

Special Administrative Review

The Department of Constitutional Services has been consulted a number of times on the process of undertaking administrative review. We hope the following notes may be helpful to governing bodies that are contemplating this action.

Higher governing bodies regularly undertake administrative review of lower governing bodies. They regularly review the minutes and other records. (G-11.0103x, G-12.0102n, G-13.0103l). Such review takes place under the authority granted by G-4.0301f and G-9.0407. This is a manifestation of the connectional nature of our system of governance.

Occasionally a higher governing body will learn of some particular irregularity committed (or omitted) by a lower governing body under its jurisdiction. In such cases the higher governing body may undertake Special Administrative Review (G-9.0408). In undertaking such a review, the higher governing body determines whether:

“The proceedings have been correctly recorded; (G-9.0409a.(1))

The proceedings have been regular and in accordance with the Constitution; (G-9.0409a.(2))

The proceedings have been prudent and equitable; (G-9.0409a.(3))

The proceedings have been faithful to the mission of the whole church; (G-9.0409a.(4))

The lawful injunctions of a higher governing body have been obeyed. (G-9.0409a.(5))”

Such a review is appropriate for a wide range of situations. It may be utilized when a presbytery or synod learns of an irregular ordination by a session or presbytery. It may be utilized when a session or presbytery has taken an action that exceeds its authority or fails to carry out a constitutionally required action. NOTE: This process may be undertaken to review actions/inactions that would be appropriate subjects for remedial complaints under D-6.0202. This is possible and not a conflict because the reviewing body is not among the parties eligible to file a remedial complaint under D-6.0202a,b.

A higher governing body has much discretion in determining which group will undertake such review as well as the scope of that review. A presbytery or synod might delegate the task to the council; it might appoint a special committee or task force; it might delegate the task to an already existing group - Committee on Ministry, Committee on Preparation for Ministry, trustees. The scope will depend upon the nature of the presenting issue.

If in the course of undertaking the review the reviewing entity discovers that an irregularity or delinquency has occurred, it may “direct the lower governing body to reconsider the irregularity or cure the delinquency.” (G-9.0410) The reviewing group

might recommend that the higher governing body declare the action or inaction to be irregular as well as direct some corrective action. If an irregularity detected in administrative review is not corrected by the entity being reviewed, the higher governing body may appoint an administrative commission as a continuation of that review. (G-9.0503a(4), see also *Mount Auburn Presbyterian Church v. Presbytery of Cincinnati*, 1995, 125, 11.060.) If this is done, it is often wise that at least some members of the initial administrative review team be appointed to such an administrative commission. A commission may be given authority to act on behalf of the governing body (G-9.0502); a committee or task force can only be given authority to gather information and make recommendations to the governing body. (G-9.0501a)

Administrative Review is a much broader process than remedial judicial process. It is not subject to the same explicit time lines (i.e. 90 days, 45 days. NOTE, the time lines are not tolled by administrative review); it is not limited by the scope of the original suggestion of irregular action/inaction; it may be undertaken by a wide variety of groups or entities - all at the discretion of the appointing body. Administrative Review does not necessarily preclude remedial action (so long as time limits have not expired), but it is often much less disruptive to the mission and work of both the higher and lower governing bodies. Of course if a remedial case is filed, the higher governing body's Permanent Judicial Commission will have to handle the complaint.

This is explicitly noted in G-9.0411 which states: "In addition to administrative review, review and correction of a lower governing body and of a council or an agency of the General Assembly may be obtained by judicial process... ."

We know from the *Mount Auburn Presbyterian Church v. Presbytery of Cincinnati* (1995, 125, 11.060) judicial case that judicial and administrative review are not sequential but alternative processes. If a remedial complaint is filed, the judicial commission may delay trial, pending administrative review, so long as it moves to at least the D-6.0306 (Preliminary Questions) stage.

It is our experience that possible complainants are often willing to delay or forgo filing remedial complaints if the higher governing body undertakes Special Administrative Review, for while the results can be substantially similar, the process is much less formal and hence limited, and it is less confrontational.

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