training or for general information for the various participants in the process.

While this Guide may provide helpful explanations and may serve as a quick reference, all persons who are considering initiating judicial process or who will participate in it in some way (those filing complaints or allegations of wrongdoing, committees of counsel, clerks of session and stated clerks, investigating committees, permanent judicial commissions) should read carefully the relevant sections of the Rules of Discipline in the *Book of Order* and become familiar with them. Particular attention should be paid to specific directions and time constraints. The members of the PC(USA) have designated a means of interpreting the constitution that is authoritative for mid councils. These Authoritative Interpretations may be found in the *Annotated Book of Order*. The *Annotated Book of Order* is a very important resource for all persons involved with Judicial Process.

## CHAPTER I - THE NATURE OF CHURCH DISCIPLINE

### Process of Church Discipline - Judicial

Judicial process is the means by which the PC(USA) exercises discipline within the context of pastoral care and oversight of church members and councils. This is accomplished by a session or permanent judicial commission after a due process trial or hearing of complaints against councils or allegations of offense against individual members. Through a remedial case, the process seeks to provide a way for a member of a council or a sister council or an employee of a council to seek redress if they believe that a council has taken an irregular action beyond those empowered by the PC(USA) constitution or has failed to take an action the council has a duty to take under the PC(USA) constitution. Through a disciplinary case, the process provides a means to seek corrective action intended to bring about restoration, wholeness, and repentance when a church member or a member ordained to an ordered ministry has committed an act or omission contrary to the Scriptures or The Constitution of the Presbyterian Church (U.S.A.). The “Rules of Discipline” (ROD) section of The Constitution of the Presbyterian Church (U.S.A.) define judicial process.

### Why and When to Use Judicial Process

There are many different types of conflict that may arise within the context of the Presbyterian Church (U.S.A.). The Judicial Process provides a means of resolving, as fairly as possible, two specific types of conflict. All other conflict may be resolved or managed through a variety of administrative processes found in the Form of Government of the *Book of Order* of the Presbyterian Church (U.S.A.).

The only two types of conflict that may be addressed through the use of judicial process within Presbyterian Church (U.S.A.) are

1. Remedial challenge: Action or inaction of a council: A challenge by a member of a council or a sister council (or, in limited circumstances, an employee of the council) of a decision made by a council alleging that the decision was beyond the power of the council given to it under the constitution or of the failure of a council to make a decision it had a duty under the constitution to make. A higher council may not file a remedial challenge against a lower council, but must seek to remedy the act of a lower council to make a decision or failure to make a decision through administrative process.
2. Disciplinary challenge: Correction of the action of an individual member: A challenge alleging that an individual member of the PC(USA) has committed an offense by engaging in an action that is contrary to Scripture or the PC(USA) constitution.

These processes look and sound similar to the secular judicial processes that individuals may be familiar with such as criminal and civil litigation. However, the PC(USA) judicial processes have as their basis reconciliation to be in right relationship with each other for the ultimate goal of living and being the body of Christ. There is no concept of punishment or retaliation within the PC(USA) judicial process and thus it is usually not appropriate to transport secular procedures into the church procedures.

## How to Initiate Judicial Process

To initiate a remedial case, a person who has standing must file a complaint alleging that a council made a decision or took an action it was not empowered to take or failed to take an action it had a duty to take under the PC(USA) constitution. The complaint may allege either an irregularity (something done incorrectly) or a delinquency (something that should have been done was not done). Constitutional provisions for remedial process are found primarily in Chapters VI-VIII of the ROD.

To initiate a disciplinary case, a person must file an allegation against an individual member that the member committed an act that is contrary to the Scriptures or The Constitution of the Presbyterian Church (U.S.A.). Disciplinary cases must always be filed with the council where the accused person has membership—the session for members of congregations; the presbytery for Teaching Elders and Ruling Elders commissioned by a presbytery to a particular pastoral service.

Once the clerk or stated clerk of the council has received a written statement alleging the offense, the council shall investigate the allegation to determine if charges shall be filed. If charges are filed, the parties to the disciplinary case become the accused and the Presbyterian Church (U.S.A.) through the council of membership. Constitutional provisions for disciplinary process are found primarily in Chapters X–XIII of the ROD.

The stated clerks of the presbytery and synod as well as the Department of Constitutional Services of the Office of the General Assembly can be valuable sources of information and guidance regarding the process of initiating and engaging in judicial process.

While this Guide may provide helpful explanations and may serve as a quick reference, all persons who are considering initiating judicial process or who will participate in it in some way (those filing complaints or allegations of wrongdoing, committees of counsel, clerks of session and stated clerks, investigating committees, permanent judicial commissions) should read carefully the relevant sections of the Rules of Discipline in the *Book of Order* and become familiar with them. Particular attention should be paid to specific directions and time constraints. The members of the PC(USA) have designated a means of interpreting the constitution that is authoritative for mid councils. These Authoritative Interpretations may be found in the *Annotated Book of Order*. The *Annotated Book of Order* is a very important resource for all persons involved with Judicial Process.



## **OVERVIEW OF THE CLERK'S ROLE**

The role of the clerk of session or the stated clerk of a council in judicial process is primarily twofold:

1. to facilitate the process by receiving and sending documents and by notifying parties of the time limits for each step in the process, and
2. to serve as a constitutional advisor, clarifying the process for all parties involved.

In order to fulfill the responsibilities of the office, the clerk must maintain the trust and confidence of all parties and, therefore, must be viewed by all concerned as open, fair, and impartial.

Judicial process begins with communication to the clerk of session or stated clerk.

### **Clerk of Session**

The clerk of session receives a written statement of an alleged offense committed by a church member.

### **Stated Clerk of Presbytery**

The stated clerk of presbytery receives a written statement of:

1. complaint against a session, or
2. an alleged offense committed by a member of the presbytery (a teaching elder or a ruling elder commissioned to particular pastoral service), or
3. appeal from a decision of a session in a disciplinary trial of a church member, or
4. request for reference from a session (transfer of the trial in a disciplinary case from a session to the presbytery).

### **Stated Clerk of Synod**

The stated clerk of synod receives a written statement of:

1. complaint against a presbytery, or
2. an appeal from a decision rendered by a presbytery permanent judicial commission, or
3. request for reference from a presbytery (transfer of the trial in a case from the presbytery to the synod).

**See the following chapters, sections and pages for specific information on each process.**

## TIPS FOR CLERKS

In general, clerks of session and stated clerks of presbyteries and synods have limited experience in dealing with the judicial process. However, when it becomes necessary for clerks to serve as managers of judicial process for their councils, there is little time to prepare. The following suggestions are provided to start you on the way.

1. Assure that all written materials that may pertain to the judicial process are stamped with the date of arrival.

If the clerk acknowledges receipt of all paperwork involved in a judicial matter, there is a clear track record of what was done and the date it was done. The “Rules of Discipline” (ROD) don’t always call for this kind of acknowledgement, but it provides provable documentation.

If the paperwork is deficient or incomplete in some way, the acknowledgment may be a very helpful reminder that further action is necessary. (Example: “This will acknowledge receipt, on [date], of your notice of appeal of the decision in “X” v. “Y” case. I will watch for your filing of a copy of that case decision, by [date], to complete your initiation of the appeal process.”)

2. When you first learn there may be judicial process involving your council, review the timeline for the kind of process it might be. If you are away from the office for an extended period, a matter may sit on your desk so long that it is difficult to meet deadlines. You should have a contingency plan for handling judicial business in your absence. Note that on the outlines for remedial, disciplinary, and appeal processes, many of the deadlines for clerks are “immediately.”
3. Review the sample forms provided in Appendix A of the Book of Order. These are useful when individuals come to you with questions about how to initiate judicial process, as well as helpful to you in sending communications.
  - Form 1 is for use in a formal dissent.
  - Form 2 is for use in a formal protest.
  - Forms 3–22 are for use with remedial cases.
  - Forms 23–25 are for use in relation to a request for vindication.
  - Forms 26–49 are for use with disciplinary cases.
  - Forms 50 and 51 are for use with a request for reference.
4. The *Annotated Book of Order* is an extremely valuable resource. Not only does it contain notations as to when and how parts of the Constitution changed, but it contains notes about the interpretation of the Constitution as a result of General Assembly Permanent Judicial Commission cases and Authoritative Interpretations approved by the General Assembly. Reading the case decision cited in the notations for a particular section of the *Book of Order* may help you assist those involved in a particular case.

5. Develop a tentative schedule for training. It may be helpful to consider training in segments. For example, an investigating committee (IC) needs immediate training in how to begin its task. However, the IC has one year in most cases to complete its work. It does not need to know at its initial training how to write charges. The investigation may, or may not, result in charges. You may suggest that the initial training only cover what is needed at that time. You can provide an outline for the entire process, but may feel it is wise to provide detailed training for later parts of the process at a later time.

It is important to remember that those who agree to serve in judicial process come with a wide variety of knowledge and experience with Presbyterian polity. Training needs to help participants understand purpose and procedures of church discipline.

If you feel too inexperienced to provide the training yourself, ask others with experience in judicial process to assist. Other stated clerks and staff of the Office of the General Assembly, Department of Constitutional Services, are good resources.

Examples of training you may need to provide include:

- The purpose and function of judicial process  
Types of cases and nomenclature  
Remedial Process  
Training for a Committee of Counsel  
Training for the Permanent Judicial Commission (PJC)
- Disciplinary Process  
Training for an IC  
Training for the PJC
- Appeal Process  
Training for the PJC

PJC Training #4 (page V-23 of this Guide) lists the various aspects of Presbyterian judicial process. It could be used as a checklist for training in either small segments or longer intense training.

6. If a matter is moving to the trial stage, it is important to be certain that there are sufficient members of the PJC to hear the case and to provide for possible emergencies. It is not wise to begin a trial with a bare quorum. Factors that affect the decision concerning the number of members necessary to hear the case include:
  - Either party can challenge the composition of the PJC and request that an individual be disqualified to serve for that trial.
  - In disciplinary cases, it may have been necessary to identify two members of the PJC to review the IC process or decision. These members may not sit in trial.
  - A member of the PJC may become ill, have a family crisis, or even die

You may choose to consult with the moderator of the PJC in determining how many persons to have available. You will find guidance at D-5.0206b to assist in determining the order to use in seeking additional persons to serve.

If the parties in a case agree in writing, some former PJC members may be used for those review processes that might reduce the number of PJC members available to sit for a trial.

7. Establish voting requirements in your mind, so you can advise the moderator of the PJC. Most decisions made by the PJC are determined by majority vote. However, a vote to close a hearing or trial must be determined by 2/3 vote. Decisions on each charge in a disciplinary trial must be voted on separately, and require a 2/3 vote which must be recorded in the minutes of the PJC. A settlement agreement reached in a disciplinary case without trial must be approved by the session or PJC by a 2/3 majority.
8. From the very inception of a judicial matter, the clerk must take care not to express an opinion on the merits of the matter. The clerk must be an impartial manager of judicial process, available to all those involved in the process. A careless comment at the beginning of the process, or prior to the formal process can severely limit the ability of clerks to serve their councils.
9. It may be helpful to develop a numbering system for cases, especially if your council handles a fair number of them. One often used is based on the year and the sequence of filing (2010-1, 2010-2, etc.). The General Assembly uses the meeting number and the sequence of filing (219-1, 219-2, etc.).
10. Written communication with the parties in a case is done directly with the parties, often by certified, return receipt requested mail service. Additionally, copies of the communications should be sent to the party's counsel if one has been identified.

By written agreement of the parties, communication may be by email. Where communication is done electronically, it should also include copies to both the parties and their counsels of record as well as a "file" copy for the clerk's record.

11. The parties in both remedial and disciplinary cases are entitled to appear and may be represented by counsel, provided that no person shall act as counsel who is not a member of the Presbyterian Church (U.S.A.). This means that a non-Presbyterian may not speak for a party or have conversations with the session/permanent judicial commission (PJC) during the proceedings. Some PJCs have allowed non-Presbyterians to be present and "whisper" advice to a party in a case.

Those serving as counsel may need to be reminded that the purpose of church discipline "is to honor God by making clear the significance of membership in the body of Christ; to preserve the purity of the church by nourishing the individual within the life of the believing community; to achieve justice and compassion for all participants involved; to correct or restrain wrong doing in order to bring members to repentance and restoration; to uphold the dignity of those who have been harmed by disciplinary offenses; to restore the unity of the church by removing the causes of discord and division; and to secure the just, speedy, and economical determination of proceedings." (D-1.0101) It is not to be confused with the adversarial process often seen in the civil and criminal courts.

## CHAPTER II—REMEDIAL PROCESS

### ROLE OF THE CLERK

A Remedial complaint is a challenge to a particular action or inaction of a council or entity of the General Assembly.

A challenge may be made by a member of a council or a sister council (or, in limited circumstances, an employee of the council) challenging a decision made by a council alleging that the decision was beyond the council's authority under the constitution or challenging the failure of a council to make a decision it had a duty under the constitution to make. A higher council may not file a remedial challenge against a lower council, but must seek to remedy the act of a lower council to make a decision or failure to make a decision through administrative process.

#### **Clerk of the Respondent Body**

If a Remedial challenge has been filed against the council of which you are a clerk, your council is now the Respondent in what may become a Remedial case to be determined by the PJC of the next higher council.

It is possible that, in addition to a complaint, the complainant (those making the challenge) may request a Stay of Enforcement of the action or inaction of your council that has been challenged. If a Stay of Enforcement is granted, the action or inaction of council is put on hold until the resolution of the challenge.

If the clerk's council is the Respondent to a Remedial case filed with the next higher council, the clerk of the respondent body has the following responsibilities:

1. Record the date you received the complaint, and notify the council that a complaint has been filed. Timelines begin when the stated clerk of the council that has jurisdiction to hear the complaint receives the complaint.
2. Initiate the process for the appointment of a committee of counsel.

*Note: Advice concerning the appointment of members to a committee of counsel may be one of the clerk's most important functions. It is helpful for the clerk to maintain a list of persons experienced in litigation and acquainted with our polity as possible committee of counsel members. (D-6.0302) Your council may have a rule that defines the process for appointment of a committee of counsel. Neither the clerk nor the executive of a presbytery or synod may serve on a committee of counsel of that council. (D-6.0302b)*

3. Refer the complaint to the committee of counsel and provide training for the committee of counsel, if requested.
4. Advise the committee of counsel of its need to file, within 45 days after receipt of the complaint, a concise answer to the complaint with the stated clerk of the council that will try the case with a copy to the complainant. (D-6.0303).

Notes: *The Answer is due within 45 days of the receipt of the complaint, but there is no Authoritative Interpretation (AI) that tells the PJC who must receive the complaint to begin the 45 day deadline. The PJC may require the Answer within 45 days of receipt by the Stated Clerk of the council with jurisdiction to hear the case, or may allow 45 days from the date which the Committee of Counsel was formed and received the complaint. It is helpful for the Clerk of the Respondent to check with the Stated Clerk of the Council with jurisdiction to find out the exact date that the Answer from the Committee of Counsel of the Respondent council is due.*

5. Stay of Enforcement. There are three ways that a Stay of Enforcement may be obtained by a complainant.
  - a. The first way involves the council that made the decision or took the action that is being challenged. D-6.0103a. One third of the members of your council who are recorded as present when the decision or action was made by the council may sign a Request for a Stay of Enforcement and send it to the stated clerk of the council with jurisdiction. If one third of the members of your council have Requested a Stay of Enforcement, you will be asked to certify the number of members on your council and that those members who signed the Request were present when the decision or action was taken by your council. This should be reflected in the minutes of the council. You should send the certified minutes of the council that reflect the presence of the members who have signed the Request as soon as possible to the Stated Clerk of the council with jurisdiction. Since the Moderator and Clerk of the PJC must validate the signatures within 7 days of their receipt of the Request, you should send the certified minutes to the stated clerk in a timely manner to enable the stated clerk to send the certified minutes to the Moderator and Clerk of the PJC for their validation.
  - b. The second way involves a case on appeal. As clerk of the Respondent Council, you will not need to worry about this particular process.
  - c. The third way is the most commonly used and involves the PJC that has jurisdiction to hear the complaint or appeal. You will not need to worry about this process unless you may receive a filing of the Stay of Enforcement from the stated clerk of the council with jurisdiction.
6. If you receive a Stay of Enforcement from the Stated Clerk of the council with jurisdiction, immediately transmit the Stay of Enforcement to your council and to the Committee of Counsel for the council.

Note: *The Committee of Counsel should be aware that any Objection to a Stay of Enforcement is due within 45 days of the filing of the Stay of Enforcement. The filing of the Stay of Enforcement occurs when you receive the Stay from the Stated Clerk of the council with jurisdiction.*

7. Within 45 days after receipt of the complaint, the clerk shall provide all parties a written list of the papers and other materials pertaining to the case. Within 15 days, the complainant may request, in writing, the inclusion of additional minutes or papers pertaining to the case. (D-6.0307a–b)

8. On receiving notification from the clerk of the trial council that the case has been accepted, transmit to that clerk all the minutes and papers pertaining to the case along with the list of the record and any requests for additional papers which, if available, shall be included. (D-6.0307c)
9. Be available to the complainant and the committee of counsel, helping to interpret the “Rules of Discipline” (ROD) and to explain or to answer questions concerning the process. Refrain from making any judgment as to whether a specific action or decision was correct. You may need to remind all parties that the clerk cannot make any binding or authoritative interpretations of any part of The Constitution of the Presbyterian Church (U.S.A.). (G-3.0501c).
10. When a decision is received from the permanent judicial commission (PJC), the clerk shall report the decision to the council at the first opportunity and shall enter the full decision in the minutes of the council. (D-7.0701).

### **Clerk of the Trial Level Council**

A person or council with standing may file a Remedial complaint against a lower council within the jurisdiction of your council, i.e. a complaint against a session within your presbytery, etc.

In addition to filing a complaint, the complainant may request a Stay of Enforcement of the action of the council that has been challenged. If a Stay of Enforcement is granted, the action of council is put on hold until the resolution of the challenge.

A Remedial Complaint is deemed filed when the stated clerk of the council with jurisdiction receives a Complaint against a lower council within its geographic bounds. On receiving the written statement of a complaint against a lower council, the stated clerk of the next higher council has the following responsibilities:

1. Record the date a complaint was received; (D-6.0301) It is best to then notify the clerk of the respondent council that you have received a complaint against their council; record the date you received from complainant a copy of the receipt for certified delivery or personal deliver signed by the responded council (D-6.0301f); specify the time line for receiving respondent committee of counsel’s answer to the complaint and for receiving the list of the record (within 45 days that the respondent council received the complaint) (D-6.0303 and D-6.0307).
2. If you receive a request for a Stay of Enforcement, transmit the Request for Stay of Enforcement along with the complaint to the moderator and the clerk of your PJC immediately. See Section on Stay of Enforcement for further advice regarding the request for a stay.
3. Receive the answer to the complaint. (D-6.0303).
4. Upon receipt of the answer to the complaint from the committee of counsel, transmit the Complaint and Answer to the Moderator and Clerk of the PJC and formally notify the parties that the case has been received by the stated clerk of the council and sent to the PJC Moderator and Clerk for their determination whether or not to accept the case based upon the preliminary questions. (D-6.0304 and D-6.0305).

5. Receive notification from the PJC officers whether or not the case has been accepted following determination of the preliminary questions. (D-6.0305, D-6.0306)
6. Notify the officers of the PJC if a challenge to the findings is made within 30 days of determination of the preliminary questions by either a party to the case or by a member of the PJC. In that event a hearing on the preliminary questions will be held before the entire PJC. (D-6.0306)
7. If the case is accepted, assign a case number and notify the parties that the case has been accepted. (D-6.0307c)
8. Receive from the clerk of the respondent body the minutes and papers pertaining to the case along with the list of the record and any requests for additional papers. (D-6.0307c)
9. Transmit the minutes and papers pertaining to the case to the PJC and send the parties an estimated date for trial. (D-6.0308)
10. Arrange for a recording of the trial with the clerk of the PJC. (D-7.0601)
11. When a decision is received from the PJC, the clerk shall report the decision to the council at the first possible opportunity and shall enter the full decision upon the minutes of the council. (D-6.0701)
12. Receive from the clerk of the PJC the record in the case and preserve it for at least 2 years. (D-7.0601e)

### **Clerk of the Complaining Body (if not an individual)**

If a complaint is being filed by a council, it must designate a committee of counsel to represent the council in the case until a final decision is reached.

1. Initiate the process for the appointment of a committee of counsel. Advice concerning the appointment of members to a committee of counsel may be one of the clerk's most important functions. It is helpful for the clerk to maintain a list of Presbyterian members experienced in litigation and acquainted with our polity as possible committee of counsel members. (D-6.0302)
2. Note that neither the clerk nor the executive may serve on a committee of counsel of that council. (D-6.0302b)



## REMEDIAL PROCESS OVERVIEW

When a council fails to take an action it has a duty to take under the PC(USA) Constitution or takes an action beyond the powers given to it under the PC(USA) Constitution, church discipline provides the means for addressing such failures or irregular actions. Church discipline, through Remedial Judicial Process, provides a means for a member of a council or a sister council (or in limited issues an employee of a council) to challenge a perceived failure or irregular action of a council. The resolution of a remedial case is by a trial conducted by the permanent judicial commission (PJC) of the next higher council. It is not permissible for a higher council to challenge a lower council using Judicial Process. If a higher council has concern that a lower council may have failed to take an action it had a duty to take or took an action beyond its powers, then the higher council may address the perceived irregularity through administrative process by using a special administrative review committee or an administrative commission.

### WHAT IS A REMEDIAL CASE

A remedial case is one in which an irregularity or a delinquency of a lower council, the General Assembly Mission Council, or an entity of the General Assembly may be corrected by a higher council. (D-2.0202)

An **irregularity** is an erroneous decision or action.

A **delinquency** is an omission or failure to act.

There are two parties in a remedial case:

The **complainant** is the party complaining against the council for either an irregularity or a delinquency.

The **respondent** is the council against whom the complaint is made.

### INITIATING A REMEDIAL COMPLAINT

The following persons and councils may complain against a particular council for alleged delinquencies or irregularities by filing a complaint with the stated clerk of the immediately higher council.

#### *Against a Session:*

- Members of the congregation may complain against their session by filing with the presbytery stated clerk. (D-6.0202b(1))
- A session may complain against another session in the same presbytery or against a session in a different presbytery. When complaining against a session, the complaint must be filed with the stated clerk of the presbytery having jurisdiction over the session being complained against. (D-6.0202a(5))

- A person who is an employee of a particular church who claims to have sustained injury or damage to person or property by the session or an entity of the session may file with the stated clerk of the presbytery. This person does not have to be a member of any Presbyterian Church (U.S.A.) congregation. (D-6.0202b(4))

### ***Against a Presbytery:***

- Sessions of congregations belonging to a presbytery may complain against their presbytery with the synod. (D-6.0202a(3))
- Enrolled ruling elders in presbytery and teaching elder members of presbytery may complain to the synod of irregularities or delinquencies of the presbytery occurring during their period of enrollment. (D-6.0202a(1))
- A presbytery may file a complaint against another presbytery with the stated clerk of the synod having jurisdiction over the presbytery being complained against. (D-6.0202a(5))
- A person who is an employee of a presbytery or an entity of a presbytery who claims to have sustained injury or damage to person or property by the presbytery or entity may complain by filing with the synod. This person does not have to be a member of any Presbyterian Church (U.S.A.) congregation. (D-6.0202a(6))

### ***Against a Synod***

- Presbyteries may complain against their synod by filing with the General Assembly. (D-6.0202a(4))
- Enrolled ruling elder and teaching elder commissioners to a synod may complain to the General Assembly of alleged irregularities or delinquencies of the synod occurring during their period of enrollment. (D-6.0202a(2))
- A synod may complain against another synod with the stated clerk of the General Assembly. (D-6.0202a(5))
- A person who is an employee of a synod or an entity of a synod who claims to have sustained injury or damage to person or property by the synod or entity may complain by filing with the General Assembly. This person does not have to be a member of any Presbyterian Church (U.S.A.) congregation. (D-6.0202a(6))

### ***Against the General Assembly Mission Council or General Assembly Entity:***

- A session, presbytery or synod may complain against the General Assembly Mission Council or an entity of the General Assembly by filing with the General Assembly stated clerk. (D-6.0202b(2))
- A person who is an employee of the General Assembly or one of its entities who claims to have sustained injury or damage to person or property by the General Assembly Mission Council or one of its employing entities may complain by filing with the General Assembly. This person does not have to be a member of any Presbyterian Church (U.S.A.) congregation. (D-6.0202b(3))

## Filing a complaint (D-6.0202a, b)

### *Of an irregularity:*

Within 90 days after the alleged irregularity has occurred, the party wishing to complain files a complaint, by certified mail or personal service, **with the stated clerk of the immediately higher council** having jurisdiction over that alleged offending council.

The complainant must also submit, at the time of filing, a certification that the respondent has received a copy of the complaint. (D-6.0301f)

### *Of a delinquency:*

Within 90 days after **the failure or refusal of the respondent council to correct the alleged delinquency at its next meeting, provided that a written request to do so has been made prior to the meeting**, the party wishing to complain files a complaint, by certified mail or personal service, **with the stated clerk of the immediately higher council** having jurisdiction over the respondent.

The complainant must also submit, at the time of filing, a certification that the respondent has received a copy of the complaint. (D-6.0301f)

### **Content of the Complaint (D-6.0301)**

The complaint should state the following (D-6.0301):

1. Name of complainant and name of respondent.
2. Date, place and circumstances of the alleged irregularity, or the particular delinquency including the date of the written request to resolve the delinquency, and the date of the next meeting at which the council failed to respond. The complaint must state clearly whether it is about an irregularity or a delinquency. (Annotation on D-6.0301 in the *Annotated Book of Order*.)
3. The reason for the complaint, stated clearly and concisely. Appropriate constitutional provisions should be noted.
4. The interest or relationship of the complainant, showing why that party has a right to file the complaint.
5. The corrective action being requested. This relief must be within the jurisdiction and authority of the PJC to grant and must be provided for in the *Book of Order*. **The corrective action granted by the PJC after a hearing on the merits, may be different from the corrective action requested in the complaint.**
6. Certification that the respondent has received a copy of the complaint. (D-6.0301f)

### ***Timeliness***

The ninety days for the complainant to file begins from the date the alleged irregularity or delinquency occurred and extends until the stated clerk receives in hand the complaint. The stated clerk may not refuse to accept the filing of a complaint. (Annotation on D-6.0305c in the *Annotated Book of Order*)

(See Forms 6 and 7 in Appendix A of the *Book of Order* for suggested wording of the complaint and certification of receipt.)

### **Stay of Enforcement (D-6.0103)**

As of July 10, 2011, comprehensive changes to the Rules of Discipline regarding the procedures for obtaining a Stay of Enforcement in Remedial cases and in Appeals became effective. There are now timelines for the complainant or appellant to file a Request for a Stay of Enforcement, for the Moderator and Clerk of the PJC with jurisdiction to review the Request for a Stay of Enforcement, and for the determination by the PJC regarding the implementation of a Stay of Enforcement or a challenge to a Stay of Enforcement.

A Stay of Enforcement is a written instruction from the permanent judicial commission having jurisdiction to hear a complaint or appeal that orders the suspension of a decision or an action until a complaint or appeal is finally determined. See II—Remedial Process—Stay of Enforcement, page II-25.

### ***Representation by Committees of Counsel (D-6.0302)***

When a council, the General Assembly Mission Council or one of its entities, becomes either a complainant or a respondent, it shall appoint at least three persons to represent that council throughout the remedial judicial process until a final decision is reached in the highest council to which the case is appealed. The method for designating a committee of counsel should be included in the council's bylaws or standing rules so that it is not necessary to call a special meeting of the council to appoint one, should a complaint be filed. It is not necessary for all members of the committee of counsel to participate in the trial. A committee of counsel may be represented by legal counsel.

### ***Answer to the Complaint (D-6.0303, D-6.0305)***

Within 45 days of receiving the complaint the respondent committee of counsel shall file with the stated clerk of the higher council a concise answer which shall:

1. admit those facts alleged in the complaint that are true;
2. deny those allegations that are not true or are mistakenly stated;
3. present other facts that may explain the situation identified as an irregularity or delinquency;
4. Address any of the preliminary questions which may support a motion to dismiss:

- Does the council have jurisdiction?
- Does the complainant have standing to file the complaint?
- Was the complaint timely filed?
- Does the complaint state a claim upon which relief can be granted?

This is the respondent's opportunity to enter facts that it hopes the PJC will consider in reaching a decision. It should be complete enough to give the PJC a picture from the respondent's perspective. The answer should never include personal attacks against the complainant. A copy of the answer must also be furnished to the complainant.

## **PRETRIAL PROCEEDINGS**

Upon receiving the complaint and the respondent's answer to the complaint, the moderator and clerk of the PJC shall examine them to determine if the preliminary questions have been answered affirmatively. They shall report their findings to all parties and other members of the PJC.

### ***Hearings on Preliminary Questions (D-6.0306)***

If a challenge is made by either party or a PJC member within thirty days after receipt of those findings, a hearing shall be held by the full PJC to settle the finding(s) in question. The parties shall be invited to submit, prior to the hearing, written briefs outlining the arguments to be presented that support or refute the findings.

If the PJC ultimately determines that any of the preliminary questions have not been answered affirmatively, it shall dismiss the case. (D-6.0306c)

The PJC may not dismiss a case if all the preliminary questions have been answered affirmatively.

### ***Pretrial Conference (D-6.0310)***

At any time after a case is received by the PJC, it may hold a pretrial conference with the parties or their counsel to:

- seek agreement on any of the disputed issues in the case,
- exchange documents and other evidence,
- take other action which might reasonably and impartially narrow the dispute and expedite its resolution.

or

- explore settlement possibilities that would resolve the dispute and avoid a trial.

The PJC moderator or another person such as a trained mediator designated by the PJC may facilitate such alternative resolutions.

### ***Right to Counsel (D-7.0301)***

Each of the parties in a remedial case may be represented by counsel during the pretrial proceedings and the trial, provided that no person shall act as counsel who is not a member of the Presbyterian Church (U.S.A). Such counsel need not be a paid representative or an attorney-at-law. (Note: D-6.0310 implies that counsel may be active prior to trial.)

### ***The Records of the Case (D-6.0307)***

Within 45 days after the receipt of the complaint, the clerk of the respondent council shall provide all parties with a list of all the papers and other materials pertaining the case. The complainant then has 15 days to request in writing that the respondent include additional papers. It is inappropriate to request materials which are not within the jurisdiction of the council or to “turn the clerk into a research assistant.”

Upon notice that the PJC will try the case, it becomes the responsibility of the respondent session clerk or stated clerk to file all the documents (listed above), including the written list and any requests for additional papers, with the stated clerk of the higher council who will transmit them to the PJC that will try the case.

The PJC may require either party to file a trial brief outlining the evidence to be presented and the theory upon which the evidence is considered to be relevant. (D-6.0309)

### **TRYING THE CASE (D-7.0400)**

Both the complainant and the respondent and/or their counsel shall have the opportunity to present their supporting arguments on why the complaint should or should not be sustained. Evidence as deemed necessary or proper, and in accordance with the rules of evidence in D-14.0000, shall be presented. If, following deliberation, the PJC determines that no irregularities or delinquencies were committed by the respondent, the complaint shall not be sustained. If the complaint is sustained either in whole or in part, the PJC shall either order such action as is appropriate or direct the lower council to conduct further proceedings in the matter.

Written decisions are promptly prepared and sent by certified delivery or personal service to all parties to the case. (D-7.0402)

## **OUTLINE AND TIMELINE OF THE REMEDIAL PROCESS**

All participants involved in a remedial case should review carefully the outline with accompanying timeline and flowchart following this overview to ensure that all matters are handled within the limits and constraints of the process.

## REMEDIAL PROCESS—OUTLINE

<b>Action</b>	<b>Timing</b>
1. Complainant writes a letter asking the council to cure a delinquency. If the council fails or refuses to correct the delinquency, a complaint may be filed with the stated clerk of the next higher council.	Within 90 days of failure or refusal to correct the delinquency
<b>OR</b>	
1. Complainant files a complaint with the stated clerk of the next higher council alleging irregularity in a decision or action. (D-6.0202a)	Within 90 days after the alleged irregularity occurred.
2. Complainant may file a stay of enforcement to halt the implementation of a decision or action until a complaint or appeal is finally determined. (D-6.0103)	Within 30 days after the action or decision.
3. The clerk of session or stated clerk advises the council (the respondent) to form a committee of counsel to defend the council. (D-6.0302)	Immediately
4. The respondent, through the committee of counsel, files a concise answer to the complaint with the stated clerk of the higher council. (D-6.0303)	Within 45 days after the filing of the complaint.
5. On receipt of the complaint and the answer to the complaint, the stated clerk of the higher council transmits them to the officers of the permanent judicial commission (PJC). (D-6.0304)	Immediately
6. The moderator and clerk of the PJC decide the preliminary questions (D-6.0305) and communicate their findings to the parties and the full PJC. If this finding is challenged by either party or a member of the PJC, a hearing on the finding at issue is held. (D-6.0306)	In a timely manner.
If any of the preliminary questions are	

<b>Action</b>	<b>Timing</b>
answered in the negative, either unchallenged or after a hearing on the issue, the case is dismissed. (D-6.0306c)	
7. A challenge to the findings may be made by either party or by a member of the PJC.	Within 30 days of receipt of findings
8. If a challenge is made to the findings, a hearing on the finding at issue is held. (D-6.0306a)	
9. The PJC notifies the stated clerk of its council that the case has been accepted. (D-6.0307c)	
10. The stated clerk of the higher council notifies the clerk of session or stated clerk of the lower council that the case has been accepted. (D-6.0307c)	
11. The clerk of the respondent body lists in writing to the parties all the papers and other material pertaining to the case. (D-6.0307a)	Within 45 days after receipt of the complaint
12. The complainant may request in writing that respondent file additional minutes or papers pertaining to the case (D-6.0307b)	Within 15 days after receipt of the list of the record.
13. The clerk of the respondent body transmits to the stated clerk of the higher council the minutes and papers pertaining to the case, along with the list of the record and any requests for additional papers which, if available shall be included. (D-6.0307c)	On receipt of notification that the case has been accepted (see 8. above), transmit the material without delay.
14. The stated clerk of the higher council transmits the minutes and papers to the PJC, and gives notice to the parties of an estimated date for trial. (D-6.0308)	Immediately upon receiving the materials.
15. The moderator and clerk of the PJC may schedule a pretrial conference with the parties to explore settlement possibilities, to seek agreement on facts and disputed issues, to	Any time after the case is accepted.



**Action**

exchange documents and other evidence, and to take other actions which may narrow the dispute and expedite its resolution. (D-6.0310)

16. The PJC may require either party to file a trial brief outlining the evidence to be produced and the theory upon which the evidence is considered to be relevant. (D-6.0309)

17. The moderator and clerk of the PJC schedule a trial.

18. Citations to appear at trial for the parties and such witnesses as either party may request are signed by the PJC moderator or clerk. (D-7.0200)

19. The trial is conducted in a neutral setting with proper decorum. The PJC is in charge of the proceedings and makes all decisions about the trial issues and proceedings. (D-7.0102)

A verbatim recording of all testimony and oral proceedings is required. (D-7.0601)

20. The trial is conducted in accordance with Chapter VII of the “Rules of Discipline.” After all evidence is presented and final statements made, the PJC meets privately to deliberate and vote on the complaint. (D-7.0402)

21. A written decision stating the judgment on each irregularity or delinquency assigned in the complaint is prepared while in session. (D-7.0402a)

22. If the complaint is sustained either in part or in full, the PJC shall either order such action as is appropriate or direct the lower council to conduct further proceedings in the matter. (D-7.0402b)

23. A signed copy of the decision is delivered to each party to the case. (D-

**Timing**

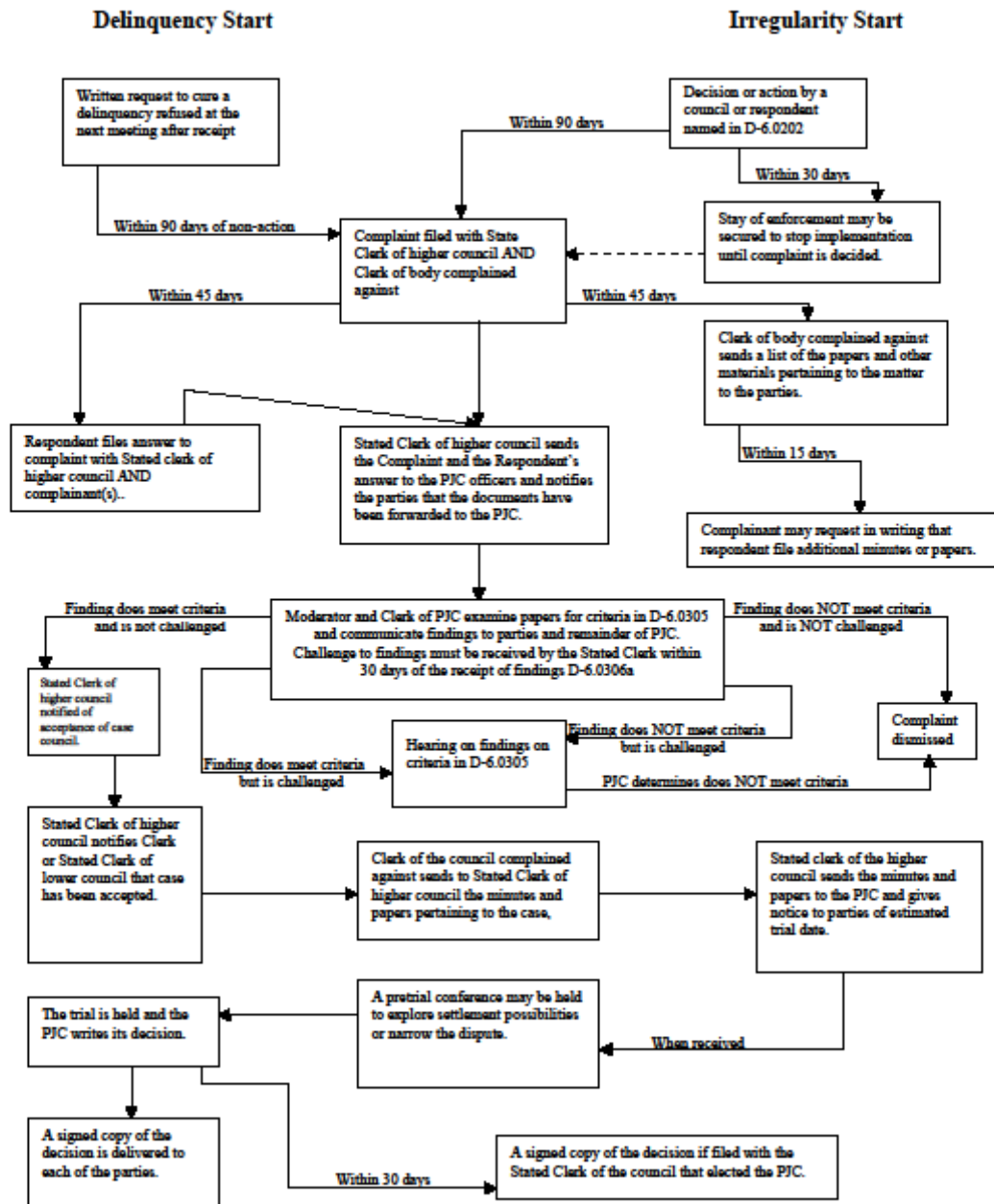
The trial may be no sooner than 30 days after any hearing resulting from a challenge to the initial finding on the preliminary questions, unless there is a compelling reason to hold the trial sooner.

Immediately

<b>Action</b>	<b>Timing</b>
7.0402c)	
24. A signed copy of the decision is delivered to the stated clerk of the council that appointed the PJC. (D-7.0402d)	Within 30 days after the conclusion of the trial.
25. Either party may appeal the decision to the PJC of the next higher council if there is a belief the decision was reached as a result of one of the errors listed in D-8.0105. (D-7.0500, D-8.0201)	Within 45 days of receipt of a copy of the decision

# FLOWCHART OF REMEDIAL PROCESS

## REMEDIAL PROCESS FLOWCHART



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## REMEDIAL PROCESS

### THE PERMANENT JUDICIAL COMMISSION'S ROLE

#### OVERVIEW

In a remedial case, the complainant is seeking to have an action of a council, which the complainant feels is either irregular or delinquent, corrected by a decision of the next higher council's permanent judicial commission (PJC). The PJC that tries the case will determine whether to sustain the complaint or not. If sustained in whole or in part, based on a preponderance of the evidence, the PJC orders whatever corrective action it decides or directs the lower council to conduct further proceedings in the matter. If the complaint is not sustained the case is dismissed.

#### *Preliminary Questions*

The moderator and clerk of the PJC have a major responsibility on receiving a complaint and the respondent's written answer to the complaint. They are to examine the papers promptly to determine if the preliminary questions of jurisdiction, standing, timeliness and states a claim upon which relief can be granted can be answered affirmatively. (D-6.0305)

1. Jurisdiction: Has the complaint been filed with the appropriate higher council? (i.e., If the complaint is against a presbytery, is the presbytery a member of the synod in which the complaint was filed?) Presbyteries have jurisdiction over all the sessions within their membership, synods have jurisdiction over all the presbyteries within their membership. When a council complains against another council of the same level, the complaint must be filed with the immediately higher council to which the respondent council is subject. (D-3.0000)
2. Standing: Does the person or council have a right to complain against the particular respondent council? Are/were persons properly enrolled in the council when the delinquency or irregularity occurred? Is the complainant council at the same or lower level than the respondent council? (D-6.0202a, b)
3. Timeliness: Has the complaint been filed within the allowed 90 days following the occurrence of the alleged irregularity or within the allowed 90 days after the failure of the council to cure a delinquency? A previous decision by the General Assembly PJC has determined that "To file" is interpreted to mean "in the hands of ..." Therefore, the ninety days for the complainant to file begins on the date the alleged irregularity or delinquency occurred and extends until the stated clerk receives in hand the complaint. Postmarked dates are not determinative. The stated clerk may not refuse to accept the filing of a complaint. (D-6.0202a,b)
4. States a claim upon which relief can be granted: Is the corrective action that the complainant is asking the PJC to provide within the jurisdiction and authority of the commission to grant and is it consistent with the provisions of the *Book of Order*? Does the complaint state clearly whether it is about an irregularity or delinquency, and does the

remedy request the appropriate relief? Whatever corrective action the PJC might order must be within its authority as the representative of a specific council and consistent with the Constitution. The corrective action ordered by the PJC, if the complaint is upheld, may or may not be the same as the relief requested in the complaint. (D-7.0402b)

This is often the most difficult of the preliminary questions to determine if answered affirmatively. It should be answered without consideration of the merits of the case. (See the annotations of D-6.0305d in the *Annotated Book of Order* for assistance in clarifying this question.)

*Note:* Sometimes the preliminary questions are referred to as “threshold issues” or “jurisdictional questions.”

The PJC moderator and clerk shall then report their findings to all parties and the other members of the PJC, allowing thirty days for challenges to their findings. In the event there is a challenge, a hearing shall be held by the full PJC to settle the finding(s) in question. The parties shall be invited to submit, prior to the hearing, written briefs outlining the arguments that support or refute the finding(s). (D-6.0306a, b)

If the PJC ultimately determines that any of the preliminary questions have not been answered affirmatively, it shall dismiss the case. (D-6.0306c)

The PJC may not dismiss a case if all the preliminary questions have been answered affirmatively.

### ***Pretrial Conference (D-6.0310)***

Although discretionary, it may be helpful for the PJC, at any time after it has received a case, to hold a pretrial conference with the parties or their counsel to:

- seek agreement on any of the disputed issues in the case,
- exchange documents and other evidence,
- take other action which might reasonably and impartially narrow the dispute and expedite its resolution.

or

- explore settlement possibilities that would resolve the dispute and avoid a trial. The PJC moderator or another person such as a trained mediator may facilitate such alternative resolutions.

### ***Constitutional Interpretation Issues***

In many cases, an interpretation of the Constitution is at issue. Parties have included in their briefs arguments about the Constitution’s meaning and application. Some considerations for the PJC hearing the case are:

1. Have the parties omitted relevant provisions?
2. Do the provisions cited really apply to this case?

3. Has General Assembly's PJC or the General Assembly itself given an interpretation of the provisions?
4. What do the grammar and punctuation of the provision imply as to its meaning?

## **ORGANIZATIONAL AND PROCEDURAL CHALLENGES**

### ***Maintaining Neutrality***

It is important that members of the PJC avoid all possible appearances of bias or prejudice when trying a case, and limit deliberations to only those facts that are presented in the records, presentations, and testimony during trial. No materials of any kind, from any party to the case or from any other person, regarding the case should be considered by a commission member. Only the records provided by the stated clerk, the moderator and clerk of the PJC, or during the trial should be considered. (D-7.0302) Ex parte information which includes informal conversations concerning the case with anyone other than PJC members during the trial deliberation, is to be avoided.

Furthermore, a member of the PJC is disqualified from participating in a case if the member is personally interested (involved) in the case, is related by blood or marriage to any party, or has been active for or against any party. (D-7.0401b[1]). Church or council membership may also serve to disqualify a PJC member if that person's membership is in the church, lower council or another church in that council which is party to the case. (D-5.0205)

### ***Procedural Challenges***

It is not uncommon for both parties or their counsel to make challenges during the proceedings of a trial. Since there are few grounds for challenges mentioned in the "Rules of Discipline" (ROD), and even less guidance as to how these challenges should be answered by the PJC through its moderator, the PJC clerk may decide to identify all challenges in the minutes of the PJC, including an explanation for its ruling. This documentation may be helpful if such a ruling is challenged on appeal. (D-7.0303a; D-7.0401c)

The complainant is permitted to amend the complaint at the time of the trial, provided that the amendment does not change the substance of the complaint or prejudice the respondent. (D-7.0401d)

## **CONDUCTING THE TRIAL OF A REMEDIAL CASE**

### ***Setting:***

Trials should be conducted in a neutral setting with proper decorum. A neutral setting is one which would have no real or perceived advantage or disadvantage to any party. (D-7.0102)

### ***Open or Closed Proceedings:***

Except during deliberations, trials are ordinarily open. However, at the request of any party, or on its own initiative, the PJC may, at any stage of the proceedings, by a vote of the members present, decide to remove any person to the end that proper dignity and decorum shall be

maintained. (D-7.0303) It should be noted, however, that a removal of the parties or their counsel could create a problem. (D-11.0306 is specific that in a trial in a disciplinary case, the parties and their counsel may not be excluded.) Closing proceedings to some persons does not require closing it to all persons. This means it is not an all or nothing closing of the trial. Certainly a PJC may choose to close the proceedings to the press.

The General Assembly Permanent Judicial Commission has stated that the written decision in cases where proceedings have been closed must include the rationale for the closing.

At the discretion of the PJC, witnesses may be excluded during the examination of other witnesses. Unless otherwise determined by the PJC, witnesses may remain once they have completed their testimony.

### ***The Moderator begins the trial by (D-7.0401)***

- reading the first two paragraphs of Preamble to ROD;
- enjoining the members to “recollect ... their high character as judges of a council of the Church of Jesus Christ and the solemn duties they are about to undertake” (D-7.0401a);
- offering opportunity for either party to challenge the organization and jurisdiction of the PJC, which, if it occurs, shall be determined by the rest of the PJC;
- explaining the procedure of the trial, including the order for presentations, examining and cross-examining witnesses, etc.
- opening the trial with prayer.

### ***Presentations by the Parties***

The Parties shall be given the opportunity to make both opening and final statements. In the final statement, the complainant has the right of opening and closing the argument. (D-7.0401 e, h)

Presentations by the complainant and respondent should focus on the significant points they want the PJC to consider.

### ***Evidence***

Evidence shall be presented and witnesses examined in accordance with the provisions of Chapter XIV of the ROD “Evidence in Remedial or Disciplinary Cases.” These are the only rules of evidence that are required in judicial process.

All questions concerning the credibility of a witness or the admissibility of evidence are determined by the PJC at the time such testimony or evidence is offered.

- Credibility means the degree of belief that may be given to the testimony of a witness. The PJC may consider any matter that bears on the accuracy or truthfulness of the testimony in determining a witness’s credibility. (D-14.0205)
- The PJC should analyze proposed evidence on the basis of its reliability, its relevance, and its integrity.



1. The PJC needs to decide questions about the sources of evidence and may need to exclude evidence if obtained by unethical or illegal means. (See *Presbytery of Central Florida v. Herrero, Minutes*, 1995, Part I, p.132)
2. The PJC should consider whether the admission of the evidence obtained illegally violates the ROD, “to honor God ... [and] correct ... wrongdoing.” (D-1.0101)
3. Evidence obtained in a questionable manner may denigrate the moral leadership the church should be exhibiting.

#### **Guidelines for Admission of Evidence**

1. “No distinction should be made between direct and circumstantial evidence as to the degree of proof required.” (D-14.0101)
2. The ROD provide little guidance about admissibility of evidence, but PJCs should not apply some secular standard by default. Rather the PJC should apply rules of evidence in the “spirit” of the Preamble to the ROD.

#### **Hearsay evidence**

1. Hearsay evidence is evidence that is essentially second-hand information. Because the person giving it (or the document purporting something) is not the original speaker or writer that person is not available to verify or dispute what is said. It is usually excluded in secular courts largely because it is thought to be unreliable (unverifiable), not because it is not true. The ROD do not specifically prohibit hearsay evidence. Therefore, it may be admitted, if a PJC decides to do so. In making that determination, there are at least three approaches that a PJC may take, all of which are permissible under the ROD:
  - a. to hold it as unreliable and not admissible;
  - b. to exclude all hearsay evidence unless an exception applies. If this choice is made, before trial, the PJC should determine and announce what its exceptions will be;
  - c. to allow hearsay evidence and let each PJC member factor the weight of this evidence when the decision is being made.

#### **Testimony by deposition**

1. Section D-14.0304 describes the process for taking testimony in the form of a deposition.
2. Depositions are generally only used for those witnesses who are unable to be present at the trial.
3. The 214th General Assembly (2002) approved the following authoritative interpretation of the Constitution: “The session or permanent judicial commission conducting a case has the sole power and discretion to allow depositions or to decline to enable them. There is not a free, unlimited opportunity for parties in a case to conduct depositions of any and all potential witnesses. Weighing fairness, expense, legitimacy, validity, and practicality the session or commission may or may not exercise its power to appoint persons to take and record testimony. The party making application for depositions to be held may be required to show the necessity of recording testimony in this form.” (*Minutes*, 2002, Part I, p. 300)

**Electronic evidence**

1. ***Tape recording.*** Tape recordings as evidence are subject to all the criteria of valid evidence: how obtained, etc. Many PJCs have established policies that require transcripts to be presented as evidence rather than listening to a tape which may or may not be of sufficient quality for all members of the commission to hear adequately.
2. ***Video recording.*** Video recordings as evidence are subject to all the criteria of valid evidence. If a video is accepted as evidence, it must be possible for all members of the PJC as well as the parties to view it at the same time. This will usually require several monitors of adequate size.
3. ***Computer images and e-mail correspondence.*** Where possible, printed copies of the purported evidence should be used rather than an electronic file or computer itself. All such evidence is subject to all the criteria of valid evidence.

***PJC Members Asking Questions During the Trial***

Members of the PJC may ask questions of both parties and witnesses, usually after their presentations have been made. This is not a time to argue with one or both parties. It is not a time to ask for new evidence. It is a time to make sure PJC members understand the arguments being presented.

***Deliberations and Decisions***

Immediately following the public portion of the proceeding, the PJC meets privately to deliberate the complaint and issues raised in the trial. After careful deliberation, the commission votes on each irregularity or delinquency raised in the complaint and records the vote on each in its minutes. No complaint in a remedial case shall be sustained unless it has been proved by a preponderance of the evidence. Preponderance means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. (D-7.0402a)

If the complaint is sustained either in whole or in part, the PJC shall either order such action as is appropriate or direct the lower council to conduct further proceedings in the matter. (D-7.0402b)

***Writing the Decision***

A small group of PJC members may be assigned to draft the initial decision that is then revised, refined and adopted by vote of all PJC members sitting for this trial while in session. Sufficient time must be allowed to complete the entire process. Support services such as secretarial services can be especially helpful during this phase of the proceedings. Persons providing such services should not be present for discussion and voting by the PJC, but should have access to word processing and printing to provide the PJC with drafts and revisions as it does its work. (D-7.0402c)

Although an explanation of the PJC decision does not have to be included, such an explanation could be helpful to the parties in understanding the decision, important in the consideration of any appeal to a higher PJC, and provide historic or procedural value in future cases.

See the sample forms for a written decision and certification of delivery (Note: Pages II-31 and II-33 of hard copy).

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## **REMEDIAL PROCESS STAY OF ENFORCEMENT (D-6.0103)**

The action of a council or certain General Assembly entities (D-6.0202b), or the decision of the permanent judicial commission (PJC) of a council may be suspended by a stay of enforcement.

### **A Stay of Enforcement Defined**

A stay of enforcement is a written instruction from the permanent judicial commission having jurisdiction that orders the suspension of an action or decision until a complaint or appeal is finally determined. D-6.0103.

### **Facts Concerning a Stay of Enforcement**

The following is a list of some of the facts concerning a stay of enforcement.

1. A stay of enforcement applies to remedial cases.
2. Any person or council with standing to file a complaint or remedial appeal may request a stay of enforcement of a decision or action by completing the necessary steps.
3. A request for a stay of enforcement must be filed within 30 days after the alleged irregular action of the council or the remedial decision of a PJC being appealed.
4. There are several ways to secure a stay of enforcement outlined in D-6.0103.
5. The stay of enforcement is effective until the time for filing a complaint or notice of appeal has expired or, if timely filed, until the decision of the PJC having jurisdiction over the case.
6. The respondent may challenge a stay of enforcement with the PJC and has the right to a hearing on the appropriateness of the stay of enforcement.

### **Obtaining the Stay of Enforcement**

The process for seeking a stay of enforcement varies depending upon whether the action was taken by the council itself, or by its permanent judicial commission. If the action was taken by the council, there are two options available, seeking signatures of one-third of those members present when the action was taken, or seeking the requisite number of signatures from the members of the permanent judicial commission that will hear the complaint or appeal. If the action was taken by a permanent judicial commission, there are also two options available, seeking the signatures of one-third of the members of the permanent judicial commission that decided the case, or seeking the signatures of at least three members of the permanent judicial commission having jurisdiction to hear the complaint or appeal.

- 1. The action of a council may be stayed with the concurrence of the council that made the decision. D-6.0103a (1)**

This is achieved by gathering the signatures of one third of the members of the council recorded as present when the decision or action was made by the council. These signatures requesting a stay of enforcement must be filed concurrently with a remedial complaint signed by an entity or person(s) who have standing to file the complaint no later than 30 days after the complained about decision or action taken by the council.

The complaint and the request along with the requisite signatures must be filed with the stated clerk of the council whose permanent judicial commission has jurisdiction to hear the case. The clerk of the council whose action is sought to be stayed should verify that the requisite number of signatures have been obtained from members recorded as present (one third of the members recorded as present) when the action was taken. The clerk of the PJC with jurisdiction should verify that the complaint and signatures have been received within 30 days of the action by the lower council and should send the complaint and the request for a stay of enforcement along with the signatures and verification to the Moderator and Clerk of the PJC promptly by the most expeditious means available.

The Moderator and the Clerk of the PJC with jurisdiction will determine whether the complaint meets the preliminary questions in D-6.0305 and whether the request is complete and timely including validation of the signatures and intent of those who signed the request for a stay of enforcement. The Moderator and the Clerk of the PJC with jurisdiction will report their findings to the PJC and the parties within 7 days of receiving the request and may enter a Stay of Enforcement within 10 days of their finding on the preliminary issues if they determine that the request is complete and timely.

The stated clerk of the PJC with jurisdiction will send a copy of the stay of enforcement to the parties and to the permanent judicial commission members.

The stay of enforcement is effective until the final decision of the PJC having jurisdiction.

**2. The decision of a permanent judicial commission in a remedial case may be stayed with the signatures of at least one third of the members of the permanent judicial commission who decided the case. D-6.0103a(2)**

This is achieved by gathering the signatures of one third of the members of the PJC that decided the remedial case. These signatures requesting a stay of enforcement must be filed concurrently with a remedial appeal no later than 30 days after the appealed decision made by the PJC.

The appeal and the request for a stay along with the requisite signatures must be filed with the stated clerk of the council whose permanent judicial commission has jurisdiction to hear the case. The stated clerk of the PJC whose decision is sought to be stayed should verify that the requisite number of signatures (one third of the members of the PJC present when the decision was made) have been obtained. The clerk of the PJC with jurisdiction should verify that the appeal and signatures have been received within 30 days of the decision of the lower PJC and should send the appeal and the request for a stay of enforcement along with the signatures and verification to the Moderator and Clerk of the PJC promptly by the most expeditious means available.

The Moderator and the Clerk of the PJC with jurisdiction will determine whether the appeal meets the preliminary questions in D-8.0301 and whether the request is complete and timely including validation of the signatures and intent of those who signed the request for a stay of enforcement. The Moderator and the Clerk of the PJC with jurisdiction will report their findings to the PJC and the parties within 7 days of receiving the request and may enter a Stay of Enforcement within 10 days of their finding on the preliminary issues if they determine that the request is complete and timely.

The stated clerk of the PJC with jurisdiction will send a copy of the stay of enforcement to the parties and to the permanent judicial commission members.

The stay of enforcement is effective until the final decision of the PJC having jurisdiction over the appeal.

**3. The action of a council or the decision of a permanent judicial commission may be stayed by securing the signatures and certification of three of the members of the permanent judicial commission having jurisdiction to hear the remedial complaint or appeal. D-6.0103d(2)**

The request for a stay of enforcement must be filed simultaneous with a complaint or a notice of appeal with the Stated Clerk of the council whose PJC has jurisdiction to hear the case no later than 30 days after the alleged irregular action of the council or the remedial decision of a PJC being appealed.

The clerk of the council with jurisdiction should verify that the complaint or appeal and request has been received within 30 days of the action of the lower council or decision of the lower PJC and should send the complaint or notice of appeal, and request for a stay of enforcement to the Moderator and Clerk of the PJC promptly by the most expeditious means available.

The Moderator and the Clerk of the PJC with jurisdiction will determine whether the complaint or the appeal meets the preliminary questions in D-6.0301 or D-8.0301 and whether the request is complete and timely. The Moderator and the Clerk of the PJC with jurisdiction will report their findings to the PJC and the parties within 7 days of receiving the request.

The members of the permanent judicial commission that has jurisdiction must determine two items before they may sign the stay:

- a. The member must certify that in his/her judgment probable grounds exist for finding the decision or action erroneous. This is difficult because the PJC member will only have the complaint or notice of appeal. The response of the committee of counsel of respondent will not yet be available.
- b. The member must certify that in his/her judgment, the complainants or appellants will suffer substantial harm if the decision or action is not stayed. There will be no opportunity for an answer or challenge from the responding council prior to the initial signatory decision by the members, making it difficult to weigh harm to the complainants versus harm to the responding council.

- c. Each PJC member will include a summary of the specific council action or decision being stayed.

If three members of the PJC certify that in their judgment probable grounds exist for finding the decision or action erroneous and that the requesting entity will suffer substantial harm if the decision or action is not stayed and return those certifications to the stated clerk within 10 days of the receiving the moderator and clerk's findings on the preliminary questions, the stated clerk should notify the parties that a stay has been entered (secured).

See Revised Forms 3, 4, 5 and 5A in the Appendix A of the *Book of Order*.

#### **Effect of the Stay of Enforcement**

The body whose action or decision is stayed must comply with the stay or face further judicial action.

#### **Objection to the Stay of Enforcement**

The respondent/appellee may file, with the PJC of the body that has jurisdiction to try the complaint or hear the appeal, an objection to the stay of enforcement within 45 days, and thereby secure a hearing on the matter of the stay.

1. No fewer than three members of the PJC hearing the case shall conduct a hearing on the matters related to the stay;
2. At the hearing, the stay may be modified, terminated, or continued until the decision on the merits of the case is made by the PJC.
3. The members of the PJC conducting the hearing are not automatically disqualified from deciding the case when it comes to trial/hearing, but are subject to challenge as is any member of the PJC.



## **REMEDIAL PROCESS**

### **TRAINING A PERMANENT JUDICIAL COMMISSION**

The person ordinarily responsible for completing or arranging the training of a permanent judicial commission (PJC) is the stated clerk of the council. The stated clerk may also invite others with experience in judicial process within the Presbyterian Church (U.S.A.), including other clerks, or the staff of the Office of the General Assembly, Department of Constitutional Services, to assist with the training.

Prepare for the training by reading carefully all the material in this chapter of the Guide for Judicial Process as well as Chapters VI and VII of the “Rules of Discipline” (ROD). If this is the first meeting of a new PJC, it will be important to present the information in D-5.0200 for the benefit of the new members. Have copies of the *Book of Order* available for each member. You may also wish to copy relevant sections concerning remedial process from the *Annotated Book of Order* for use during the training. The following outline may assist you in determining what material should be covered.

1. Begin with the Preamble (Chapter I) of the ROD.
2. Distribute copies of the pages from this Guide entitled “Remedial Process: Overview” and review them as a way of assisting the members of the PJC to understand the remedial process. Of particular importance to the PJC are the sections on “Stay of Enforcement” and “Pretrial Proceedings.”
3. Distribute “Remedial Process: Outline” and “Remedial Process: Flowchart of Process.” Use these handouts to reinforce the sequence and importance of following the required time limits.
4. Distribute the handout from this Guide that is titled “Remedial Process: The Permanent Judicial Commission’s Role.”
  - Spend some time on “Preliminary Questions” and refer to the Annotated Book of Order in regard to D-6.0305, Examination of the Questions.
  - Make certain that the PJC understands the difference between a hearing on the preliminary questions and the pretrial conference.
  - Highlight the section on evidence, and remind PJC members that rules of evidence which attorneys may be familiar with from civil or criminal procedures do not apply.
  - Stress the importance of maintaining neutrality, and explain that the participation of any member of the PJC can be challenged. PJC members should avoid discussion of the case and should not receive information or materials related to the case, except those that are the records provided by the stated clerk or the moderator or clerk of the PJC.

- Reinforce the requirement that the decision must be written and adopted by the PJC while it is still in session.
5. Emphasize that the rules which apply to judicial process in the church are to be found in the *Book of Order*, particularly in the ROD. Some members of the PJC may bring a background from the legal profession and will be inclined to assume that those rules apply. They do not. A remedial trial is an ecclesiastical process.
  6. Remind the PJC that it has the right and responsibility to control the conduct of the trial.
  7. Discuss the meaning and significance of making a decision on the preponderance of the evidence, using the definition in D-7.0402.
  8. Discuss the difference between ordering “such action as is appropriate” and directing “the lower council to conduct further proceedings in the matter.”
  9. After a time of training, you may find it helpful to use “PJC Training #1” and “PJC Training #2” found in Chapter V of this Guide. (See pages V-13 to V-18.) Use “PJC Training #1” as a quiz on judicial terminology. The answer guide follows. “PJC Training #2” deals with understanding the preliminary questions, and has suggested answers. (“PJC Training #3” and “PJC Training #5” deal with disciplinary cases. “PJC Training #4” is a listing of potential subjects for inclusion in training.)
  10. Remind the PJC that the stated clerk should be considered an advisor on process issues, and will serve as a resource person during the trial. The stated clerk is normally present during the trial up to the point of deliberation.

**REMEDIAL PROCESS—SAMPLE DECISION FORMAT**

THE PERMANENT JUDICIAL COMMISSION  
*of*  
THE PRESBYTERY/SYNOD OF \_\_\_\_\_  
*of*  
THE PRESBYTERIAN CHURCH (U.S.A.)

\_\_\_\_\_  
DECISION  
\_\_\_\_\_

[Name(s)], )  
Complainant(s) )  
 )  
v. ) [case number]  
 )  
[Name(s)], )  
Respondent )

----- [ ARRIVAL STATEMENT ] -----

This is a remedial case which has come before this Permanent Judicial Commission as a result of a complaint filed by the above named complainant(s) against the Presbytery of \_\_\_\_\_, respondent.

--- [ JURISDICTION STATEMENT, see D-6.0305 ] ---

The Permanent Judicial Commission finds that it has jurisdiction, that the complainant has standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted.

----- PRELIMINARY DECISIONS-----

---[ If proceedings were closed to any persons, state reasons. If not, eliminate this section.] ---

----- HISTORY -----

---[ text of the history ] ---

----- SPECIFIC IRREGULARITIES OR DELINQUENCIES -----

---- [state the alleged irregularities or delinquencies and the PJC's decision to sustain or not ] ----

----- ORDER -----

IT IS THEREFORE ORDERED that:  
---- [state what is to be done and who is to do it] ----

IT IS FURTHER ORDERED that the Stated Clerk of (the Presbytery of \_\_\_\_\_) report this Decision to the (Presbytery) at its first meeting, that the (Presbytery) enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Synod. (D-7.0701)

----- [ ABSENCES AND NON-PARTICIPANTS ] -----

[name(s)], (a) member(s) of the Permanent Judicial Commission, (was)(were) present for argument of the complaint, but took no part in the decision

OR

[name(s)], (a) member(s) of the Permanent Judicial Commission, (was)(were) not present and took no part in the proceedings.

----- [ DATE ] -----

Dated this \_\_\_\_\_ day of \_\_\_\_\_ , \_\_\_\_\_  
day month year

[signed] \_\_\_\_\_  
[name]  
Moderator, Permanent Judicial Commission

[signed] \_\_\_\_\_  
[name]  
Clerk, Permanent Judicial Commission

# REMEDIAL PROCESS SAMPLE CERTIFICATION AND TRANSMITTAL FORM

## CERTIFICATES

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Presbytery/Synod of \_\_\_\_\_, Presbyterian Church (U.S.A.), in Remedial Case No. \_\_\_\_\_, \_\_\_\_\_ v. \_\_\_\_\_, made and announced at \_\_\_\_\_ [place], on \_\_\_\_\_ [date].

\_\_\_\_\_  
[typed name], Permanent Judicial Commission of the  
Moderator, Presbytery/Synod of  
\_\_\_\_\_

\_\_\_\_\_  
[ typed name ], Permanent Judicial Commission of the  
Clerk, Presbytery/Synod of  
\_\_\_\_\_

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, depositing it in the United States mail at

\_\_\_\_\_ [place] on \_\_\_\_\_ [date]:

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Presbytery/Synod of \_\_\_\_\_, Presbyterian Church (U.S.A.), by delivering it in person, on \_\_\_\_\_ [date].

\_\_\_\_\_  
[ typed name ], Permanent Judicial Commission of the

Clerk, Presbytery/Synod of

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## CHAPTER III—DISCIPLINARY PROCESS

### ROLE OF THE CLERK

Upon receiving a written statement of accusation(s) against a member of the Presbytery, the stated clerk has the following responsibilities.

*If the alleged offense is sexual abuse of a person under the age of eighteen, or a person alleged to lack the mental capacity to consent:*

1. Immediately communicate the allegation to the moderator of the permanent judicial commission (PJC)

*If the allegation is any other type of offense:*

1. Notify the presbytery, but **do not** name the accused or specify the nature of the offense (D-10.0103)

- 1a. Notify the presbytery, but **do not** name the accused or specify the nature of the offense. (D-10.0103)

2. When a clerk of session or stated clerk of a presbytery receives a written statement of an alleged offense from a person who is not a member of the PC(USA), the clerk or stated clerk becomes “a member of a council receiving information from any source that an offense may have occurred which should be investigated for the purpose of discipline.” (D-10.0102b) If the clerk or stated clerk determines that the statement contains sufficient information to allow investigation and to suggest that an offense has been committed, an investigating committee (IC) must be created to handle the statement of alleged offense. (See Authoritative Interpretation—*Minutes*, 2004, Part I, pp. 82, 300, Item 04-07.)
3. Give advice concerning the make-up of an investigating committee (IC) since, at this point, only the clerk knows the identity of the accused. It is best to name at least four or five members to an IC. The Clerk **may not** serve on an IC nor should the presbytery executive. It is beneficial for the clerk to maintain a list of Presbyterian attorneys experienced in litigation and acquainted with Presbyterian polity as possible IC members. If charges are to be filed, the IC must appoint one or more of its members to be the prosecuting committee (PC). The PC may wish to have an attorney among its members. (D-10.0201a; D-10.0202i)
4. The presbytery should establish a rule that specifies the appointment of an IC, in order to avoid having to call a special meeting for this purpose. A statement in the presbytery standing rules or bylaws that specifies the appointment of the IC, in consultation with the stated clerk, is all that is required. (D-10.0201b)
5. Without further inquiry, refer the statement of accusation to the appointed IC.
6. Be available to the accuser and the accused to help interpret the “Rules of Discipline” (ROD) and to explain and answer questions concerning the process.

The clerk cannot promise anonymity to the accused or the accuser(s), but can indicate that matters will be handled discretely. (See Chapter III, pages III-11 and III-15 in hard copy.)

7. Familiarize the IC with its duties, responsibilities, and time limits. Advise it regarding fair procedures and due process. Emphasize the need for confidentiality in its work. Confidentiality means not talking about the case with anyone who doesn't have a need to know.

If necessary, arrange with a neighboring stated clerk or person experienced in judicial process to provide training for the IC and permanent judicial commission (PJC). The stated clerk may arrange with the Office of the General Assembly's Constitutional Services to assist in this training.

8. If applicable, be familiar with any sexual misconduct policy adopted by the council and advise various parties of its provisions. **Do not engage in any personal counseling with any of the parties.** In some cases, this may mean notifying a Misconduct Response Team, if your policy provides for one, to begin its work.
9. Maintain confidentiality. Those who may have a "need to know" might include:
  - a. Response Team Coordinator;
  - b. Any presbytery or church requesting transfer of the accused;
  - c. The clerk of another council if accusations come from outside the council of membership, or the clerk of a higher council if reference is being considered;
  - d. The session, if the accused is a teaching elder serving that congregation.
  - e. Entities of the presbytery dealing with pastoral relations or congregational health.
10. Receive the report of the IC and report to the council that:
  - a. An IC has completed work and that no charges will be filed, or
  - b. Charges have been filed and transmitted to the moderator or clerk of the PJC (or Session). Do not name the Accused person. (Refer to the accused as "*Minister X*" or as "*Elder X*").
11. If no charges are filed, the clerk should retain the records of the IC in accordance with the council's policy. (Three years is a suggested time frame).



## **DISCIPLINARY PROCESS—OVERVIEW**

A disciplinary case involves a person who is a member of the Presbyterian Church (U.S.A.) [PC(USA)], who may be censured if found guilty of committing an offense. An offense is an act or omission that is contrary to the Scriptures or The Constitution of the Presbyterian Church (U.S.A.).

### **Jurisdiction**

A council has the responsibility for discipline of its membership. This means that church members, ruling elders, and deacons accused of an offense would usually be tried by the session of the church of which they are a member. Teaching elders accused of an offense would usually be tried by the permanent judicial commission (PJC) of the presbytery of which they are a member. (D-3.0101a and b)

The exceptions to the general rule are:

1. The presbytery has jurisdiction in a disciplinary case involving ruling elders commissioned to particular pastoral service in that presbytery even though the ruling elder commissioned to particular pastoral service is still a member of a local church. (D-3.0101b(1))
2. A teaching elder engaged in work within the bounds of a presbytery other than the presbytery of membership, whether or not that work is under the jurisdiction of the other presbytery, submits to the presbytery where the work is located for the purpose of discipline. This does not apply to teaching elders serving in validated ministries “in other service of this church.” (D-3.0101b(2))
3. A session, presbytery PJC, or synod PJC may, under certain circumstances, request the next higher council to try and decide a case. (D-4.0000)

### **How to Make an Accusation**

The judicial process for a disciplinary case is begun by filing a statement of alleged offense together with any supporting information with the clerk of the council having jurisdiction over the person being accused. The statement should give a clear narrative of the alleged offense and the alleged facts to support the accusation. (D-10.0101) See Forms 26 and 27 in Appendix A of the *Book of Order*.

### **What Happens Next**

If the alleged offense is sexual abuse of a person under the age of eighteen, or of a person alleged to lack the mental capacity to consent, the stated clerk shall immediately communicate the allegation to the moderator of the PJC who shall, within three days, designate two members or former members whose terms have expired within the past six years to determine whether the accused shall be placed on a paid administrative leave. (D-10.0106)

The clerk will arrange for the council to designate an investigating committee (IC) of 3 to 5 persons to inquire into the matter and determine whether charges will be filed. (D-10.0103; D-10.0201a)

### **Time Limits**

In non-sexual abuse cases, the investigating committee must report within one year of its formation, except that no charges can be filed later than three years after the alleged offense occurred. If the alleged offense is the sexual abuse of another person, the only time limit is the requirement that the IC report within one year of its formation. (D-10.0401)

In those situations where civil proceedings have begun, an IC may request of the session or PJC and receive an extension of its time for filing charges of up to six months from the conclusion of such civil proceedings. (D10.0401.a)

### **Safeguards**

The “Rules of Discipline” (ROD) contain provisions for reviewing the actions of the IC. As a safeguard to the process, both the accuser and the accused have means to ask for a review. (D-10.0204; D-10.0303)

### **Charges**

If the final decision, after the accuser’s request for a review, is not to file charges, the matter is concluded. If charges are going to be filed, there may be an opportunity to seek an alternative solution to holding a trial. (D-10.0202g, D-10.0302, D-10.0405b[4])

### **Resolution**

The session or the PJC, according to the rules of jurisdiction, will conduct a trial, or will review and approve any alternative resolution reached by agreement among the parties. (D-11.0000, D-10.0202h(2)(3))

If the accused is found not guilty, the matter is concluded. If the accused is found guilty or pleads guilty, the session or PJC will determine the degree of censure to be imposed. (D-11.0403e)

### **Censure**

There are four degrees of censure: rebuke, rebuke with supervised rehabilitation, temporary exclusion from the exercise of ordered ministry or membership, and removal from ordered ministry or membership. (D-12.0000) See Chapter III, page III-51 of this Guide.

### **Appeal**

A person found guilty of an offense may file an appeal of the decision as described in the ROD, Chapter XIII.

### **Details of a Disciplinary Case**

ROD Chapters X, XI, XII, and XIII contain the details of the disciplinary case process.

## **Outline and Timeline of the Disciplinary Process**

All participants involved in a disciplinary case should review carefully the outline with accompanying timeline and flowchart following this overview to ensure that all matters are handled within the limits and constraints of the process.

For an Outline of the Disciplinary Process for Presbytery, see Chapter III, page III-7 of this Guide.

For an Outline of the Disciplinary Process for the Session, see Chapter VI, page VI-5 of this Guide.

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## **DISCIPLINARY PROCESS—OUTLINE FOR PRESBYTERY**

<b>Action</b>	<b>Timing</b>
1. A written statement of alleged offense with supporting information is filed with the stated clerk. (D-10.0101)	As soon as possible after the offense has been committed
2. If the written statement alleges sexual abuse of a minor or a person lacking the mental capacity to consent, the stated clerk communicates the allegation to the PJC (D-10.0106)	Immediately upon receipt of written statement.
3. The PJC moderator appoints two members or former members to determine whether the accused should be placed on paid administrative leave. (D-10.0106a)	Within three days of receipt of allegations from stated clerk.
4. The two-member panel give the accused an opportunity to be heard and determines whether to place the accused on administrative leave. (D.10.0106a)	No time limit is stated, but prompt action is clearly required.
5. The stated clerk reports to presbytery that an offense has been alleged without naming the accused or the nature of the offense, and an investigating committee (IC) is established. Presbytery may provide by rule for appointment of an IC (D-10.0103 and D-10.0201)	As soon as possible after the stated clerk has received the statement of accusation.
6. The IC provides the accused with a copy of the statement of alleged offense. (D-10.0202a)	Immediately upon formation.
7. The IC provides the person making the accusation with a statement of the investigating committee's procedures. (D-10.0202b)	Immediately upon formation
8. The IC makes a thorough inquiry into the facts and circumstances of the alleged offense. (D-10.0202c–e)	
9. During the course of the investigation, the accused may petition the permanent judicial commission (PJC) to review the procedures of the IC. Two members of the PJC shall conduct a hearing to carryout this review. (D-10.0204)	The hearing must be held within 30 days of receipt of the petition.

<b>Action</b>	<b>Timing</b>
With the written consent of parties, former members of the PJC could be used.	
10. Decisions resulting from this review are communicated to both parties, and are also communicated to the moderator of the PJC as input to the pretrial conference. (D-10.0204)	Within 15 days of the hearing.
11. If there are civil proceedings, the IC may request and be granted an extension of up to six months beyond the end of the civil proceedings. (D-10.0401a)	The IC must report within 1 year of its formation as long as it is within three years after the alleged offense occurred. (If the alleged offense is sexual abuse of another person, only the one year limit applies.
12. The IC decides if there are probable grounds to believe the accused committed an offense, and whether charges, if filed, could reasonably be proved. (D-10.0202f and g)	
13. Initiate, if deemed appropriate, alternative forms of resolution. Any resolution achieved is transmitted to the PJC for approval. (D-10.0202h) See page III-49.	
14. If the IC does not file charges, it reports this fact to the stated clerk and notifies the person who submitted the statement of accusation. The matter is completed unless the accuser files a petition for review. (D-10.0303)	Within 30 days of receipt of report that no charges are to be filed.
15. The accuser may petition the PJC to review the decision of the IC not to file charges. (D-10.0303a) See page III-47	Within a reasonable length of time (not specified).
16. The IC submits a written response to the facts alleged in the accuser's petition for review. (D-10.0303b)	
17. Two designated members of the PJC review the petition and IC response, and issue a decision. (D-10.0303c)	Within 90 days of the filing of the petition and response.
18. If the PJC members sustain the petition, a new IC is created. If they do not sustain the petition, the matter is	The new IC must report within 1 year of its formation as long as it is within three years after the alleged offense occurred. (If the

**Action**  
concluded. (D-10.0303d and e)

**Timing**  
alleged offense is sexual abuse of another person, only the 1 year limit applies.)

19. If the IC does file charges, it notifies the accused in writing of the charges, including a summary of facts it expects to prove to support the charges. It shall ask the accused if s/he wishes to plead guilty to the charges to avoid full trial and indicate the censure it will recommend to the PJC. (D-10.0302)

20. If charges are filed, the IC prepares them and files them with the stated clerk who then forwards them to the PJC. The IC designates one or more of its members to be the Prosecuting Committee (PC). (D-10.0404 and D-10.0202i)

21. PJC moderator and clerk conduct a pretrial conference with accused, counsel for accused (if any), PC, and others deemed appropriate. The accused is furnished a list of all witnesses and a description of documents to be presented in support of charges. (D-10.0405)

Within 30 days of receiving the charges from the presbytery stated clerk.

22. Accused provides clerk of PJC and PC with a list of witnesses. (D-10.0406)

At least 20 days prior to the trial date.

23. The PC **and** the accused shall provide the PJC clerk and the other party with an updated list of witnesses. (D-10.0406)

At least 10 days prior to the trial date.

24. Citations to appear at trial for the parties and such witnesses as either party may request are signed by the PJC moderator or clerk. (D-11.0201)

As early as practical before the trial.

25. The trial is conducted in a neutral setting with proper decorum. The PJC is in charge of the proceedings and makes all decisions about the trial issues and proceedings. (D-11.0102)

No sooner than 30 days after the pretrial conference.

A verbatim recording of all testimony and oral proceedings is required. (D-11.0601)

26. The trial is conducted in accordance with Chapter XI of the “Rules of Discipline.”

**Action****Timing**

After all evidence is presented and final statements made, the PJC meets privately to deliberate and vote on the charges. (D-11.0403)

26. (Continued)

A written decision stating the judgment on each charge separately and the degree of censure (if any) is prepared while in session. (D-11.0403c)

The PJC moderator, in open meeting, announces the verdict for each charge separately. (D-11.0403d)

27. If the accused is found guilty or after a guilty plea, the PJC **may** hear evidence as to the extent of injury suffered, mitigation, rehabilitation, and redemption. At the conclusion of the deliberations or the censure hearing, the moderator of the PJC, in open meeting, shall pronounce the censure. (D-11.0403e)

28. A signed copy of the decision is delivered to each party and to the stated clerk of the presbytery. (D-11.0403f–g)

Immediately

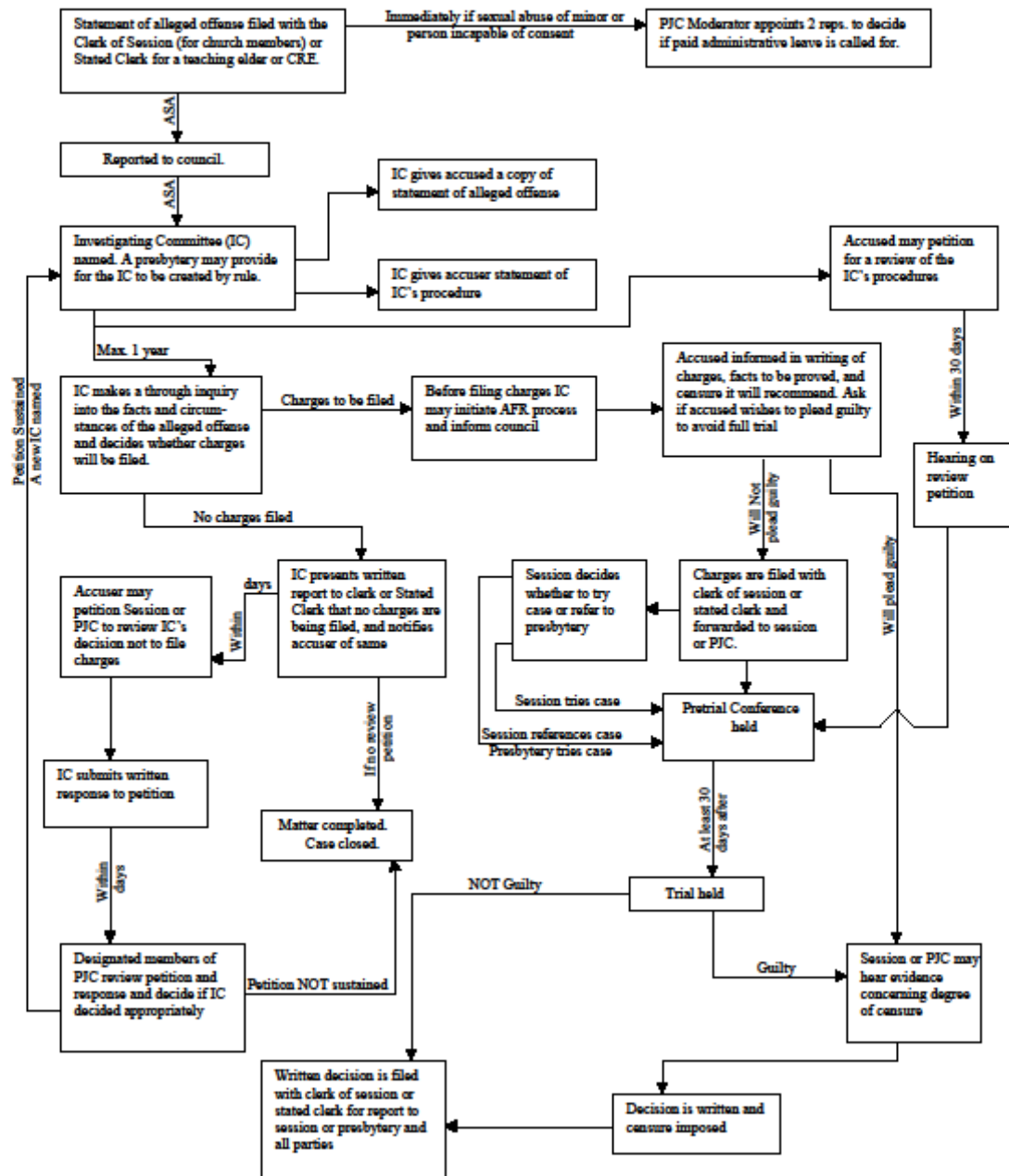
29. The accused, if found guilty, may appeal the decision to the PJC of the synod if s/he believes the decision was reached as a result of one of the errors listed in D-13.0106a.

Within 45 days of receiving the judgment



# FLOWCHART OF DISCIPLINARY PROCESS

## DISCIPLINARY PROCESS FLOWCHART



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## DISCIPLINARY PROCESS—GUIDE FOR THE ACCUSER

“The purpose of discipline is:

- “• to honor God by making clear the significance of membership in the body of Christ;
- “• to preserve the purity of the church by nourishing the individual within the life of the believing community;
- “• to achieve justice and compassion for all participants involved;
- “• to correct or restrain wrongdoing in order to bring members to repentance and restoration;
- “• to uphold the dignity of those who have been harmed by disciplinary offenses;
- “• to restore the unity of the church by removing the causes of discord and division; and,
- “• to secure the just, speedy, and economical determination of proceedings.”

*Book of Order*, “Rules of Discipline,” D-1.0101

### MAKING ALLEGATION(S)

To begin the disciplinary process against an individual, file a written statement of specific allegations and supporting evidence. This statement should state the facts clearly, that if proved, could result in a church disciplinary action. For disciplinary action to be taken, the alleged wrongdoing must be a violation of the Scriptures or The Constitution of the Presbyterian Church (U.S.A.), which includes *The Book of Confessions* and the *Book of Order*.

“The written statement may be submitted by:

- “• a person under jurisdiction of a council of the Presbyterian Church (U.S.A.) making an accusation against another;
- “• a member of a council receiving information from any source that an offense may have occurred which should be investigated for the purpose of discipline; or
- “• a person under jurisdiction of a council of the Presbyterian Church (U.S.A.) coming forward in self-accusation.”(*Book of Order*, D-10.0102)

1. If the person against whom allegations will be made is a member of a congregation, file the statement of alleged offense with the clerk of session.
2. If the person against whom allegations will be made is a teaching elder, or a ruling elder commissioned to particular pastoral service, file the statement of alleged offense with the stated clerk of the presbytery.

### WHAT HAPPENS NEXT

Once allegations are received by the clerk of session or the stated clerk, an investigating committee (IC) must be formed immediately to investigate the allegations. When the IC has been established, it will provide you with a statement of its procedures. Its work is to determine whether or not there is probable cause and sufficient evidence for the filing of disciplinary charges against the accused. During this investigation, you will be interviewed by the IC about

the allegations. You should consider having an advocate or trusted friend with you throughout, both as a support and as a resource to help you to understand as the allegations move through the disciplinary process. If your accusation involves alleged sexual abuse by a teaching elder against a minor or a person who lacks the mental capacity to consent, the stated clerk will immediately communicate it to the permanent judicial commission (PJC) for determination of whether the accused should be placed on paid administrative leave.

Throughout the investigating process, you will not have to confront the person whom you accused or be cross-examined. **However, your willingness to testify at trial regarding the factual basis for the allegations may determine whether charges are filed.** If you agree to testify at the trial, you probably will be cross-examined.

## TIME LIMITS

The statute of limitations for filing charges is three years from the time of the occurrence, unless, the alleged offense is sexual abuse. There is no statute of limitations for situations involving sexual abuse. The IC has up to one year to complete its task of investigation as long as the statute of limitations has not expired. If civil proceedings begin in addition to this judicial process, the IC may request and be granted an extension of the time for filing charges of up to six months from the end of the civil proceedings.

## IC DETERMINATION

1. If, after thorough investigation, the IC determines there is probable cause to believe that an offense has been committed, and has determined that there is sufficient evidence to substantiate the allegation, it has two options:
  - a. Ask the parties to participate in an Alternative Form of Resolution process (mediation process) to determine if agreement can be reached between all parties involved concerning any charges which may be filed. (D-10.0202h)
  - or**
  - b. File charges and proceed to trial. The IC becomes responsible for the prosecution of the case. If you have personal knowledge of the facts of the charges, the IC probably may call you as a witness during the trial. You are wise to have a friend or advocate with you throughout these proceedings. The accused will be present for the trial.
2. If the IC determines that it will not file charges and you believe that the IC has improperly reached this conclusion, you may file a petition for review of this decision with the clerk of session or the stated clerk within 30 days of receiving notice of the IC's decision. This petition must identify areas where you believe the IC has not fulfilled its duty as mandated in the "Rules of Discipline" (D-10.0202). Two members of the PJC must render its decision on your petition within 90 days. (For session ICs, the presbytery PJC reviews the petition. D-5.0101 last sentence) If the petition is sustained, the council will appoint another IC. If the PJC does not sustain the petition, the disciplinary process is ended. (See Chapter III, page III-47 for a description of the process.)

## **ROLE OF THE ACCUSER**

If the IC decides to file charges, some members of the IC will become the Prosecuting Committee, representing the Presbyterian Church (U.S.A.). The parties to the case will be the Presbyterian Church (U.S.A.) and the accused.

**THROUGHOUT THE PROCESS, THE PRESBYTERY STATED CLERK IS AVAILABLE TO ALL PARTIES INVOLVED FOR IMPARTIAL ASSISTANCE IN THE PROCESS.**

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## DISCIPLINARY PROCESS—GUIDE FOR THE ACCUSED

“The purpose of discipline is:

- to honor God by making clear the significance of membership in the body of Christ;
- to preserve the purity of the church by nourishing the individual within the life of the believing community;
- to achieve justice and compassion for all participants involved;
- to correct or restrain wrongdoing in order to bring members to repentance and restoration;
- to uphold the dignity of those who have been harmed by disciplinary offenses;
- to restore the unity of the church by removing the causes of discord and division; and,
- to secure the just, speedy, and economical determination of proceedings.”

*Book of Order*, “Rules of Discipline,” D-1.0101

### After Allegations Are Filed

When the clerk of the council receives a written communication that alleges you have committed an offense contrary to the Scriptures or The Constitution of the Presbyterian Church (U.S.A.), it is vital that you take this procedure seriously. If proven true, these allegations could result in your removal from ordered ministry or loss of membership.

As a result of the allegation, an investigating committee (IC) has been appointed or elected by the council. The clerk has reported to the session or presbytery that an offense has been alleged, without naming you or the nature of the alleged offense.

If the allegation involves alleged sexual abuse of a minor or a person who lacks the mental capacity to consent and you are a member of a presbytery, the stated clerk has immediately communicated it to the permanent judicial commission (PJC) for determination of whether you should be placed on paid administrative leave. The PJC moderator has appointed two present or eligible former members of the PJC to make this determination. You will be given an opportunity to be heard before a decision is made.

### What Happens Next

The task of the IC is to determine whether or not there is probable cause to believe that an offense has been committed by you, and whether or not there is sufficient evidence to sustain charges against you before the session or the PJC.

Members of the IC must provide you with a copy of the allegation(s) and will meet with you to review the allegation(s). The IC is not required to disclose the name of the accuser at this time. (See annotation on D-10.0202a in the *Annotated Book of Order*.) When the IC meets with you, you will have an opportunity to provide the IC with information/evidence in your behalf.

Note that throughout the process, you have the right to remain silent. You also have the right to counsel, but you must bear the costs of counsel throughout the investigating stage. (D-10.0203, D-11.0301–.0302). If charges are filed against you by the IC and you cannot afford counsel, you

may petition the session/PJC to appoint counsel on your behalf. Counsel may be, but does not have to be, an attorney. Counsel must be a member of the Presbyterian Church (U.S.A.). Even if you do secure counsel, it is in your best interest to have a trusted friend or advocate with you throughout the process.

If, during the investigation, you become concerned about the process of the IC's investigation, you may petition for a review of the procedures. See Chapter III, page III-47 and "Rules of Discipline," D-10.0204 for specifics.

## **IC Determination**

1. If the IC determines either that there is no probable cause or that there is insufficient evidence to sustain a charge, the following will happen:
  - a. Both you and the accuser(s) will be notified in writing.
  - b. The fact that the IC filed no charges will be reported to the session/presbytery through the report of the clerk. No names or details about the accusations will be mentioned.
  - c. The accuser(s) has 30 days following notification of the IC's determination, to petition the PJC of the presbytery to review the IC's decision not to file charges. (D-5.0101 last sentence.)
  - d. If the petition of the accuser(s) is sustained during the review, the session/presbytery will appoint a new IC to complete a whole new investigation. If this IC also determines that no charges are to be filed, this fact is reported to the clerk and the matter is concluded.

2. If the IC determines it has cause to file charges:

It may initiate, if it deems appropriate, alternative forms of resolution, ordinarily after the investigation has been completed, probable cause has been determined, but before charges have been filed. The purpose of alternative forms of resolution will be to determine if agreement can be reached between all parties involved concerning any charges which may be filed. Any such agreement must be approved by the session/PJC.

3. If the IC decides to file charges:
  - a. It shall notify you in writing of the charges, including a summary of the facts it expects to prove, ask you if you wish to plead guilty, and indicate the censure it will recommend. (D-10.0302)
  - b. It will forward the charges, through the clerk to the session/PJC. One or more of the IC members will act as prosecuting committee (PC) of the case before the session/PJC. (D-10.0202i) The parties will be the Presbyterian Church (U.S.A.) and yourself.

## **PROCEEDING TO TRIAL**

The session/PJC will schedule a pretrial conference within 30 days after receiving the charges. At this conference, the charges will be read, giving the names and addresses of the witnesses to



be called, and a description of the records and documents that will be used to support each charge. You will be informed of your right to secure counsel. The session/PJC will ask whether you wish to plead guilty or proceed to trial.

**If you plead guilty and all parties agree to the facts and the censure**, the session/PJC must approve such a settlement by a two-third majority and compile the record in the case as described in D-11.0601d. (D-10.0202h(3))

**If you do not plead guilty**, the session/PJC will schedule a trial no earlier than 30 days after the pretrial conference.

If you proceed to trial and are unable to secure counsel, the session/PJC may appoint counsel of its choosing for you. If you cannot afford counsel, (D-11.0302), the session/presbytery will bear reasonable expenses for your defense. The session/PJC alone determines “reasonable expenses.” The session/PJC may hold a hearing to determine your ability to pay for and to secure counsel. Again, it is not required that counsel be an attorney, but counsel obtained for you by session/PJC should have training and experience comparable to that of the prosecution. If the session/PJC appoints counsel for you, the selection of a particular counsel is their prerogative.

**Now that you are moving toward a trial, this begins a sequence of events that result in the final decision being reported to the council.**

**Please note, you should avoid any contact with persons related to these allegations which could be construed as harassing.**

**THROUGHOUT THE PROCESS, THE PRESBYTERY STATED CLERK IS AVAILABLE TO ALL PARTIES INVOLVED FOR IMPARTIAL ASSISTANCE IN THE PROCESS.**

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## **DISCIPLINARY PROCESS—INVESTIGATING COMMITTEE**

When an allegation is made against a member, the council has the responsibility of investigating the credibility of the accusation. This investigation is conducted by an investigating committee (IC) composed of three to five people. If the IC determines there is probable grounds to believe the accused committed the offense, it files charges and proceeds to prosecute the case, becoming the prosecuting committee (PC).

### ***BOOK OF ORDER INFORMATION***

1. **Initiation of procedure preliminary to a disciplinary case.** D-10.0100. The clerk of session or stated clerk receives a written statement of an alleged offense with supporting documentation submitted by a person under jurisdiction of a council of the Presbyterian Church (U.S.A.) [PC(USA)] who has either made an allegation against another or come forward in self-accusation, or by a member of a governing body who has received information from any source that an offense may have occurred which should be investigated for the purpose of discipline.
  - a. **Immediately**—If the alleged offense is sexual abuse of a person under the age of eighteen or of a person alleged to lack the mental capacity to consent, the stated clerk shall immediately communicate the allegation to the moderator of the PJC who shall, within three days, designate two members or former members whose terms have expired within the past six years, to determine whether the accused shall be placed on a paid administrative leave. (D-10.0106)
  - b. **Report.** D-10.0103. The clerk or stated clerk shall report to the council that an offense has been alleged without naming the accused or the nature of the alleged offense.
  - c. **Referral to IC.** D-10.0101, D-10.0103, D-10.0201. The written statement shall be referred immediately to an IC.
2. **Purpose of IC.** D-10.0201, D-10.0202f–g. The IC shall **determine whether charges should be filed** based upon whether there are probable grounds or cause to believe that an offense was committed by the accused, and whether or not the offense can be reasonably proved with available evidence.
3. **Procedure for IC.** D-10.0200. The IC shall make this determination by the following procedure:
  - a. Follow a proper trail of evidence,
  - b. Include relevant evidence proposed by the accused, and
  - c. Ensure evidence it receives has been properly obtained.
4. **Responsibility of IC.** D-10.0202. The IC shall:

- a. **Notify accused.** D-10.0202a. The IC shall provide a copy of the statement of the alleged offense to the accused. This statement is a copy of the original statement of allegation which does not need to include the name(s) of the person(s) who signed the allegation. See annotation on D-10.0202a in the *Annotated Book of Order*.
- b. **Provide to accuser.** The IC shall provide a statement of its procedures to the person making the accusation. (D-10.0202b) See Page III-57 for a sample of the statement.
- c. **Conduct inquiry.** D-10.0202c–e. The IC shall make a thorough inquiry into the facts and circumstances of the alleged offense by
  - (1) **Examining physical evidence.** Relevant papers, documents, records, recordings, electronic evidence (email, phone logs), etc.
  - (2) **Examine all witnesses.** Contact any persons with relevant information about the alleged offense having due regard for the character, availability and credibility of each witness.
- d. **Under Special Circumstances.** D-10.0106. If the accusation is sexual abuse of a person under the age of eighteen, or a person alleged to lack the mental capacity to consent, the designated representatives of the permanent judicial commission (PJC) have determined that no administrative leave or restriction is required, the IC shall be free at any point in its investigation to present additional evidence to the designated representatives of the PJC supporting the imposition of administrative leave or other restrictions.
- e. **Determine probable cause.** D-10.0202f, D-2.0203b. Determine whether or not there are probable grounds or cause to believe that an offense was committed by the accused.
- f. **Determine whether or not to file charges.** D-10.0202g–i. The IC determines whether or not there is probable cause to believe that an offense was committed by the accused, and whether or not the offense can be reasonably proved with available evidence.
- g. **Determine whether appropriate to start an alternative form of resolution (AFR).** D-10.0202h. See Chapter III, page III-49.
  - (1) **Purpose:** To reach agreement between all parties involved concerning any charges that may be filed.
  - (2) **Timing:** Ordinarily after investigation is complete, probable cause determined, and before charges filed.
  - (3) **Timeframe:** Completed within 120 days.
  - (4) **Notification:** D-10.0301. If AFR is begun, the IC shall notify the clerk of session or stated clerk of the council.
  - (5) **Advocate:** All parties must be provided with an advocate throughout settlement negotiation.

- (6) **Agreement:** Any settlement agreement must be reported to and approved by the session or PJC by a two-thirds majority.
  - (7) **No Agreement:** If a settlement is not reached during AFR, the IC shall file charges.
  - h. **Notify accused if charges are to be filed.** D-10.0302. If the IC decides to file charges, IC shall notify the accused in writing of all charges and a summary of the facts the IC expects to use at trial to prove the charges.
  - i. **Accused must be offered opportunity to plead guilty.** D-10.0302. If the IC decides to file charges, the IC shall ask the accused if that person wishes to plead guilty to avoid a full trial and indicate the censure it will recommend to the session or PJC.
  - j. **Time limit.** D-10.0401. No charges may be brought any later than three years from the time of the commission of the alleged offense, nor later than one year from the date the IC was formed.
    - (1) **Exceptions:** D-10.0401a–c.
      - (a) **Sexual abuse.** In instance of sexual abuse, the only time limit shall be one year from the date the IC was formed.
      - (b) **AFR extension.** If AFR is initiated, the time limits are extended for the duration of the process.
      - (c) **Civil proceedings.** If civil proceedings begin, the IC may request and be granted by the PJC an extension of the time for filing charges of up to six months from the end of the civil proceedings
  - k. **Report to councils.** D-10.0202h–i. The IC shall report:
    - (1) Any settlement agreement to the session or PJC for its approval;
    - (2) That it will or will not file charges.
  - l. **Prepare charges.** D-10.0402, D-2.0203b. Each charge shall allege only one offense, shall be prepared according to D-10.0403 and shall be prepared in writing and filed with the clerk of session or stated clerk of the presbytery. More than one charge may be filed at the same time. D-10.0403a.
  - m. **Designate prosecuting committee (PC).** D-10.0202i–j, D-10.0402. Upon filing charges, the IC shall designate one or more of its members to be the PC, to prosecute the case in the name of the Presbyterian Church (U.S.A.) and represent the church with all the rights of the appropriate council.
  - n. **If no charges filed, notice required.** D-10.0303. If no charges are filed, the IC files a written report of that fact alone with the clerk of session or stated clerk of the presbytery, and notifies the person who submitted the written statement of allegation.
5. **Accused may file petition to review procedures of the IC.** D-10.0204, D-5.0101. **At any time during the course of the investigation,** the accused may file a petition with the

clerk of session or stated clerk who must refer the petition to the presbytery PJC to review the procedures of the IC to determine whether or not the IC is following proper procedure. The petition shall be limited to whether or not the IC has followed a proper trail of evidence, whether or not the evidence being considered is properly in the hands of the IC, and whether or not the IC is examining relevant evidence proposed by the accused.

6. **Accuser may file petition to review the decision of the IC not to file charges.** D-10.0303, D-5.0101. If the IC decides not to file charges, the accuser may, within 30 days of receipt of notice, file a petition with the clerk of session or stated clerk who must refer the petition to the presbytery PJC to review the decision of the IC not to file charges. The accuser must allege that the IC did not fulfill the duties specified in D-10.0202 and listed in 4. above. If the accuser files such petition, the IC must submit a written response addressing the facts alleged in the petition.
7. **Rights of the accused.** D-10.0203c. Each time the IC or any of its members speaks with the accused, the IC or its members shall inform the person of:
  - a. The right to remain silent,
  - b. The right to be represented by counsel (at own expense during investigation phase),
  - c. If charges are filed, the right to have counsel appointed and paid for if unable to secure counsel.
8. **Rights of the accuser.** D-10.0202b, D-10.0203a–b. During the investigation and trial process, the person submitting the accusation and the person on whose behalf it was submitted:
  - a. Will receive a statement of the IC’s procedure.
  - b. Will be reminded of the right to be accompanied by an advocate at each and every conference with the IC, the prosecuting committee, and the session or PJC.

## COMMENTARY ON THE INVESTIGATING COMMITTEE PROCESS

### *A. Authority of the IC*

The IC represents the session/presbytery. The investigation is neutral in the beginning. The only initial object is to determine whether or not to file charges against the accused.

### *B. Chair*

If a chair for the IC has not been appointed, the IC should elect a chair and a secretary before the end of its initial training.

### *C. Rights of accuser*

The IC should inform the accuser s/he will receive a statement of the IC's procedure and may ask questions at any time about the process. The IC must also notify the accuser of the right to be accompanied by an advocate at each and every conference with the IC, the PC, and the session or PJC. The sexual misconduct policies of some councils provide for an advocate to accompany the accuser through the process. The advocate should be someone trusted by the accuser who is aware of the Presbyterian Judicial process.

### *D. Rights of accused*

The IC should instruct the accused each time it talks to the accused that s/he has the right to counsel and the right to remain silent. The sexual misconduct policies of some councils provide for an advocate to accompany the accused through the process. The advocate should be someone trusted by the accused and who is aware of the Presbyterian judicial process.

### *E. Scope of investigation*

An IC has discretion in how broadly it will investigate allegations. Investigations should be thorough enough to determine whether a pattern of behavior exists or whether the allegations are confined to a single incident. Furthermore, if, in the course of following a trail of evidence, new information is uncovered which leads to additional allegations, the IC will need to determine whether additional charges should be considered. These charges may or may not be related to the original allegations that prompted the formation of the IC.

### *F. Start of investigation*

The IC begins gathering evidence by talking with the person(s) who brought the accusations, as well as with the accused. Either or both the accused and the accuser may suggest other names of people or documents and evidence. In addition, the IC may interview people it thinks may have further information about the accusation(s). While the IC cannot force anyone to submit to an interview, it should seek to talk with anyone who it believes may have relevant information. Witnesses may be accompanied by a friend or advocate.

### ***G. Confidentiality***

1. The IC must maintain strict confidentiality during its investigation. As it interviews people, it should impress upon them the need to refrain from discussing the interview with anyone else.
2. There may be people in the church who “need-to-know” that an investigation is in progress, but it is not the IC’s job to make such notifications. Contact the clerk of the council about any “need-to-know” issues not directly related to the IC’s investigation work.
3. Inform the accused of the IC’s adherence to confidentiality procedures and caution the accused about discussing the investigation in an attempt to build support. The matter will be determined in accordance with Presbyterian procedures, not by popular vote.
4. Additionally, it should be noted that even though the IC’s work is confidential, its records might be subject to subpoena in a concurrent civil case.

### ***H. Recording***

1. Some ICs have found it helpful to tape record interviews with potential witnesses. These recordings serve as a means of preserving for later use the actual information related to the investigation. These recordings do not meet the criteria for evidence to be admitted at trial. When the IC makes a tape recording, permission to record should be granted on the tape and/or in writing. The permission to record should include:
  - a. the name of the person;
  - b. acknowledgment of making the tape;
  - c. the date of the recording; and
  - d. an explanation of how the tape will be used.
2. Some ICs have found it helpful to have two members conduct the interviews on tape rather than have the interviewees have to face the entire IC.

### ***I. Balance***

ICs are sometimes criticized because they are not sensitive to the person(s) bringing the accusation, or are too harsh and critical of the accused. While it is important to be courteous and respectful, it also must ask the difficult questions. One way to mitigate possible anger projected onto the IC is to insure that both the accuser and the accused have advocates even if they also have counsel. The advocates should know Presbyterian polity.

### ***J. Results***

The investigation may lead to one of three results. Any one is appropriate, depending on the information gathered.



1. The IC may determine there is no basis for believing an offense has been committed.
2. The IC may conclude that it is probable that the accused did commit an offense, but the case cannot reasonably be proven (for example: the key witness will not testify).
3. The IC may determine that it is probable that the accused did commit an offense and the case can be proven.

### ***K. Writing charges***

The “Rules of Discipline” (D-10.0403) contain specific details about how charges are to be written. The IC should consult with the stated clerk before the charges are finalized in order to insure that they are written correctly. One of the common errors in the writing of charges is that there is no reference in the charge to a violation of the Scriptures or the Constitution that is mandated in D-2.0203b. For example, a teaching elder is charged with professional misconduct when the charge is more appropriately a violation of W-4.4003g, the ordination vow to uphold the “peace, purity, and unity of the church.” See sample charges at Chapter III, pages III-59 and III-60.

### ***L. Multiple charges***

D-10.0403. There may be several charges against one individual with each charge having time, place and circumstance detailed, names and addresses of witnesses, and a description of records and documents supporting the charges.

### ***M. Before filing charges***

After charges have been formulated, but not yet filed, the IC proceeds in the following sequence:

1. Determine whether or not to initiate AFR. In the sole discretion of the IC, it may initiate AFR to determine if agreement can be reached between the accused, the accuser, and the IC without completing a full trial. See page III-49 on Alternative Form of Resolution.
  - a. This process must not allow for an outcome which suggests the accused is innocent when questions of guilt remain.
  - b. The results of AFR must be approved by the session/PJC and become the decision in the case. (D-10.0202h)
  - c. AFR is “ordinarily” considered after the investigation is completed as the IC must understand the full scope of the situation before considering AFR.
2. Communicate the charges it will file, including a summary of the facts it expects to prove to support the charges, and the censure it will recommend to the session/PJC. It shall ask the accused if s/he wishes to plead guilty to the charges.
  - a. If the accused pleads guilty to the charges and agrees to the recommended censure, the charges are filed and the session/PJC meets to formally acknowledge guilt and impose the censure. (D-10.0202h)

- b. If the accused pleads guilty, but does not agree to the recommended censure, the charges are filed, the session/PJC meets to formally acknowledge guilt and may or may not hear evidence as to the extent of injury suffered, mitigation, rehabilitation, and redemption before imposing censure
- c. If the accused does not plead guilty, the charges are filed with the clerk of the council and the session/PJC proceeds to trial. (D-11.0403e)

### ***N. File charges***

Charges are filed with the clerk who transmits them to the session/PJC to begin the trial process. Once charges are filed, the IC designates one or more of its members to prosecute the case as the PC.

### ***O. Petition for review***

1. If the IC decides it will not file charges, the accuser may, within 30 days, file a petition for review of that decision. The IC must file a response addressing the facts alleged in the petition. The PJC, through two of its members, will decide whether to sustain the petition and order a new IC formed, or to deny the petition and let the matter end. See Chapter III, page III-47, Petition For Review, and Item 6 on Chapter III, page III-24 of this Guide. (D-10.0303)
2. At any time during the investigation, the accused may petition for a review of the IC's procedures. The results of this review will be a part of the pre-trial conference. See Chapter III, page III-47, Petition For Review, and Item 5 on Chapter III, page III-23 of this Guide. (D-10.0204)

### ***P. Pretrial conference***

If the case proceeds to trial, the moderator of the session/PJC will convene a pretrial conference at which the PC is a participant.

1. The PC will furnish the accused with the names and addresses of all the witnesses then known, and a description of the records and documents that may be offered to support each charge.
2. The PC will determine with the accused those charges that are not in dispute and discuss alternatives to a full trial.
3. There may also be motions to dismiss some or all of the charges or to permit amendments to the charges. The session/PJC moderator and clerk will make preliminary determinations on these motions, but the full session/PJC will review them.
4. The trial date will be set.
5. No less than twenty days prior to the trial, the accused shall provide the session/PJC and the PC with a list of anticipated witnesses, including addresses.

6. No less than ten days prior to the trial, the PC and the accused shall each provide the session/PJC and the other party with an updated list of witnesses.

***Q. Papers archived***

When the matter is concluded, either by not filing charges or by trial and any subsequent appeals, all papers related to the case should be turned over to the clerk of session or stated clerk's office.

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## **DISCIPLINARY PROCESS— SESSION/PERMANENT JUDICIAL COMMISSION’S ROLE**

When disciplinary charges against a member or a person in an ordered ministry of the church are filed by an investigating committee (IC), it is the responsibility of the session or permanent judicial commission (PJC) to try the case. If the accused does not plead guilty, the session/PJC shall determine guilt or innocence based on the presentation of evidence and testimony. In the event the accused is found guilty, the session/PJC determines the degree of censure to be imposed.

### **COMMENTARY ON THE SESSION’S/PERMANENT JUDICIAL COMMISSION’S ROLE IN A DISCIPLINARY CASE**

#### *Foundations of Disciplinary Process*

##### **1. Principles of Church Discipline**

- a. The preamble to the “Rules of Discipline” (ROD) (D-1.0101, D-1.0102) sets the context in which church discipline takes place. Two of its three sections are read at the beginning of every trial.
- b. The moderator of the PJC also enjoins the members of the commission “to recollect and regard their high character as judges of a council of the Church of Jesus Christ and the solemn duties they are about to undertake,” at the beginning of every trial.

##### **2. Definitions**

- a. Judicial process

Judicial process in a disciplinary case is the means by which church discipline is implemented within the context of pastoral care and oversight. It is the exercise of authority by the governing bodies of the church for the prevention and correction of offenses by persons. (D-2.0101)

- b. Offense

An offense is any act or omission by a member or a person in ordered ministry of the church that is contrary to the Scriptures or The Constitution of the PC(USA). (D-2.0203b)

- c. Constitution

The Constitution of the PC(USA) consists of *The Book of Confessions* and the *Book of Order*.

- d. Ecclesiastical authority

The church’s councils are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical

jurisdiction for the purpose of serving Jesus Christ and declaring and obeying his will in relation to truth and service, order and discipline. (G-9.0102)

### 3. Jurisdiction

#### a. For a teaching elder

Teaching elders are members of a presbytery.

- (1) The presbytery of membership generally has jurisdiction in disciplinary cases involving a teaching elder.
- (2) A teaching elder engaged in work within the bounds of a presbytery other than the presbytery of membership, whether or not that work is under the jurisdiction of that presbytery, does, by the fact of engaging in that work, submit to the jurisdiction of that presbytery for the purposes of discipline.
  - (a) This applies whether or not permission has been sought and/or granted to labor within that presbytery and outside the bounds of the presbytery of membership.
  - (b) This does not apply to teaching elders working in a validated ministry in other service of this church. (G-2.0503a)

#### b. For a church member, ruling elder, or deacon.

The session of a church generally has jurisdiction in disciplinary cases involving members of that church. Chapter IV of the ROD describes how the trial of a church member may be transferred to the presbytery by a process called “reference.”

#### c. For a ruling elder commissioned to particular pastoral service (CRE).

A CRE is a ruling elder of the PC(USA) who is granted a local commission by the presbytery to lead worship and preach the gospel, watch over the people, and provide for their nurture and service.

- (1) If an accusation stems from a person’s service to a congregation as a CRE, the presbytery has jurisdiction. (D-3.0101b[1])
- (2) If an accusation stems from anything other than service as a CRE, the session of the church of membership has jurisdiction.

### 4. Maintaining Neutrality

- a. It is important that members of the PJC avoid all possible appearances of bias or prejudice when trying a case, and limit deliberations to only those facts that are presented in the records, presentations, and testimony during trial.
- b. A member of the PJC is disqualified from participating in a case if the member is personally interested (involved) in the case, is related by blood or marriage to any party, or has been active for or against any party.

### 5. Comparison to the secular legal system

- a. A disciplinary trial has some characteristics of a secular criminal trial. They both deal with an individual accused of failure to comply with established standards.
- b. The purpose of church discipline is repentance and restoration which is different from the retribution and punishment purposes underlying the criminal justice system.
  - (1) Censure is the term used by the church to describe the consequences of being judged or having pled guilty.
  - (2) Censure is a process determined to be the best means of living up the ROD Preamble's charge to redeem and restore.
- c. Many of the procedures familiar to people trained in the secular criminal justice system are simply not found in the church's judicial process for disciplinary cases. Some of these will be discussed later in this document.

### ***Sexual Abuse of person under eighteen or incapable of consent***

1. Early Involvement.
  - a. When the alleged offense is sexual abuse of a person under the age of eighteen, or a person alleged to lack the mental capacity to consent, the stated clerk will immediately communicate it to the moderator of the PJC prior to the usual steps in establishing an investigating committee.
  - b. Within three days of receiving such an allegation, the PJC moderator shall designate two members of the PJC or two former members of the PJC whose terms have expired within the past six years to determine whether the accused shall be placed on a paid administrative leave during the resolution of the matter.
    - (1) The designated representatives of the PJC, after giving the accused the opportunity to be heard, shall determine whether the risk to the congregation and to potential victims of abuse, when considered in light of the nature and probable truth of the allegations, requires administrative leave or other restrictions upon the accused's service.
    - (2) The cost of the paid administrative leave shall be borne by the employing entity whenever possible.
    - (3) While on administrative leave, the accused may not perform any pastoral, administrative, educational, or supervisory duties, and may not officiate at any functions such as Baptism, funerals, or weddings.
2. Continuing Involvement. The two representatives of the PJC may be requested at any time during the investigation by the IC to impose, modify, or remove the administrative leave or restrictions during the course of the investigation. Such a request may come from either the IC or the accused.

3. See Chapter III, page III-45, “Disciplinary Process: Paid Administrative Leave.”

### ***Authority at the trial—the session or PJC***

#### **1. Control of the proceedings**

The session is a council of the church. The PJC is a council for the sake of judicial process, and, therefore, has the full authority of its council. The session/PJC controls the conduct of a trial as an ecclesiastical process. Aggressive, adversarial, secular prosecutorial or defensive practices have no place in a process aimed at reconciliation rather than punishment. (D-11.0304)

#### **2. Determination of issues in question.**

##### ***a. Eligibility of commission members***

The parties may challenge any member of the commission on the basis of D-11.0402b(1). The remaining members of the session/PJC determine the validity of the challenge and whether challenged members remain or are excused.

##### ***b. Preliminary objections***

The session/PJC determines objections including those to the sufficiency of the charges.

- (1) Were charges filed within the time limits required? (D-10.0401)
- (2) Does the charge(s) specify an offense meeting the criteria of D-2.0203b?
- (3) Was the accused sufficiently informed of the charges to be able to prepare a defense?

##### ***c. Procedure or admissibility objections***

During the course of the trial, objections may be raised about procedures or admissibility of evidence being presented. The moderator of the session/PJC rules on such objections after the parties have had an opportunity to be heard. A party or members of the session/PJC may appeal the ruling and ask for the full commission to make the decision by vote. (D-11.0304a)

##### ***d. Amendments to the charges***

Any proposed amendments to the charges must meet the criteria of not changing the substance of the charge or prejudicing the accused. (D-11.0402c)

##### ***e. Dismissal***

The session/PJC has the authority to dismiss the case without trial if the time requirements for filing have not been met. D-14.0402c

##### ***f. Reminder***

The forms found in Appendix A of the *Book of Order* are suggested models rather than required formats. Filings should be judged on the basis of their content rather than their layout.

#### **3. Petition for Review**



Safeguards are built into the investigation process for both the accuser and the accused. These safeguards require that the PJC designate two of its members to review any petition for review of the procedures of the IC while the investigation is in progress, (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. Members of the presbytery PJC perform this function for session ICs as well. (D-5.0101, last sentence)

***Pretrial Conference (D-10.0405)***

1. Charges are filed with the clerk who immediately transmits them to the moderator and clerk of the session/PJC. Once this happens, the session/PJC is completely in charge of the case.
2. The session/PJC moderator and clerk notify the accused, the counsel for the accused, if any, the prosecuting committee (PC), and the counsel for the prosecuting committee, if any, of the time and place of the pretrial conference, and furnish the accused with a copy of the charges.
3. At the pretrial conference the session/PJC moderator does the following things:
  - a. reads the charges to the accused;
  - b. informs the accused of the right to counsel;
  - c. requires the PC to furnish the accused with the names and addresses of all the witnesses then known, and a description of the records and documents that may be offered to support each charge;
    - (1) D-10.0405b(3) does not require the PC to furnish copies of all records and documents that may be offered, only a description.
    - (2) D-10.0405b(3) does not prohibit the PC from furnishing copies of all records and documents that may be offered.
  - d. determines, with the accused and the PC, those charges that are not in dispute and discuss alternatives to a full trial;
    - (1) The PJC Clerk should prepare a document indicating those matters that are not in dispute so that information can be presented at trial and included in the record of the case.
    - (2) Alternatives to a full trial include securing a guilty plea to charges or identifying for trial those charges still in dispute, and moving to the PJC's consideration of censure.
  - e. reviews any reports of petitions for review of the work of the IC, hears any additional challenges to the appropriateness of charges, takes preliminary actions to dismiss some or all of the charges, dismisses the case, or permits amendments to the charges. Such preliminary determinations must be reviewed by the full session/PJC in accordance with D-11.0402c.

- f. schedules a trial for no sooner than 30 days following the pretrial conference. If all parties agree on the charges and the recommended degree of censure, schedule a censure hearing rather than a trial.
  - g. orders all parties to appear.
4. Nothing more can be done at this meeting.

### ***Right to Counsel***

1. Each party in a disciplinary case is entitled to appear and may be represented by counsel, provided that no person shall act as counsel who is not a member of the PC(USA). Counsel need not be a paid representative nor an attorney-at-law.
2. If the accused indicates an inability to secure counsel, the ROD provide for the session/PJC to appoint counsel for the accused. Reasonable expenses for defense shall be authorized and reimbursed by the council in which the case originated.
  - a. **This duty does not arise until charges are filed.** Counsel may surely be helpful to the accused long before that time, but the ROD make the provision only for the trial proceedings.
  - b. Section D-11.0302 states that the presbytery will appoint counsel, not that it will pay for the one the accused has selected.
  - c. Section D-11.0302 states that reasonable expenses for defense shall be authorized and reimbursed. This places a burden on the PJC to establish what is reasonable.
    - (1) Some sessions/PJCs have examined the last several year's tax returns, earnings and assets statements, and lists of living expenses to verify accused's degree of financial need.
    - (2) Some sessions/PJCs have set a maximum dollar amount, others have set the hourly rate and the number of hours appointed counsel may charge without further authorization.

### ***Evidence***

1. The only rules of evidence are found in Chapter XIV of the ROD.
2. All questions concerning the credibility of a witness or the admissibility of evidence are determined by the session/PJC at the time such evidence is offered.
  - a. Credibility means the degree of belief that may be given to the testimony of a witness. The session/PJC may consider any matter that bears on the accuracy or truthfulness of the testimony in determining a witness's credibility. (D-14.0205)
  - b. The PJC should analyze proposed evidence on the basis of its reliability, its relevance, and its integrity.

- (1) The PJC needs to decide questions about the sources of evidence and may need to exclude evidence if obtained by unethical or illegal means. (See *Presbytery of Central Florida v. Herrero, Minutes, 1995, Part I, p. 132*)
  - (2) The PJC should consider whether the admission of the evidence obtained illegally violates the ROD, to honor God and correct wrong doing. (D-1.0101)
  - (3) Evidence obtained in a questionable manner may denigrate the moral leadership the church should be exhibiting.
- c. Guidelines for Admission of Evidence
- (1) No distinction should be made between direct and circumstantial evidence as to the degree of proof required. (D-14.0101)
  - (2) The ROD provide little guidance about admissibility of evidence, but sessions/PJCs should not apply some secular standard by default. Rather the session/PJC should apply rules of evidence in the “spirit” of the Preamble to the ROD.
- d. Hearsay evidence
- (1) Hearsay evidence is evidence that is essentially second-hand information because the person giving it or the document purporting something is not the original speaker or writer and that person is not available to verify or dispute what is said.
    - (a) It is usually excluded in secular courts largely because it is thought to be unreliable (unverifiable) not because it is not true.
    - (b) In secular court systems, there are complex systems of exceptions which allow for its admission under certain circumstances.
  - (2) The ROD do not specifically prohibit hearsay evidence. Therefore, it may be admitted, if a session/PJC decides to do so. In making that determination, there are at least three approaches that a session/PJC may take, all of which are permissible under the ROD:
    - (a) to hold it as unreliable and not admissible;
    - (b) to exclude all hearsay evidence unless an exception applies. If this choice is made, before trial, the session/PJC should determine and announce what its exceptions will be.
    - (c) to allow hearsay evidence and let each session/PJC member factor the weight of this evidence when the decision is being made.
- e. Testimony by deposition
- (1) D-14.0304 describes the process for taking and recording testimony in the form of a deposition.

- (2) Depositions are generally only used for those witnesses who are unable to be present at the trial.
  - (3) The 214th General Assembly (2002) adopted the following authoritative interpretation of the Constitution: “The session or permanent judicial commission conducting a case has the sole power and discretion to allow depositions or to decline to enable them. There is not a free, unlimited opportunity for parties in a case to conduct depositions of any and all potential witnesses. Weighing fairness, expense, legitimacy, validity, and practicality the session or commission may or may not exercise its power to appoint persons to take and record testimony. The party making application for depositions to be held may be required to show the necessity of recording testimony in this form.”
- f. Electronic evidence
- (1) **Tape recording.**
    - (a) Tape recordings as evidence are subject to all the criteria of valid evidence. How obtained, verification of speakers, date recorded, etc.
    - (b) Many PJs have established policies that require transcripts to be presented as evidence rather than listening to a tape which may or may not be of sufficient quality for all members of the commission to hear adequately.
  - (2) **Video recording.** Video recordings as evidence are subject to all the criteria of valid evidence. If a video is accepted as evidence, it must be possible for all members of the session/PJC as well as the parties to view it at the same time. This will usually require several monitors of adequate size.
  - (3) **Computer images and e-mail correspondence.** Where possible, printed copies of the purported evidence should be used rather than an electronic file or computer itself. All such evidence is subject to all the criteria of valid evidence.

### 3. Family Testimony

- a. The ROD state that a spouse may be a witness for or against the other, but may not be compelled to testify against the other. (D-14.0202)
- b. It is generally not helpful to the church to have domestic disputes fought out in the church courts. Neither is it helpful for the church’s judicial process to be used as pretrial discovery for later use in the secular system.

## ***Trial***

- 1. Formally conducted with full decorum in a neutral place. (D-11.0102)
  - a. Neutral place means a place that has no real or perceived advantage or disadvantage for any party. The presbytery office or one of the churches in the presbytery are often the sites selected.
  - b. See How To Set Up The Room For a Trial, Chapter V, pages V-11 and V-12.

- c. The clerk of the session/PJC is responsible for assuring that there is an “accurate verbatim recording of all testimony and oral proceedings.” (D-11.0601)
  - (1) Often the presbytery stated clerk will assist in meeting this requirement.
  - (2) The most efficient and reliable way to handle this requirement is to secure the services of a court reporter. Court reporter’s fees are likely to be high, but the expense is often worth it if there is the likelihood of an appeal.
  - (3) The session/PJC may choose instead to rely upon a tape recording. If a tape recording is employed, there are a number of steps that can improve its effectiveness.
    - (a) Provide microphones for all the likely speakers in the trial. Important locations for microphones are: the moderator, the PC, the accused, the witness chair, and possibly one for other members of the commission.
    - (b) Designate someone to monitor the recording to make sure there is sufficient tape and the machine is recording.
    - (c) Have the person monitoring the tape log the meter numbers and speaker’s name each time there is a change of speaker. This will significantly ease the task of creating a transcript of the proceedings.
- d. The clerk of the session/PJC is also responsible for identifying and maintaining all exhibits offered in evidence, noting whether or not they were accepted as evidence, and keeping a list of all exhibits.

## 2. Conduct of the Trial

- a. The session/PJC has full authority and power to control the conduct of the trial and of all parties, witnesses, counsel, and the public, including removal of them, to the end that proper dignity and decorum shall be maintained. (D-11.0304)
- b. **Members of the session/PJC who will decide the case must be present for all of the proceedings.** This means that the trial should be recessed for any interruption which would take a member out of the room or distract his/her attention from the proceedings.
  - (1) This includes restroom breaks and telephone calls.
  - (2) If a trial is likely to last longer than one day, it is advisable to insure that more than a minimum quorum is available. There are many things that could prevent a session/commission member from being available for the trial’s continuation.
- c. Trials are normally open (D-11.0306). It is permissible for people other than the parties to be present.
  - (1) There may, however, be times, especially when minors are involved, when the session/PJC may deem it wise to close the proceedings.
  - (2) Certainly a session/PJC may choose to close the proceedings to the press.

- (3) At the request of any party, or on its own initiative, the session/PJC may, at any stage of the proceedings, by a vote of two thirds of the members present, decide to exclude persons other than the parties and their counsel. Note: this means it is not an all or nothing closing of the trial. The only ones who may not be excluded are the PC, PC's counsel, the accused and the accused's counsel.
  - (4) The General Assembly Permanent Judicial Commission has stated that the written decision in cases where proceedings have been close must include the rationale for the closing.
  - (5) At the discretion of the PJC, witnesses may be excluded during the examination of other witnesses. Unless otherwise determined by the PJC, witnesses may remain once they have completed their testimony.
- d. Beginning the Trial
- (1) **Opening prayer.** While this is not specifically required by the ROD, the PJC is the council for judicial process and G-3.0105 calls for all meetings of the council to be opened and closed with prayer. Prayer also serves as a good reminder that this is an ecclesiastical proceeding and that the purpose is to honor God.
  - (2) **Preamble and enjoinder.** The moderator reads aloud D-1.0101 and D-1.0102, and enjoins the session/PJC members to recollect and regard their high character as judges of a council of the church of Jesus Christ and the solemn duties they are about to undertake.
  - (3) **Introductions.** Introduce the session/PJC members to the parties and their counsel. This helps to establish the proper decorum and also facilitates the challenge to eligibility which follows.
  - (4) **Challenge to organization and jurisdiction of the session/PJC.** Identify any session/PJC members ineligible to serve on this particular case, explain the absence of any other session/PJC members, and ask if there are any challenges to the organization and jurisdiction of the PJC. Decide any challenges raised by vote of the remaining members of the session/PJC. (D-11.0402b)
  - (5) **Decide any preliminary objections.** There may be issues raised at the pretrial conference or any other objections affecting the order and regularity of the proceedings. Any issues raised are decided by vote of the session/PJC. (D-11.0402c)
  - (6) **Report on the pretrial conference.** Report any agreements or preliminary decisions reached at the pretrial conference and vote to affirm those actions. This also includes reading into the record the list of agreed upon facts that do not need to be proved during the trial.
  - (7) **Plea.** This amounts to reading the charges not covered by no. 6) above, and asking the accused to plead "guilty" or "not guilty" to each charge. If the accused pleads "guilty," the session/PJC moves directly to consider the appropriate censure, otherwise the trial proceeds. (D-11.0402d)

- e. Managing the trial (D-11.0402e-j)
- (1) **Opening statements.** The parties have the opportunity to make opening statements. The PC begins, and is followed by the accused.
  - (2) **Oath or affirmation.** The moderator should perform this task or assign it to another. Prior to giving testimony, witnesses shall make an oath, or an affirmation if there is an objection to making an oath, by answering one of the following questions.
    - (a) “Do you solemnly swear that the evidence you will give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?”
    - (b) “Do you solemnly affirm that you will declare the truth, the whole truth, and nothing but the truth in the matter in which you are called to testify?” (D-4.0302a, b)
  - (3) **Prosecution evidence.** The PC presents its evidence in support of the charges, subject to objection and cross-examination.
  - (4) **Defense evidence.** The accused presents evidence to refute the charges, subject to objection and cross-examination.
  - (5) **Rebuttal.** The PC may introduce additional evidence, but only to rebut evidence introduced on behalf of the accused. This additional evidence is also subject to objection and cross-examination.
  - (6) **Final Statements.** The parties have the opportunity to make final statements. The PC has the right to open and close these arguments.
  - (7) **Censure Hearing.** The session/PJC should make some indication before retiring for its deliberations as to whether or not it will hold a censure hearing if the accused is found guilty. This will allow the parties to prepare while the session/PJC is deliberating.

## *Decision*

### **1. Making the decision (D-11.0403a, b)**

- a. The session/PJC meets privately to reach a decision in the case. All persons not a member of the session/PJC are excluded.
- b. After careful deliberation, the session/PJC votes on each charge separately and records the vote in its minutes.
- c. In order to find the accused guilty of a charge, the session/PJC must find that the pertinent facts within the charge have been proven beyond a reasonable doubt.
  - (1) Proof beyond reasonable doubt occurs when the comparison and consideration of all the evidence compels an abiding conviction that the material facts necessary to prove the charge are true.

- (2) No judgment of guilt may be found on a charge unless at least two thirds of the session/PJC members present agree on the judgment.
- d. When the session/PJC reaches a decision, the moderator, in open meeting, announces the verdict for each charge separately.

## 2. Writing the decision (D-11.0403c)

- a. A written decision stating the judgment on each charge and the determination of the degree of censure, if any, must be prepared while the session/PJC is in session. It becomes the final decision when it is signed by the moderator and clerk.
- b. The degree of censure is determined after guilt has been established on at least one charge. (D-11.0403e)
- c. If the verdict is “guilty” on at least one charge, the written decision must very specifically spell out the censure to be imposed.
- d. A copy of the written decision must be delivered to each party named in the decision by personal service or certified delivery.
- e. The decision must be filed promptly with the clerk of the session/presbytery. The decision will be read to the council and the full decision will be incorporated in its minutes. (D-11.0700)
- f. The session/PJC should consider including as part of the decision the requirement that the decision be reported to the session, congregation, or other agency impacted by the decision.
- (1) If the guilty party is a pastor, the PJC may ask the presbytery or the appropriate presbytery entity to meet with the session and to provide the decision, and to assist the session in deciding on next steps.
- (2) It may be helpful to allow the session to decide what, when, and how to communicate with the congregation.
- g. A session/PJC may direct any additional publicity as the session/PJC may deem necessary (D-11.0403h.)

## *Nature of Church Censure*

1. Censure is the term used by the church to describe to consequences of being judged or having pled guilty.
2. Censure is a process determined to be the best means of living up the ROD Preamble’s charge to redeem and restore.
3. The degrees of censure are described in Chapter XII of the ROD and in this Guide on pages III-51 to III-52.
4. The PJC exists for judicial process. It does not enforce its decision, the council does. This means that the written decision must contain all the information necessary for the



enforcement of the decision. For example: If the censure for a teaching elder is either rebuke with supervised rehabilitation, or temporary exclusion defined by the completion of supervised rehabilitation, the decision must include the goals of rehabilitation, the specific authority conferred on the supervising entity, a statement of how progress will be evaluated, and a statement of how it will be determined when and if the supervised rehabilitation has been satisfactorily completed.

### ***Determining Censure***

#### **1. When the accused pleads guilty**

If the accused pleads guilty before or during a pre-trial conference, thus avoiding a trial to determine guilt (See D-10.0302 and D-10.0405b[4]), the session/PJC shall proceed as follows:

- a. The moderator shall convene the full session/PJC at the time established at the pretrial conference.
- b. Following the review of all preliminary determinations and resolution of preliminary objections, the moderator shall ask how the accused pleads to each charge. The plea shall be entered on the record. (D-11.0402d)
- c. After the accused has pled guilty to each charge, the session/PJC hears the prosecuting committee's recommended censure, if any, and whether the accused agrees with the recommendation.
- d. If the nature of the offense is such that a person has been harmed, the person who was directly harmed by the offense may submit a victim impact statement which is not subject to cross-examination.
- e. If the parties disagree concerning the recommended censure or if the session/PJC finds the recommendation unacceptable or if it simply decides it needs more information to determine the appropriate degree of censure, the session/PJC **should hear** evidence from either party or the original accuser or that person's representative as to the extent of injury suffered, mitigating factors, rehabilitation, and other pertinent information before meeting in private to determine the degree of censure to be imposed. (D-11.0403e) **or**
- f. The session/PJC may choose not to hear evidence, but may move directly to private session to determine the degree of censure to be imposed.
- g. Whether as a result of procedure "e" or "f" above, the session/PJC reconvenes to pronounce the censure in open session.

#### **2. When the accused is found guilty**

If the accused is found guilty of any charge in accordance with D-11.0403a,b, the session/PJC shall determine the degree of censure to be imposed. It shall consider, but not be bound to, any recommendation that the prosecuting committee might have offered.

- a. If the nature of the offense is such that a person has been harmed, the person who was directly harmed by the offense may submit a victim impact statement which is not subject to cross-examination.
- b. The session/PJC **should hear** evidence from either party or the original accuser or that person's representative as to the extent of injury suffered, mitigating factors, rehabilitation, and other pertinent information before meeting in private to determine the degree of censure to be imposed. (D-11.0403e) Following determination, the session/PJC reconvenes to pronounce the censure in open session. **or**
- c. The session/PJC may choose not to hear evidence concerning censure. While in deliberation on the charges, the session/PJC may continue to determine the degree of censure if guilt is established. In open meeting, the moderator of the session/PJC shall announce the verdict for each charge separately and pronounce the censure.

**THROUGHOUT THE PROCESS, THE PRESBYTERY STATED CLERK IS AVAILABLE TO ALL PARTIES INVOLVED FOR IMPARTIAL ASSISTANCE IN THE PROCESS.**

**DISCIPLINARY PROCESS—  
PAID ADMINISTRATIVE LEAVE D-10.0106**

A. If the written statement of an alleged offense against a teaching elder includes an allegation of sexual abuse of a person under the age of eighteen, or of a person alleged to lack the mental capacity to consent, the following procedures apply:

1. The stated clerk immediately communicates the allegation to the permanent judicial commission (PJC).
2. The PJC moderator, within three days of receiving the allegation from the clerk, appoints two present or former members of the PJC whose terms expired within the past six years to determine whether the accused should be placed on paid administrative leave during the resolution of the matter.
3. The two-member panel:
  - a. Gives the accused an opportunity to be heard; and
  - b. Determines whether the risk to the congregation and to potential victims of abuse, when considered in light of the nature and probable truth of the allegations, requires administrative leave or other restrictions upon the accused's service.
  - c. If imposed, the administrative leave or restrictions continue until resolution of the matter as required by the Rules of Discipline (ROD) or the leave or restrictions are altered or removed by the two-member panel.
  - d. While on administrative leave, the accused may not perform any pastoral, administrative, educational, or supervisory duties, and may not officiate at any functions such as Baptism, funerals, or weddings.
  - e. Even if the PJC panel determines that no administrative leave or restriction is required, the investigating committee (IC) may present additional evidence to the panel at any time during the investigation supporting the imposition of administrative leave or other restrictions.
4. The cost of the paid administrative leave shall be borne by the employing entity whenever possible, or be shared by the presbytery as necessary.
5. Although D-10.0106 is silent on this point, the two designated members of the PJC are likely to be challenged on the matter of impartiality at the time of the trial. This would suggest the wisdom of designating former PJC members who are on the roster to serve in this capacity.

B. In most other situations, administrative leave cannot be imposed without the agreement of the accused teaching elder.

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## **DISCIPLINARY PROCESS—PETITION FOR REVIEW**

### **PETITION FOR REVIEW OF INVESTIGATING COMMITTEE PROCESS:**

A petition for the review of investigating committee's (IC) procedure (D-10.0204) may be initiated by the person against whom an allegation has been made. This petition shall be limited to:

- has the IC followed a proper trail of evidence?
- is evidence being considered properly in IC's hands?
- has IC examined relevant evidence proposed by the accused?

The petition for review is submitted to the session/PJC that would have jurisdiction if charges are filed, through the clerk of the council. The review of the petition shall be done in a hearing conducted by two members of the presbytery PJC within 30 days of receipt of the petition. This review is conducted by the presbytery PJC for both session and presbytery ICs. (D-5.0101, last sentence) Both parties may be present and may be represented by counsel.

The decision of the review will be communicated in writing to both parties within 15 days. The decision will also be communicated to the session/PJC moderator.

The petition for review does **not** stop the work of the IC, but the results of the review will be considered at the pre-trial conference if charges are filed.

### **PETITION FOR REVIEW OF IC DECISION NOT TO FILE CHARGES:**

A petition for review of the decision not to file charges may be initiated by the person who originally filed the written accusation(s). It must be initiated within 30 days of receiving the report from the IC that no charges were to be filed. This petition (D-10.0303 a to f) shall be limited to:

- specific examples of how the IC did not fulfill its duties specified in D-10.0202
- alleged irregularities in the conduct of the investigation, rather than disagreement with the conclusion

The Petition for Review is submitted to the clerk of session or the stated clerk of the presbytery. This review is conducted by the presbytery PJC for both session and presbytery ICs. (D-5.0101, last sentence) A copy of the petition may also be given to the IC to facilitate the filing of their response.

The IC shall file a written response to the facts alleged in the petition for review. If this is an IC at the local church level, the clerk of session will forward the petition for review and the IC's

response to the presbytery stated clerk who will transmit them to the designated members of the PJC for review.

Two members of the presbytery PJC shall consider the petition and the response, and render a decision within 90 days.

If the petition is not sustained, the disciplinary matter is concluded.

If the petition is sustained, a new IC shall be appointed by the session or presbytery. If a second IC decides not to file charges, the matter is concluded. (D-10.0303e)

**DISCIPLINARY PROCESS—  
ALTERNATIVE FORMS OF RESOLUTION  
D-2.0103; D-10.0202h**

After determining that it has found probable cause to believe that an offense was committed and that charges are ready to be filed, the investigating committee (IC) has the option to initiate alternative forms of resolution (AFR), if deemed appropriate. The purpose of AFR is to achieve justice and compassion for all parties involved through mediation and settlement. This is the only opportunity for the victim/accuser and the accused to participate in a mutual process of resolution. No conciliation process should be undertaken which makes anyone involved feel vulnerable or coerced. Therefore, such alternative forms of resolution require

- the written consent of all parties involved;
- that it be conducted by a professionally trained and certified mediator or arbitrator;
- that all parties be provided with an advocate throughout the mediation process.
- that any mediated agreement ordinarily must be achieved within 120 days.
- that it is solely the prerogative of the IC to determine if it will accept an agreement and present it to the session/PJC.
- that any mediated agreement must be approved by the session/PJC by a two-thirds majority and becomes the decision in the case. A record of the proceeding, in accordance with D-11.0601d, shall be transmitted to the clerk of session or stated clerk. (D-10.0202h[3]).

If a mediated settlement is not achieved, or if the agreement is unacceptable to either the IC or the session/PJC, the IC shall file the charges and shall proceed to prosecute the case. **No statements, written or oral, made at or in connection with the AFR process shall be admissible in evidence at a subsequent ecclesiastical investigation or trial.**

A 2004 Authoritative Interpretation of D-10.0202g (now D-10.0202h) says “When an investigation committee begins alternative forms of resolution under D-10.0202g (now D-10.0202h), the investigation committee must file charges at least concurrently with an agreement being filed with the permanent judicial commission’s approval of the agreement. Absent such charges, the permanent judicial commission has no basis to evaluate the proposed agreement. Moreover, if the agreement is not approved, the investigation should be prepared to move forward to prosecute such charges.”

(Also see D-10.0301 for reporting requirements and time constraints for filing charges when sexual abuse is involved.)



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## **DISCIPLINARY PROCESS—DEGREES OF CENSURE** (See Chapter XII, “Rules of Discipline”)

CENSURE is the official consequence of having been judged or having pled guilty to an offense. There are four degrees of censure, and each is accompanied by intercessory prayer when imposed by a court of the church.

### **Rebuke**

Rebuke is a statement that publicly sets forth the character of the offense, together with entreaty to be more watchful and avoid such offense in the future. It urges the offender to make diligent use of the means of grace to the end that the offender may be more obedient to our Lord Jesus Christ. It is complete when pronounced, and becomes a part of the minutes of the council when the decision in the case is reported.

### **Rebuke With Supervised Rehabilitation**

Rebuke with supervised rehabilitation involves a statement that publicly sets forth the nature of the offense, together with entreaty to be more watchful and avoid such offense in the future, and also mandates a period of supervised rehabilitation. The session/PJC must specify all necessary information about the supervised rehabilitation in its written decision and communicate it to the entity that will supervise the rehabilitation as well as to the person being censured. This information includes:

- the goals of the rehabilitation,
- the specific authority conferred on the supervising entity,
- a statement of how progress will be evaluated, and
- a statement of how it will be determined when and if the supervised rehabilitation has been satisfactorily completed.

This degree of censure permits the person censured to remain in ordered ministry while completing supervised rehabilitation ordered by the session/PJC.

In a case which involves the offense of sexual abuse of another person, the rehabilitation program may include the advice that the person found guilty complete a voluntary act or acts of repentance. Such acts may include: public acknowledgement of guilt, community service, symbolic restoration of what was lost by the person who was harmed, and or contributions toward documented medical/psychological expenses incurred by the person who was harmed.

### **Temporary Exclusion from the Exercise of Ordered Ministry or Membership**

Temporary exclusion from the exercise of ordered ministry or membership removes a person from exercising the rights and privileges of ordered ministry or membership for a period of time, or for a period defined by completion of supervised rehabilitation imposed by the session/PJC.

The session/PJC decision must specify whether the exclusion is from the exercise of ordered ministry or from membership.

If the period of temporary exclusion is defined by the completion of supervised rehabilitation, the session/PJC must specify all necessary information about the supervised rehabilitation in its written decision and communicate it to the entity that will supervise the rehabilitation as well as to the person being censured. This information includes:

- the goals of the rehabilitation,
- the specific authority conferred on the supervising entity,
- a statement of how progress will be evaluated, and
- a statement of how it will be determined when and if the supervised rehabilitation has been satisfactorily completed.

In a case which involves the offense of sexual abuse of another person, the rehabilitation program may include the advice that the person found guilty complete a voluntary act or acts of repentance. Such acts may include: public acknowledgement of guilt, community service, symbolic restoration of what was lost by the person who was harmed and/or contributions toward documented medical/psychological expenses incurred by the person who was harmed.

If a pastor is temporarily excluded from the exercise of the exercise of ordered ministry, the presbytery may, if no appeal is pending, declare the pastoral relationship dissolved.

Section D-12.0104h describes the required process for restoration from temporary exclusion.

### **Removal from Ordered Ministry or Membership**

Removal from ordered ministry or membership is the most severe censure the church, through judicial process, can impose. The session/PJC decision must specify whether the removal is from ordered ministry or from membership. Removal from ordered ministry sets aside election and ordination. Teaching elders removed from ordered ministry are given a certificate of membership to a church of the person's choosing. Removal from membership terminates a person's membership as well as sets aside ordination and election to all offices.

Once the censure of removal is imposed, restoration may be granted by the council imposing the censure when fully satisfied that the action is justified and the person makes a reaffirmation of faith for membership restoration or is reordained for restoration to ordered ministry.

## **DISCIPLINARY PROCESS— RENOUNCING THE JURISDICTION OF THE CHURCH**

### **G-2.0407 and G-2.0509**

When a person in an ordered ministry, whether a ruling elder, a deacon, or a teaching elder, renounces the jurisdiction of this church in writing to the clerk or stated clerk of the council of jurisdiction, the renunciation shall be effective upon receipt. Such renunciation of jurisdiction removes that person from membership and ordered ministry and the exercise of ordered ministry.

### **D-3.0106**

“Jurisdiction in judicial process ends when a person in an ordered ministry or a member renounces the jurisdiction of the church. Should the accused in a disciplinary case renounce the jurisdiction of the church as provided in G-2.0407 and G-2.0509, the clerk or stated clerk shall report to the council both the renunciation and the status of the matter at the time, including the name of the accused, the date and fact of renunciation during an investigation or trial, and the charges filed.”

Since membership is strictly voluntary, church members, deacons, ruling elders, and teaching elders may choose to leave the church at any time. The accused in a disciplinary case may renounce the jurisdiction at any point during the process. It may seem this is one way to end the judicial process. **It is also a self-imposed highest form of censure.** There is no provision for restoration for a person who has renounced the jurisdiction of the Presbyterian Church (U.S.A.).

### **Pastoral Inquiry**

Section G-3.0109b(6) provides for the creation of an administrative commission to make pastoral inquiry into persons accused of sexual abuse of another person (D-10.0401c) when jurisdiction in a judicial proceedings against such persons has ended due to death or renunciation of the accused. Such inquiries shall not be understood as judicial proceedings but shall seek to reach a determination of truth related to the accusation and make appropriate recommendations to the designating council.

[Intentionally Blank]

## **DISCIPLINARY PROCESS— GUIDE TO THE PRESBYTERY CONCERNING SESSION’S NEED TO KNOW**

While the allegations made against a teaching elder or a ruling elder commissioned to particular pastoral service (CRE) are lodged with the presbytery stated clerk and are confidential, confidentiality does not mean secrecy. “Confidential” means the allegations are not revealed, unless there is a demonstrated “need to know.”

When allegations against a pastor or a CRE of a congregation are made, ordinarily the session has a “need to know” that accusations have been made. Some reasons for informing the session are:

1. The allegations may be of such a nature (i.e., financial improprieties, or improper conduct with parishioners) that the session needs to know of the allegations to make an **informed** decision whether to adjust a pastor’s job description in certain areas of responsibility during the investigation and trial, if one is required. Being responsibly informed is necessary both from a polity perspective and from civil liability perspective.
  - a. This should be viewed as both insulating the pastor from the source of further allegation and reducing the risk of reoccurrence.
  - b. This should be viewed as temporary adjustments to the job description rather than changes to the terms of call.
  - c. Removal from preaching and moderating session and congregational meetings is only possible with the concurrence of the pastor or prior acceptance of a presbytery policy requiring such.
2. It is not uncommon for pastors, who have allegations brought against them, to seek support within the congregation, without reporting accurately about the allegations or the judicial process. This may deepen division in the congregation, cause conflicted loyalties, and lengthen the subsequent healing period for all parties involved.

Prayerful sensitivity is required in meeting with the session. The *Book of Order* gives responsibility for the congregation and the ministry of a church in time of conflict to the presbytery. Therefore, the presbytery must designate a person or entity to inform the session of the allegations. In some presbyteries, one of the designated persons for such tasks is the executive presbyter. This requires the stated clerk to inform the designated person and the executive of the nature of the allegations.

As soon as the appropriate person or entity is informed of the allegations, he/she should be in contact with the session moderator and with the clerk of session to ascertain when and how they will inform the session. It may be preferable to have a called meeting of session for this purpose only.

Often session members are concerned that they shouldn't be hearing information about a matter that is still under investigation. It is a difficult and sensitive matter, but there are important reasons why the council of the church must be aware of issues that might have an impact on the safety of people in the church or the health and well-being of the congregation. This meeting does not call for the session to decide whether it believes in the teaching elder's or CRE's guilt or innocence. It does call for the session to reduce the exposure to further problems. Depending on the nature of the allegation(s), the session may choose to modify some ministerial responsibilities during the investigation.

### **In Extreme Cases**

In most circumstances, the *Book of Order* does not provide for non-voluntary leave during the time of an investigation into allegations against an installed pastor. If the pastor does not agree to taking a leave, neither the session nor the presbytery may impose one.

However, beginning with the 2005–2007 *Book of Order*, there is a provision for imposing a paid administrative leave when the alleged offense is sexual abuse of a person under the age of eighteen, or of a person alleged to lack the mental capacity to consent. It is two designated representatives of the permanent judicial commission (PJC) who are given the authority to impose the leave, but it is undoubtedly the committee on ministry that will be given the task of working with a congregation where a pastor has been placed on such a leave. (D-10.0106)

In other extreme cases, the presbytery does have authority to dissolve the pastoral relationship **when it finds that the church's mission under the Word imperatively demands it.** (G-2.0904)

It would require an extreme situation for the presbytery to act to dissolve the pastoral relationship without being requested to do so by either the pastor or the congregation. In doing so, the presbytery would be acting in its capacity of being responsible for the mission and government of the church throughout its bounds.

**DISCIPLINARY PROCESS—  
SAMPLE STATEMENT OF  
INVESTIGATING COMMITTEE PROCEDURE**

1. Meet to receive training and to organize for the task.
  - a. Receive the written statement of alleged offense from the clerk of session or stated clerk.
  - b. Decide under what circumstances the investigating committee (IC) will work in smaller groups than the full committee.
  - c. Set meeting schedule.
2. Provide the accused with a copy of the statement of alleged offense.
3. Provide the accuser with a statement of the IC's procedure.
4. Inform accuser and the person on whose behalf the accuser has acted, if there is such, of the right to be accompanied by an advocate at each and every conference with the IC, the prosecuting committee (PC), and the session or permanent judicial commission (PJC). Arrange for and hold a conference with the accuser and the person on whose behalf the accuser acted, if there is such.
5. Arrange for and hold a conference with the accused. At this and every subsequent conference, inform the accused of the right to remain silent, the right to be represented by counsel, and, if charges are later filed, to have counsel appointed if unable to secure counsel.
6. Follow up on information provided by the statement of alleged offense, the accuser, and the accused. Make a thorough inquiry into the facts and circumstances of the alleged offense as they emerge.
7. Examine all relevant papers, documents, and records available to the IC.
8. Determine a list of available witnesses and interview them.
9. Determine, in accordance with G-3.0102 and D-2.0203b, whether there are probable grounds or cause to believe that an offense was committed by the accused.
10. Decide whether the charge(s), if filed on the basis of the papers, documents, records, testimony, or other evidence, can reasonably be proved, having due regard for the character, availability, and credibility of the witnesses and evidence available.
11. If the investigating committee decides to file charges, it will promptly inform the accused in writing of the charges it will make, including a summary of the facts it expects to prove at the trial to support those charges. The investigating committee will ask the



accused if that person wishes to plead guilty to the charges to avoid full trial and indicate the censure it will recommend to the session or permanent judicial commission.

12. Inform the accuser that charges are being filed, and to expect to hear from the prosecuting committee about the timing of further proceedings.
13. Submit the charges to the clerk of session or stated clerk, and decide which member(s) will serve as the prosecuting committee.
14. If charges are not to be filed, prepare and submit a statement to the stated clerk and the accused indicating that fact.
15. Inform the accuser that charges are not being filed.
16. If a petition for review of the decision not to file charges is submitted, within 30 days submit a written response to the facts alleged in the petition.

**DISCIPLINARY PROCESS**  
**SAMPLE CHARGES #1—D-10.0403**

The Presbyterian Church (U.S.A.) charges you, STICK E. FINGERS, a member and ruling elder of Restoration Presbyterian Church, with the following offenses:

1. On or about June 23, 2002, you, STICK E. FINGERS, did commit the offense of stealing from the church in that you wrote a check from the bank account of Restoration Presbyterian Church to the bank account of SF Laundry, a business owned by Mr. Fingers, in the amount of \$25,000.00 for which no services were exchanged. This action is contrary to Deuteronomy 5:19.

**Witnesses in support of charge:**

MON E. BAGS, Church Financial Secretary, 102 Gotrocks Dr., Sadtown, MA

PILL R. O'CHURCH, Ruling Elder and President of 1st City Bank of Sadtown, MA,  
1001 Safety Box Rd, Sadtown, MA

**Records and documents in support of charge:**

Bank account records from 1st City Bank of Sadtown for Restoration Presbyterian Church

Check stub for check number 20135 of Restoration Presbyterian Church

Canceled check number 20135 from Restoration Presbyterian Church showing the endorsement and deposit tracking information for SF Laundry.

A letter from the Bank of Dolittle verifying that Restoration Presbyterian Church check no 20135 was deposited to an account in that bank owned by Stick E. Fingers.

2. On or about June 23, 2002, you, STICK E. FINGERS, did commit the offense of misuse of church funds not in accord with session direction in that you took church funds for use in your business. This action is contrary to G-3.0205 of The Constitution of the Presbyterian Church (U.S.A.).

**Witnesses in support of charge:**

WRIT N. RECORD, Clerk of Session for Restoration Presbyterian Church, 675 Lost Word Lane, Sadtown, MA.

**Records and documents in support of charge:**

Minutes of the session of Restoration Presbyterian Church for the year 2001 and through the end of June 2002.

Date: August 15, 2002

\_\_\_\_\_  
Signature, Investigating Committee

**DISCIPLINARY PROCESS  
SAMPLE CHARGES #2—D-10.0403**

The Presbyterian Church (U.S.A.) charges you, PRED A. TORR, a teaching elder, with the following offense:

1. On or about the January 10, 2000, you, PRED A. TORR, did commit the offense of adultery in that you, while in a counseling relationship with Vone R. Able, a married woman, did engage in sexual a relationship with her. The relationship continued throughout 2000. This action is in violation of Exodus 20:14.

**Witnesses in support of charge:**

Vone R. Able, 102 Frightening Drive, Bigtown, WA

**Records and documents in support of charge:**

Letters from Pred A. Torr to Vone R. Able, all dated during 2000 or early 2001.

Credit card receipts for By-The-Hour Motel for the following dates: April 12, 2000, May 29, 2000, August 3, 2000, and October 17, 2000.

E-mail correspondence between Pred A. Torr and Vone R. Able between January, 2000, and January, 2001.

Date: February 27, 2001

\_\_\_\_\_  
Signature, Investigating Committee

## DISCIPLINARY PROCESS TRAINING FOR A PERMANENT JUDICIAL COMMISSION

The person ordinarily responsible for completing or arranging the training of a permanent judicial commission (PJC) is the stated clerk of the presbytery or synod. The stated clerk may invite others with experience in judicial process within the Presbyterian Church (U.S.A.) [PC(USA)], including other clerks, or staff of the Office of the General Assembly, Department of Constitutional Services, to assist with the training.

Prepare for the training by reading carefully all the material in this chapter of the Guide for Judicial Process as well as Chapters XI through XIV of the “Rules of Discipline” (ROD). If this is the first meeting of a new PJC, it will be important to present the information in D-5.0200 for the benefit of the new members. You should give an overview of Chapter X so that everyone understands the work of an investigating committee (IC) and what has brought the matter to the PJC.

1. Begin the training by reading aloud the Preamble (Chapter I) of the ROD.
2. Distribute copies of the pages from this Guide entitled “Disciplinary Process: Overview” as a way of assisting the members of the PJC to understand the disciplinary process.
3. Distribute copies of the pages from this Guide entitled “Disciplinary Process: Permanent Judicial Commission.” This section gives clear information about jurisdiction and the authority of the PJC. The section on evidence will be important if there is the likelihood of a trial.

Stress the importance of members of the PJC maintaining neutrality. Explain that the participation of any member of the PJC can be challenged by either party at the beginning of a trial. (D-11.0402b[1]) PJC members should avoid discussion of the case or even a pending case and should not receive information or materials related to the case, except those that are the records provided by the stated clerk or the moderator or clerk of the PJC. (D-11.0303)

4. Distribute copies of the pages from this Guide entitled “Disciplinary Process: Outline for the Presbytery” and “Disciplinary Process: Flowchart.” It is important for you and the PJC to be aware of the many steps of the process that are very time sensitive. Some members will find it helpful to follow the outline pages while others will find the flowchart more informative.
5. A **quick response** will be needed by the PJC moderator if an allegation of sexual abuse of a person under the age of eighteen, or of a person alleged to lack the mental capacity to consent is filed. (D-10.0106). The PJC moderator and vice moderator should be aware of this and understand the importance of quick action.
6. At this time in the training, it will be important to focus on particular sections of the disciplinary process.

If an IC is created, focus on assisting the PJC to understand the work of an IC and the PJC’s responsibilities in the “petition for review” process. Distribute

“Disciplinary Process: Petition for Review” and “Disciplinary Process: Alternative Forms of Resolution.”

By the end of the training session, the PJC should determine how the two PJC members that will receive petitions for review, as well as the two present or former PJC members who will determine the imposition of administrative leave, will be designated. Note: this may need to be adjusted depending on where a case arises since some members of the PJC may be excluded from serving.

If charges have been or may soon be filed, focus on assisting the PJC to understand the procedures of a trial as outlined in “Disciplinary Process: Permanent Judicial Commission.” Also distribute “Disciplinary Process: Degrees of Censure,” “Disciplinary Process: Renouncing the Jurisdiction,” and “Disciplinary Process: Guide to the Presbytery Concerning a Session’s Need to Know.” Each page will give detailed information to assist the PJC.

Discuss the “Degrees of Censure” so that the PJC understands the differences, distinctions, and implications of each degree.

7. Since you have provided each member of the PJC with a current *Book of Order*, review with them the forms found in the Appendix. Forms #34 to 49 are applicable to a disciplinary case. The forms are not mandatory language, but a guide for information that is needed.
8. Emphasize that the rules which apply to judicial process in the church are to be found in the *Book of Order*, particularly the ROD. Some members of the PJC may bring a background from the legal profession and will be inclined to assume that those rules apply. They do not. A disciplinary trial is an ecclesiastical process.
9. Remind the PJC that it has the right and responsibility to control the conduct of the trial.
10. Discuss the meaning and significance of making a decision beyond a reasonable doubt, using the definition in D-11.0403a.
11. After a time of training, you may find it helpful to use “PJC Training #1,” “PJC Training #3,” and “PJC Training #5.” (See Chapter V, pages V-13 to V-18, and V-19 to V-22, and V-27 to V-30 in this Guide. Pages for new trainings.) Use the front side of “PJC Training #1” as a quiz on judicial terminology, and the back side as an answer guide. “PJC Training #3” can be a quiz to measure understanding of the sequence of events in a disciplinary case. “PJC Training #5” is a case study which can facilitate valuable discussion. (“PJC Training #2” deals with remedial cases.) “PJC Training #4” is a list of potential topics for inclusion in training.
12. Remind the PJC that the stated clerk should be considered an advisor on process issues, and will serve as a resource person during the trial. The stated clerk is normally present during the trial up to the point of deliberation.

**DISCIPLINARY PROCESS—  
SAMPLE DECISION FORMAT**

THE PERMANENT JUDICIAL COMMISSION

*of*

THE PRESBYTERY/SYNOD OF \_\_\_\_\_

*of*

THE PRESBYTERIAN CHURCH (U.S.A.)

\_\_\_\_\_  
DECISION  
\_\_\_\_\_

Presbytery of \_\_\_\_\_ )  
for )  
The Presbyterian Church (U.S.A.) )  
v. ) [case number]  
[Name(s)], )  
Minister of Word and Sacrament )  
or )  
Elder, Deacon, Church member )

----- [ ARRIVAL STATEMENT ] -----

This is a Disciplinary case which has come before the Permanent Judicial Commission as a result of accusations submitted against [Name], a teaching elder and a member of the Presbytery of [Presbytery Name].

--- [ JURISDICTION STATEMENT, see *BOOK OF ORDER*, D-3.0101, D-10.0401 ] ---

The Permanent Judicial Commission finds that it has jurisdiction, that the charges against Mr./Ms \_\_\_\_\_ were filed with the Stated Clerk of the Presbytery of \_\_\_\_\_ within the required time limits.

----- PRELIMINARY DECISIONS -----

---[If proceedings were closed to any persons, state reasons. If not, eliminate this section.]---

----- HISTORY -----

---[ state history including the appointment of the Investigating Committee and its decision ]---  
---[ to file charges. Indicate the dates of the trial and other details deemed pertinent ]---

----- CHARGES AND VERDICT -----

--- [ state the charges as submitted by the investigating committee and the verdict on each ] ---

--- VERDICT ---

--- [ JURISDICTION STATEMENT, see *BOOK OF ORDER*, D-3.0101, D-10.0401 ] ---

----- ORDER -----

THIS PERMANENT JUDICIAL COMMISSION, ACTING AS A COURT OF THE CHURCH,  
THEREFORE IMPOSES THE CENSURE OF \_\_\_\_\_.

[details of the censure imposed]

----- [ ABSENCES AND NON-PARTICIPANTS ] -----

[name(s)], (a) member(s) of the Permanent Judicial Commission, (was)(were) present for  
the presentation of evidence, but took no part in the decision

**OR**

[name(s)], (a) member(s) of the Permanent Judicial Commission, (was)(were) not present  
and took no part in the proceedings.

----- [ DATE ] -----

Dated this \_\_\_\_\_ day of \_\_\_\_\_ , \_\_\_\_\_  
day month year

[signed] \_\_\_\_\_  
[name]  
Moderator, Permanent Judicial Commission

[signed] \_\_\_\_\_  
[name]  
Clerk, Permanent Judicial Commission

## DISCIPLINARY PROCESS— SAMPLE CERTIFICATION AND TRANSMITTAL FORM

### CERTIFICATES

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Presbytery/Synod of \_\_\_\_\_, Presbyterian Church (U.S.A.), in Disciplinary Case No. \_\_\_\_\_, \_\_\_\_\_ v. \_\_\_\_\_, made and announced at \_\_\_\_\_ [place], on \_\_\_\_\_ [date].

\_\_\_\_\_  
[typed name], Moderator, Permanent Judicial Commission of the  
Presbytery/Synod of  
\_\_\_\_\_

\_\_\_\_\_  
[ typed name ], Clerk, Permanent Judicial Commission of the  
Presbytery/Synod of  
\_\_\_\_\_

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, depositing it in the United States mail at \_\_\_\_\_ [place] on \_\_\_\_\_ [date]:

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Presbytery/Synod of \_\_\_\_\_, Presbyterian Church (U.S.A.), by delivering it in person, on \_\_\_\_\_ [date].

\_\_\_\_\_  
[ typed name ], Permanent Judicial Commission of the  
Clerk, Presbytery/Synod of  
\_\_\_\_\_



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## **CHAPTER IV—APPEAL PROCESS**

### **ROLE OF THE CLERK**

#### **Clerk of the council whose permanent judicial commission will hear the appeal**

Upon receiving the copy of a notice of appeal of a decision of a lower council, the stated clerk of the council that will hear the appeal has the following responsibilities:

1. Note the date a notice of appeal is received. A copy of the judgment or decision being appealed should be included with the notice of appeal. (D-8.0201b, D-13.0201b)
2. Immediately transmit the notice of appeal and the decision being appealed to the officers of the permanent judicial commission (PJC). (D-8.0203, D-13.0203)
3. If a Request for Stay of Enforcement is received along with the appeal, immediately send the request, with the accompanying short statements and notice of appeal to all members of the permanent judicial commission. (D-6.0103a.(3)[b])
4. Receive notification from the PJC moderator and clerk that the case has been either accepted or rejected. If the case is rejected, either unchallenged or after a hearing on the preliminary questions, the matter is ended. If not already done so by the PJC officers, notify the parties and PJC members of the preliminary findings of the officers.
5. If three or more members of the PJC sign certifications that they believe a Stay of Enforcement is appropriate, immediately advise the parties that a stay of enforcement has been entered (secured).
6. If the findings of the moderator and clerk are challenged within 30 days of receipt of their findings, arrange for a hearing on the preliminary questions. (D-8.0302a) (D-13.0302a)
7. Notify the stated clerk of the lower council that the case has been accepted. (D-8.0303c, D-13.0303c)
8. Receive the record of the case from the clerk of the lower council. (D-8.0303c, D-13.0303c)
9. Notify all parties of the date the record was received. If requested, furnish any party to the appeal, at cost to that party, a copy of the record on appeal. Extend time limits, for good cause shown. (D-8.0303e–g, D-13.0303e–g)
10. Receive the written brief from the appellant within 30 days after the filing of the record on appeal. Acknowledge receipt to all parties indicating the date the appellant’s brief was received. Extend time limits for good cause shown. (D-8.0304, D-13.0304)
11. Receive the written brief from the appellee within 30 days after the filing of the appellant’s brief. Extend time limits for good cause shown. (D-8.0305, D-13.0305)

12. Transmit the record and the briefs to the clerk of the PJC. (In the role of support for the PJC, the clerk of the higher council may copy the record and briefs and transmit them to the members of the PJC as well as the clerk.) (D-8.0306, D-13.0306)
13. Be available to the appellant and appellee to help interpret the “Rules of Discipline” (ROD) and to explain and answer questions concerning the appeal process.
14. Receive the decision from the clerk of the PJC. The minutes and decisions of the PJC shall be entered into the minutes of the council that elected the PJC, as with all commissions of councils. (D-8.0404e, D-13.0404e)

### **Clerk of the council whose decision (or whose PJC’s decision) is being appealed**

Upon receiving the written notice of appeal, the clerk of the lower council whose decision (or whose PJC’s decision) is being appealed has the following responsibilities:

1. Note the date a notice of appeal is received. A copy of the judgment or decision being appealed should be included with the notice of appeal. (D-8.0202b, D-13.0202b)
2. Within 45 days after receipt of the notice of appeal, list in writing to the parties all of the papers and other materials that constitute the record of the case. (D-8.0303a, D-13.0303a)
3. Within 15 days thereafter, receive any written challenges to the content of the record of the case. (D-8.0303b, D-13.0303b)
4. Upon notification by the stated clerk of the higher council that the appeal has been accepted, certify and file the record of the case, including any written challenges, with the stated clerk of the higher council. Correct the record as directed. (D-8.0303c–d, D-13.0303c–d)
5. If a PJC in an appeal of a disciplinary case reverses all findings of guilt, the person is automatically restored to ordered ministry or church membership. Make this declaration to the council and correct the rolls, if necessary. (D-13.0405)

## APPEAL PROCESS OVERVIEW

### WHAT IS AN APPEAL

An **appeal** is a review of the proceedings and decision of a case, remedial or disciplinary, by the next higher council, through that council's PJC. The purpose of this review is to seek correction, modification, setting aside or reversing the decision. **The PJC that hears an appeal is not a trier of fact, but a reviewer of process.** The lowest court of jurisdiction is in the best position to determine the facts of the case. An appeal asks the next higher council, through its PJC, to correct alleged errors in the process used in a trial, mistakes in application of the provisions of the Constitution, or a fundamental injustice in a decision such as an unduly severe censure.

### INITIATING AN APPEAL

#### *Remedial Case Appeal*

One or more of the original parties (complainant or respondent) in a **remedial case** can file an appeal of the decision with the stated clerk of the council that rendered the decision on the grounds that at least one of the items listed below (D-8.0105a–g) had occurred. Either party may file an appeal of an appellate decision if that decision has not been rendered by the General Assembly PJC. (D-8.0102)

#### **Grounds for Appeal of a Remedial Case are (D-8.0105):**

1. Irregularity in the proceedings
2. Refusing a party reasonable opportunity to be heard or to obtain or present evidence
3. Receiving improper, or declining to receive proper evidence or testimony
4. Hastening to a decision before the evidence or testimony is fully received
5. Manifestation of prejudice in the conduct of the case
6. Injustice in the process or decision
7. Error in constitutional interpretation

The party appealing the decision of the lower council's PJC is called the appellant. The party defending the decision of the lower PJC is called the appellee.

#### *Disciplinary Case Appeal by Person Found Guilty*

**The person found guilty** in a **disciplinary case** may initiate the first level of appeal, on the grounds that at least one of the items listed below (D-13.0106a(1–8)) had occurred, by filing a notice of appeal with the stated clerk of the council that rendered the decision. Once a disciplinary case has been appealed and heard, either party can appeal the results of the first

appellate review to the next higher council, providing the decision has not been rendered by the General Assembly PJC. (D-13.0102–D-13.0103)

Grounds for appeal in a disciplinary case by the person found guilty are (D-13.0106a):

1. irregularity in the proceedings
2. refusing a party reasonable opportunity to be heard or to obtain or present evidence
3. receiving improper, or declining to receive proper evidence or testimony
4. hastening to a decision before the evidence or testimony is fully received.
5. manifestation of prejudice in the conduct of the case
6. injustice in the process or decision
7. error in Constitutional interpretation
8. undue severity of censure in a disciplinary case

The party appealing the decision of the lower council's PJC is called the appellant. The party defending the decision of the lower PJC is called the appellee.

A PJC may properly dismiss a case if the appeal fails to state at least one of the grounds for appeal referenced above. A PJC may grant a request to withdraw an appeal only if such withdrawal would not defeat the ends of justice. (D-8.0104, D-13.0105)

### ***Filing a Notice of Appeal (D-8.0200, D-13.0200)***

Within 45 days of receipt of the decision of the session or PJC, the party wishing to appeal the decision (the appellant) files a notice of appeal which contains all the data identified in D-8.0202 or D-13.0202 **with the session clerk or stated clerk of the council that rendered the decision** (the lower council) by certified delivery with copies to the other party or parties (the appellee) and the stated clerk of the higher council whose PJC will hear the appeal. (See forms 19 and 20 or 46 and 47 in the Appendix A of the *Book of Order* for suggested wording of the notice of appeal.)

**Note:** Copies of all communications are always sent to all parties and appropriate stated clerks. It is important to secure a dated certification that all copies have been received. Communication to the PJC should always come through the stated clerk.

### **Stay of Enforcement Procedure, Challenge and Application (D-6.0103)**

As of July 10, 2011, comprehensive changes to the Rules of Discipline regarding the procedures for obtaining a Stay of Enforcement in Remedial cases and in Appeals became effective. There are now timelines for the complainant or appellant to file a Request a Stay of Enforcement, for the Moderator and Clerk of the PJC with jurisdiction to review the Request for a Stay of Enforcement and for the determination by the PJC regarding the implementation of a Stay of Enforcement or a challenge to a Stay of Enforcement.

A Stay of Enforcement is a written instruction from the permanent judicial commission having jurisdiction to hear a complaint or appeal that orders the suspension of a decision or an action until a complaint or appeal is finally determined. D-6.0103. See Chapter IV, page IV-19 for details of the stay of enforcement and challenge to the stay as it applies to appeals.

## **THE RECORD ON APPEAL (D-8.0303, D-13.0303)**

Within 45 days of receiving the notice of appeal, the clerk of session or stated clerk of the council that rendered the decision shall list in writing to the parties all the papers and materials that constitute the record of the case. This includes such things as all minutes and papers filed in the case, all exhibits, records, documents, etc. See D-7.0600 for contents of the record of a remedial case and D-11.0600 for that of a disciplinary case. Both parties to the appeal then have fifteen days to submit a written request to correct the record or file additional minutes or papers.

It is the responsibility of the session clerk or stated clerk of the lower council to certify and file the record of the case with the stated clerk of the council whose PJC will hear the appeal when the clerk has notice from the higher council PJC that the case has been accepted. Upon receiving the record on appeal, that stated clerk shall notify the parties that it has been received. Any party may request, at their own expense, a complete copy of the record to be furnished by the stated clerk of the higher council.

## **BRIEFS**

The appellant shall file with the stated clerk of the higher council a brief which clearly specifies the errors alleged in the notice of appeal and arguments, reasons, and citations of authorities in support of appellant's contentions of alleged errors. (D-8.0305; D-13.0304) The appellant's brief must be filed within thirty days of notice of reception of the record on appeal. A copy of the brief must also be provided to the other party or parties. See Form 48 and 21 (remedial appeal) or 49 and 22 (disciplinary appeal) for suggested format and certification of brief receipt. **Failure to file an appellant brief renders the case abandoned.** (D-8.0304/D-13.0304) The other party or parties (the appellee) shall then have thirty days to file with the stated clerk a written brief responding to the appellant's brief. **Failure to file an appellee brief waives the rights of the appellee to appear and be heard at the hearing.** (D-8.0305/D-13.0305) The briefs and the record on appeal are transmitted to the clerk of the PJC by the stated clerk.

*While there is no provision for parties to submit "motions" to the PJC, or for the appellant to provide a response to the appellee's brief, such practice is common. The PJC will decide whether or not to receive any material outside the record, including newly discovered evidence under the provision of D-14.0502.*

## **PREHEARING PROCEEDINGS**

### ***Preliminary Questions (D-8.0300, D-13.0300)***

Upon receiving the papers in an appeal case, the moderator and clerk of the PJC shall examine them to determine if four preliminary questions have been answered affirmatively:

1. Does the council receiving the appeal have jurisdiction?
2. Does the appellant have standing to file?

3. Was the notice of appeal filed within the proper time limits?
4. Does the appeal state one or more grounds for appeal as described in D-13.0106?

The moderator and clerk shall report their findings to all parties and to the other members of the PJC. A challenge may be made to their findings within 30 days of the receipt of the findings by either party or a member of the PJC. In the event there is a challenge by any party or PJC member, the PJC shall hold a separate hearing to settle the matter. The parties may present supporting evidence and arguments on the finding(s) in question. **If the PJC ultimately determines that any of the preliminary questions have not been answered affirmatively, it shall dismiss the appeal. The PJC may not dispose of a case without a hearing and review of the record if the preliminary questions have been answered affirmatively.** If they have been answered affirmatively, the PJC shall notify all parties of the date and time when they may appear to present their appeal. How the appeal will be heard varies with PJC's, but the parties should be advised of the format and given some basic rules for the hearing.

### *Prehearing Conference*

At any time after an appeal is received by a PJC, the commission may provide for the parties or their counsel, if any, in a prehearing conference, to seek agreement on any of the disputed issues in the appeal, and to take other action which might reasonably and impartially narrow the dispute and expedite its resolution. (D-8.0307/D-13.0307)

## **HEARING THE APPEAL**

Appellant and appellee and/or their counsel shall have the opportunity to present their supporting arguments on why the alleged errors of the lower council should or should not change the decision. If, following deliberation, the PJC determines that none of the alleged errors were, in fact, sustainable and no other errors were found, the decision of the lower PJC is affirmed. (D-8.0404a/D-13.0404a)

If one or more errors are found, the PJC determines the manner in which the error will be addressed in its written decision. It may affirm, set aside, reverse, or modify the previous decision, or it may remand the case back to the lower council for a new trial. When a PJC reverses all findings of guilt in an appeal in a disciplinary case, it is in effect an acquittal, and the person is automatically restored to ordered ministry or membership. (D-13.0405)

Written decisions are promptly prepared and sent by certified delivery or personal service to all parties and the stated clerk of the council whose PJC heard the appeal.

## **OUTLINE AND TIMELINE OF THE APPEAL PROCESS**

All participants involved in the appeal process should review carefully the outline and accompanying timeline following this overview to ensure that all matters are handled within the time limits and constraints of the appeal process.

## APPEAL PROCESS OUTLINE

<b>Action</b>	<b>Timeline</b>
1. One of the original parties in a remedial case, or the guilty party in a disciplinary case, files a written notice of appeal with the session clerk or stated clerk of the council which elected the permanent judicial commission (PJC) whose decision is being appealed. The person filing the appeal becomes known as the appellant. (D-8.0201-.0202/D-13.0201-.0202)	Within 45 days of receipt of the decision of the Session or PJC.
The party filing an appeal in a remedial case may file a request for a stay of enforcement of the decision being appealed. (D-6.0103)	Within 45 days of receipt of the decision.
2. Upon receipt of the notice of appeal with a copy of the decision being appealed, the stated clerk (of the higher council) transmits them to the officers of the PJC. (D-8.0203/D-13.0203)	Immediately
3. The moderator and clerk of the PJC decide the preliminary questions and communicate their findings to the parties and the full PJC.	In a timely manner.
4. If this finding is challenged by either party or a member of the PJC, a hearing on the finding at issue is held. (D-8.0301/D-13.0301)	Within 30 days of receipt of the findings.
If any of the preliminary questions are answered in the negative, either unchallenged or after a hearing on the issue, the case is dismissed.	
5. The PJC notifies the stated clerk of the higher council that the case has been accepted.	
6. The stated clerk of the higher council notifies the clerk of session or stated clerk of the lower council that the case has been accepted. (D-8.0303c/D-13.0303c)	
7. The clerk of session (in a disciplinary case for a church member) or the stated clerk (in a disciplinary case for a teaching elder or a ruling elder commissioned to particular pastoral service in a remedial case) lists in writing to the parties all the papers and other materials that constitute the record of the	Within 45 days of receipt of the notice of appeal



<b>Action</b>	<b>Timeline</b>
case. (D-8.0303/D-13.0303)	
8. A party or parties to a case may file with the clerk of session or stated clerk of the lower council a statement challenging the accuracy or completeness of the record as listed in 6.	Within 15 days of receipt of the list of material included in the record on appeal
9. The clerk of session or stated clerk of lower council certifies and files with stated clerk of the higher body the record of the case including any written challenges to accuracy. (D-8.0303c/D-13.0303c)	Immediately on receipt of notification from the clerk of the higher council that the case has been accepted.
10. The stated clerk of the higher council shall notify the parties of the date the record on appeal was received. (D-8.0303e/D-13.0303e)	Immediately on receipt of the record on appeal.
11. Appellant files a brief with the stated clerk of the higher council with a copy to the other party or parties. (D-8.0304/D-13.0304)	Within 30 days after the date the record on appeal was received (see flowchart, p. IV-9).
12. Appellee files a brief with the stated clerk of the higher council with a copy to the other party or parties. (D-8.0305/D-13.0305)	Within 30 days after the filing of the appellant's brief.
13. The stated clerk of the higher council sends the record and briefs to the PJC. (D-8.0306/D-13.0306)	On receipt of the record on appeal and the briefs, or the expiration of the time for filing them.
14. Moderator or clerk of the PJC notify parties of date and time of the hearing. (D-8.0401/D-13.0401)	
15. The hearing is held. The appellant has the right of opening and closing the argument. (D-8.0403b/D-13.0403b)	
16. The PJC deliberates, votes separately on each alleged specification of error, and writes its decision while in session. (D-8.0404/D-13.0404)	
17. A signed copy of the decision is delivered to the parties. (D-8.0404c/D-13.0404e)	Immediately.
18. A signed copy of the decision is	Within 30 days of the conclusion of the

**Action**

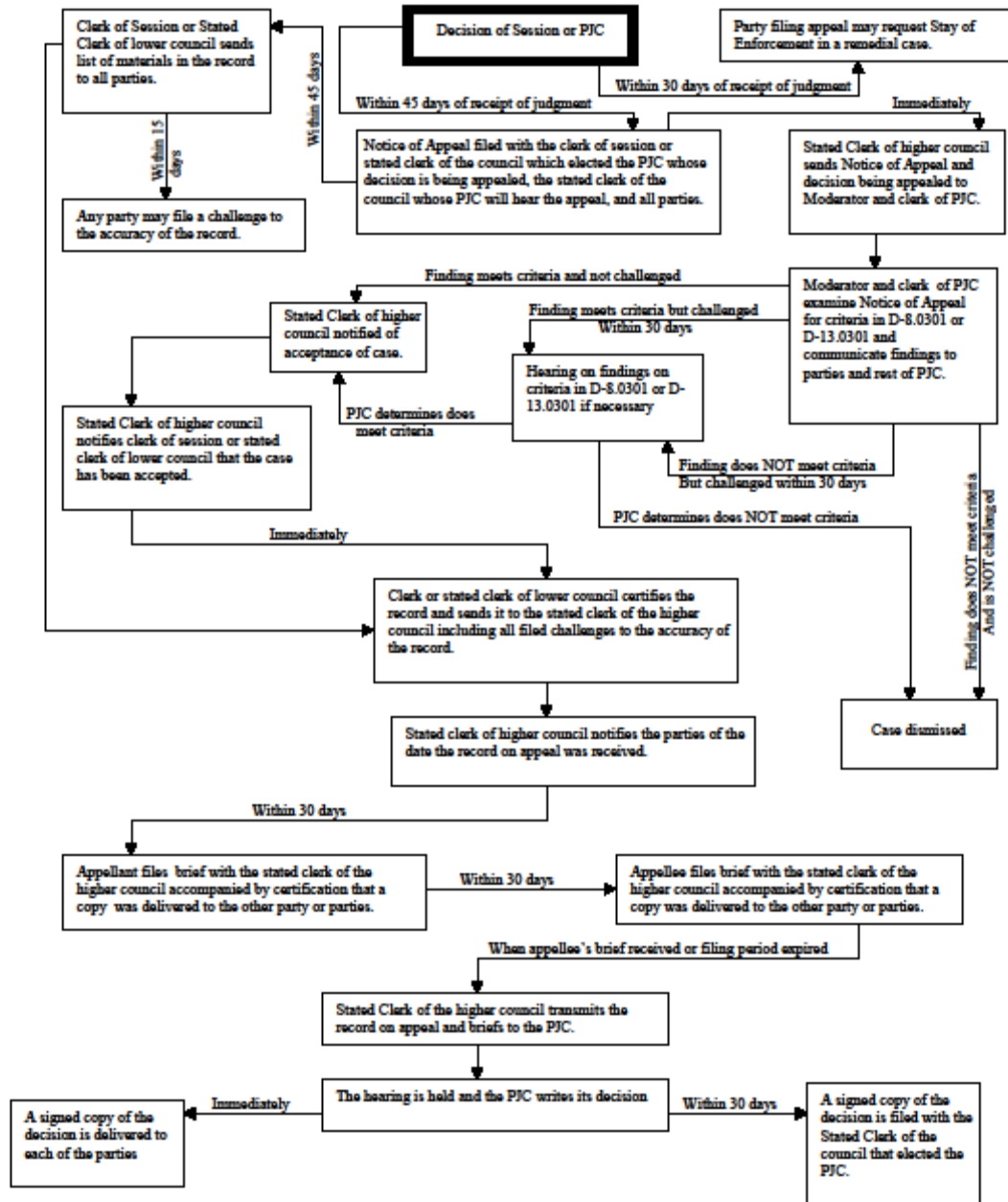
delivered to the stated clerk of the council that appointed the PJC. (D-8.0404e/D-13.0404e)

**Timeline**

hearing for a remedial case, and as soon as possible in a disciplinary case.

**FLOWCHART OF APPEAL PROCESS**

### APPEAL PROCESS FLOWCHART



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## **APPEAL PROCESS PERMANENT JUDICIAL COMMISSION'S ROLE**

In the appeal process, the appellant is seeking to prove that the decision of the session in a disciplinary case, or lower council's permanent judicial commission (PJC) was improper for one or more of the reasons listed in D-8.0105 or D-13.0106a, or D-13.0106b. The appellee seeks to defend the process and decision of the lower council or PJC. The PJC that hears the appeal will generally accept findings of facts determined at the trial level, and will focus primarily on procedures and/or constitutional interpretation.

### **Reviewing the Record on Appeal**

Sometimes the Record on Appeal has so many papers that the issues are difficult to follow. Reading the papers in the following sequence may provide a clearer idea of what the case is about and what are the issues in dispute:

1. Read the original complaint or charge
2. Read the decision of the session (in a disciplinary case) or lower PJC
3. Read the Appellant's brief to discover what error(s) are alleged and what relief Appellant is requesting
4. Read the rest of the record
5. Reread the first items, 1–3
6. Study the arguments from all parties

### **Preliminary Questions (D-8.0300, D-13.0300)**

The moderator and clerk of the PJC have a major responsibility on receiving an appeal. They are to examine the papers promptly to decide if the preliminary questions of jurisdiction, standing, timeliness, and statement of grounds for appeal have been answered affirmatively (D-8.0301/D-13.0301).

#### ***1. Jurisdiction:***

Has the notice of appeal been transmitted to the appropriate higher council PJC? (i.e. If the appellant is appealing a decision of a presbytery PJC, is the presbytery a member of the synod whose PJC is being asked to hear the appeal?) (D-3.0101a–d)

#### ***2. Standing***

Is the appellant one of the original parties of the remedial case which is being appealed?

#### ***3. Timeliness:***

Has the appeal been filed within the required 45 days after receipt of the decision being appealed? A previous decision by the General Assembly PJC has determined that “To file” is interpreted in the case of appeals to mean when the case was placed in the mail ...” Therefore, the forty-five days for the appellant to file begins from the date the decision was received by the appellant and extends until the notice of appeal is formally placed in the USPS mail or mailed by certified mail. The stated clerk may not refuse to accept the filing of a complaint. (D-8.0201, D 13.0201)

#### ***4. Grounds for appeal***

Does the appeal state one or more of the grounds for appeal set forth in D-8.0105 or D-13.0106a or b?

The moderator and clerk shall then report their findings to all parties and to other members of the PJC, allowing, within 30 days of the receipt of their findings, a challenge to the findings. In the event there is a challenge, a hearing shall be held by the full PJC to settle the matter. The parties may present evidence and arguments on the finding(s) in question. Such a hearing must be held at least thirty days before the hearing on the appeal unless the circumstances, including monetary considerations, make it advisable to decide the preliminary questions immediately before the hearing of the appeal. In situations where parties and members of the PJC must travel large distances (as with General Assembly and most Synod PJC's), the monetary considerations are important.

If the PJC ultimately determines that any of the preliminary questions have not been answered affirmatively, it shall dismiss the case. (D-8.0303c/D-13.0302c)

The PJC may not dismiss a case if all the preliminary questions have been answered affirmatively.

### **Constitutional Interpretation Issues**

In many cases, an interpretation of the Constitution is at issue. Parties have included in their briefs arguments about the Constitution’s meaning and application. The lower PJC usually will indicate its understanding in its decision. Some considerations for the PJC hearing the appeal are:

1. Have the parties omitted relevant provisions?
2. Do the provisions cited really apply to this case?
3. Has General Assembly’s PJC or the General Assembly itself given an interpretation of the provisions?
4. What do the grammar and punctuation of the provision imply as to its meaning?

### **Conducting a Hearing on Appeal (D-8.0400, D-13.0400)**

#### ***Setting:***

An appeal hearing should be conducted in a neutral setting with proper decorum. A neutral setting is one that would have no real or perceived advantage or disadvantage to any party.

#### ***Open or Closed Proceedings:***

While the “Rules of Discipline” (ROD) provide no explicit statements regarding open and closed hearings, the PJC may wish to follow the guidance provided for disciplinary trials. Except during deliberations, appeal hearings are ordinarily open. However, at the request of any party, or on its own initiative, the PJC may, at any stage of the proceedings, by a vote of two thirds of the members present, decide to exclude persons other than the parties and their counsel. This means it is not an all or nothing closing of the hearing. Certainly a PJC may choose to close the proceedings to the press. The only ones who may not be excluded are the parties and their counsel. Anyone disrupting the orderly process may be removed from the room. If the PJC chooses to close the proceedings, they must do so by a 2/3rds vote and have a written reason for the closure. (D-7.0303)

### ***Maintaining Neutrality***

Although the ROD make no provision for the organization of the PJC to be challenged during an appeal hearing, it is not uncommon for one or both of the parties to do so upon the grounds that a member or members of the commission may be unduly biased one way or another. It is important that members of the PJC avoid all possible appearances of bias or prejudice as an appeal is heard. (D-7.0401b, D-11.0402b) Members should limit deliberations to only those facts that are presented during the hearing. No materials of any kind, from any party to the case or from any other person, regarding the case should be considered by a commission member. Only the records provided by the stated clerk or the moderator and clerk of the PJC should be considered. (D-7.0302) *Ex parte* information, which **includes conversations concerning the case with anyone other than PJC members, is to be avoided.**

Furthermore, a member of the PJC may be disqualified from participating in an appeal if the member is personally interested (involved) in the case, is related by blood or marriage to any party, or has been active for or against any party. Church or council membership may also serve to disqualify a PJC member if that person’s membership is in the church, lower council or another church in that council which is party to the case. (D-5.0205)

### ***The Moderator begins the hearing by***

- reading the first two paragraphs of Preamble to Rules of Discipline;
- enjoining the members to recollect “their high character as judges of a council of the Church of Jesus Christ and the solemn duties they are about to undertake” (D-7.0401/D-11.0402a);
- offering opportunity for either party to challenge the organization and jurisdiction of the commission, which, if it occurs, shall be determined by the rest of the commission;
- explaining the procedure of the hearing, including time allotments for presentations, order of presentations, etc.
- opening the hearing with prayer.

### ***Presentations by the Parties***

Presentations by the appellant and appellee should focus on the significant points they want the PJC to consider. Their full arguments should be in their briefs with the presentations being

used to summarize and highlight. The appellant has the right of opening and closing argument. Appellant and appellee should be allowed the same total amount of time, no matter how it is distributed. The hearing is not a trial setting and does not require rehashing all the evidence submitted at trial.

### ***Introducing New Evidence (D-8.0403a, D-13.0402a)***

The availability of new evidence is a complex issue because it can impact the process at a number of places.

1. Before filing a notice of appeal, any person convicted of an offense, or the party against whom a decision or judgment has gone in a remedial case, may apply to the session or PJC that tried the case or heard the earlier appeal for a **new trial**. (D-14.0501)
  - a. The session or PJC must be satisfied that the new evidence could reasonably have resulted in a different decision.
  - b. The session or PJC must be satisfied that, in the exercise of reasonable diligence, the new evidence could not have been produced at the time of the trial.
2. After the filing of a notice of appeal either party may apply to the PJC hearing the appeal to have the new evidence considered, provided that:
  - a. application is made, with copies to the adverse party, at least 30 days prior to the appeal hearing;
  - b. the PJC must be satisfied that the new evidence could not have been discovered prior to the filing of the notice of appeal. (D-14.0502)

### ***PJC Members Asking Questions During the Hearing***

Hearing procedures allow members of the PJC to ask questions of both parties, usually after their presentations have been made. This is not a time to argue with one or both parties. It is not a time to ask for new evidence. It is a time to make sure commission members understand the arguments being presented.

### ***Specification(s) of Error***

Sometimes an appellant does not understand what is intended by the requirement that the notice of appeal and the appellant's brief include the "specifications of error" alleged from the previous trial, and will include an entire restatement of the case rather than succinctly stating one or more of the grounds for appeal as set forth in D-8.0105 or D-13.0106.

When the specifications of error are unclear, the GA PJC on occasion has framed its own statement of specification(s) of error, sometimes combining two or more unclear specifications into one, based on its reading of the appellant's writings and their understanding of the case.

The PJC must vote to sustain or not to sustain each specification of error, whether in its original form or restated form. The numerical vote on each specification of error shall be recorded in the PJC minutes, and the result of the vote on each original or restated specification of error stated in the PJC decision. (D-8.0404, D-13.0404) If none of the specifications of error is sustained, and



no other error is found, the decision of the lower council is affirmed. If one or more errors are found, the PJC shall determine whether the decision of the lower council shall be affirmed, set aside, reversed, modified, or the case remanded for a new trial. (D-8.0404a–b, D-13.0404a–b)

***Writing the Decision (D-8.0404c, D-13.0404c)***

When writing the decision, results of the vote on each original or revised specification of error must be included. The clearest way to accomplish this is to state, “This specification of error is [is not] sustained,” following each specification. Some commentary on the restatements of specifications may be included. The PJC decision must include a rationale for the decision it renders. The rationale could be helpful to the appellant and appellee in understanding the decision. It may also be important in the consideration of any appeal to a higher PJC, and provide historic or procedural value in future cases.

A small group of PJC members may be assigned to draft the initial decision which is then revised, refined and adopted by vote of the PJC members sitting for this hearing **while in session**. Sufficient time must be allowed to complete the entire process. Support services such as secretarial services can be especially helpful during this phase of the proceedings. Persons providing such services should not be present for discussion and voting by the PJC, but should have access to word processing and printing to provide the PJC with drafts and revisions as it does its work.

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## **APPEAL PROCESS STAY OF ENFORCEMENT (D-6.0103)**

The action of a council or certain General Assembly agencies (D-6.0202b), or the decision of the permanent judicial commission (PJC) of a council may be suspended by a stay of enforcement.

### *A Stay of Enforcement Defined*

A stay of enforcement is a written instruction from the permanent judicial commission having jurisdiction that orders the suspension of an action or decision until a complaint or appeal is finally determined. D-6.0103.

### *Facts Concerning a Stay of Enforcement*

The following is a list of some of the facts concerning a stay of enforcement.

1. A stay of enforcement applies to remedial cases.
2. Any person or council with standing to file a complaint or remedial appeal may request a stay of enforcement of a decision or action by completing the necessary steps.
3. A request for a stay of enforcement must be filed within 30 days after the alleged irregular or delinquent action or decision being appealed.
4. In order to enter the stay, the Moderator and the Clerk of the PJC with jurisdiction must verify the signatures of the request for a stay of enforcement or three members of the PJC with jurisdiction must sign that in his or her judgment substantial harm will occur if the action or decision is not stayed and that in her or his judgment probable grounds exist for finding the decision or action erroneous.

### *Obtaining the Stay of Enforcement*

The process for seeking a stay of enforcement varies depending upon whether the action was taken by the council itself, or by its permanent judicial commission. If the action was taken by the council, see Chapter II, Remedial Process, Stay of Enforcement, page II-25 for details. If the action was taken by a permanent judicial commission, there are two options available, seeking the signatures of one-third of the members of the permanent judicial commission that decided the case, or seeking the signatures of at least three members of the permanent judicial commission having jurisdiction to hear the complaint or appeal.

- 1. The decision of a permanent judicial commission in a remedial case may be stayed with the signatures of at least one third of the members of the permanent judicial commission who decided the case. D-6.0103a(2)**

This is achieved by gathering the signatures of one third of the members of the PJC that decided the remedial case. These signatures requesting a stay of enforcement must be filed concurrently with a remedial appeal no later than 30 days after the appealed decision made by the PJC.

The appeal and the request for a stay along with the requisite signatures must be filed with the stated clerk of the council whose permanent judicial commission has jurisdiction to hear the case. The stated clerk of the PJC whose decision is sought to be stayed should verify that the requisite number of signatures have been obtained (one third of the members of the PJC) when the decision was made. The clerk of the PJC with jurisdiction should verify that the appeal and signatures have been received within 30 days of the decision of the lower PJC and should send the appeal, request for a stay of enforcement along with the signatures and verification to the Moderator and Clerk of the PJC promptly by the most expeditious means available.

The Moderator and the Clerk of the PJC with jurisdiction will determine whether the appeal meets the preliminary questions in D-8.0301 and whether the request is complete and timely including validation of the signatures and intent of those who signed the request for a stay of enforcement. The Moderator and the Clerk of the PJC with jurisdiction will report their findings to the PJC and the parties within 7 days of receiving the request and may enter a Stay of Enforcement within 10 days of their finding on the preliminary issues if they determine that the request is complete and timely.

The stated clerk of the PJC with jurisdiction will send a copy of the stay of enforcement to the parties and to the permanent judicial commission members.

The stay of enforcement is effective until the final decision of the PJC having jurisdiction over the appeal.

**2. The action of a council or the decision of a permanent judicial commission may be stayed by securing the signatures and certification of three of the members of the permanent judicial commission having jurisdiction to hear the remedial complaint or appeal. D-6.0103d(2)**

The request for a stay of enforcement must be filed simultaneous with a complaint or a notice of appeal with the Stated Clerk of the council whose PJC has jurisdiction to hear the case no later than 30 days after the alleged irregular action of the council or the remedial decision of a PJC being appealed.

The clerk of the PJC with jurisdiction should verify that the complaint or appeal and request has been received within 30 days of the action of the lower council or decision of the lower PJC and should send the complaint or notice of appeal, and request for a stay of enforcement to the Moderator and Clerk of the PJC promptly by the most expeditious means available.

The Moderator and the Clerk of the PJC with jurisdiction will determine whether the complaint or the appeal meets the preliminary questions in D-6.0301 or D-8.0301 and whether the request is complete and timely. The Moderator and the Clerk of the PJC with jurisdiction will report their findings to the PJC and the parties within 7 days of receiving the request.

The members of the permanent judicial commission that has jurisdiction must determine two items before they may sign the stay:

- a. The member must certify that in his/her judgment probable grounds exist for finding the decision or action erroneous. This is difficult because the PJC member will only have the complaint or notice of appeal. The response of the committee of counsel of respondent will not yet be available.

- b. The member must certify that in his/her judgment, the complainants or appellants will suffer substantial harm if the decision or action is not stayed. There will be no opportunity for an answer or challenge from the responding council prior to the initial signatory decision by the members, making it difficult to weigh harm to the complainants versus harm to the responding council.
- c. Each PJC member will include a summary of the specific council action or decision being stayed.

If three members of the PJC certify that in their judgment probable grounds exist for finding the decision or action erroneous and that the requesting entity will suffer substantial harm if the decision or action is not stayed and return those certifications to the stated clerk within 10 days of the receiving the moderator and clerk's findings on the preliminary questions, the stated clerk should notify the parties that a stay has been entered (secured).

See Revised forms 3, 4, 5 and 5A in the Appendix A of the *Book of Order*.

### ***Effect of the Stay of Enforcement***

The body whose action or decision is stayed must comply with the stay or face further judicial action.

### ***Objection to the Stay of Enforcement***

The appellee may file, with the PJC of the body that has jurisdiction to hear, the appeal an objection to the stay of enforcement within 45 days, and thereby secure a hearing on the matter of the stay.

1. No fewer than three members of the PJC hearing the case shall conduct a hearing on the matters related to the stay.
2. At the hearing, the stay may be modified, terminated, or continued until the decision on the merits of the case is made by the PJC.
3. The members of the PJC conducting the hearing are not automatically disqualified from deciding the case when it comes to trial/hearing, but are subject to challenge, as is any member of the PJC.

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**SAMPLE DECISION FORMAT**

THE PERMANENT JUDICIAL COMMISSION  
*of*  
THE PRESBYTERY/SYNOD OF \_\_\_\_\_  
*of*  
THE PRESBYTERIAN CHURCH (U.S.A.)

\_\_\_\_\_  
DECISION  
\_\_\_\_\_

[Name(s)], )  
Appellant-Complainant(s) )  
or )  
Appellant-Respondent )  
v. ) [case number]  
[Name(s)], )  
Appellee-Respondent )  
or )  
Appellee-Complainant )

----- [ **ARRIVAL STATEMENT** ] -----

This is a remedial [disciplinary] case which has come before this Permanent Judicial Commission on Appeal by [name(s) of Appellant(s)] from a decision by the Permanent Judicial Commission of the Presbytery of \_\_\_\_\_.

--- [ **JURISDICTION STATEMENT, see D-8.0301** ] ---

----- **HISTORY** -----

---[ text of the history ] ---

----- **REPORT ON THE SPECIFICATIONS OF ERROR** -----

The Permanent Judicial Commission examined the record in the case and the alleged errors specified by the Appellant. The Commissions vote on each specification of error is stated below.

---- [number and state a specification of error with the PJC’s decision to sustain or not ] ---- This specification of error is SUSTAINED [NOT SUSTAINED].

---- [number and state a specification of error with the PJC’s decision to sustain or not ] ---- This specification of error is SUSTAINED [NOT SUSTAINED].





**APPEAL PROCESS**  
**SAMPLE CERTIFICATION AND**  
**TRANSMITTAL FORM CERTIFICATES**

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Presbytery/Synod of \_\_\_\_\_, Presbyterian Church (U.S.A.), in Appeal Case No. \_\_\_\_\_, \_\_\_\_\_ v. \_\_\_\_\_, made and announced at \_\_\_\_\_ [place], on \_\_\_\_\_ [date]

\_\_\_\_\_  
[typed name], Moderator, Permanent Judicial Commission of the  
Presbytery/Synod of  
\_\_\_\_\_

\_\_\_\_\_  
[ typed name ], Clerk, Permanent Judicial Commission of the  
Presbytery/Synod of  
\_\_\_\_\_

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, depositing it in the United States mail at \_\_\_\_\_ [place] on \_\_\_\_\_ [date]:

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

[ typed name: ] \_\_\_\_\_  
[position title in case:] \_\_\_\_\_

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Presbytery/Synod of \_\_\_\_\_, Presbyterian Church (U.S.A.), by delivering it in person, on \_\_\_\_\_ [date].

\_\_\_\_\_  
[ typed name ], Clerk, Permanent Judicial Commission of the

Presbytery/Synod of

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## **CHAPTER V. PERMANENT JUDICIAL COMMISSION**

### **ROLE OF THE STATED CLERK**

The Stated Clerk's role as facilitator for the Permanent Judicial Commission (PJC) and interpreter of judicial process may call for various interactions with the PJC.

#### **Convene the Commission**

1. Each time a new class is elected to the PJC, convene the commission to elect officers and possibly conduct training.

#### **Training**

1. In consultation with the moderator of the PJC, arrange for training of the PJC on a regular basis, whether or not there is a pending case.
2. Arrange for training, if requested, when specific needs arise.

#### **Assure a Quorum**

1. Arrange to have former PJC members from the required list (D-5.0206b) sit in on cases if it appears there may not be a quorum of the commission to complete the hearing of the case.

#### **Assist the Clerk of the PJC (if requested)**

1. Arrange for the accurate verbatim recording of all testimony and oral proceedings
2. Arrange to take testimony by deposition, if indicated
3. Prepare the record of the case (D-7.0601d; D-11.0601d)
4. Prepare and arrange for the service of citations to witnesses
5. Arrange for a certified transcript of the trial if requested.

#### **Authenticate Written Records**

1. Authenticate written records of the council when requested as evidence.

#### **Other Duties**

1. Immediately communicate to the PJC any written statement of alleged sexual abuse of a person under the age of eighteen, or alleged to lack the mental capacity to consent, for determination of whether the accused should be placed on paid administrative leave. (D-10.0106)
2. Be available to assist with any of the logistics pertaining to the trial or hearing:
  - a. Set up meeting room. Be sure all PJC members can see and hear the speaker. (see Chapter V—"Suggested Room Set Up for a Trial," pages V-11 and V-12)

- b. Make needed copies of papers
- c. Monitor needs of PJC to recess should any PJC member need to leave the room.

### **Arrangements**

1. Make travel, lodging, and meal arrangements for the PJC members, in consultation with the moderator and/or clerk of the PJC.

## **PERMANENT JUDICIAL COMMISSION ROLE OF THE PJC MODERATOR**

The role of the moderator of the permanent judicial commission (PJC) is critical to the conduct of a trial not only for the functions performed, but also for maintaining decorum. While the functions of the moderator are fairly specific, the moderator has some latitude in exerting the PJC's authority and power to control the conduct of the trial and of all parties, witnesses, counsel, and the public.

The moderator should warn and remind participants, when necessary, that they are participating in an ecclesiastical process and not a secular one. The goal and purpose of judicial process as spelled out in the Preamble to the "Rules of Discipline" (ROD) (D-1.0101 through D-1.0103) should be continually before the PJC and other trial or hearing participants.

The moderator serves as the spokesperson for the commission in dealing with matters of procedure or the admissibility of evidence. After the parties have had the opportunity to be heard, the moderator should decide these questions and state a rationale for that particular decision. A party to the case or a member of the PJC may appeal the decision of the moderator. The PJC will decide such appeals by majority vote.

The tasks of the PJC moderator differ depending on the type of proceeding being conducted. Most of the differences occur during the trial/hearing proceedings; however, there are four circumstances that involve the PJC, through the moderator, prior to an actual trial or appeal hearing.

1. In a remedial case, complaint or appeal, where a stay of enforcement has been secured, the Respondent may file an objection to the stay. In such situations, at least three members of the PJC that will hear the case conduct a hearing to determine if the stay should be modified, terminated, or continued. The moderator doesn't necessarily have to conduct the hearing, but must at least arrange for it to take place.
2. In a disciplinary accusation against a teaching elder involving allegations of sexual abuse of a person under the age of eighteen, or a person alleged to lack the mental capacity to consent, the moderator of the PJC will receive a copy of the allegations immediately after the stated clerk receives such a written statement. The PJC moderator shall, within 3 days, designate two members, or two members whose terms have expired within the past six years, to determine whether the accused shall be placed on a paid administrative leave.
3. In a disciplinary matter, the accused may, during the course of the investigation, petition the PJC to review the procedures of the investigating committee (IC). Two members of the PJC shall conduct a hearing to carry out this review. These two members may not, then participate in the trial should there be one. It may be best to designate these members ahead of time, or with the written approval of the parties, designate these two members from the roster of former PJC members.

4. In a disciplinary matter in which the IC has reported that it is not filing charges, the person who submitted the written statement of accusation may petition to PJC to review the decision of the IC not to file charges. The same two members of the PJC designated in No. 3 above may consider the petition and the IC's written response and determine whether to sustain the petition and order the formation of a new IC, or sustain the IC decision and order the matter closed.

***Opening the Trial (also suggest for a Hearing)***

1. Arrange for an opening prayer prior to the start of a trial. In addition to the Constitution requiring all meetings of councils to be opened and closed with prayer, prayer also serves as a good reminder that this is an ecclesiastical proceeding and that the purpose is to honor God.
2. Read aloud D-1.0101 and D-1.0102, and enjoin the PJC members to recollect and regard their high character as judges of a council of the church of Jesus Christ and the solemn duties they are about to undertake.
3. Introduce the PJC members to the parties and their counsel. While not specifically required by the ROD, this helps to establish the proper decorum and facilitates the challenge to eligibility which follows.
4. Explain the absence of any PJC members, and ask if there are any challenges to the organization and jurisdiction of the PJC. Decide any challenges raised by vote of the remaining members of the PJC.
5. Decide any preliminary objections subject to appeal by any party or member of the PJC. There may be issues raised at the pretrial conference or any other objection affecting the order and regularity of the proceedings. Any issues raised are decided by vote of the commission.
6. Report any agreements or preliminary decisions reached at the pretrial conference or pretrial hearing and vote to affirm those actions. This also includes reading into the record the list of agreed upon facts that do not need to be proved during the trial. (See specific sections on remedial and disciplinary pretrial conferences and pretrial hearings.)
7. Explain the process of the proceedings, including order and length for speaking, cross-examining, closing arguments, etc.

**Remedial—Continued on page V-5.**

**Disciplinary—Continued on page V-7.**

**Appeal—Continued on page V-9.**

## **TASKS OF THE PJC MODERATOR IN A REMEDIAL CASE**

### ***Prior to the Trial***

1. Examine, with the clerk of the PJC, the complaint and response to the complaint to determine preliminary questions. (D-6.0305)
2. Report finding on preliminary questions to the parties and members of the PJC. Schedule and hold a hearing on preliminary questions if a challenge arises. (D-6.0306)
3. If warranted, schedule and hold a pretrial conference to explore settlement possibilities.

### ***Public Portion of the Trial***

*After the opening procedures identified above (page V-3 of this section), the moderator continues to conduct the trial as follows:*

1. Call first on complainant, then the respondent, to make opening statements.
2. Call first on the complainant and then the respondent to present evidence. When witnesses are called, provide for their making an oath or affirmation as provided in D-14.0302. Witnesses are examined first by the party producing them, and then may be cross-examined by the opposing party. Following this, members of the PJC may ask additional questions.
3. Decide issues of admissibility or procedure during the trial subject to appeal by any party or members of the PJC.
4. The parties have the opportunity to make final statements with the complainant having the right to open and close the argument.
5. Close the public portion of the trial by thanking the parties for their presentations and a closing prayer. These are not specifically required by the ROD, but they provide a good transition to the deliberations and serve as a reminder of the purpose of judicial process in the church.

### ***Closed Deliberations and Decisions***

1. Immediately following the public portion of the proceeding, the PJC meets privately to deliberate the complaint and issues raised in the trial. The moderator helps the PJC work through the issues. After careful deliberation, the moderator calls on the PJC to vote on each irregularity or delinquency raised in the complaint. If the complaint is sustained

either in whole or in part, the moderator leads the PJC to determine the appropriate remedy.

2. The moderator oversees the writing of the decision while still in session and signs it along with the clerk of the PJC.
3. Make sure a copy of the decision is delivered to the parties and to the stated clerk of the council that appointed the PJC. The PJC must also decide how the decision shall be disseminated beyond those who are required to receive a copy of the decision.



## **TASKS OF THE PJC MODERATOR IN A DISCIPLINARY CASE**

### ***Prior to the Trial***

1. Within 30 days of receiving disciplinary charges, arrange for a pretrial conference with the PJC clerk, the accused, the accused's counsel, if any, the prosecuting committee (PC), and PC's counsel, if any. At the discretion of the moderator and clerk, other appropriate persons may be present. (D-14.0405). Furnish the accused with a copy of the charges. Notify the PC of their need to have ready a list of witnesses and documents supporting their charges.
2. At the pretrial conference:
  - a. Read the charges to the accused;
  - b. Inform the accused of the right to counsel;
  - c. Require the PC to furnish the accused with the names and addresses of all the witnesses then known, and a description of the records and documents that may be offered to support each charge;
  - d. Determine with the accused and the PC those charges that are not in dispute and discuss alternatives to a full trial. Note: Alternatives at this point do not include any form of alternative dispute resolution.
  - e. Because these can be highly emotional exchanges, the moderator should sensitively maintain proper decorum at all times.
  - f. Review any reports of petitions for review of the work of the IC, hear any additional challenges to the appropriateness of charges, take preliminary actions to dismiss some or all of the charges, dismiss the case, or permit amendments to the charges. Such preliminary determinations must be reviewed by the full PJC in accordance with D-11.0402c.
  - g. Schedule a trial for no sooner than 30 days following the pretrial conference. If all parties agree on the charges, schedule a censure hearing rather than a trial.
  - h. Order all parties to appear.

### ***Public Portion of the Trial***

After the opening procedures identified on page V-3 of this section, the moderator continues to conduct the trial as follows:

1. Call on the accused to plead "guilty" or "not guilty" to each charge.

***If the accused pleads guilty the Moderator may move the proceedings directly to the censuring portion of the trial.***

2. Call on PC, first, then the accused to make opening statements.

3. Call on the PC to present evidence in support of the charges. When witnesses are called, provide for their making an oath or affirmation as provided in D-14.0302. Witnesses are examined first by the party producing them, and then may be cross-examined by the opposing party. Following this, members of the PJC may ask additional questions.
4. Call on the accused to present evidence to refute the charges. Witnesses shall make an oath or affirmation as described in 3. above.
5. Call on the PC to present additional evidence, but only to rebut evidence introduced on behalf of the accused.
6. Decide issues of admissibility or procedure during the trial subject to appeal by any party or members of the PJC.
7. The parties have the opportunity to make final statements with the PC having the right to open and close the argument.
8. Close the public portion of the trial by thanking the parties for their presentations and a closing prayer. These are not specifically required by the ROD, but they provide a good transition to the deliberations and serve as a reminder of the purpose of judicial process in the church.

### *Closed Deliberations and Decisions*

1. After careful deliberation, the moderator calls on the PJC to vote on each charge separately. In order to find the accused guilty of a charge, the PJC must find that the pertinent facts within that charge **have been proven beyond a reasonable doubt**. Proof beyond a reasonable doubt occurs when the comparison and consideration of all the evidence compels an abiding conviction that the material facts necessary to prove the charge are true. No judgment of guilt may be found on a charge unless at least two thirds of the PJC members present agree on the judgment.
2. Lead the PJC in deciding the appropriate censure if guilt is judged or plead. The PJC may hear evidence as to the extent of injury suffered, mitigation, rehabilitation, and redemption. If the PJC chooses to hear evidence concerning censure, plans should be made and announced to reopen the public portion of the hearing, announce the verdict, and then begin hearing evidence concerning censure, if necessary. The PJC would then return to private deliberations to consider the censure.
3. The moderator oversees the writing of the decision while still in session and signs it along with the clerk of the PJC.
4. In open meeting, announce the verdict on each charge separately.
5. In open meeting, pronounce the censure.
6. Make sure a copy of the decision is delivered to the parties and to the stated clerk of the council that appointed the PJC.
7. The PJC must also decide how the decision shall be disseminated beyond those who are required to receive a copy of the decision.

## **TASKS OF THE PJC MODERATOR IN AN APPEAL**

### ***Prior to the Hearing***

1. Examine, with the clerk of the PJC, the notice of appeal and the decision being appealed to determine preliminary questions. (D-8.0301, D-13.0301)
2. Report finding on preliminary questions to the parties and members of the PJC. Schedule and hold a hearing on preliminary questions if a challenge arises within 30 days after receipt of those findings. (D-8.0302a, D-13.0302a)
3. If the preliminary questions are met, notify the stated clerk and the parties that the case has been accepted. This notification triggers actions by the stated clerk to make sure the record of earlier proceedings and briefs are submitted.
4. Any time after an appeal is received by the PJC, consider whether a prehearing conference might help narrow the dispute and expedite its resolution. Hold such a conference with the parties if it is deemed appropriate.
5. With the PJC clerk, notify the parties of the hearing date, time, place, and opportunity to appear in person and speak to the appeal.

### ***Public Portion of the Trial***

*After the opening procedures identified above (page V-3 of this section), the moderator continues to conduct the trial as follows:*

1. Call on appellant to speak to the appeal. Appellant and appellee should have the same amount of time to speak to the PJC even though the appellant has the right to open and close the argument.
2. Determine whether to receive newly discovered evidence in accordance with D-14.0502.
3. Call on the appellee to speak to the appeal.
4. Call on the appellant to close the argument.
5. Close the public portion of the trial by thanking the parties for their presentations and a closing prayer. These are not specifically required by the ROD, but they provide a good transition to the deliberations and serve as a reminder of the purpose of judicial process in the church.

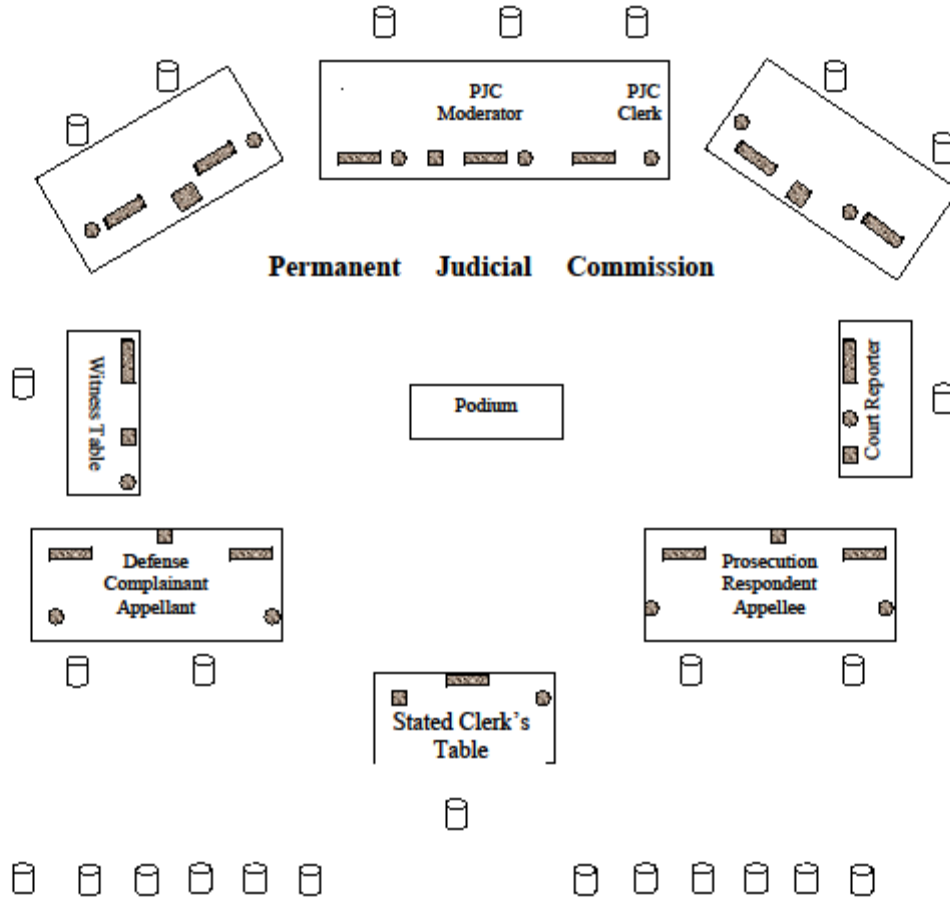
### ***Closed Deliberations and Decisions***

1. The PJC meets privately to deliberate the appeal. After careful deliberation the moderator calls on the PJC to vote on each specification of error alleged in the appeal. The vote is on the question, "Shall the specification of error be sustained?"
2. If none of the specifications of error is sustained, and no other error is found, the decision of the lower council is sustained. If one or more errors are found, the PJC shall determine





whether the decision of the lower council shall be affirmed, set aside, reversed, modified, or the case remanded for a new trial.

3. The moderator oversees the writing of the decision **while still in session** and signs it along with the clerk of the PJC.
4. Make sure a copy of the decision is delivered to the parties and to the stated clerk of the council that appointed the PJC. The PJC must also decide how the decision shall be disseminated beyond those who are required to receive a copy of the decision.

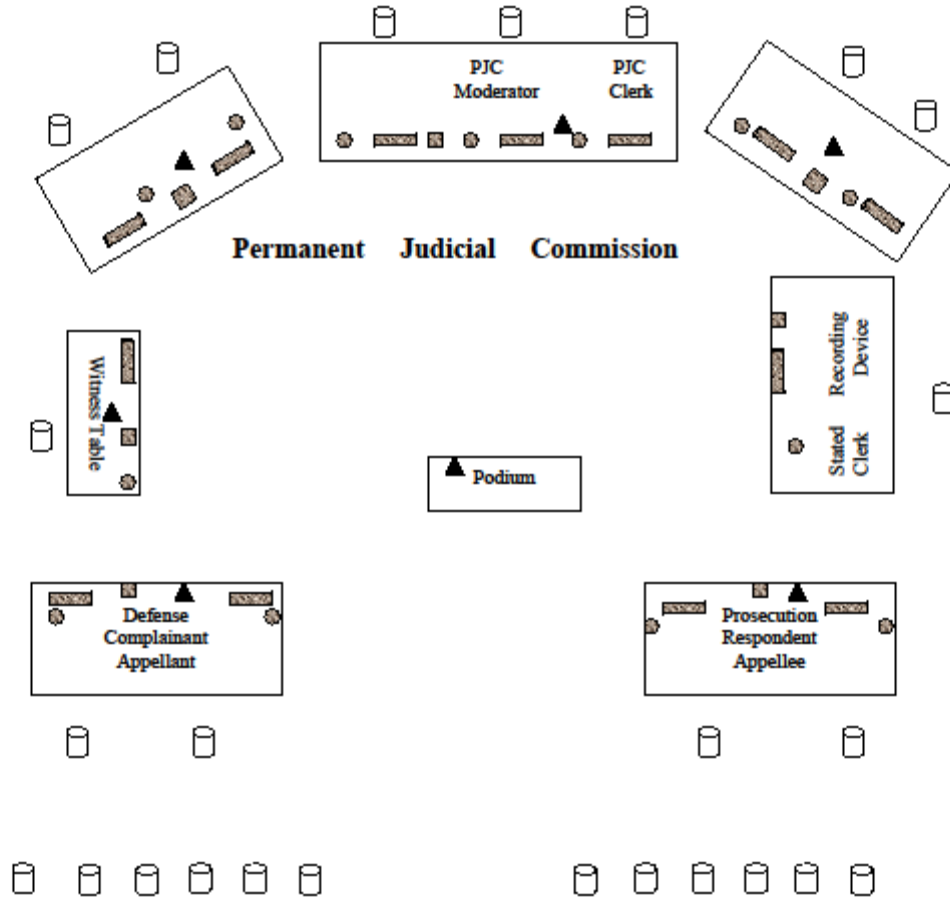
**SUGGESTED ROOM SET UP FOR A TRIAL  
(with a Court Reporter present)**



**LEGEND**

-  Chair
-  Water Pitcher
-  Water Glass
-  Name Tent

**SUGGESTED ROOM SET UP FOR A TRIAL  
(WITHOUT A COURT REPORTER PRESENT)**



**LEGEND**

-  Chair
-  Water Pitcher
-  Water Glass
-  Name Tent
-  microphone

**PJC TRAINING #1**

Identify to which type of case the following terms refer and provide a definition for each.

### JUDICIAL PROCESS TERMINOLOGY

<b>Term</b>	<b>Type of Case</b>	<b>Definition</b>
1. Accusation	_____	
2. Appellant	_____	
3. Appellee	_____	
4. Censure	_____	
5. Charges	_____	
6. Committee of Counsel	_____	
7. Complaint	_____	
8. Complainant	_____	
9. Delinquency	_____	
10. Investigating Committee	_____	
11. Irregularity	_____	
12. Preliminary Questions	_____	
13. Pretrial Conference	_____	
14. Prosecuting Committee	_____	
15. Request for Vindication	_____	
16. Respondent	_____	
17. Stay of enforcement	_____	
18. Specification of error	_____	



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**PJC TRAINING #1**  
**JUDICIAL PROCESS TERMINOLOGY—Answer Guide**

<b>Term</b>	<b>Type of Case</b>	<b>Definition</b>
1. Accusation	Disciplinary	Written statement naming the person committing an offense and the fact of the offense
2. Appellant	Both	The party seeking review of a judicial decision
3. Appellee	Both	The party defending the decision rendered by a lower court
4. Censure	Disciplinary	The consequences imposed when a person is found guilty of one or more offenses
5. Charges	Disciplinary	The formal statement of the offenses believed to have been committed
6. Committee of Counsel	Remedial	The group designated by a council to represent it in a remedial case
7. Complaint	Remedial	The written statement of alleging error on the part of a council
8. Complainant	Remedial	The person or council alleging error on the part of another council
9. Delinquency	Remedial	An omission or failure to act by a council
10. Investigating Committee	Disciplinary	The committee designated to investigate accusations and determine if charges will be filed
11. Irregularity	Remedial	An erroneous decision or action by a council
12. Preliminary Questions	Remedial	The threshold issues that allow a case to go forward:

		jurisdiction, standing, timeliness, possible relief
13. Pretrial Conference	Both	A gathering of the parties to the case to clarify issues and procedures
14. Prosecuting Committee	Disciplinary	The group that prosecutes the case at trial on behalf of the entire church
15. Request for Vindication	Disciplinary	A request by an individual to be investigated with the hope of dispelling rumors and untruth
16. Respondent	Remedial	The council against which a complaint has been filed
17. Stay of enforcement	Remedial	A written statement requesting that the implementation of a decision or action be delayed
18. Specification of error	Both	A written statement of the error(s) made by the court that originally tried the case

## PJC TRAINING #2

### JUDICIAL PROCESS—PRELIMINARY QUESTIONS

*(Determine if the following items under “action” meet the preliminary questions including “states a claim upon which relief can be granted.”)*

#### Action

#### Evaluate

1. The congregation of my church voted to sell a piece of property. I want to appeal that decision.
2. This is a Complaint against the Reverend Trobb L. Maker for encouraging the session to change our worship service from 9:45 to 9:30 on Sunday mornings.
3. This is a formal accusation against the session of Wonderful Presbyterian Church for firing Betty Ann Fingers, our organist.
4. Ang R. Rhee, an elder on the session of First Presbyterian Church, is Complaining of the action of the Presbytery of Blue Sky in approving a per capita apportionment of \$.25 during the one year he was not serving as a commissioner from his church.
5. A. Lytl Leight hereby Complains about the decision of the Oblivious Presbyterian Church to sell its property two years ago and build new facilities 5 miles away. Mr. Leight writes that it hasn't worked out the way the session expected so he is filing a Complaint.
6. N. Ear Bye, a former member of Big Bells Presbyterian Church, files a Complaint about the church's playing a hymn on the bells every hour from 7 am to 9 pm.
7. A Complaint filed by Eer A. Tated against the Session of Beautiful Presbyterian Church for failure to correct the spelling of his mother's name on the memorial window given in her honor. He stated that he has waited patiently for two weeks since communicating the need for correction.

**PJC TRAINING #2**  
**JUDICIAL PROCESS—PRELIMINARY QUESTIONS**  
**(Answers)**

*(Determine if the following items under “action” meet the preliminary questions including “states a claim upon which relief can be granted.”)*

<b>Action</b>	<b>Evaluate</b>
1. The congregation of my church voted to sell a piece of property. I want to appeal that decision.	Does not state a claim upon which relief can be granted. The congregation has the right to sell property assuming presbytery approved.
2. This is a Complaint against the Reverend Trobb L. Maker for encouraging the session to change our worship service from 9:45 to 9:30 on Sunday mornings.	Can't complain against a person. Should be against the session. An accusation against the pastor would quickly be dismissed because there is no offense.
3. This is a formal accusation against the session of Wonderful Presbyterian Church for firing Betty Ann Fingers, our organist.	Not an accusation. Should be complaint against session. Does not state a claim upon which relief can be granted because the session has the right, unless personnel policies were violated in doing so.
4. Ang R. Rhee, an elder on the session of First Presbyterian Church, is Complaining of the action of the Presbytery of Blue Sky in approving a per capita apportionment of \$.25 during the one year he was not serving as a commissioner from his church.	Mr. Rhee does not have standing to file a complaint as he was not a commissioner to presbytery at the time.
5. A. Lytl Leight hereby Complains about the decision of the Oblivious Presbyterian Church to sell its property two years ago and build new facilities 5 miles away. Mr. Leight writes that it hasn't worked out the way the session expected so he is filing a Complaint.	Mr. Leight has two problems. His “complaint” is beyond the time period for filing a complaint. He also has not stated a claim upon which relief can be granted. Assuming all the approvals from the congregation and presbytery were secured along the way, the Oblivious has the right and authority to relocate.
6. N. Ear Bye, a former member of Big Bells Presbyterian Church, files a Complaint about the church's playing a hymn on the bells every hour from 7 am to 9 pm.	Ms. Bye does not have standing to file a complaint in the church courts because she is no longer a member. It is possible a letter to the session asking that the hours for the chimes be changed might just do the trick.
7. A Complaint filed by Eer A. Tated against the Session of Beautiful Presbyterian Church for failure to correct the spelling of his mother's name on the memorial window given in her honor. He	Mr. Tated's complaint is not timely filed. The two weeks he has given the church to make the correction are far less than time limit for the church to act on his request.

stated that he has waited patiently for two weeks since communicating the need for correction.

### **PJC TRAINING #3**

The following 20 statements describe steps in the process for a disciplinary case. The steps are in the proper sequence as they appear on the following three pages. Photocopy the following three pages and then cut the statements apart so that each statement appears on a separate slip of paper. Mix the slips up so they are in a random sequence.

The training task is to rearrange the 20 statements back into proper sequence. Use the original pages as an answer guide.

File with the clerk of session (for a church member) or stated clerk (for a teaching elder) a written statement of alleged offense with supporting information.

Upon receipt of a written statement alleging sexual abuse of a person under the age of eighteen, or a person alleged to lack the mental capacity to consent, communicate the allegation to the PJC for consideration of placing the accused on paid administrative leave.

Clerk advises the council that accusations have been received without naming the accused or the nature of the alleged offense.

An Investigating Committee is designated, trained and begins its work.

The accused is notified that accusation(s) have been filed and is given a copy of the statement of alleged offense.

The accuser is provided a statement of the investigating committee's procedures.

The Investigating Committee makes a thorough inquiry into the fact and circumstances of the alleged offense.

If appropriate, alternative forms of resolution are initiated.

Report to the council having jurisdiction over the accused only whether or not it will file charges

If charges are to be filed, prepare and file them.

If no charges are filed, submit a written report of that fact to the Clerk or Stated Clerk and notify the person who submitted the written statement of accusation.

Designate from among its members one or more persons to prosecute the case as the “prosecuting committee.”

PJC holds a pretrial conference with the accused, accused’s counsel (if any), and the prosecuting committee.

Schedule the trial and order all parties to appear.

Conduct a trial with the presentation of evidence supporting charges and the presentation of evidence refuting charges.

Meet privately to discuss and then vote on each charge separately.

The moderator shall, in open meeting, announce the verdict for each charge separately.

If the accused is found guilty or after a guilty plea, the session or PJC may hear evidence as to the extent of the injury suffered, mitigation, rehabilitation, and redemption.



The session or PJC shall meet privately to determine the degree of censure to be imposed.

The moderator shall, in open meeting, pronounce the censure.

## **PJC TRAINING #4—Sample**

### Permanent Judicial Commission Training Topics

- Preamble
- REMEDIAL—definition
- DISCIPLINARY—definition
- Permanent Judicial Commissions—definition
- Membership
- Term
- Classes
- Quorum
- Expenses
- Conflict of Interest

### **REMEDIAL CASE**

- Irregularity—definition
- Delinquency—definition
- Complainant
- Respondent
- Initiating a Remedial Case—Who has standing
- Complaint—90 days

### **Stay of Enforcement—revised 7/10/2011**

- D-6.0103
- 2 ways to seek stay of council action
- 2 way to seek stay of pjc decision
- Probable grounds exist for finding the decision or action erroneous
- Substantial harm
- Answer and List of Materials pertinent

### **Preliminary Questions**

- Jurisdiction
- Standing
- Timely filed
- Claim upon which Relief may be Granted

### **Case Accepted**

- Receive Materials and transmit to PJC
- Trial Briefs
- Pretrial Conference
- Trial
  - Room
  - Witnesses

- Record of Proceedings
- Reporting written decision

## **REMEDIAL TRIAL**

- Preamble
- Prayer
- Organization and Jurisdiction of PJC
- Preliminary objection
- Amend Complaint
- Opening Statements
- Evidence
- Closing Statements
- Decision
  - Preponderance of the Evidence
  - Written
- Rules of Evidence
  - Relevant to issue
  - No distinction between direct and circumstantial as to degree of proof
  - May be used to determine prejudicial value
  - Includes: Oral testimony, records, writings, material objects or other items presented to prove the existence or non-existence of a fact
- Witnesses
  - Competency
  - Counsel may not be compelled to testify
  - Credibility
    - Degree of belief that may be given
    - Accuracy or truthfulness of the testimony
  - PJC may sequester witnesses
  - Expert witnesses
  - Direct Examination
  - Cross Examination
  - PJC may ask questions
  - Oath
- Deposition
  - Appointed by PJC
  - Not for discovery purposes
  - All parties entitled to be present and to cross-examine
- Records
  - Authenticated
  - New Evidence
  - No Hearsay Rule

## **DISCIPLINARY CASE**

- ALLEGATION OF OFFENSE
  - Notice to Presbytery

- Standing
- No discretion
- Standing rule for appointment of Investigating Committee
- INQUIRY
  - Offense
  - Probable Cause
  - Reasonably Proven
  - Prove Beyond a Reasonable Doubt
- Time Limit to File Charges
- Rights of the Person Accused
- Statement of procedures to person filing allegation

#### **Alternative Form of Resolution**

- Negotiation
- Mediation
- Arbitration
- Settlement Agreement
- PJC Approval w/ charges filed

#### **PETITION FOR REVIEW**

- Accused during inquiry
- Person who brought allegation after no charges
- Charges
- Parties
- PreTrial Conference
  - 30 days
  - Moderator and Clerk of PPJC
  - No settlement
- Disclosure of Witnesses
- CENSURE
  - Rebuke
  - Rebuke w/ Supervised Rehabilitation
  - Temporary Exclusion
  - Removal from Office or Membership

#### **Renunciation**

#### **DISCIPLINARY TRIAL**

- Challenge to PJC
- Citation of Witnesses
- Counsel
- Control
- Quorum
- Open—2/3 Vote
- Record
- Decision
  - BEYOND A REASONABLE DOUBT—2/3 Vote
  - Reporting Decision
  - In Open Court

- Enforcement
- Censure Hearing
- Victim Impact Statement

**REFERENCE**

- Jurisdiction
- After Charges Filed
- Original Jurisdiction
  - Inquiry
  - Case

**REQUEST FOR VINDICATION**

- Investigating Committee
- Public Report
- Possible Charges

**JUDICIAL PROCESS REFERENCE MATERIAL**

- *Book of Order*
- *Annotated Book of Order*
- GA Authoritative Interpretations
- GAPJC Decisions
- Stated Clerks Judicial Process Guide
- Office of Constitutional Services
- PC(USA) Website

## PJC TRAINING #5

### Case Study—Discipline Case

1. You have been given notice that an IC is beginning AFR. You don't know what the situation is, but you are preparing to receive a possible AFR agreement or charges. What do you do?
2. You have been called in to receive charges and an AFR agreement. In reading the charges, you realize the accused is a person whom you have known for 20 years in a professional capacity. Do you recuse yourself? If you decide to remain on the PJC, you open the Agreement and begin to read. You realize that the accused minister has agreed that she had an adulterous affair with the church treasurer. You know that the minister has had adulterous affairs before. The minister member is agreeing to temporary removal from office for two years and counseling. There is a confidentiality clause in the agreement and an agreement that the files will be sealed when she is reinstated to office in two years. Do you approve the agreement?
3. The PJC disapproves the agreement and suggests that the confidentiality clause be taken out. The prosecuting committee prepares for trial. Unfortunately, they list no witnesses because the main witnesses refuse to testify. They want to introduce telephone tapes made by an aggrieved spouse and copies of emails from a personal email account. The defense has filed a motion asking to exclude the evidence on the basis of privacy and that it was illegally obtained. What do you do?
4. Assuming that you refuse to accept that evidence, but you do accept the aggrieved spouse as a witness, how will you evaluate his testimony?
5. The accused has told her congregation about the charges and there are 50 people from her congregation there as support. The witness will only testify if no one is there that doesn't have to be. What do you do?
6. The IC has informed the COM of the charges and the COM along with the session of her congregation has placed the accused on administrative leave. Her defense counsel has filed a motion to dismiss and alleged that she has been falsely placed on administrative leave and asks for monetary damages from the Presbytery if she is found not guilty. What do you do with the Motion?
7. The PPJC has by a two-thirds vote sustained two of the three charges beyond a reasonable doubt. The accused would like to put forward evidence that she has been in marital counseling and in spiritual counseling since the alleged affair and she is repentant and rehabilitated. You are running out of time, two members of the PJC have planes to catch in one hour. What do you do?

[Intentionally Blank]

## PJC TRAINING #5

### Case Study—Discipline Case—with Commentary

1. You have been given notice that an IC is beginning AFR. You don't know what the situation is, but you are preparing to receive a possible AFR agreement or charges. What do you do?

*The Rules of Discipline require the Investigating Committee to notify the PJC when/if they begin an Alternative Form of Resolution process. The IC still must file any charges or Settlement Agreement within one year of the date on which they were formed. The PJC members do not have to do anything until charges or a Settlement Agreement is filed.*

2. You have been called in to receive charges and an AFR agreement. In reading the charges, you realize the accused is a person whom you have known for 20 years in a professional capacity. Do you recuse yourself? If you decide to remain on the PJC, you open the Agreement and begin to read. You realize that the accused minister has agreed that she had an adulterous affair with the church treasurer. You know that the minister has had adulterous affairs before. The minister member is agreeing to temporary removal from office for two years and counseling. There is a confidentiality clause in the agreement and an agreement that the files will be sealed when she is reinstated to office in two years. Do you approve the agreement?

*The Presbyterian Church (U.S.A.) is a relatively small community. The councils within the PC(USA) are smaller still. There is a very high likelihood that the accused may be a person with whom you have a (church) professional relationship. You may have served on committees before or served in similar congregations. If you have been in a counseling relationship with the individual or you feel that you cannot be neutral in hearing the evidence of possible offense or innocence then you should recuse yourself.*

*D-10.0202i(3) requires that if the PJC members approve the Settlement Agreement, they will make a record of the proceedings including the name of the accused, the substance of the charge(s) and censure; and then transmit that record as its decision to the clerk of session or the stated clerk who shall report it to the council. There is no possibility of a confidentiality clause or sealed files.*

*The PJC may not amend the Settlement Agreement, but may disapprove it with recommendations. The IC and the Accused may agree to the recommendations or may disagree with the recommendations and move forward with a due process trial.*

3. The PJC disapproves the agreement and suggests that the confidentiality clause be taken out. The prosecuting committee prepares for trial. Unfortunately, they list no witnesses because the main witnesses refuse to testify. They want to introduce telephone tapes made by an aggrieved spouse and copies of emails from a personal email account. The defense has filed a motion asking to exclude the evidence on the basis of privacy and that it was illegally obtained. What do you do?



*The PJC has full discretion regarding the admissibility of evidence. The GAPJC has interpreted this to mean that the evidence admitted should not be so far from probable truth as to prejudice the PJC members. Also, the GAPJC has stated that evidence that may be illegally obtained in the secular world should not be admitted in the church judicial process. In this situation the telephone tapes if made without the knowledge or consent of the accused probably should not be admitted. Similarly, emails from a personal email account should not be admitted if obtained without the permission of the accused. However, if the emails were from a work (church) account or downloaded by the Accused to a church owned electronic device, then they probably could be admitted.*

4. Assuming that you refuse to accept that evidence, but you do accept the aggrieved spouse as a witness, how will you evaluate his testimony?

*The aggrieved spouse will probably want to testify to the above information that was not admitted and the aggrieved spouse may not be the most accurate witness available due to hurt or angry feelings. The PJC must determine the credibility or degree of belief that they will give to each witness and may consider any matter that bears upon the accuracy or truthfulness of the testimony of the witness.*

5. The accused has told her congregation about the charges and there are 50 people from her congregation there as support. The witness will only testify if no one is there that doesn't have to be. What do you do?

*The PJC members may choose to close the trial to the parties only with a 2/3rds vote and a written reason for the closure.*

6. The IC has informed the COM of the charges and the COM along with the session of her congregation has placed the accused on administrative leave. Her defense counsel has filed a motion to dismiss and alleged that she has been falsely placed on administrative leave and asks for monetary damages from the Presbytery if she is found not guilty. What do you do with the Motion?

*The IC may share information with a committee or commission of the council for the purpose of furthering that committee or council's work but not for the purpose of censuring the individual for an offense. If this was an irregularity, it would be the subject of a Remedial Complaint against the Presbytery and should not have any bearing on whether the individual committed the offensive action.*

7. The PPJC has by a two-thirds vote sustained two of the three charges beyond a reasonable doubt. The accused would like to put forward evidence that she has been in marital counseling and in spiritual counseling since the alleged affair and she is repentant and rehabilitated. You are running out of time, two members of the PJC have planes to catch in one hour. What do you do?

*The PJC may schedule a censure hearing within a "reasonable time" to hear evidence regarding the appropriate censure for the individual.*

## CHAPTER VI. JUDICIAL PROCESS AND THE LOCAL CHURCH

### ROLE OF THE CLERK OF SESSION

#### Disciplinary Allegations Against a Church Member

Upon receiving a written statement of accusations(s) against a member of the church, the clerk of session has the following responsibilities:

1. Notify the session, but do not name the accused or specify the nature of the offense. (D-10.0103)
2. When a clerk of session receives a written statement of an alleged offense from a person who is not a member of the PC(USA), the clerk becomes “a member of a council receiving information from any source that an offense may have occurred which should be investigated for the purpose of discipline.” (D-10.0102b) If the clerk determines that the statement contains sufficient information to allow investigation and to suggest that an offense has been committed, an investigating committee must be created to handle the statement of alleged offense. (See Authoritative Interpretation—*Minutes*, 2004, Part I, pp. 82, 300, Item 04-07.)
3. If there is not a designated rule as to how to appoint an investigating committee (IC), the clerk will need to give advice as to the make-up of the IC since only the clerk of session knows the identity of the accused. It is best to name four or five members to the IC. Neither the clerk of session, the pastor(s), nor any member of the session may serve on an IC. (D-10.0201a) Since one or more members of the IC become the prosecuting committee (PC) if charges are filed, ability to handle the trial process as well as the investigation should be taken into account when naming members to the IC.
4. Without further inquiry, refer the written statement of accusation to the appointed IC.
5. Be available to the parties involved to help interpret the “Rules of Discipline” (ROD), and to explain and answer questions concerning the process. The stated clerk of the presbytery is also a good source of assistance.
6. Either familiarize the IC with its duties and responsibilities (including fair procedures and due process), or ask the stated clerk of the presbytery to conduct this training. (See D-10.0202–D-10.0402 and Chapter III of this Guide.)
7. If the investigation and/or trial appears that it will be too disruptive to the life of the church consider referencing the trial, or asking the Presbytery to assume original jurisdiction for both the investigation and possible trial. If the presbytery assumes original jurisdiction, responsibility shifts to the presbytery and the session is no longer involved. (G-3.0303e) If the case is referenced to the presbytery, this is done after the IC completes its investigation and files charges. (D-4.0101)
8. Receive the report of the IC and report to the Session that:

- a. IC has completed work and that no charges will be filed, or
  - b. Charges have been filed and transmitted to the clerk of the session. Do not name the accused person.
  - c. The session must then determine whether it will try the case or refer it to the presbytery. (D-4.0000)
9. If session retains jurisdiction, work with the moderator of session to prepare for a trial on the charges. (See Chapter III of this Guide.)

### **Remedial Action Involving the Session**

See Chapter II of this Guide for descriptions of the remedial process.

## JUDICIAL PROCESS AND THE LOCAL CHURCH—OVERVIEW

Increasingly, judicial process is impacting the life of the local congregation. Members of a congregation are filing remedial complaints against the session, individuals are initiating disciplinary actions against members of the church, sessions are filing complaints against the presbytery or other sessions, or pastors are being accused of committing offenses. While all these actions are entirely within the bounds of Presbyterian judicial process, they often create special challenges to maintaining the fabric of “community of faith” relationship within a church.

The definition of judicial process is especially important to its exercise at the local church level; **judicial process is the means by which church discipline is implemented within the context of pastoral care and oversight.**

A remedial complaint filed against the session is often, but not always, an indication that the filer does not feel as though the session is listening to his/her concerns. Sometimes it is the result of a church member not understanding the authority given the session in Presbyterian polity as opposed to that given the congregation. While both of these situations can be addressed by filing a complaint against the session with the presbytery for some specific action taken or not taken by the session, both also may be handled by some direct communication and possibly even conversation between the church member and representatives of the session. Judicial process is one way among many to handle difficult issues in a congregation’s life. Both complainants and respondents have the right to expect pastoral care and oversight even in the midst of judicial process.

Whether a complaint is filed against the session, or by the session against another council, a committee of counsel is designated to represent the session in all stages of that case. If the complaint is against the session, the committee of counsel prepares the answer to the complaint and defends the session if the case goes to trial. If the complaint is filed by the session, it is actually the committee of counsel that develops the complaint and pursues the complaint against some other council of the church. In both situations, sessions need to be reminded that the purpose of judicial process is to build up the body of Christ, not to destroy it.

Retaining good healthy community feelings within the church can be difficult during remedial proceedings that have the impression of one side being right and one side being wrong. The sense of community is even more at risk in a disciplinary process. Here it is one side accusing the other of having done something in violation of the Scriptures or The Constitution of the Presbyterian Church (U.S.A.). Depending on the nature of the offense, there may also be a sense of victims and perpetrators.

The session has original jurisdiction for church members, and may sit in trial when accusations lead to charges being filed against a church member. In some instances sessions are fully prepared and capable of exercising their judicial responsibilities to investigate accusations and conduct trials when charges are filed. In some instances sessions find they are ill prepared to manage the intricacies of judicial process when it involves a congregation member.

There are two provisions that allow a session to request that the presbytery permanent judicial commission (PJC) assume jurisdiction for the session in judicial matters. Chapter IV of the

“Rules of Discipline” describes “Reference.” A reference is a written request made, in this case, by the session to the PJC of the presbytery to conduct the trial and make a decision on the session’s behalf. G-3.0303e provides for the presbytery to assume original jurisdiction when the session cannot exercise its authority. In this situation, the presbytery could assume responsibility for the case immediately after accusations were received about a member of its congregation. This would mean the investigation as well as the trial, if there is one, would be handled by the presbytery.

The session is responsible for the mission and government of the particular church. As a result, it has many responsibilities and powers. Among them is the responsibility **and power to lead the congregation in ministries of personal and social healing and reconciliation in the communities in which the church lives and bears its witness.**

**Note:** Chapter III of this Guide contains many resources dealing with the “Disciplinary Process.” Review that material as well as the resources in this chapter dealing with “Judicial Process and the Local Church.”

## JUDICIAL PROCESS AND THE LOCAL CHURCH DISCIPLINARY OUTLINE FOR SESSION

<b>Action</b>	<b>Timeline</b>
1. A written statement of alleged offense is filed with supporting information with the clerk of session. (D-10.0101)	As soon as possible after offense has been committed.
2. The clerk reports to session that an offense has been alleged without naming accused or the nature of the offense, and an investigating committee (IC) is established. No session member may serve on the IC. (D-10.0103 and D-10.0201a)	As soon as possible after the clerk of session has received the statement of accusation.
3. The IC provides the accused with a copy of the statement of alleged offense. (D-10.0202a)	Immediately upon formation.
4. The IC provides the person making the accusation with a statement of the investigating committee's procedures. (D-10.0202b)	Immediately upon formation
5. The IC makes a thorough inquiry into the facts and circumstances of the alleged offense. (D-10.0202b-d)	
6. During the course of the investigation, the accused may petition the presbytery permanent judicial commission (PJC) to review procedures of the IC. Two members of the PJC shall conduct a hearing to carryout this review. (D-10.0204 and D-5.0101)	The hearing must be held within 30 days of receipt of the petition.
7. Decisions resulting from this review are communicated to both parties, and are also communicated to the moderator of the session as input to the pretrial conference. (D-10.0204)	Within 15 days of the hearing.
8. If there are civil proceedings, the IC may request and be granted an extension of up to six months beyond the end of the civil	The IC must report within 1 year of its formation as long as it is within three years after the alleged offense occurred. (If the

**Action**

**Timeline**

proceedings. (D-10.0401a)

alleged offense is sexual abuse of another person, only the 1 year limit applies.)

9. The IC decides if there are probable grounds to believe the accused committed an offense, and whether charges, if filed, could reasonably be proved. (D-10.0202f and g)

10. Initiate, if deemed appropriate, alternative forms of resolution. Any resolution achieved is transmitted to the session for approval. (D-10.0202h) See Chapter III, (page III-49).

11. If the IC does not file charges, it reports this fact to the clerk of session and notifies the person who submitted the statement of accusation. The matter is completed unless the accuser files a petition for review. (D-10.0303)

12. The accuser may petition the session to review the decision of the IC not to file charges. (D-10.0303a) See Chapter III (page III-24).

Within 30 days of receipt of report that no charges are to be filed.

13. The IC submits a written response to the facts alleged in the accuser’s petition for review. (D-10.0303b)

Within a reasonable length of time (not specified).

14. Two designated members of the presbytery PJC review the petition and IC response, and issue a decision. (D-10.0303c)

Within 90 days of the filing of the petition and IC response.

15. If the PJC members sustain the petition, a new IC is created. If they do not sustain the petition, the matter is concluded. (D-10.0303d and e)

The new IC must report within 1 year of its formation as long as it is within three years after the alleged offense occurred. (If the alleged offense is sexual abuse of another person, only the 1 year limit applies.)

16. If the IC does file charges, it notifies the accused in writing of the charges, including a summary of facts it expects to prove to support the charges. It shall ask the accused if s/he wishes to plead guilty to the charges to avoid

<b>Action</b>	<b>Timeline</b>
full trial and indicates the censure it will recommend to the session. (D-10.0302)	
17. If charges are filed, the IC prepares them and files them with the clerk of session. The clerk shall present them at its next meeting. The session shall determine if it will try the case or refer it to the presbytery. (D-10.0404a) If the session tries the case, the IC designates one or more of its members to be the prosecuting committee (PC). (D-10.0404 and D-10.0202i)	
18. The session moderator and clerk conduct a pretrial conference with accused, counsel for accused (if any), PC, and others deemed appropriate. The accused is furnished a list of all witnesses and a description of documents to be presented in support of charges. (D-10.0405)	Within 30 days of receiving the charges from the clerk.
19. Accused provides clerk of session and PC with a list of witnesses. (D-10.0406)	At least 20 days prior to the trial date.
20. The PC and the accused shall provide the clerk of session and the other party with an updated list of witnesses. (D-10.0406)	At least 10 days prior to the trial date.
21. Citations to appear at trial for the parties and such witnesses as either party may request are signed by the session moderator or clerk. (D-11.0201)	As early as practical before the trial.
22. The trial is conducted in a neutral setting with proper decorum. The session is in charge of the proceedings and makes all decisions about the trial issues and proceedings. (D-11.0102) A verbatim recording of all testimony and oral proceedings is required. (D-11.0601)	No sooner than 30 days after the pretrial conference.
23. The trial is conducted in accordance with Chapter XI of the “Rules of Discipline.” After all evidence is presented and final statements made, the session meets privately to deliberate and vote on the charges. A written decision stating the judgment on each charge separately and the degree of censure (if any) is prepared	



**Action**

**Timeline**

while in session. (D-11.0403c) The session moderator, in open meeting, announces the verdict for each charge separately. (D-11.0403d)

24. If the accused is found guilty or after a guilty plea, the session may hear evidence as to the extent of injury suffered, mitigation, rehabilitation, and redemption. At the conclusion of the deliberations or the censure hearing, the moderator of the PJC, in open meeting, shall pronounce the censure. (D-11.0403e)

25. A signed copy of the decision is delivered to each party. (D-11.0403g) Immediately

26. The accused, if found guilty, may appeal the decision to the PJC of the presbytery if s/he believes the decision was reached as a result of one of the errors listed in D-13.0106. Within 45 days of receiving the judgment.

## **JUDICIAL PROCESS AND THE LOCAL CHURCH**

### **ROLE OF THE MODERATOR OF SESSION**

The role of the moderator of session in a disciplinary process is significantly complicated by the moderator's more common role of pastor. The session moderator may be the pastor to the accused, the accuser, the members of the investigating committee (IC), as well as to the session members who may sit in judgment. This multiplicity of roles can be very confusing for the pastor as well as for the other participants in the process. The following is intended to provide some assistance to a pastor in this situation.

The disciplinary process is started by the filing of an accusation that a particular person committed an offense. The accusation should be filed with the clerk of session, but it may come to you because you are more visible and church members may be less familiar with the correct procedures.

If the accusation is filed with the clerk of session, you may well receive a call from the clerk seeking guidance on how the accusation should be handled.

In either case, you and the clerk should confer as soon as possible on how to handle the accusation. There are alternatives to be considered and moderator and clerk need to help lead the session through the decision making process to select the appropriate alternative. The presbytery stated clerk can be very helpful in guiding you through this process and providing resources.

Neither the moderator nor the clerk has the authority to dismiss the matter out of hand. If the person who filed the accusation is under the jurisdiction of the Presbyterian Church (U.S.A.) (is a Presbyterian), and the person accused is a member of your congregation, it is properly filed. You may have the opportunity to discuss with the accuser whether the ecclesiastical judicial process is the appropriate place to pursue this matter, but you do not have the option of refusing to have it considered.

### **Pastoral Consideration**

You need to seriously consider whether your congregation can handle all that is involved in disciplinary process. After you have reviewed the procedures and processes involved in a disciplinary process, think through how your particular session will function sitting in judgment of a church member if the case should proceed to trial.

### **Consider the Alternatives**

#### ***1. Ask the presbytery to assume original jurisdiction of the matter.***

(G-3.0303e) This would transfer to the presbytery the responsibility of investigating the accusation and conducting the trial, if charges are filed. It is not an automatic transfer. Presbyteries usually consider very carefully the assumption of jurisdiction from a session, and it would take an action by the presbytery to do so. It would, however, allow the investigation and trial, if there is one, to be managed outside the local congregation.

## ***2. Establish the IC and transfer the case to the presbytery for trial if charges are filed.***

This process is called “reference” and is described in Chapter IV of the “Rules of Discipline.” The session appoints an investigating committee (IC). If the IC files charges, the session could request that the presbytery permanent judicial commission (PJC) conduct the trial and make the decision in the case. It has the advantage of only needing the PJC’s agreement to transfer the case to the presbytery level rather than the presbytery itself as in alternative no. 1.

## ***3. Establish the IC and be prepared to conduct a trial if charges are filed.***

The nature of the accusations and who filed them often have an impact on when a session feels able to handle all the requirements of processing a disciplinary case. Accusations from within the congregation are harder to manage than ones from outside the congregation.

Working with the clerk of session and, possibly, the presbytery stated clerk, decide which alternative to recommend to the session. Which alternative to select should be a session decision, but a recommendation from the moderator and clerk will help put the issues in perspective.

## **Establish the Investigating Committee**

Alternatives 2 and 3 both require the establishment of an IC consisting of three to five members, none of whom are session members. If charges are filed, one or more members of the IC prosecute the case as the prosecuting committee (PC). This should be taken into account when selecting the members of the IC.

Your presbytery stated clerk might be a good person to train the IC once it has been established.

## **Role Reminder**

1. The session is the equivalent of a panel of judges. That is why it is not involved in the investigation. It will sit in judgment if charges are filed.
2. The moderator of session, usually the pastor, is the spokesperson for the session as well as being a member of the session, and, therefore, also may not be involved in the investigation.
3. The accused is a church member and has a right to expect pastoral care during the process. It may be wise to provide an alternate source of pastoral care so roles do not get confused and confidentiality is not jeopardized.
4. The accuser may or may not be a member of this congregation. If a member, it may be wise to provide an alternate source of pastoral care so roles do not get confused and confidentiality is not jeopardized.
5. In as much as the moderator of session has varied responsibilities within the church, you may wish to consider asking another teaching elder of the presbytery to serve as moderator of the session for the trial, or consult with the presbytery about appointing a moderator.

## **Preparing for Trial**

Ask the presbytery stated clerk for copies of other parts of the Guide for Judicial Process that pertain to disciplinary cases. Specifically look at “Disciplinary Process: Session/Permanent Judicial Commission” and “Permanent Judicial Commission: Role of the PJC Moderator.”

Use the part of the “Permanent Judicial Commission: Role of the PJC Moderator” piece dealing with disciplinary cases as a guide to conducting the trial.

## **CHAPTER VII. REQUEST FOR VINDICATION**

### **OVERVIEW—Overview (D-9.0000)**

#### **What is a Request for Vindication?**

A request for vindication is a request made by a member of the Presbyterian Church (U.S.A.) who feels injured by rumor or gossip to investigate erroneous, inaccurate or inflammatory statements made about him or her in order to “clear the record.” If the request, made to the clerk of the council having jurisdiction over the person, is granted, an investigating committee (IC) is formed. Similar to the task of an IC in a disciplinary case, the committee conducts an inquiry to ascertain the facts and circumstances, and report in writing to the council. This report normally concludes the matter. However, if in the course of its work an IC determines that charges should appropriately be filed against the person seeking vindication, the IC proceeds to engage in judicial process by prosecuting the disciplinary case.

#### **May a Session/Presbytery Refuse to Initiate a Request for Vindication?**

Upon receiving a request for vindication, the clerk passes the request to the appropriate session (for a church member) or presbytery entity (for a teaching elder) to determine whether or not to initiate vindication proceedings. While the “Rules of Discipline” grant the session/presbytery authority to refuse to initiate the process, the request for vindication should normally be granted unless there are compelling reasons not to do so.

#### **Special Considerations in Making a Request for Vindication**

In certain situations, particularly if the person requesting vindication knows the source or sources of the rumors, it may be more appropriate to file accusations against that person or those persons in a disciplinary case rather than request vindication. At the presbytery level, the stated clerk may help the aggrieved party determine the most appropriate action to take.

When an IC has been named as a result of accusations, and the IC declines to file charges, the individual may feel that further vindication is desirable. In that event, the individual may request vindication.

A request for vindication is a public process. If the request for vindication is granted, the name of the person requesting vindication is reported to the council at the time of the naming of the IC.

The report of an IC formed as a result of a request for vindication should include sufficient information to give a clear picture of facts and circumstances. The name of the person seeking vindication should be noted in the report, which is recorded in the minutes of the council.

## CHAPTER VIII. GLOSSARY OF TERMS AND ABBREVIATIONS

**Accusation:** A written term sometimes used synonymously with “allegation.”

**Accused:** The person against whom an allegation has been submitted. The allegation (accusation) is always considered by the council having jurisdiction over the accused.

**Accuser:** The person who submits an accusation. This person must be under jurisdiction of the Presbyterian Church (U.S.A.). This person may claim to be a victim or a third party. Any member of the church may make an accusation based on credible information from any source. (D-10.0102a, b, c).

**Administrative Leave:** A term used in the *Book of Order* and some Sexual Misconduct Policies to indicate removing an installed pastor from pastoral duties during the course of an investigation and trial. This type of leave is normally only voluntary. It may not be imposed against the pastor’s will except in a situation in which sexual abuse is alleged involving a person under the age of 18 or who lacked the mental capacity to consent, in which case it may be imposed by order of the permanent judicial commission.

**Allegation:** The written statement alleging that a person under the jurisdiction of the Presbyterian Church (U.S.A.) committed an offense. The statement should give a clear narrative and allege facts supporting the allegation (D-10.0101). The allegation is submitted to the clerk of session or stated clerk of the presbytery, depending on jurisdiction.

**Alternative Forms of Resolution (AFR):** Alternative Forms of Resolution are methods of resolving disputes that are based on the obligation “to conciliate, mediate, and adjust differences” as noted in D-1.0103, and to avoid some of the adversarial flavor of trials. There are provisions in both remedial cases (D-6.0309) and disciplinary cases (D-2.0103, D-10.0202h) for AFR.

**Appeal:** The transfer to the next higher council of a case for the purpose of obtaining a review of the proceedings and decision to correct, modify, set aside, or reverse the decision. (D-8.0101 and D-13.0101)

**Appellant:** The party seeking the review of a trial decision, either remedial or disciplinary, or the decision of an appeal at a lower court level. Either party may appeal the decision in both remedial and disciplinary cases. (D-8.0102, D-13.0102–.0103)

**Appellee:** The party defending the decision rendered by a session/PJC in the trial or hearing on appeal. PJC’s are never parties to an appeal.

**Beyond a Reasonable Doubt:** A compelling and abiding conviction that the material facts necessary for proof are true and supported by evidence. The level of proof required for a determination of guilt in a disciplinary case. (D-11.0403a) See also “Reasonable Doubt.”

**Brief:** A formal listing of the legal contentions along with supporting evidence and arguments.

**Censure:** The consequences imposed by a session or the PJC of a presbytery when a member is found guilty of one or more offenses. There are four degrees of censure. (“Rules of Discipline,” Chapter XII)

**Charge(s):** The formal statement of the offense(s) that the investigating committee believes can reasonably be proved to have been committed by the accused.

**Clerk (Clerk of Session, Stated Clerk, Clerk of PJC):** A clerk in Presbyterian polity is charged with keeping the minutes and records of a council or a council’s commission. The clerk of a presbytery, synod, or the General Assembly is a Stated Clerk. Official correspondence is transmitted between clerks. Each PJC elects a clerk as well as a moderator.

**Committee of Counsel:** One to three persons designated by a governing body to represent it in a remedial case. This committee represents the governing body from the beginning of the process through the highest level to which it is appealed. (D-6.0302)

**Committee on Ministry (COM):** No longer a required committee, but a presbytery may designate such a committee for handling presbytery’s responsibilities of oversight.

**Complainant:** The person, persons, or council that files a remedial complaint.

**Complaint:** The written statement alleging an irregularity in a council or GA agency decision or action, or alleging a delinquency by a council or GA agency. The person filing a complaint must have standing to do so. (D-6.0202)

**Constitution:** The Constitution of the Presbyterian Church (U.S.A.) is composed of the *Book of Order*, which has four sections (Foundations of Presbyterian Polity, Form of Government, Directory for Worship, and Rules of Discipline), and *The Book of Confessions*, which contains eleven confessional documents.

**Council:** The councils of the church are the session, presbytery, synod, and the General Assembly. Higher councils review the actions of lower councils (“higher”/”lower” is the language used in the “Rules of Discipline”).

**Counsel:** A person chosen to represent the interests of a party in judicial process. No person may act as counsel who is not a member of the Presbyterian Church (U.S.A.). Counsel need not be a paid representative or attorney-at-law. (D-7.0301, D-11.0301–D-11.0302)

**Delinquency:** An omission or failure to act (as required by the Constitution) by a council (D-2.0202b)

**Deposition:** Testimony under oath written down for possible later use during a trial. (D-14.0304)

**Disciplinary Case:** A case which begins with an accusation against a church member or person in an ordered ministry. (D-2.0203)

**Ex parte:** A legal term which means “from one side only.”

**Grounds for Appeal:** The basis or reason why a review of the proceedings and decision is being requested. The recognized grounds for appeal in a remedial case are found in D-8.0105. The recognized grounds for appeal by a person found guilty in a disciplinary case are found in D-

13.0106a. The recognized grounds for appeal by a prosecuting committee in a disciplinary case are found in D-13.0106b.

**Hearsay:** A term used to describe testimony given by a person who does not have direct knowledge of the events or words about which he/she gives testimony. Such testimony is based upon the report of another person. The “Rules of Discipline” do not prohibit consideration of hearsay testimony.

**Investigating Committee (IC):** The committee (of three to five members) appointed by a session or presbytery to conduct an investigation to determine whether charges should be filed against the person accused of an offense. Initially, the IC should make no presumption of guilt or innocence; it should, instead, follow the requirements of D-10.0202. After its investigation, however, it makes an assessment whether probable cause exists to believe an offense has been committed by the accused.

**Irregularity:** An erroneous decision or action (D-2.0202a). An irregularity may involve violation of provisions of the *Book of Order*, procedures adopted by the council (as in bylaws or manuals), or of decisions previously made.

**Jurisdiction:** Authority to exercise governance and judgment.

**Neutral setting, neutral place:** A neutral setting is one that would have no real or perceived advantage or disadvantage to any party in a case.

**Notice of Appeal:** The written statement that, if properly filed, begins the appeal process. (D-8.0202, D-13.0202)

**Offense:** Any act or omission by a member or officer of the church that is contrary to the Scriptures or The Constitution of the Presbyterian Church (U.S.A.). (D-2.0203b)

**Ordered Ministry:** The ministry of deacons, ruling elders, and teaching elders.

**Original Jurisdiction in judicial process:** The term used to describe where a judicial case starts. Sessions and presbyteries have original jurisdiction in disciplinary cases. Presbyteries, synods, and the General Assembly have original jurisdiction in remedial cases filed against the next lower council.

**Paid Administrative Leave:** Removal of an installed pastor from pastoral duties during the course of an investigation and trial and continuing to pay salary and other benefits. In a situation in which sexual abuse is alleged involving a person under the age of 18 or who lacked the mental capacity to consent, it may be imposed by order of the permanent judicial commission.

**Permanent Judicial Commission (PJC):** A specialized commission of the council for the conduct of judicial business. The session of a local church handles judicial matters at that level, but each council above the session has a PJC to act as the council for judicial matters. The membership of PJCs at each level is specified in D-5.0000.

**Polity:** The practice of governance of the Presbyterian Church (U.S.A.) as stated in the *Book of Order*.



**Preliminary Questions:** The term used to indicate the criteria that must be met for a case to be accepted. These criteria are described in D-6.0305 for a remedial case, D-8.0301 for a remedial appeal, and D-13.0301 for a disciplinary appeal. Sometimes also referred to as threshold issues.

**Preponderance of Evidence:** The evidence has more convincing force and the greater probability of truth than that weighed against it. The level of proof required to sustain a complaint in a remedial case. (D-7.0402a)

**Probable Cause (probable grounds):** Sufficient indications to warrant the belief that an offense was committed by the accused. (D-10.0202f) This is related to, but is somewhat distinct from the question of whether a charge can reasonably be proved. (D-10.0202g)

**Prosecuting Committee (PC):** One or more of the members of an IC designated to prosecute the case when charges have been filed in a disciplinary case.

**Reasonable Doubt:** A session or PJC must find the pertinent facts have been proven beyond a reasonable doubt to find the Accused guilty in a disciplinary case. Proof beyond a reasonable doubt occurs when the comparison and consideration of all the evidence compels an abiding conviction that the material facts necessary to prove the charge are true. (D-11.0403a)

**Rebuke:** The lowest degree of censure. Rebuke is a statement that publicly sets forth the character of the offense, together with entreaty to be more watchful and avoid such offense in the future. (D-12.0102)

**Rebuke with Supervised Rehabilitation:** The second degree of censure. In addition to the rebuke, this censure mandates a period of supervised rehabilitation. (D-12.0103)

**Record on Appeal:** The record of the proceedings of a case that is now being appealed. The materials and transcripts of the lower court proceedings. The content of the record that should be available from a remedial case is described in D-7.0601d, and that for a disciplinary case is described in D-11.0601d.

**Remedial Case:** A case that begins with the filing of a complaint against a council, or an agency of a council, for an irregularity or delinquency.

**Removal from Ordered Ministry or Membership:** The highest degree of censure. Sets aside ordination and election and may also remove a person from membership. (D-12.0105)

**Respondent:** The council or GA agency against which a complaint has been filed.

**Roster of Former Members:** Each year, the stated clerk must keep and report to the council annually a list of the members of the PJC whose terms have expired within the past six years. This roster is used to guarantee a quorum for trials and hearings, to provide members to handle petitions for review, and to consider paid administrative leave in cases of sexual abuse of a minor or person incapable of consent. (D-5.0206b)

**Ruling Elder:** A church member elected by the congregation to serve on the session. The term applies whether currently serving on session or not.

**Sexual Misconduct Policy:** A policy adopted by a council that states the expectations for conduct by members, officers, and volunteers, the procedures for processing accusations of misconduct, and the processes for providing care to affected persons and institutions.

**Sexual Misconduct Response Team:** A team whose duties are designated in the Sexual Misconduct Policy of the council.

**Specification of Error:** A statement of the error allegedly made at trial or earlier appeal that form the grounds or basis for the appeal.

**Standing:** Meets the eligibility requirements.

**Stay of Enforcement:** The provision for preventing the implementation of a decision pending resolution of a remedial complaint or appeal. (D-6.0103)

**Teaching Elder:** Also called ministers of the Word and Sacrament.

**Temporary Exclusion:** Short for the degree of censure “temporary exclusion from the exercise of ordered ministry or membership.” Temporary is defined as either a period of time or the completion of specified supervised rehabilitation. (D-12.0104)

**Threshold Issues:** A term sometimes used synonymously with “preliminary questions” to indicate the criteria that must be met for a case to be accepted. These criteria are described in D-6.0305 for a remedial case, D-8.0301 for a remedial appeal, and D-13.0301 for a disciplinary appeal.

