

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 or officer 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 PCUSA, the clerk becomes “a member of a governing body 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 (IC) must be created to handle the statement of alleged offense. (See Authoritative Interpretation – GA 2004, 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 minister, 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 Handbook.)
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-11.0103s) 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 governing body (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 Handbook.)

Remedial Action Involving the Session

See Chapter II of this Handbook for descriptions of the remedial process.

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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 governing body, 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 governing body 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.

As a governing body within our Presbyterian governmental system, the session is a court of the church. 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-11.0103s 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 Handbook 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."

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DISCIPLINARY OUTLINE FOR SESSION

Action	Timing
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 the 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 carry out 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 proceedings. (D10.0401a)	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)
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 page III - 49.	

Action

Timing

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 page III - 33.

13. The IC submits a written response to the facts alleged in the accuser's petition for review. (D-10.0303b)

14. Two designated members of the presbytery PJC review the petition and IC response, and issue a decision. (D-10.0303c)

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)

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 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)

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

Within 30 days of receipt of the report that no charges are to be filed.

Within a reasonable length of time (not specified.)

Within 90 days of the filing of the petition and IC response.

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.)

Within 30 days of receiving the charges from the clerk

At least 20 days prior to the trial date.

Action

Timing

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)

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 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.

With 45 days of receiving the judgment.

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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.

The First Question

Yes, you do have to take this seriously. 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 church courts is the appropriate place to pursue this matter, but you do not have the option of refusing to have it considered.

The Second Question

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-11.0103s)

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 only if charges are filed.

This process is called "reference" and is described in Chapter IV of the "Rules of Discipline." 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.

This decision may be a matter of choosing what role you wish to play. If your choice is the role of pastor, it may be best to recommend one of the options which transfer judicial responsibility to the presbytery. If your choice is the role of leader of the session, it may be possible for the session to handle the disciplinary judicial process. If your preferred role is that of mediator, try very hard to get the matter settled prior to accusations being filed. Judicial process provides limited opportunities for mediating issues as it is primarily procedural and is often viewed as the last resort.

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. Remember which role (pastor, session leader, or mediator) you prefer and work at functioning within the options available for that choice. You may wish to consider asking another minister of the presbytery to serve as moderator of the session for the trial, or asking the committee on ministry to appoint a moderator for this purpose.

Preparing for Trial

Ask the presbytery stated clerk for copies of other parts of the Handbook for Judicial Process that pertains 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.

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