

# 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) who shall, within three days, designate two 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)
- 1a. Notify the presbytery but **do not** name the accused or specify the nature of the offense (D-10.0103).

*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)

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 PCUSA, the clerk or stated 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 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 – GA 2004, 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 IC should be "designated by rule of the governing body" in order to avoid having to call a special meeting to appoint the IC. A statement in the bylaws or standing rules of the governing body that authorizes the appointment of the IC in consultation with the 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-13 and III-17.)
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. (See Chapter III, page III-21)

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 governing body 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 governing body if accusations come from outside the governing body of membership, or the clerk of a higher governing body if reference is being considered;
  - d. The Session, if the accused is a minister serving that congregation.
10. Receive the report of the IC and report to the governing body 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 governing body'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.) (PCUSA), 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

As a general rule, a disciplinary case is initiated and tried at the place where the accused holds his/her membership. This means that church members, elders, and deacons accused of an offense would be tried by the session of the church of which they are a member. Ministers 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 commissioned lay pastors serving congregations in that presbytery even though the commissioned lay pastor is still a member of a local church. (D-3.0101b(1))
2. A minister 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 for the purpose of discipline. This does not apply to ministers 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 governing body 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 governing body 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 governing body 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. (D10.0401a)

## **Safeguards**

The "Rules of Discipline" (ROD) contain provisions for reviewing the actions taken in determining whether or not charges are to be filed. 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 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) and (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 available to the church courts: rebuke, rebuke with supervised rehabilitation, temporary exclusion from the exercise of ordained office or membership, and removal from ordained office or membership. (D-12.0000) See Chapter III, page III - 51 of this Handbook.

## **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 Handbook.

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

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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-10.0106)	Within three days of receipt of allegations from stated clerk.
4. The two-member panel gives 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.
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.	Within 15 days of the hearing.

## Action

## Timing

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 1 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)

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

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

18. 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.)

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)

## Action

## Timing

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-10.0202j)

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."

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

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)

## Action

## Timing

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.



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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 governing body of the Presbyterian Church (U.S.A.) making an accusation against another;
- 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; or
- a person under jurisdiction of a governing body 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 or officer 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 minister of the Word and Sacrament or commissioned lay pastor serving a congregation, 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 minister of Word and Sacrament 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**

There is a statute of limitations for the filing charges of 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-10-0202.h)
  - 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 governing body 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 governing body 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 office or loss of membership.

As a result of the allegation, an investigating committee (IC) has been appointed or elected by the governing body. The clerk has reported to the governing body 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 the presbytery, the stated clerk has immediately communicated it to the permanent judicial commission (PJC) for determination 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-10.0202j) 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-thirds 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 governing body.**

**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 or officer, the governing body 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 governing body of the Presbyterian Church (U.S.A.) (PCUSA) 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 paid administrative leave. (D-10.0106)
  - b. **Report.** D-10.0103. The clerk or stated clerk shall report to the governing body 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)
- 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 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, G-9.0102, 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 of PJC:** D-10.0301. If AFR is begun, the IC shall notify the clerk of session or stated clerk of the governing body.

- 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 an extension of the time for filing charges of up to six months from the end of the civil proceedings.
  - k.. **Report to governing bodies.** 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 governing body.

- 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 governing bodies provide for an advocate to accompany the accused 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 governing bodies 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. At stake is the ability to objectively continue the investigation, division in the church between those who would support the accused and those who would further detract, and the ability of the accused to function in the church should the accusations prove groundless.

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 governing body 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. There has not been a test case as to whether such records would have to be turned over to a civil court.

#### ***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***

While the "Rules of Discipline" (D-10.0403) contain specific details about how charges need 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 minister is charged with professional misconduct when the charge is more appropriately a violation of G-14.0405b.(7) 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 (D-11.0403e)
- c. If the accused does not plead guilty, the charges are filed with the clerk of the governing body and the session/PJC proceeds to trial.

#### ***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 Handbook. (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 - 24 of this Handbook. (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 officer 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 governing body 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 officer of the church that is contrary to the Scriptures or *The Constitution of the PCUSA*. (D-2.0203b)
- c. **Constitution.** *The Constitution of the PCUSA* consists of *The Book of Confessions* and the *Book of Order*.
- d. **Ecclesiastical authority.** The church's governing bodies 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 minister.** Ministers are members of a presbytery.
  - 1) The presbytery of membership generally has jurisdiction in disciplinary cases involving a minister.
  - 2) A minister 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 ministers working in a validated ministry in other service of this church. (G-11.0410)
- b. **For a church member, 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 commissioned lay pastor (CLP).** A CLP is an elder of the PCUSA 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 CLP, the presbytery has jurisdiction. (D-3.0101b[1])
  - 2) If an accusation stems from anything other than service as a CLP, 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 investigation 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 of the trial court - the session or PJC*

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

The session is a governing body of the church. The PJC is a governing body for the sake of judicial process, and, therefore, has the full authority of the governing body. 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, and the prosecuting committee (PC) 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 means securing a guilty plea to all charges 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 PCUSA. 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 governing body 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. D-11.0302 states that the presbytery will appoint counsel, not that it will pay for the one the accused has selected.
  - c. 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, 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 PJsCs 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-13 and V-14.
- 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. A member of the Committee on Ministry may choose to be present as might an employer.
- 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, the accused and the accused's counsel.
  - 4) At the request of either party, witnesses may be excluded during the examination of other witnesses. Unless otherwise determined by the session/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 governing body for judicial process and G-9.0301b calls for all meetings of the governing body 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 governing body 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-14.0302a, 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 governing body 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 committee on ministry (COM) 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 Handbook on pages III - 51 to III - 52.
4. The PJC exists for judicial process. It does not enforce its decision, the governing body 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 minister 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 asked 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 **may 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 minister of Word and Sacrament 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 true 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 minister.

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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 governing body. 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)

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## 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 governing body 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 office while completing supervised rehabilitation ordered by the session/PJC. For a minister of Word and Sacrament, the supervising entity is often the committee on ministry (COM) or its designee(s).

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 Ordained Office or Membership**

Temporary exclusion from the exercise of ordained office or membership removes a person from exercising the rights and privileges of office 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 ordained office, 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.

For a minister of Word and Sacrament, the supervising entity is often the COM or its designee(s).

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

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

## **Removal from Office or Membership**

Removal from office or membership is the most severe censure the church courts can impose. The session/PJC decision must specify whether the removal is from office, or from membership. Removal from office sets aside election and ordination. Ministers removed from office 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 governing body 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 office.

## DISCIPLINARY PROCESS

### RENOUNCING THE JURISDICTION OF THE CHURCH

#### G-6.0501

"When a church officer, whether a minister of the Word and Sacrament, elder or deacon, renounces the jurisdiction of this church in writing to the clerk or stated clerk of the governing body of jurisdiction, the renunciation shall be effective upon receipt. Renunciation of jurisdiction shall remove the officer from membership and ordained office and shall terminate the exercise of office."

#### D-3.0106

"Jurisdiction in judicial process ends when a church officer 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-6.0501 and G-6.0503, the clerk or stated clerk shall report to the governing body 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, officers, and ministers 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. **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.).

#### NOTE:

**The 2005-2007 *Book of Order* contains a new section dealing with "pastoral inquiry" in the event that jurisdiction in a judicial proceeding is ended as a result of the death of, or renunciation of jurisdiction by, the person accused of the disciplinary offense of "sexual abuse of another person." See G-9.0503a(7).**

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# DISCIPLINARY PROCESS

## GUIDE TO THE COMMITTEE ON MINISTRY MODERATOR CONCERNING SESSION'S NEED TO KNOW

While the allegations made against a minister of the Word and Sacrament or a commissioned lay pastor (CLP) 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 CLP 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.
2. Many pastors, who have allegations brought against them, seek support within the congregation, but may not report 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 committee on ministry (COM). Therefore, it should be the moderator of COM or persons designated by the COM moderator in consultation with the executive presbyter who are responsible for informing 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 moderator of COM and the executive of the nature of the allegations.

As soon as the COM moderator 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 governing body 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 minister's or CLP'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-11.0103o)

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-9.0102 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 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, 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-10.0202h 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

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Signature, Investigating Committee

# **DISCIPLINARY PROCESS**

## **SAMPLE CHARGES #2 -- D-10.0403**

The Presbyterian Church (U.S.A.) charges you, PRED A. TORR, a minister of Word and Sacrament, 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

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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.) (PCUSA), 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 Handbook 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 Handbook 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 Handbook 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 Handbook 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 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 Committee on Ministry Moderator 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" and "PJC Training #3" (See Chapter V, pages V - 15 to V - 18 and V - 21 to V - 24 in this Handbook.). Use "PJC Training #1" as a quiz on judicial terminology, and the following pages 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 #2" deals with remedial cases.)
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 Minister of Word and Sacrament 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.

----- 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 ] ---



# 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 ], Clerk, Permanent Judicial Commission  
of the Presbytery/Synod of \_\_\_\_\_

**[Intentionally Blank]**