

CHAPTER I - INTRODUCTION

OVERVIEW OF THE CLERK'S ROLE

The role of the clerk of session or the stated clerk of a governing body 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.

A letter from the General Assembly Permanent Judicial Commission to governing body stated clerks, in 1990, reminds them that they may be tempted to assume the role of "protector" of the governing body, and thereby inappropriately become an adversary of those seeking to use the system, seeing them as troublemakers or "surfacers of embarrassment." The letter reminds clerks that they have no grounds for refusing to:

- produce requested documents,
- determine the appropriate content of the record of a case, or
- transmit materials to a permanent judicial commission as requested by a party

(General Assembly *Minutes*, 1990, page 139)

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:

1. an alleged offense committed by a church member, or
2. an alleged offense committed by an officer (elder or deacon) of the church.

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 minister or commissioned lay pastor serving a church), 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

On the average, clerks of session and middle governing body stated clerks 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 governing bodies, 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 governing body, 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 adopted 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.

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:

- 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
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.

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 governing bodies.
9. It may be helpful to develop a numbering system for cases, especially if your governing body handles a fair number of them. One often used is based on the year and the sequence of filing (2002-1, 2002-2, etc.). The General Assembly uses the meeting number and the sequence of filing (214-1, 214-2, etc.).
10. Communicating with the parties in a case is ordinarily done directly with the parties, often by certified, return receipt requested mail service. Copies of the communications should be sent to the party's counsel if one has been identified, and may be by regular mail.
11. Tips for counsel. 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 court during the proceedings. Some permanent judicial commissions (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.

It may also be helpful to remind those who serve as counsel that the *Constitution of the Presbyterian Church (U.S.A.)* contains the full legal system for the church. This means that Chapter XIV of the ROD contains all of the church's rules of evidence, and beyond what is there, each court will make its own decision.

[Intentionally Blank]

JUDICIAL PROCESS -- EXERCISING CHURCH DISCIPLINE

What is Judicial Process

Judicial process is the means by which church discipline is implemented within the context of pastoral care and oversight by filing complaints or making allegations of wrongdoing, holding trials and arriving at decisions by a session or permanent judicial commission. Through a **remedial case**, the process seeks to provide a way for those in the minority (even one person) to seek redress if a governing body abuses the rights of a person or a lower governing body in exercising the authority of the majority. 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, officer, or minister 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 that process.

Why and When to Use Judicial Process

When persons believe they have been injured or that governing bodies have misused their authority, parties with differing views about these matters are not always willing or able to resolve their differences. Judicial process offers one avenue for resolution. However, it is only one means of redressing a grievance. Other means of resolution such as working through a personnel committee or the committee on ministry of the presbytery, requesting the governing body to take corrective action, or entering into alternative forms of resolution should be explored and may offer the best course of action.

Presbyterian judicial process can be frustrating for the persons involved because it relies on processes and procedures, rather than relationships and underlying reasons. Some may even feel that their emotional concerns have been violated in and by the process. It can also be time-consuming; preparing a case for trial and the trial itself may take several months. It can involve considerable monetary expense for all parties.

However, even though the use of judicial process can be long and costly (both emotionally and financially) it may be the only means that will satisfactorily result in justice, reconciliation and redemption. This may be especially true when there are alleged instances of sexual abuse or misconduct. It is the decision of the aggrieved person to determine if judicial process is the most appropriate and effective means of seeking redress and achieving justice.

How to Initiate Judicial Process

To initiate a **remedial case**, a complaint must be filed about a governing body's decision, action or inaction. 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**, an individual must be accused of an act that is contrary to the Scriptures or *The Constitution of the Presbyterian Church (U.S.A.)*. Disciplinary cases must always begin at the governing body where the accused person has membership - the session for elders, deacons or members of congregations; the presbytery for Ministers of Word and Sacrament and Commissioned Lay Pastors serving congregations.

Once the governing body receives a written statement alleging the offense, the governing body 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 governing body of membership. While the person bringing the allegation of wrongdoing is not the "prosecuting" party, in cases of sexual misconduct or abuse the governing body may provide an advocate to assist the alleged victim throughout the process. 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 handbook 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 ROD and become familiar with them. Particular attention should be paid to specific directions and time constraints.