

CHAPTER IV - APPEAL PROCESS

ROLE OF THE CLERK

Clerk of the governing body whose permanent judicial commission will hear the appeal

Upon receiving the copy of a notice of appeal of a decision of a lower governing body, the stated clerk of the governing body 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 governing body 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 governing body. (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 governing body 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 governing body that elected the PJC, as with all commissions of governing bodies. (D-8.0404e, D-13.0404e)

Clerk of the governing body whose decision (or whose PJC's decision) is being appealed

Upon receiving the written notice of appeal, the clerk of the lower governing body 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 governing body 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 governing body. 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 office or church membership. Make this declaration to the governing body and correct the rolls, if necessary. (D-13.0405)

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OVERVIEW

Church discipline or correction of a governing body through judicial process is not infallible. Therefore, the system of church courts allows for review of decisions reached in trials by the session or permanent judicial commission (PJC) which originally had jurisdiction over a disciplinary or remedial case.

WHAT IS AN APPEAL

An **appeal** is a review of the proceedings and decision of a case, remedial or disciplinary, by the next higher governing body. 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 governing body, 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 governing body 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 court is called the appellant. The party defending the decision of the lower court 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 governing body 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 governing body, 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

The party appealing the decision of the lower court is called the appellant. The party defending the decision of the lower court is called the appellee.

Disciplinary Case Appeal by Prosecuting Committee

The **prosecuting committee** in a **disciplinary case** may initiate the first level of appeal on the grounds that at least one of the items listed below (D-13.0106b(1-6)) had occurred, by filing a notice of appeal with the stated clerk of the governing body that rendered the decision. Grounds for appeal in a disciplinary case by the prosecuting committee are (D-13.0106b):

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. error in Constitutional interpretation

The party appealing the decision of the lower court is called the appellant. The party defending the decision of the lower court is called the appellee.

The 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 governing body that rendered the decision** (the lower governing body) by certified delivery with copies to the other party or parties (the appellee) and the stated clerk of the higher governing body 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.)

The 45 days of 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. Postmarked dates are not determinative. The stated clerk may not refuse to accept the filing of a complaint. (Annotation on D-6.0305c in the *Annotated Book of Order*)

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 and not from either party except when requesting a stay of enforcement.

Stay of Enforcement

As of July 3, 2004, 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 several challenges of interpretation around the new procedures that will require review and discretion on the part of the individuals who are approached to sign a request for a Stay of Enforcement.

A Stay of Enforcement is now defined as a written instruction that orders a delay of the implementation[by a governing body] of a decision or action until a complaint or appeal is finally determined. D-6.0103. See Chapter IV, page IV-21 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 governing body 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 governing body to certify and file the record of the case with the stated clerk of the governing body whose PJC will hear the appeal when the clerk has notice from the higher governing body 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 governing body.

BRIEFS

The appellant shall file with the stated clerk of the higher governing body 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 not uncommon. 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 governing body 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-13.0106a or D-13.0106b?

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 governing body 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 governing body 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 office 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 governing body 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.

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OUTLINE

Action	Timing
<p>1. One of the original parties in a remedial case, or either party in a disciplinary case, files a written notice of appeal with the session clerk or stated clerk of the governing body which elected the permanent judicial commission (PJC) whose decision is being appealed. Becomes known as the appellant. (D-8.0201-.0202/D-13.0201-.0202)</p> <p>The party filing an appeal in a remedial case may file a stay of enforcement of the decision being appealed. (D-6.0103)</p>	<p>Within 45 days of receipt of the decision of the Session or PJC</p>
<p>2. Upon receipt of the notice of appeal with a copy of the decision being appealed, the stated clerk (of the higher governing body) transmits them to the officers of the PJC. (D-8.0203/D-13.0203)</p>	<p>Immediately</p>
<p>3. The moderator and clerk of the PJC decide the preliminary questions and communicate their findings to the parties and the full PJC.</p>	<p>In a timely manner</p>
<p>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-8.0302a/D-13.0302a)</p> <p>If any of the preliminary questions are answered in the negative, either unchallenged or after a hearing on the issue, the case is dismissed.</p>	<p>Within 30 days of receipt of the findings.</p>
<p>5. The PJC notifies the stated clerk of the higher governing body that the case has been accepted</p>	
<p>6. The stated clerk of the higher governing body notifies the clerk of session or stated clerk of the lower governing body that the case has been accepted. (D-8.0303c/D-13.0303c)</p>	
<p>7. The clerk of session (in a disciplinary case for a church member) or the stated clerk (in a disciplinary case for a minister or commissioned lay pastor or in a remedial case) lists in writing to the parties all the papers and other materials that constitute the record of the case. (D-8.0303/D-13.0303)</p>	<p>Within 45 days of receipt of the notice of appeal</p>

Action	Timing
8. A party or parties to a case may file with the clerk of session or stated clerk of the lower governing body a statement challenging the accuracy or completeness of the record as listed in 7.	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 governing body 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 governing body that the case has been accepted.
10. The stated clerk of the higher governing body shall notify the parties of the date the record on appeal as 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 governing body 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 9.)
12. Appellee files a brief with the stated clerk of the higher governing body 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 governing body 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 delivered to the stated clerk of the governing body that appointed the PJC. (D-8.0404e/D-13.0404e)	Within 30 days of the conclusion of the hearing for a remedial case, and as soon as possible in a disciplinary case.

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PERMANENT JUDICIAL COMMISSION'S ROLE

In the appeal process, the appellant is seeking to prove that the decision of the lower governing body or permanent judicial commission (PJC) was improper for one or more of the reasons listed in D-8.0105, D-13.0106a, or D-13.0106b. The appellee seeks to defend the process and decision of the lower governing body or PJC. The PJC that hears the appeal will generally accept findings of facts determined by the trial court (lower governing body or PJC), and will focus primarily on procedures.

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 lower PJC or governing body
3. Read the Appellant's brief to discover 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 governing body 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 to mean "in the hands of..." 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

stated clerk receives in hand the notice of appeal. 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 PJCs), 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. (D-7.0303)

Maintaining Neutrality

The ROD make no provision for the organization of the PJC to be challenged during an appeal hearing, although 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 informal conversations concerning the case with anyone other than PJC members during the hearing deliberations 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 governing body membership may also serve to disqualify a PJC member if that person's membership is in the church, lower governing body or another church in that governing body 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 governing body 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 Trial

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 governing body is affirmed. If one or more errors are found, the PJC shall determine whether the decision of the lower governing body 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. Although an explanation of the PJC decision does not have to be included, such an explanation could be helpful to the appellant and appellee in understanding the decision, 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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IV. – APPEAL PROCESS

STAY OF ENFORCEMENT

(D-6.0103)

The decision of the permanent judicial commission (PJC) of a governing body may be suspended by a stay of enforcement.

A Stay of Enforcement Defined

A stay of enforcement is a written instruction that orders a delay of the implementation of an action or decision until a complaint or appeal concerning that action or decision is finally determined. (D-6.0103). This section describes the requirements and procedures for a stay of enforcement as it applies to the appeal of a PJC decision in a remedial case.

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 governing body qualified to file a remedial appeal may request a stay of enforcement of a decision by completing the necessary steps
3. A stay of enforcement must be requested simultaneous to the filing of an appeal, but **within 45 days of the appealed decision.**
4. The 45 day deadline applies to receipt, by the appropriate stated clerk, of the signatures, not to the date of the request.

Obtaining the Stay of Enforcement

There are two ways to obtain a Stay of Enforcement of a decision of a PJC.

1. The decision of a PJC may be stayed by requesting that at least one third of the members of the PJC who decided the case sign a Stay of Enforcement of their decision. D-6.0103a (2)

This request must be directed to the commission through the clerk of the PJC made the decision or the stated clerk of the governing body of the PJC that made the decision. If one third of the members of the PJC sign the request for the stay, and the signatures are secured within 45 days of the decision, the Stated Clerk of the governing body should notify the parties that the stay has been entered (secured).

2. The decision of a PJC may also be stayed by securing the signatures of three of the members of the PJC having jurisdiction to hear the case. D – 6.0103a (3)

This request must be filed with the Stated Clerk of the governing body whose PJC has jurisdiction to hear the case. The request must include a short statement of the basis for challenging the decision or action, a short statement of the harm that will occur if the

decision or action is not stayed, and a list of telephone numbers and addresses for the complainant or appellant and the opposing party or governing body. The request for stay of enforcement should be filed concurrently with the Notice of Appeal.

The members of the PJC 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 made difficult because they will only have the Notice of Appeal and the Decision of the lower PJC. The response of the Committee of Counsel of the Appellee will not be available.
- b. The member must certify that in his/her judgment, the complainants or appellants will suffer harm if the decision is not stayed.

If three members of the PJC certify that in their judgment probable grounds exist for finding the decision erroneous and that the appellants will suffer harm if the decision is not stayed and return those certifications to the Stated Clerk within 45 days of the lower governing body's decision, 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 decision is stayed must comply with the stay or face further judicial action.

Hearing on the Stay of Enforcement

The Appellee may file with the PJC of the body that will 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 individual challenge, as is any member of the PJC.

CHAPTER IV - APPEAL PROCESS
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]---

The Permanent Judicial Commission finds that it has jurisdiction, that the appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal states one or more of the grounds for appeal set forth in D-8.0105.

--- 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]

CHAPTER IV - 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 _____

[Intentionally Blank]