

CHAPTER V. PERMANENT JUDICIAL COMMISSION

ROLE OF THE STATED CLERK

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

Convene the Commission

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

Training

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

Assure a Quorum

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

Assist the Clerk of the PJC (if requested)

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

Authenticate Written Records

1. Authenticate written records of the governing body when requested as evidence.

Other Duties

1. Immediately communicate to the PJC any written statement of alleged sexual abuse of a person under the age of eighteen, or alleged to lack the mental capacity to consent, for determination of whether the accused should be placed on paid administrative leave. (D-10.0106)

2. Be available to assist with any of the logistics pertaining to the trial or hearing:
 - a. Set up meeting room (see Chapter V - "Suggested Room Set Up for a Trial," pages V - 13 and V - 14)
 - b. Make needed copies of papers
 - c. Monitor needs of PJC to recess should any PJC member need to leave the room.

Arrangements

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

CHAPTER V. PERMANENT JUDICIAL COMMISSION

ROLE OF THE PJC MODERATOR

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

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

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

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

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

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

The moderator should attend to the following tasks at the beginning of the public portion of all trial proceedings, regardless of its type: remedial trial, disciplinary trial, or appeal hearing.

Opening the Trial or Hearing

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

Remedial - Continued on page V-5.

Disciplinary - Continued on page V-7.

Appeal - Continued on page V-11.

TASKS OF THE PJC MODERATOR IN A REMEDIAL CASE

Prior to the Trial

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

Public Portion of the Trial

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

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

Closed Deliberations and Decisions

1. Immediately following the public portion of the proceeding, the PJC meets privately to deliberate the complaint and issues raised in the trial. The moderator helps the PJC work through the issues. After careful deliberation, the moderator calls on the PJC to vote on each irregularity or delinquency raised in the complaint. If the complaint is sustained either in whole or in part, the moderator leads the PJC to determine the appropriate remedy.
2. The moderator oversees the writing of the decision while still in session and signs it along with the clerk of the PJC.

3. Make sure a copy of the decision is delivered to the parties and to the stated clerk of the governing body that appointed the PJC. The PJC must also decide how the decision shall be disseminated beyond those who are required to receive a copy of the decision.

TASKS OF THE PJC MODERATOR IN A DISCIPLINARY CASE

Prior to the Trial

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

Public Portion of the Trial

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

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

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

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

Closed Deliberations and Decisions

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

5. In open meeting, pronounce the censure.
6. Make sure a copy of the decision is delivered to the parties and to the stated clerk of the governing body that appointed the PJC.
7. The PJC must also decide how the decision shall be disseminated beyond those who are required to receive a copy of the decision.

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TASKS OF THE PJC MODERATOR IN AN APPEAL

Prior to the Hearing

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

Public Portion of the Trial

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

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

Closed Deliberations and Decisions

1. The PJC meets privately to deliberate the appeal. After careful deliberation the moderator calls on the PJC to vote on each specification of error alleged in the appeal. The vote is on the question, "Shall the specification of error be sustained?"

2. If none of the specifications of error is sustained, and no other error is found, the decision of the lower governing body is sustained. If one or more errors are found, the PJC shall determine whether the decision of the lower governing body shall be affirmed, set aside, reversed, modified, or the case remanded for a new trial.
3. The moderator oversees the writing of the decision **while still in session** and signs it along with the clerk of the PJC.
4. Make sure a copy of the decision is delivered to the parties and to the stated clerk of the governing body that appointed the PJC. The PJC must also decide how the decision shall be disseminated beyond those who are required to receive a copy of the decision.

PJC TRAINING #1

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

JUDICIAL PROCESS TERMINOLOGY

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

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PJC TRAINING #1 - Answer Guide

JUDICIAL PROCESS TERMINOLOGY

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

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

PJC Training #2

JUDICIAL PROCESS – PRELIMINARY QUESTIONS

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

Action

Evaluate

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

PJC Training #2 - Answer Guide

JUDICIAL PROCESS – PRELIMINARY QUESTIONS

Action

Evaluate

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

Does not state a claim upon which relief can be granted. The congregation has the right to sell property assuming presbytery approved.

Can't complain against a person. Should be against the session. An accusation against the minister would quickly be dismissed because there is no offense.

Not an accusation. Should be complaint against session. Does not state a claim upon which relief can be granted because the session has the right, unless personnel policies were violated in doing so.

Mr. Rhee does not have standing to file a complaint as he was not a commissioner to presbytery at the time.

Mr. Leight has two problems. His "complaint" is beyond the time period for filing a complaint. He also has not stated a claim upon which relief can be granted. Assuming all the approvals from the congregation and presbytery were secured along the way, the Oblivious has the right and authority to relocate.

Ms. Bye does not have standing to file a complaint in the church courts because she is no longer a member. It is possible a letter to the session asking that the hours for the chimes be changed might just do the trick.

Mr. Tated's complaint is not timely filed. The two weeks he has given the church to make the correction are far less than time limit for the church to act on his request.

PJC Training #3

The following 20 statements describe steps in the process for a disciplinary case. The steps are in the proper sequence as they appear on the following three pages. Photocopy the following three pages and then cut the statements apart so that each statement appears on a separate slip of paper. Mix the slips up so they are in a random sequence.

The training task is to rearrange the 20 statements back into proper sequence. Use the original pages as an answer guide.

File with the clerk of session (for a church member) or stated clerk (for a minister) a written statement of alleged offense with supporting information.

Upon receipt of a written statement alleging sexual abuse of a person under the age of eighteen, or a person alleged to lack the mental capacity to consent, communicate the allegation to the PJC for consideration of placing the accused on paid administrative leave.

Clerk advises the governing body that accusations have been received without naming the accused or the nature of the alleged offense.

An Investigating Committee is designated, trained and begins its work.

The accused is notified that accusation(s) have been filed and is given a copy of the statement of alleged offense.

The accuser is provided a statement of the investigating committee's procedures.

The Investigating Committee makes a thorough inquiry into the fact and circumstances of the alleged offense.

If appropriate, alternative forms of resolution are initiated.

Report to the governing body having jurisdiction over the accused only whether or not it will file charges

If charges are to be filed, prepare and file them.

If no charges are filed, submit a written report of that fact to the Clerk or Stated Clerk and notify the person who submitted the written statement of accusation.

Designate from among its members one or more persons to prosecute the case as the “prosecuting committee.”

PJC holds a pretrial conference with the accused, accused’s counsel (if any), and the prosecuting committee.

Schedule the trial and order all parties to appear.

Conduct a trial with the presentation of evidence supporting charges and the presentation of evidence refuting charges.

Meet privately to discuss and then vote on each charge separately.

The moderator shall, in open meeting, announce the verdict for each charge separately.

If the accused is found guilty or after a guilty plea, the session or PJC may hear evidence as to the extent of the injury suffered, mitigation, rehabilitation, and redemption.

The session or PJC shall meet privately to determine the degree of censure to be imposed.

The moderator shall, in open meeting, pronounce the censure.