



PROPOSED RULES OF DISCIPLINE

Presented by: Rules of Discipline Task Force

INTRODUCTION

The Rules of Discipline Task Force presents the first draft of the proposed Rules of Discipline for feedback. Comments can be submitted using [THIS FORM](#) until September 15, 2018.

OVERVIEW OF CHANGES

The bulk of the proposed changes to the Rules of Discipline are the task force's attempts to simplify the document's wording and organize it into processes that flow more smoothly and clearly, including the addition of new wording from various authoritative interpretations that are often quoted by judicial commissions in their rulings. At the same time, the proposal also includes several intentional changes to the current rules, which are summarized as follows:

REMEDICATION AND RESTORATION

The name of the "Disciplinary process" has been changed to "Restorative process". One intent of this change is to stress that the discipline of the church is being exercised in both remedial cases and in cases currently called disciplinary. A second intent is to acknowledge that when trust has been broken by an individual, it is important that it be restored within the community of faith.

ELIGIBILITY OF FORMER MEMBERS

Several changes are related to ensuring that permanent judicial commissions have enough eligible members to adequately and fairly function. These include allowing former members to be utilized for the required review and administrative leave evaluation process, as well as establishing a minimum quorum of five members.

CLASSES AND VACANCIES

A requirement has been added that permanent judicial commissions be divided into three classes as equal in number as possible, with vacancies, when filled, being appointments to specific classes in which the vacancy exists (while this is the practice in some councils, it is not so in all councils).

EXPANDED ELIGIBILITY TO SERVE-FORMER MEMBERS

The years of ineligibility before re-election to a permanent judicial commission have been reduced from four to two years, in recognition that some councils have limited numbers of qualified individuals to serve on their commissions.

EXPANDED ELIGIBILITY TO SERVE-EXECUTIVE PRESBYTERS

Executive Presbyters have been removed from the list of those who may not serve on committees of counsel of the council served.

REMEDICATION PRELIMINARY QUESTIONS AND RELIEF

In remediation processes, an additional preliminary question has been added, and the final question (related to stating a claim on which relief can be granted) has been significantly expanded. A section has also been added at the end of this section making declaratory relief optional (as opposed to mandatory).

EVIDENCE-HEARSAY

In remediation, witnesses must have firsthand knowledge; that is, “hearsay evidence” is not allowed. In restorative processes, on the other hand, “hearsay evidence” is specifically authorized, and rationale is provided. (Hearsay evidence is not directly addressed in the current Rules of Discipline, and is therefore not barred in either remedial or disciplinary processes.)

EXPERT WITNESSES

Expert witnesses, regardless of their church membership, may no longer be “cited,” and required to appear at trials.

CITATIONS

The requirement for second citations when a cited witness does not appear has been removed.

OUTLINE OF PROCESSES

Throughout the rules, procedures for electronic meetings, testimony, notices, and filings are outlined.

USE OF TECHNOLOGY FOR MEETINGS AND WITNESSES

The provision for depositions is replaced by the authorization for witnesses to appear electronically if they are unable to be present in person for a trial.

Decisions in remedial cases may now with certain restrictions be completed and published within ten days of the hearing or trial, and at an electronic meeting.

APPEALS

The General Assembly’s Permanent Judicial Commission is no longer obligated to accept all appropriately filed appeals, provided the case has already been reviewed.

A request to withdraw an appeal is now automatically granted unless the withdrawal is challenged by a member of the permanent judicial commission that would hear the appeal.

In order to avoid the filing of “counter appeals,” the appellee brief in a remedial appeal may raise additional issues for appellate review, in which case the appellant then has the opportunity to respond to the appellee’s brief.

CERTIFIED MAIL

Written allegations in a restorative process must be transmitted by certified mail.

EXPANDED REFERENCE

A request for reference in a restorative process may be for the investigation of an allegation, not just the trial.

APPOINTMENT OF INVESTIGATING COMMITTEES

All councils are required to provide by rule for the appointment of investigating committees.

MODIFICATION OF ALTERNATE FORM OF RESOLUTION

The term “restorative justice” is introduced into the alternative resolution process.

SPECIFIED CHARGES

There is a new requirement that each and every “charge” in a restorative process state the specific provision(s) of Scripture and/or the constitution which is alleged to have been violated constituting an offense.

PRE-TRIAL CONFERENCE

The accuser in a restorative process is now “informed of the pretrial conference but is not required to attend.”

STANDARD FOR FINDINGS OF GUILT

In restorative processes, a new standard for a finding of guilt is introduced, from our parliamentary authority, requiring that commission members must be “morally convinced,” rather than convinced “beyond a reasonable doubt.”

NO STATUTE OF LIMITATIONS

In restorative processes, there are no statutes of limitation for charges to be filed. A one-year time limit has been set for investigating committees to do their work.

CHURCH DISCIPLINE

CHAPTER 1 PRINCIPLES OF CHURCH DISCIPLINE PREAMBLE

1. Church Discipline Defined

Church discipline is the church's exercise of authority given by Christ, both to guide, control, and nurture its members, and for the constructive criticism of offenders. The church's judicial process does not exist as a substitute for the secular judicial system, but to do what the secular judicial system cannot do. The Constitution of the Presbyterian Church (U.S.A.) is infused with principles and standards to which ordained officers voluntarily submit when they answer the ordination questions, and to which all active members voluntarily submit.

Church discipline alone is not adequate to mediate intrinsic differences of theology, polity, policy, power, or trust. Broader issues of conflict shall be addressed by persons and processes within the church, including mediation, administrative review, and administrative commissions. The church discipline through the judicial process shall be used when an individual is unable to bring about settlement of an issue and has determined, after prayerful deliberation, that judicial process is necessary, either to limit the behavior of individuals within the church or to correct the unconstitutional use of power by councils.

2. Purpose of Church Discipline

Thus, the purpose of church discipline is:

- to honor God by making clear the significance of membership in the body of Christ;
- to preserve the purity of the church by nourishing the individual within the life of the believing community;
- to achieve justice and compassion for all participants involved;
- to correct or restrain wrongdoing in order to bring members to repentance and restoration;
- to uphold the dignity of those who have been harmed by 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.

In all respects, participants are to be accorded procedural safeguards and due process.

3. Power Vested in Christ's Church

The power that Jesus Christ has vested in his Church, a power manifested in the exercise of church discipline, is one for building up the body of Christ, not for destroying it, for redeeming, not for punishing. It should be exercised as a dispensation of mercy and not of wrath so that the great ends of the Church may be achieved, that all children of God may be presented faultless in the day of Christ.

4. Conciliate and Mediate

The traditional biblical obligation to conciliate, mediate, and adjust differences without strife is not diminished by church discipline. Although these rules describe the way in which judicial process within the church shall be conducted, it is not their intent or purpose to encourage judicial process or to make it more expensive or difficult. The biblical duty to "come to terms quickly with your accuser while you are on the way to court..." (Matthew 5:25) is not diminished. It remains the duty of every church member to try prayerfully and seriously to bring about an adjustment or settlement of the issue asserted, and to avoid formal proceedings under judicial process unless, after prayerful deliberation, it is determined to be necessary to preserve the peace, unity, and purity and purposes of the church.

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51
52 **CHAPTER II**
53 **JUDICIAL PROCESS DEFINED**

54 **1. Judicial Process**

55 Church discipline in the Presbyterian Church (U.S.A.) is accomplished through judicial processes of
56 accountability. Accountability of councils is accomplished through remedial process. Accountability of
57 individuals is accomplished through restorative process.

58
59 The councils of the church are sessions, presbyteries, synods, and the General Assembly. Sessions
60 conduct trials themselves. Presbyteries, synods, and the General Assembly conduct trials and hearings
61 on appeal through permanent judicial commissions.

62
63 **2. Remedial Process**

64 Remediation is the process by which councils are held accountable. Through remediation, actions or
65 omissions contrary to the Constitution by a lower council or an entity of the General Assembly, may be
66 corrected by a higher council.

- 67 a. a decision or action contrary to the Constitution of the Presbyterian Church (U.S.A.) is
68 known as an irregularity.
69 b. the omission or failure to act on a constitutional requirement is known as a delinquency.

70
71 **3. Restorative Process**

72 Restoration is the process by which members of congregations and ministers of the Word and Sacrament
73 may be censured for an offense for the purpose of restoring the wholeness of the body of Christ.

74
75 An offense is any act or omission by a member of a congregation or a minister of the Word and
76 Sacrament that is contrary to the Scriptures or the Constitution of the Presbyterian Church (U.S.A.). The
77 mere act of participating in decisions ultimately made by a committee, a commission, or by the council
78 itself is not an offense.

79
80 **4. Standards and Process**

81 Standards and procedures used in judicial processes are those contained in the Constitution of the
82 Presbyterian Church (U.S.A.) and its parliamentary authority, in accordance with G-3.0105.

83
84 **CHAPTER III**
85 **PERMANENT JUDICIAL COMMISSION**

86 **1. Election**

87 The General Assembly, each synod or cooperating synods, and each presbytery shall elect a permanent
88 judicial commission from the ministers of the Word and Sacrament and ruling elders subject to its
89 jurisdiction. Each commission shall be composed of ministers of the Word and Sacrament and ruling
90 elders in numbers as nearly equal as possible. When the commission consists of an odd number of
91 members, the additional member may be either a minister of the Word and Sacrament or a ruling elder.

92
93 The General Assembly commission shall be composed of one member from each of its constituent
94 synods.

95
96 The synod commission shall be composed of no fewer than eleven members distributed equally, insofar
97 as possible, among the constituent presbyteries. In those synods with fewer than eleven presbyteries,

98 each presbytery shall have at least one member. When two or more synods form a shared permanent
99 judicial commission, the commission shall be composed of no fewer than twelve members, with each
100 synod electing members proportional to the number of the presbyteries in each synod, insofar as
101 possible. The cooperating synods shall designate between them one stated clerk to process the cases
102 filed with the shared permanent judicial commission.

103 The presbytery commission shall be composed of no fewer than seven members, with no more than one
104 of its ruling elder members from any one of its constituent congregations.

105
106 Three current or former permanent judicial commission members, up to two of whom may be former
107 commission members, shall be designated to review any petition for review of the procedures of the
108 investigating committee while the investigation in a restorative case is in process (D-7.10) and to review
109 any petition for review of the decision not to file charges (D-7.12). These three members shall not take
110 part in any subsequent trial. When a case proceeds to trial after a review, the quorum of the permanent
111 judicial commission shall be a majority of the members who did not participate in the review, but in no
112 case shall a quorum be fewer than five members. A session shall refer either form of petition to the
113 presbytery commission.

114 115 **2. Term**

116 Permanent judicial commissions shall be arranged in three classes of six years each, with each class as
117 equal as possible in size and with one class completing its term every two years. Commissioners who
118 have served a full term are ineligible for re-election for a period of two years. In filling vacancies for
119 unexpired terms, a member who has served more than half a term in an office is considered to have
120 served a full term, and is ineligible for immediate re-election.

121
122 Continuing membership on a presbytery permanent judicial commission is dependent on membership in
123 a congregation of the presbytery or in the presbytery. Membership on a synod permanent judicial
124 commission is contingent on the synod's rules of representation. Membership on the permanent judicial
125 commission of the General Assembly shall end when that member transfers membership to a church or
126 presbytery outside the synod from which nominated. In each even-numbered year, the General
127 Assembly shall elect members for the next class and to fill any vacancies then occurring. Members'
128 terms of office will begin with the dissolution of the General Assembly at which they are elected.

129 130 a. Vacancy

131 Any vacancy due to resignation, death, or any other cause may be filled by the electing council, which
132 may elect a person to fill the unexpired term at any future meeting.

133 134 b. Eligibility

135 No person who has served on a permanent judicial commission for a full term shall be eligible for
136 reelection until two years have elapsed after the expired six-year term. No person shall serve on more
137 than one permanent judicial commission at the same time. No person shall serve on the permanent
138 judicial commission of the General Assembly who is a member of any other entity elected by the
139 General Assembly until that person shall have resigned such membership. The moderator, stated clerk,
140 or any member of the staff of a council or the staff of any of its entities shall not serve on its permanent
141 judicial commission.

142 143 **3. Commission Expenses**

144 All necessary expenses of a permanent judicial commission shall be paid by the electing council or
145 councils. Cooperating synods shall pay the necessary expenses of a shared permanent judicial

146 commission equally; however, each synod shall pay the necessary expenses for processing a particular
147 judicial case arising within its bounds.

148

149 **4. Officers**

150 Each permanent judicial commission shall meet and elect from its members a moderator and a clerk,
151 according to its rules. A permanent judicial commission may also provide by rule for another member of
152 the commission to serve as moderator or clerk *pro tem*, if necessary.

153

154 **5. Power**

155 In the cases transmitted to it, the permanent judicial commission shall have only the powers prescribed
156 by the Constitution of the Presbyterian Church (U.S.A.), and shall conduct its proceedings accordingly.

157

158 **6. Meetings**

159 The meetings of the permanent judicial commission shall be held at such times and places as the electing
160 council or councils shall direct, or, if no directions are given, at such times and places as the commission
161 shall determine.

162

163 **7. Quorum**

164 The quorum of a permanent judicial commission shall be a majority of the members, except that the
165 quorum of a presbytery commission for a restorative case shall be a majority of the membership other
166 than the currently serving member(s) assigned responsibilities under (D-7.7), (D-7.10) or (D-7.12). In
167 no instance shall the quorum be fewer than five members. The quorum of a session for judicial process
168 shall be the moderator of the session and a majority of the ruling elder members.

169

170 a. Who Shall Not Participate

171 When a church or lower council is a party to a case, members of a permanent judicial commission who
172 are members of that church, or of that lower council, or of churches within that lower council shall not
173 participate in the case. Members designated under (D-7.7) (D-7.10) or (D-7.12) shall not otherwise
174 participate in the case.

175

176 b. Lack of Quorum

177 If, through absence, disqualification, or disability, a sufficient number of the members of a permanent
178 judicial commission are not present to constitute a quorum, the permanent judicial commission shall
179 recess until a quorum can be obtained.

180

181 c. Inability to Reach a Quorum

182 The permanent judicial commission shall report its inability to reach a quorum to the stated clerk
183 designated for processing the case.

184

185 d. Roster of Former Members

186 The stated clerk shall keep a current roster of those members of the permanent judicial commission
187 whose terms have expired within the past six years. The names shall be arranged alphabetically within
188 classes beginning with the most recent class. Whenever the permanent judicial commission reports its
189 inability to obtain a quorum, or the stated clerk believes a quorum is not likely to be present, the stated
190 clerk shall immediately select, by rotation from that roster, a sufficient number of former members of
191 the permanent judicial commission to ensure a quorum. The stated clerk shall report the roster annually
192 to the council or councils.

193

194 e. Participant Expenses

195 If a permanent judicial commission is unable to try a case for lack of a quorum, the council in whose
196 geographic boundary the case arose shall reimburse the expenses reasonably incurred by those persons
197 required to be present.

198
199

CHAPTER IV REMEDICATION

200

201 1. Remedial Process

202 Remediation is the process by which councils of the church are held accountable to their
203 members and to each other. The purpose of remediation is to further the peace, unity, and purity
204 of the church by ensuring that the constitution is upheld, and that disputes in understanding
205 regarding its requirements are addressed in a manner that is both fair and just to all concerned.

206 Remedial process is a challenge to one or more actions or inactions of a council of the church by
207 one or more of the individuals or other councils of the church who have standing to make the
208 challenge.

209 Remedial process is initiated by the filing of a complaint with the stated clerk of the council
210 having jurisdiction that alleges one or more specific irregularities or delinquencies of a council.
211 If a different clerk has been designated to process judicial cases for a shared judicial commission,
212 the stated clerk having jurisdiction shall immediately transmit the complaint to that clerk.

213 a. a decision or action contrary to the Constitution of the Presbyterian Church (U.S.A.) is
214 known as an irregularity.

215 b. the omission or failure to act on a constitutional requirement is known as a delinquency.

216 While a remedial complaint may be filed *by* individuals, it can never be filed *against* individuals.
217 Nor may it be filed against a congregation or a committee or commission of a council below the
218 General Assembly. Complaints may only be filed against sessions, presbyteries, synods, and
219 entities of the General Assembly as explained below.

220 2. Filing a Complaint

221 The parties in a case of remedial process are known as the complainant or complainants (the
222 person or persons who file the complaint) and the respondent (the council complained against).
223 Complaints may be filed by one or more persons or councils with standing to do so as defined
224 below in section “b.”

225 a. Initiating a Remedial Complaint

226

227 In the case of an alleged irregularity, if a stay of enforcement is also sought (as described
228 below in section 3), then a complaint of an alleged irregularity may be filed no later than
229 thirty (30) days after the council’s action being complained against (or in the case of an
230 appeal, from the date on which the appealing party was notified of the decision of the
231 permanent judicial commission). If no stay of enforcement is being requested, then a
232 complaint of an alleged irregularity may be filed no later than ninety (90) days after the
233 council’s action.

234

235 In the case of an alleged delinquency, a complaint may be filed no later than ninety (90) days
236 after the failure or refusal of the council to cure the alleged delinquency at its next meeting
237 provided that a written request to do so has been made prior to said meeting.
238

239 b. Standing and Jurisdiction in Remedial Cases

- 241 (1) Councils may file complaints against any other council of the same level, with the
242 council immediately higher than the council complained against and to which the
243 latter council is subject.
- 244 (2) Members of a congregation may file complaints against their session, with the
245 presbytery.
- 246 (3) Ruling elder commissioners to a presbytery may file complaints with the synod
247 alleging irregularities or delinquencies that occurred during meetings at which they
248 were present and enrolled.
- 249 (4) Minister members of a presbytery and ruling elders enrolled with the presbytery for
250 terms of service in accordance with the presbytery's rules may file complaints
251 against the presbytery with the synod regardless of whether or not they were in
252 attendance when the alleged irregularity or delinquency occurred.
- 253 (5) Sessions may file complaints against their presbytery, with their synod.
- 254 (6) Commissioners to a synod may file complaints with the General Assembly alleging
255 irregularities or delinquencies that occurred during meetings at which they were
256 present and enrolled.
- 257 (7) Ministers and ruling elders enrolled with the synod for terms of service in
258 accordance with the synod's rules may file complaints against the synod with the
259 General Assembly regardless of whether or not they were in attendance when the
260 alleged irregularity or delinquency occurred.
- 261 (8) Presbyteries may file complaints against their synod, with the General Assembly.
- 262 (9) A person who is an employee of a council, or an entity of that council, claiming to
263 have sustained injury or damage to person or property by the council or entity, may
264 file a complaint with the next higher council, or in the case of an employee of an
265 entity of the General Assembly, with the General Assembly.
266 Sessions, presbyteries, and synods may file complaints against entities of the
267 General Assembly, with the General Assembly.
268

269 3. Contents of a Complaint

270 A complaint shall state the following:
271

- 272 a. The name of the complainant(s) and the name of the respondent.
- 273 b. The particular irregularity including the date, place, and circumstances thereof; or the
274 particular delinquency including the dates of the written request to cure the delinquency
275 and of the next meeting at which the respondent failed to do so.
- 276 c. The reasons for complaint of the irregularity or delinquency.
- 277 d. A statement of facts demonstrating that the complainant(s) may file the complaint in
278 accordance with D-4.2. b. above.
279

- 280 e. The relief requested, which must be within the power of the council receiving the
281 complaint to grant.
- 282 f. That a copy of the complaint has been delivered to the respondent by certified delivery or
283 personal service. The complainant(s) shall file with the stated clerk of the higher council
284 a receipt signed by the addressee or an affidavit of personal service. At the written
285 agreement of both parties, all further communication may be handled electronically.
286

287 **4. Stay of Enforcement**

288 a. Requesting a Stay of Enforcement

289
290 A stay of enforcement is a written instruction from the permanent judicial commission
291 having jurisdiction that orders suspension of a decision or an action until a complaint (or
292 appeal) is finally determined. A request for a stay of enforcement must be filed along
293 with the complaint (or notice of appeal) as described above. The request must be made in
294 one of the following forms:
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- 296
- 297 (1) A request signed by one-third of the members recorded as present when the decision
298 or action was taken by the council,
 - 299 (2) A request signed by a complainant or appellant requesting that at least three
300 members of the permanent judicial commission having jurisdiction to hear the
301 complaint or appeal sign the stay of enforcement, or
 - 302 (3) A request signed by one-third of the members of the permanent judicial commission
303 that decided a remedial case that is being appealed.
304

305 b. Processing a Request for a Stay of Enforcement

306
307 A request for a stay of enforcement, when received along with a complaint (or notice of
308 appeal) by a stated clerk, shall be processed as follows:
309

- 310 (1) The complaint or appeal shall be promptly transmitted by the stated clerk along with
311 the request for a stay of enforcement to the permanent judicial commission
312 moderator and clerk for their determination as to whether the complaint or appeal
313 appears to meet the preliminary issues in D-4.5.c (or D-6.4 if the request is for a stay
314 of enforcement of the decision of a permanent judicial commission), and
 - 315 a. if the request is made under D-4.3a(1), whether the request is complete and
316 timely, including validation of the signatures and intent of those who signed,
317 or
 - 318 b. if the request is made under D-4.3a(3), whether the request is complete and
319 timely.
- 320 (2) Within seven (7) days after their receipt of the request, the moderator and clerk shall
321 report their findings to the permanent judicial commission and the parties.
- 322 (3) If the request is made under D-4.3a(1) or (3), a stay of enforcement may be entered
323 immediately by the moderator and clerk if they determine that the request is
324 complete and timely and the preliminary issues are met for the complaint or appeal.

- 325 (4) If the request is made under D-4.3a(2), a stay of enforcement may be entered by
326 three members of the permanent judicial commission filing within ten (10) days of
327 their receipt of the moderator and clerk's findings, a statement that in their judgment
328 substantial harm will occur if the action or decision is not stayed and that in their
329 judgment probable grounds exist for finding the decision or action erroneous. The
330 statements shall be filed with the stated clerk of the council that has jurisdiction to
331 hear the case. The statements shall include a summary of the specific council
332 action(s) or decision(s) being stayed.
- 333 (5) The stated clerk shall send a copy of the stay of enforcement to the parties and to the
334 permanent judicial commission members.
- 335 (6) The stay of enforcement shall be effective until the permanent judicial commission
336 having jurisdiction has decided the case, except as hereafter provided.
- 337 (7) The respondent may, within forty-five (45) days of the filing of a stay of
338 enforcement, file with the permanent judicial commission having jurisdiction over
339 the case an objection to the stay of enforcement, whereupon no fewer than three
340 members of such permanent judicial commission appointed by the moderator shall
341 conduct a hearing on all of the issues relating to the stay of enforcement. The parties
342 may be present or represented at such hearing. At such hearing, the stay of
343 enforcement may be modified, terminated, or continued until the permanent judicial
344 commission has decided the case.

345 5. Reference

347 A reference is a written request, made by a session or a permanent judicial commission of a
348 presbytery or synod to the permanent judicial commission of the next higher council to assume
349 jurisdiction of the case. A proper subject of reference involves matters or questions for which it
350 is desirable or necessary that a higher council decide the case.

351 With its written request for reference to a higher council, the lower council shall specify its
352 reasons for the request and transmit the record of proceedings in the case and shall take no
353 further action thereon. If the reference is accepted, all proceedings, including the trial or hearing
354 on appeal, shall thereafter be held in the higher council.

355 Upon receipt of a request for reference, the stated clerk of the higher council shall transmit the
356 request to the permanent judicial commission for a decision whether or not to accept the case.

357 If the permanent judicial commission decides to accept the reference, it shall proceed to trial and
358 decision or to a hearing on appeal.

359 The higher permanent judicial commission may decline to accept the case for reference and
360 return it to the lower council, stating its reasons. The permanent judicial commission of the lower
361 council shall then conduct the trial or hearing on appeal and proceed to a decision.

362 6. Pretrial Procedures

- 363 a. Committee of Counsel
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- 365
- 366

367 When a council or an entity of the General Assembly becomes either a complainant or a
368 respondent, it shall designate no more than three persons to be a committee of counsel.
369 This committee shall represent that complainant or respondent in the case until final
370 decision is reached in the highest council to which the case is appealed. All members of
371 a committee of counsel shall be members of the Presbyterian Church (U.S.A.).
372

373 A council or an entity of the General Assembly may provide by rule for the appointment
374 of a committee of counsel. Changes to the membership of the committee of counsel shall
375 be promptly reported to the other party and to the stated clerk of the council having
376 jurisdiction, who will notify the permanent judicial commission.
377

378 The clerk of session or the stated clerk shall not serve on a committee of counsel of the
379 council they serve. Employees of the council hearing a case or of a higher council that
380 would have jurisdiction in any appellate proceeding shall also not serve on the
381 committee of counsel.
382

383 b. Answer to Complaint
384

385 The committee of counsel of the respondent shall file with the stated clerk of the higher
386 council a concise answer within forty-five (45) days after receipt of the complaint, and
387 shall furnish a copy of the answer to the complainant. The answer shall admit those
388 facts alleged in the complaint that are true, deny those allegations that are not true or are
389 mistakenly stated, and present other facts that may explain the situation identified as an
390 irregularity or delinquency. The answer may also raise any issues mentioned in D-4.6c
391 and may include a motion to dismiss the complaint.
392

393 c. Preliminary Order
394

395 When the complaint and answer have been filed with the stated clerk of the higher
396 council, the stated clerk shall transmit them at once to the officers of the permanent
397 judicial commission of the council and shall give notice to the parties that the case has
398 been received. Upon receiving the papers, the officers shall promptly examine the papers
399 to determine whether:
400

- 401 (1) The council has jurisdiction,
- 402 (2) One or more of the complainants have standing to file the case,
- 403 (3) The complaint was timely filed,
- 404 (4) The complaint alleges facts that if proved true would constitute an irregularity or
405 delinquency, and
- 406 (5) The complaint states a claim upon which relief can be granted. Relief that a council
407 may not grant includes but is not limited to:
 - 408 a. Relief that is not within the authority of the council to grant,
 - 409 b. Financial damages,
 - 410 c. Relief that has been rendered moot,
 - 411 d. Relief that is contrary to the constitution of the Presbyterian Church (U.S.A.).

412 Permanent judicial commissions may, but shall not be required, to proceed to trial
413 and may declare a council's actions or inactions to be unconstitutional, even if a
414 matter has become moot.

415 In their consideration of the questions, the officers shall assume the truth of the facts
416 alleged.

417 The officers shall report their findings to the parties and to the permanent judicial
418 commission in a preliminary ruling either accepting the case for trial or dismissing the
419 case because one or more of the five questions above is answered in the negative.

420 If no challenge to the findings is received within thirty (30) days, the case proceeds in
421 accordance with the ruling.

422 d. Challenge to Preliminary Ruling

423 Within thirty (30) days of receipt of the preliminary ruling, either party or a member of
424 the permanent judicial commission may challenge the findings in writing to the stated
425 clerk of the council of jurisdiction. If the preliminary ruling is challenged, opportunity
426 shall be provided to present evidence and argument on the finding(s) in question. Parties
427 shall be invited to submit briefs, and may agree to allow the permanent judicial
428 commission to decide the matter on the basis of those briefs in place of a hearing.

429 e. Final Ruling

430 A final ruling shall then be issued either accepting the case for trial or dismissing it.

431 If no challenge to the preliminary ruling is received within thirty (30) days, it shall
432 automatically become final.

433 f. Duties of Respondent Clerk of Session or Stated Clerk

- 434
- 435 (1) Within forty-five (45) days after the receipt of a complaint, the clerk of session or
436 stated clerk of the respondent council shall list in writing to the parties all of the
437 papers and other materials pertaining to the case.
 - 438 (2) Within fifteen (15) days thereafter, the complainant may request in writing that the
439 respondent clerk file additional minutes or papers pertaining to the case. Questions
440 as to the relevance or reasonableness of requests shall be decided by the officers of
441 the permanent judicial commission or their designees.
 - 442 (3) Upon notification by the stated clerk of the higher council of jurisdiction that the
443 case has been accepted, the clerk of session or stated clerk of the respondent shall
444 transmit to the stated clerk of the higher council without delay the minutes and
445 papers pertaining to the case, along with the list of the record.
- 446

447 g. Record of the Case

448

449 When the minutes and papers have been filed with the stated clerk of the higher council,
450 the stated clerk shall organize and transmit them to the parties and to the permanent

451 judicial commission and give notice to the parties of an estimated date for trial, and of a
452 pretrial conference, if one is to be held.

453
454 h. Additional Filings

455
456 The permanent judicial commission may require the parties to file statements, also known
457 as briefs, outlining the evidence to be produced and the theory upon which the evidence
458 is considered to be relevant.

459
460 i. Pretrial Conference

461
462 At any time after a case is received by a permanent judicial commission, the commission
463 may provide for the parties or their counsel, if any, to explore settlement possibilities; or,
464 in a pretrial conference, to seek agreement on a statement of facts and disputed issues, to
465 exchange documents and other evidence, and to take other action which might reasonably
466 and impartially narrow the dispute and expedite its resolution.

467
468 **CHAPTER V**

469 **TRIAL IN A REMEDIAL CASE**

470 **1. Conduct of Trial**

471 The trial of a remedial case shall be conducted by a permanent judicial commission. The trial
472 shall be conducted formally with full decorum in a neutral place suitable to the occasion.

473 **2. Citations and Testimony**

474 Citations to appear at trial for parties or such witnesses as either party may request shall be
475 signed by the moderator or clerk of the permanent judicial commission and served by the clerk of
476 the council. Witnesses may be both factual and expert if qualified and if the permanent judicial
477 commission finds that the parties have established a proper foundation. Witnesses should be
478 competent, credible, and relevant. Experts should have sufficient expertise to aid the trial court
479 and the ability to express opinions that assist the trial court. Fact witnesses in remedial process
480 shall have firsthand knowledge.

481 Only members of the Presbyterian Church (U.S.A.) may be cited to appear. Persons who are not
482 members of the Presbyterian Church (U.S.A.) and expert witnesses (regardless of their
483 denominational membership) can only be requested to attend.

484 When it is necessary in the trial to summon witnesses who are under the jurisdiction of another
485 council of the church, the clerk or stated clerk of the other council shall, on the application of the
486 permanent judicial commission trying the case, issue a citation to the witnesses to appear at the
487 place of trial and give evidence as may be required.

488 Any witness shall be entitled to receive from the party calling the witness reimbursement for
489 expenses incurred in attendance at the trial.

490 A citation shall be delivered by personal service, by certified delivery, or by electronic delivery
491 acknowledged by the recipient. The moderator or clerk of the permanent judicial commission
492 trying the case shall certify the fact and date of service or delivery. If a party or a witness who is
493 a member of the Presbyterian Church (U.S.A.) fails to obey a citation to appear or having
494 appeared, refuses without good cause to testify, and after warning continues to refuse, the party
495 or witness shall be considered guilty of disobedience and contempt, and for such offense may be
496 subject to disciplinary action.

497 **3. Electronically Received Testimony**

498 Witnesses may appear electronically if unable to attend the trial in person, provided that the
499 technology employed allows witnesses to be seen and heard clearly by the parties and the trial
500 court, and to respond to their questions.

501

502 **4. Procedures in Trial**

503 Each of the parties in a remedial case shall be entitled to appear and may be represented by
504 counsel, provided that no person shall act as counsel who is not a member of the Presbyterian
505 Church (U.S.A.). No member of a permanent judicial commission shall appear as counsel before
506 that commission while a member.

507 No party to a remedial case or any other person shall circulate or cause to be circulated among
508 the members of the permanent judicial commission any written, printed, electronic, or visual
509 materials of any kind upon any matter pertaining to the case before its final disposition.
510 Notwithstanding this prohibition, the permanent judicial commission may request, or grant leave
511 to file, additional materials. Parties or their counsel may not speak with members of the
512 permanent judicial commission regarding any matter related to the case unless the other party
513 and counsel consent or are present.

514 The moderator of the permanent judicial commission shall have full authority and power to
515 control the conduct of the trial and of all parties, witnesses, counsel, and the public, including
516 removal of them, to the end that proper dignity and decorum shall be maintained. Rulings of the
517 moderator are subject to appeal to the full commission by any member of the commission, which
518 shall decide the question by majority vote.

519 Questions as to procedure or the admissibility of evidence arising in the course of a trial shall be
520 decided by the moderator after the parties have had an opportunity to be heard. A party or a
521 member of the permanent judicial commission may appeal from the decision of the moderator to
522 the commission, which shall decide the question by majority vote.

523 The absence of any member of the permanent judicial commission after a trial has commenced
524 shall be recorded. That person shall not thereafter participate in that case.

525 Loss of a quorum shall result in a mistrial and the case shall be tried again from the beginning.

526 **5. Trial**

527 The trial of a remedial case shall be opened with prayer and proceed as follows:

528 The moderator shall read aloud D-1, shall announce that the council is about to proceed to trial,
529 and enjoin the members to recollect and regard their high character as judges of a council of the
530 Church of Jesus Christ and the solemn duties they are about to undertake.

531 The parties or their counsel may object and be heard on the organization and jurisdiction of the
532 permanent judicial commission.

533 A member of a permanent judicial commission is disqualified if the member has a material
534 interest in the outcome of the case, is related by blood or marriage to any party, has been active
535 for or against any party, or is a member of a church or council which is a party.

536 Any member of a permanent judicial commission may be challenged by any party, and the
537 validity of the challenge shall be determined by a majority vote of the remaining members of the
538 permanent judicial commission.

539 The permanent judicial commission shall place all preliminary determinations on the record and
540 shall decide by majority vote any objections to the preliminary determinations and any other
541 objections affecting the order or regularity of the proceedings. Final judgment is not permissible
542 until the permanent judicial commission has heard the evidence.

543 The complainant shall be permitted to amend the complaint at the time of the trial, provided that
544 the amendment does not change the substance of the complaint or prejudice the respondent.

545 The parties shall be given an opportunity to make opening statements.

546 **6. Evidence**

547 The complainant and respondent shall be accorded the opportunity to present evidence on their
548 behalf. Evidence, in addition to oral testimony of witnesses, may include records, writings,
549 material objects, or other things presented to prove the existence or nonexistence of a fact.
550 Evidence must be relevant to be received. No distinction should be made between direct and
551 circumstantial evidence as to the degree of proof required.

552 a. Witnesses

553 Any party may challenge whether a witness satisfies the criteria to testify (D-5.2), and the
554 moderator of the permanent judicial commission shall determine the competence of the
555 witness. The ruling of the moderator may be appealed by any party or a member of the
556 permanent judicial commission and decided by majority vote of the permanent judicial
557 commission.

558 The counsel for the parties involved in a case may not be compelled to testify about
559 confidential matters, nor may they testify concerning any matters without the express
560 permission of the party they represent.

561 Credibility means the degree of belief that may be given to the testimony of a witness. In
562 determining the credibility of a witness, the permanent judicial commission may consider
563 any matter that bears upon the accuracy of the testimony or the truthfulness of the witness.

564 b. Testimony

565 At the request of either party, no witness shall be present during the examination of another
566 witness. This shall not limit the right of the accused or the committee of counsel of the
567 respondent to be present and to have expert witnesses present.

568 Witnesses shall be examined first by the party producing them, and then they may be cross-
569 examined by the opposing party. The moderator may permit additional questions from the
570 parties. Thereafter, any member of the permanent judicial commission may ask additional
571 questions.

572 Prior to giving testimony, a witness shall make an oath by answering the following question
573 in the affirmative:

574 "Do you solemnly swear that the evidence you will give in this matter shall be the truth, the
575 whole truth, and nothing but the truth, so help you God?"

576 If a witness objects to making an oath, the witness shall answer the following question in the
577 affirmative:

578 "Do you solemnly affirm that you will declare the truth, the whole truth, and nothing but the
579 truth in the matter in which you are called to testify?"

580 The testimony of each witness shall be accurately and fully recorded by a qualified reporter
581 or other means that can be accurately transcribed, including digital voice recording.

582 Witnesses may appear electronically if unable to attend the trial in person, in accordance with
583 the provisions of D-5.3.

584 A member of the permanent judicial commission before which the case is pending may
585 testify, but thereafter shall not otherwise participate in the case.

586 c. Records as Evidence

587 The authenticated written records of a council or permanent judicial commission shall be
588 admissible in evidence in any proceeding.

589 An authenticated record or transcript of testimony taken by a council or permanent judicial
590 commission shall be admissible in any proceeding in another council.

591 d. New Evidence

592 Prior to filing a notice of appeal, but without extending the time for appeal, any party against
593 whom an order or decision has been entered may apply for a new trial on the basis of newly
594 discovered evidence. The permanent judicial commission - when satisfied that such evidence
595 could reasonably have resulted in a different decision and which in the exercise of reasonable
596 diligence could not have been produced at the time of trial - may grant such application.

597 If, subsequent to the filing by any party of a notice of appeal, new evidence is discovered
598 which in the exercise of reasonable diligence could not have been discovered prior to the
599 filing of the notice of appeal, the permanent judicial commission receiving the appeal may
600 receive the newly discovered evidence and proceed to hear and determine the case. The
601 application for admission of newly discovered evidence shall be made to the permanent

602 judicial commission at least thirty days prior to the hearing with copies to the other party.
603 That application shall be accompanied by a summary of the evidence.

604 **7. Final Statements**

605 The parties shall be given an opportunity to make final statements, the complainant having the
606 right of opening and closing the argument.

607 **8. Decision**

608 The permanent judicial commission shall then meet privately. All persons not members of the
609 commission shall be excluded.

610 No complaint in a remedial case shall be sustained unless it has been proved by a preponderance
611 of the evidence. Preponderance means such evidence as, when weighed with that opposed to it,
612 has more convincing force and the greater probability of truth. After careful deliberation the
613 commission shall vote by counted vote on each irregularity or delinquency assigned in the
614 complaint and record the vote in its minutes.

615 The permanent judicial commission shall then decide the case. If the complaint is sustained
616 either in whole or in part, the commission shall order such action as is appropriate.

617 The questions presented for decision shall be fully debated and voted upon while all participating
618 commission members are present. A written outline of a decision shall be prepared while in
619 session. A written decision shall be reviewed by all participating members of the panel, which
620 may take place either while the participating commission members are present or by meeting
621 within ten (10) days either in person, or by appropriate electronic means if authorized in the
622 council's manual of administrative operations.

623 The decision shall become the final decision of the commission when a copy of the written
624 decision is signed by the moderator and clerk of the permanent judicial commission. A copy of
625 the written decision shall immediately be delivered to the parties by personal service or by
626 certified delivery.

627 Within thirty days of the conclusion of the trial, the decision shall be filed with the stated clerk of
628 the council that appointed the permanent judicial commission.

629 The moderator or clerk of the permanent judicial commission shall disseminate the decision as
630 the permanent judicial commission may direct.

631 Decisions of the permanent judicial commissions of synods and presbyteries are binding on the
632 parties to the particular cases in which the decisions are rendered unless overturned on appeal.
633 No decision of a permanent judicial commission of a presbytery or synod is binding beyond the
634 parties to the particular case.

635 For each party, the time for filing an appeal shall run from the date the decision is delivered to,
636 or refused by, that party.

637 An appeal may be initiated only by one or more of the original parties. Rules of appeal are found
638 in D-6.

639 **9. Record of Proceedings**

640 The clerk of the permanent judicial commission shall do the following:

641 Arrange in advance for the accurate verbatim recording of all testimony and oral proceedings.
642 This may be accomplished through a digital voice recording.

- 643 a. Identify and maintain all exhibits offered in evidence (noting whether or not they were
644 accepted as evidence) and keep a list of all exhibits;
- 645 b. Record minutes of the proceedings, which shall include any actions or orders of the
646 permanent judicial commission relating to the case with the vote on each.
- 647 c. Prepare the record of the case, which shall consist of
 - 648 (1) the complaint and the answer thereto;
 - 649 (2) all minutes and papers filed in the case;
 - 650 (3) a certified transcript, if requested;
 - 651 (4) all properly marked exhibits, records, documents, and other papers;
 - 652 (5) the written decision; and
 - 653 (6) any actions or orders of the permanent judicial commission relating to the case
654 with the vote on each.
- 655 d. Within fourteen days after the decision becomes final, certify and transmit the record of the
656 case to the stated clerk of the council of the permanent judicial commission, who shall
657 preserve it for at least two years.
- 658 e. Upon the request, and at the expense of any requesting party, cause to be prepared, as
659 promptly as circumstances permit, a true and complete transcript of all the testimony and
660 oral proceedings during the course of the trial. A copy of this transcript, when certified by
661 the person making the same to be true and complete, shall be delivered to each party
662 requesting the same upon satisfactory arrangement for payment, and one additional copy
663 shall be made for inclusion in the record to be sent forward upon any appeal pursuant to D-
664 6.5a.

665 **10. Additions to Record**

666 No person may supplement or add to the record in a case except for good cause as determined by
667 the moderator and clerk of the permanent judicial commission responsible for conducting the
668 trial. No request to supplement the record shall be considered until received in writing by the
669 stated clerk of the lower council, who shall transmit it to the moderator and clerk of the
670 permanent judicial commission. A copy of the request shall be delivered to all parties and every
671 party shall have ten (10) days to respond in writing.

672 **11. Duty of Stated Clerk**

673 If the council is meeting when the decision is received from the clerk of the permanent judicial
674 commission, the stated clerk shall report the decision immediately and enter the full decision
675 upon the minutes of the council. If the council is not meeting, the stated clerk shall report the

676 decision to the council at its first stated or adjourned meeting or at a meeting called to hear the
677 decision whichever comes first and enter the full decision upon the minutes of the council.

678

679

CHAPTER VI

680

REMEDIAL APPEALS

681

1. Filing an Appeal

682

An appeal of a remedial case is the transfer to the next higher council of a case in which a
683 decision has been rendered in a lower council, for the purpose of obtaining a review of the
684 proceedings and decision to correct, modify, set aside, or reverse the decision.

685

Only the parties to an original complaint (one or more of the complainants or the respondent)
686 may appeal from a ruling of a permanent judicial commission.

687

The ruling must be the commission's final order disposing of the complaint, whether that order is
688 a dismissal in accordance with D-4.6e, or a written decision in accordance with D-5.8.

689

An appeal is initiated by filing a written notice of appeal with the stated clerk of the council that
690 will hear the appeal, no later than forty-five days after a copy of the ruling was received by the
691 appealing party.

692

The written notice may be delivered by means of electronic communication, provided that the
693 stated clerk certifies receipt of the notice, which may also be communicated electronically. If
694 filing the notice electronically, care should be taken to deliver the notice in a manner that can
695 clearly demonstrate timely filing. By written agreement of the parties, all additional filings may
696 be electronic.

697

The appealing party, also known as the appellant or appellants, shall provide a copy of the
698 written notice of appeal to each of the other parties and to the stated clerk of the council whose
699 permanent judicial commission issued the ruling.

700

The parties in a remedial appeal are the appellant or appellants, and the appellee or appellees.

701

The written notice of appeal shall include the following:

702

a. the name of the appellant or appellants and their counsel, if any;

703

b. the name of the appellee or appellees and their counsel, if any;

704

c. the ruling being appealed from, including the date and place thereof, the council that made
705 the ruling, and a copy of the ruling.

706

d. a statement of the errors alleged to have been made in the ruling that are the grounds for the
707 appeal. The grounds for which an appeal may be filed are:

708

(1) irregularity in the proceedings;

709

(2) refusing a party reasonable opportunity to be heard or to obtain or present evidence;

710

(3) receiving improper, or declining to receive proper, evidence or testimony;

711 (4) manifestation of prejudice in the conduct of the case;

712 (5) injustice in the process or decision; and

713 (6) error in constitutional interpretation.

714 e. a certification that a copy of the notice of appeal was received by each of the other parties
715 and the stated clerk of the council whose permanent judicial commission issued the ruling,
716 which may be in the form of an electronic communication.

717 The General Assembly's Permanent Judicial Commission is not obligated to accept any appeal,
718 provided that the initial decision has already been reviewed as an appeal to a lower council.

719 Upon receipt of the written notice of appeal, the stated clerk of the council that will hear the
720 appeal shall transmit it to the officers of that council's permanent judicial commission.

721 **2. Effect of Appeal**

722 The filing of a notice of appeal shall not suspend any action of a council taken to implement the
723 ruling being appealed unless a stay of enforcement was obtained with the original complaint, or
724 one is obtained as described in the next paragraph, in which case the implementation of the
725 ruling being appealed is stayed until the appeal is finally disposed of.

726 If no stay of enforcement was in place when the ruling being appealed was rendered, one may be
727 requested by means of a request filed along with the notice of appeal in any of the methods
728 described in D-4.4a, and processed as described in D-4.4b.

729 **3. Withdrawal of Appeal**

730 The parties in a remedial appeal are encouraged to seek resolution of their differences in a
731 manner acceptable to all parties. If at any time in the appeal process the parties to a remedial
732 appeal file with the stated clerk of the council hearing the appeal a petition for the withdrawal of
733 the appeal, the stated clerk shall inform the members of the permanent judicial commission that
734 the appeal has been withdrawn, which shall end the judicial process unless within seven (7) days
735 any member of the permanent judicial commission challenges the withdrawal. If the withdrawal
736 is so challenged, a majority of the commission at a duly constituted meeting may conclude that
737 the withdrawal would defeat the ends of justice and deny the request.

738 **4. Preliminary Questions Determined**

739 Upon receiving the notice of appeal, the officers of the permanent judicial commission of the
740 council that will hear the appeal shall promptly examine the notice of appeal to determine
741 whether:

742 a. the council has jurisdiction;

743 b. the appellant has standing to file the appeal;

744 c. the appeal was timely and properly filed; and

745 d. the appeal states one or more of the grounds for appeal in accordance with D-6.1(d).

746 The officers of the permanent judicial commission shall report their findings to the parties and to
747 the members of the commission. Within thirty (30) days after their receipt of the findings, the
748 parties and members of the permanent judicial commission may challenge the findings, in which
749 case opportunity shall be provided for the parties to present evidence and argument on the
750 finding(s) in question. A hearing may be requested by either party for the purpose of hearing the
751 challenge, or if the parties agree, the matter may be decided by the permanent judicial
752 commission on the basis of documents submitted by the parties. If a hearing is requested, it
753 should be held at least thirty (30) days prior to the hearing on the appeal, unless the officers of
754 the permanent judicial commission determine that the circumstances, including expenditures of
755 time and resources, warrant disposition of the challenge immediately prior to the hearing on the
756 appeal.

757 In cases filed with the General Assembly's Permanent Judicial Commission that have previously
758 been reviewed on appeal, the officers shall determine whether the Commission will accept the
759 appeal. Members of the Commission may challenge this determination, in which case the
760 General Assembly's Permanent Judicial Commission shall decide the matter by majority vote.
761 No hearing shall be required.

762 If no challenge is made to the findings of the officers that one or more points are answered in the
763 negative, the case shall be dismissed without further action or order of the permanent judicial
764 commission.

765 If no challenge is made to the findings of the officers that all of the points are answered in the
766 affirmative, the stated clerk of the council shall schedule a hearing at a time acceptable to the
767 parties and at which a quorum of the commission can be present.

768 **5. Record of the Case**

769 a. Within forty-five (45) days after receipt of a notice of appeal, the stated clerk of the lower
770 council shall list in writing to the parties all of the papers and other materials that would
771 constitute the record of the case (see D-5.9). Within fifteen (15) days thereafter, either
772 party may challenge the completeness or accuracy of the record as listed by the stated
773 clerk. The stated clerk may, but is not required, to amend the list at the request of a party;
774 however, any such challenge shall be added to the record when it is filed.

775 b. Upon notice by the stated clerk of the council whose permanent judicial commission will
776 hear the appeal that the case has been accepted, the stated clerk of the council from
777 whose ruling the appeal is taken shall compile and file the record of the case with the
778 stated clerk of the higher council, who shall distribute it to the members of the permanent
779 judicial commission. The contents of the record of the case shall be considered authentic
780 for purposes of evidence.

781 c. If anything material to either party is omitted from the record by error or accident, or is
782 misstated therein, the omission or misstatement may be corrected. The parties may
783 stipulate to the correction, or the stated clerk of the lower council may certify and
784 transmit a supplemental record, or the permanent judicial commission of the higher
785 council may direct that the omission or misstatement be corrected. All other questions as
786 to the form and content of the record shall be presented to the permanent judicial

787 commission of the higher council, which shall be decided by majority vote at a duly
788 constituted meeting, which may occur immediately prior to the hearing on the appeal.

789 **6. Briefs**

- 790 a. Within thirty (30) days after the date of receiving the record on appeal, the appellant shall
791 file with the stated clerk of the higher council a written brief containing specifications of
792 the errors alleged in the notice of appeal and arguments, reasons, and citations of
793 authorities in support of the appellant's contentions. Copies of the brief shall be
794 distributed by the stated clerk to the members of the commission and to the parties.
- 795 b. Failure of the appellant to file a brief within the timeline allowed, without good cause,
796 shall be deemed by the permanent judicial commission as an abandonment of the appeal.
- 797 c. Within thirty (30) days of the receipt of the appellant's brief, the appellee shall file with
798 the stated clerk of the council whose permanent judicial commission will hear the appeal
799 a brief in response to the appellant's brief. In its brief, an appellee may raise additional
800 issues related to the decision being appealed. Copies of the brief shall be distributed by
801 the stated clerk to the members of the commission and to the parties.
- 802 d. If additional issues are raised by the appellee, then the appellant may file within thirty
803 (30) days a supplemental brief in response to those issues.
- 804 e. Failure of the appellee to file a brief within the time allowed, without good cause, shall
805 constitute waiver of the rights to file a brief, to appear, and to be heard.

806 **7. Extensions**

807 For good cause shown, the stated clerk of the higher council may extend any of the time limits
808 contained in this section for a reasonable period.

809 **8. Prehearing Conference**

810 At any time after an appeal is received by a permanent judicial commission, the commission may
811 determine or may provide by rule for the parties or their counsel, if any, in a prehearing
812 conference, to seek agreement on any of the disputed issues in the appeal, and to take other
813 action which might reasonably and impartially narrow the dispute and expedite its resolution.
814 Such conference may also result in a settlement agreement.

815 **9. Hearing of Appeal**

816 The moderator or clerk of the permanent judicial commission shall notify the parties of the date
817 when they may appear in person or by counsel before the permanent judicial commission to
818 present the appeal. Failure of a party to appear in person or by counsel shall constitute a waiver
819 of participation in the hearing on appeal. Commissions may determine by rule the procedures to
820 be followed in hearings, including the time allotted to parties for oral argument.

821 At the hearing the permanent judicial commission shall:

- 822 a. determine whether to receive newly discovered evidence, in accordance with the provisions
823 of D-5.6(d) providing for the verbatim recording of such new evidence; and
- 824 b. give opportunity to be heard on the grounds of the appeal to those parties who have not
825 waived that right, the appellant having the right of opening and closing the argument.

826 **10. Decision of the Permanent Judicial Commission**

827 Factual determinations by the trial court shall be accorded a presumption of correctness in
828 appeals. Such determinations are not to be disturbed unless they are plainly wrong, without
829 supporting evidence, or manifestly unjust. Determinations related to the correct interpretation
830 and application of constitutional provisions are not accorded the same presumption.

831 After the hearing and after deliberation, the permanent judicial commission shall vote separately
832 on each specification of error alleged. The vote, which shall be by counted vote, shall be on the
833 question, "Shall the specification of error be sustained?" The minutes shall record the vote on
834 each specification of error.

835 The decision of the permanent judicial commission shall include the determination of errors
836 specified, and state the remedy as provided in D-6.1. The permanent judicial commission may
837 prepare its decision in a manner that will dispose of all substantive questions without
838 redundancy. It should include an explanation of its determinations.

839 Decisions of permanent judicial commissions other than the General Assembly's Permanent
840 Judicial Commission are binding only on the parties to the case.

841 If none of the specifications of error is sustained, and no other error is found, the decision of the
842 lower council shall be affirmed.

843 If one or more errors are found, the permanent judicial commission shall determine whether the
844 decision of the lower council shall be affirmed, modified, set aside, reversed, or the case
845 remanded for a new trial.

846 The questions presented for decision shall be fully debated and voted upon while all participating
847 commission members are present. A written outline of a decision shall be prepared while in
848 session. A written decision shall be reviewed by all participating members of the panel, which
849 may take place either while the participating commission members are present or by meeting
850 within ten (10) days either in person, or by appropriate electronic means if authorized in the
851 council's manual of administrative operations.

852 The decision shall become the final decision when a copy of the written decision is signed by the
853 moderator and clerk of the permanent judicial commission. A copy of the decision shall
854 immediately be delivered to the parties to the case by personal service, certified delivery, or
855 electronic communication if agreed upon in advance by the parties.

856 **CHAPTER VII**
857 **RESTORATION**

858 **Restorative Process**

859 The purpose of church discipline is to restore wholeness to the body of Christ. When it is
860 alleged that trust is broken by an individual, it is important to restore that trust within the community of
861 faith. Church discipline is not punishment; rather, it is the exercise of authority given by Christ, both to
862 guide, control, and nurture the church's members and for the constructive criticism of offenders. The
863 purpose of the restorative process is to honor God by making clear the significance of membership in the
864 body of Christ, to achieve justice and compassion for all participants involved, to correct or restrain
865 wrongdoing in order to bring members to repentance and restoration where possible, to restore peace

866 and unity in the body of Christ, and to secure the just, speedy, and economical determination of
867 proceedings.

868

869 **1. Definitions**

870 a. Restorative Process

871 Restorative process begins when an offense is alleged against a member of a congregation or a
872 minister of the Word and Sacrament. If after investigation and trial, the offense proves true, the person
873 found guilty is subject to censure.

874 b. Offense

875 An offense is any act or omission by a member of a congregation or a minister of the Word and
876 Sacrament that is contrary to the Scriptures or the Constitution of the Presbyterian Church (U.S.A.).

877 c. Sexual Abuse

878 Sexual abuse of another person is any offense involving sexual conduct in relation to any person
879 under the age of eighteen years or anyone over the age of eighteen years without the (mental) capacity to
880 consent, or any person when the conduct includes force, threat, coercion, intimidation, or misuse of
881 ordered ministry or position.

882 d. Time Limits

883 Allegations may be brought regardless of the date on which an offense is alleged to have
884 occurred.

885 e. Counsel

886 Each of the parties in a restorative case shall be entitled to appear and to be represented by
887 counsel, provided, however, that no person shall act as counsel who is not a member of the Presbyterian
888 Church (U.S.A.). No member of a permanent judicial commission shall appear as counsel before that
889 commission while a member. Counsel need not be a paid representative or attorney-at-law.

890 f. Designated Members

891 When necessary, the moderator of the permanent judicial commission designates three members,
892 two of whom should be from the roster of former members of the permanent judicial commission, to
893 determine matters regarding administrative leave for a minister of Word and Sacrament against whom
894 an accusation has been filed, and to review petitions regarding filing charges. The designated members
895 shall not participate in the case.

896

897 **2. Initiating an Investigation**

898 Investigations begin the formal proceedings to inquire into whether alleged acts have taken
899 place, which if proved true, would likely result in disciplinary action. The two ways to initiate an
900 investigation are 1) allegation of violation of Scripture or the Constitution of the Church and 2) request
901 for vindication.

902

903 1) Allegations

904 Disciplinary investigations are in order when a council of the church is presented with written
905 allegations against a member of a congregation or a minister of the Word and Sacrament. These
906 allegations are based on perceived violations of Scripture or the Constitution of the church involving
907 behavior of the individual. Such written allegations shall be delivered to the clerk of the council by
908 certified mail. At the written agreement of both parties, all further communication can be handled
909 electronically.

910 The written allegations shall contain the following information:

911 1. The nature of the alleged offense; and

912 2. Any facts to support the allegation, such as dates and circumstances surrounding the allegations.

913

914 a. Standing and Jurisdiction

915 To initiate an investigation, a written statement of the alleged violation(s) is submitted to the
916 clerk of the council of jurisdiction. The statement shall give a clear narrative and allege facts that, if
917 proven true, would likely result in disciplinary action. Such allegations shall be referred to an
918 investigating committee.

919 (1) If the allegation is against a member of a congregation, the allegation is sent to the clerk of
920 session of the church of membership.

921 (2) If the allegation is against a minister of Word and Sacrament, the allegation is sent to the
922 stated clerk of the presbytery of jurisdiction.

923 (3) When someone is accused of an offense by a written statement presented to a council other
924 than the one having jurisdiction over the member, the clerk of session or stated clerk of the
925 presbytery who receives the statement shall immediately submit it to the clerk of the council who
926 has jurisdiction over the member. At the discretion of the council of jurisdiction, the councils
927 involved should proceed cooperatively in the judicial process including appointing members of
928 both councils to the investigating committee for the matter.

929 (4) If the council of jurisdiction chooses to retain sole jurisdiction, expenses shall be borne by
930 that council. If the council of jurisdiction chooses to appoint a joint investigating committee,
931 expenses shall be shared by both councils.

932 (5) When a congregation is dissolved, the presbytery shall assume jurisdiction of any restorative
933 process begun by the session and not yet concluded.
934

935 b. Who May Submit Allegations

936 An allegation may be submitted by any person under the jurisdiction of a council of the
937 Presbyterian Church (U.S.A.). A person under the jurisdiction of a council may also come forward in
938 self-accusation.

939 Any member of a council who receives information from any source that an offense may have
940 occurred which should be investigated for the purpose of discipline can submit a written allegation to the
941 clerk of session or stated clerk of presbytery. Such offenses may include, but are not limited to, sexual
942 abuse or any form of abuse of another person.

943 A former minister of the Word and Sacrament who renounced jurisdiction in the midst of a
944 restorative process as the accused may come forward in self-accusation in accordance with G-2.0509.
945

946 2) Request for Vindication

947
948 A member of the Presbyterian Church (U.S.A.) who feels injured by rumor or gossip may
949 request an inquiry for vindication by submitting to the clerk of session or stated clerk of the presbytery a
950 clear narrative and statement of alleged facts. The request for vindication is not intended to replace the
951 traditional biblical obligation to conciliate, mediate, and adjust differences without strife.

952 If a council, through its appropriate committee, finds it proper to grant the request, it shall
953 proceed with an investigating committee as provided in (D-7.5). The investigating committee shall
954 conduct an inquiry to ascertain the facts and circumstances and report in writing to the council.

955 The report, which shall become a part of the council's minutes, shall conclude the matter, unless
956 the investigating committee reports that charges are being filed against the person requesting
957 vindication. If charges are to be filed, the matter shall proceed with appropriate judicial process
958 beginning with D-7.9.
959

960 3. Reference

961 A reference is a written request, made by a session or a permanent judicial commission of a
962 presbytery or synod to the permanent judicial commission of the next higher council to assume
963 jurisdiction of the case, for:

- 964 a. investigation of an alleged offense, trial and decision; or
965 b. for trial and decision; or
966 c. for a hearing on appeal in a restorative case not yet decided.

967 A proper subject of reference involves matters or questions for which it is desirable or necessary
968 that a higher council decide the case. In those instances where a session does not have sufficient
969 numbers to try a case, they shall refer the matter to the presbytery for trial and decision by the presbytery
970 permanent judicial commission who shall accept the reference.

971 With its written request for reference to a higher council, the lower council shall specify its reasons for
972 the request and transmit the entire record of proceedings in the case and shall take no further action
973 thereon. If the reference is accepted, all proceedings, including the trial or hearing on appeal, shall
974 thereafter be held in the higher council.

975 Upon receipt of a request for reference, the stated clerk of the higher council shall transmit the
976 request to the permanent judicial commission for a decision whether or not to accept the case.

977 If the permanent judicial commission decides to accept the reference, it shall proceed to trial and
978 decision or to a hearing on appeal.

979 The higher council's permanent judicial commission may decline to accept the case for reference and
980 return it to the lower council, stating its reasons. The permanent judicial commission of the lower
981 council shall then conduct the trial or hearing on appeal and proceed to a decision.

982

983 **4. Referral to an Investigating Committee**

984 As soon as the clerk of session or stated clerk of a presbytery receives a written statement of
985 alleged offense, without undertaking further inquiry, that clerk shall then report to the council only that
986 an offense has been alleged without naming the accused or the nature of the alleged offense and refer the
987 statement immediately to an investigating committee.

988 a. An inquiry shall be made by the investigating committee designated by the session or
989 presbytery having jurisdiction over the member to determine whether charges should be
990 filed.

991 b. In the case of a complaint against a member of a congregation, the session shall
992 provide by standing rule for the appointment of an investigating committee; however, the
993 current members of the session shall not serve as members of the investigating committee
994 since the session will try the case if charges are filed or an alternative form of resolution
995 is not reached.

996 c. Presbyteries shall provide by rule for the appointment of an investigating committee.

997 d. A session shall not grant a certificate of transfer to a member, nor shall a presbytery
998 grant a certificate of transfer to a minister of the Word and Sacrament, while an inquiry
999 or charges are pending. The reasons for not granting transfer may be communicated by
1000 the clerk of session or the stated clerk of the presbytery to the appropriate persons.

1001

1002 **5. Membership of the Investigating Committee**

1003 An investigating committee shall have no more than five but no fewer than three members, and
1004 may include members from another council, if the complaint was first received by another council and
1005 the councils deem it appropriate to share in the investigation. Sessions shall not appoint elders currently
1006 on the session to investigating committees (D-7.4b).

1007

1008 **6. Expenses of the Investigating Committee**

1009 The expenses of an investigating committee shall be paid by the council which designates it. In cases
1010 where the investigation is shared, expenses shall be shared per D-7.2.1a(4).

1011

1012

1013 **7. Administrative Leave**

1014 When a written statement of an alleged offense of sexual abuse toward any person has been
1015 received against a minister of the Word and Sacrament, the stated clerk receiving the allegation shall
1016 immediately communicate the allegation to the moderator and clerk of the permanent judicial
1017 commission.

- 1018 a. The moderator of the permanent judicial commission shall, within three days, designate three
1019 members, two of whom should be from the roster of former members of the permanent judicial
1020 commission, to determine whether the accused shall be placed on a paid administrative leave
1021 during the resolution of the matter. The cost of such shall be borne by the employing entity
1022 whenever possible or be shared by the presbytery as necessary.
- 1023 b. The designated members, after reviewing the written allegations and giving the accused the
1024 opportunity to be heard, shall determine whether the risk to the congregation and to potential
1025 victims of abuse requires administrative leave or other restrictions upon the minister's service,
1026 when considered in light of the nature and probable truth of the allegations. Such administrative
1027 leave or restrictions will continue until resolution of the matter in one of the ways prescribed in
1028 the restorative process or the leave or restrictions are altered or removed by the designated
1029 members of the commission.
- 1030 c. While administrative leave is in effect, the minister may not perform any pastoral,
1031 administrative, educational, or supervisory duties, and may not officiate at any functions such as
1032 baptism, funerals, or weddings. The effect of administrative leave for a minister of the Word
1033 and Sacrament in a validated ministry beyond the jurisdiction of the Presbyterian Church
1034 (U.S.A.), is the temporary suspension of the validation of the ministry, including notification of
1035 the employer, until the matter is resolved.
- 1036 d. If the designated members of the commission determine that no administrative leave or
1037 restriction is required, the investigating committee appointed to investigate the allegations shall
1038 be free at any point in its investigation to present additional evidence to the designated members
1039 supporting the imposition of administrative leave or other restrictions.
- 1040 e. Nothing in this section shall preclude a presbytery from establishing its own rules for
1041 administrative leave or other restrictions on a minister's service in situations not involving
1042 alleged sexual abuse where it finds the church's mission under the Word imperatively demands
1043 such protection from possible harm.

1044
1045 **8. Rights of the Persons in an Investigation**

1046 The rights of persons in an investigation are as follows:

- 1047 a. The investigating committee shall inform the person making the accusation of the right to be
1048 accompanied by an advocate at each and every conference between the person making the
1049 accusation and the investigating committee, the prosecuting committee, and the session or
1050 permanent judicial commission. The role of the advocate is to provide support and pastoral care.
- 1051 b. The investigating committee shall notify all persons alleged to have been harmed by the offense
1052 of their right to be accompanied by an advocate at each and every meeting with the investigating
1053 committee, the prosecuting committee, and the session or permanent judicial commission.
- 1054 c. At the beginning of each and every conference with an investigating committee or any of its
1055 members, the person against whom an allegation has been made shall be informed by the
1056 investigating committee of the right to remain silent, the right to be represented by counsel, and
1057 the right to have counsel appointed if unable to secure counsel.
- 1058 d. All parties in an investigation have the responsibility to work cooperatively in the investigation.
1059 This includes, but is not limited to, the preservation of records which may be pertinent.

1060
1061 **9. Investigative Process**

1062 The investigating committee shall review the statement of alleged offense to determine whether
1063 it alleges any facts that, if true, constitute an offense, that is any act or omission by a member of a
1064 congregation or a minister of the Word and Sacrament that is contrary to Scripture or to the Constitution
1065 of the Presbyterian Church (U.S.A.). If no offense is alleged, the investigating committee shall end its
1066 inquiry and report that it has found no offense to the clerk of the council. The clerk shall communicate
1067 the decision to the person who filed the allegation and to the person against whom the allegation was
1068 filed.

1069 If an offense as defined in D-7.1b. is alleged, the investigating committee shall:

- 1070 a. provide the accused with a copy of the statement of alleged offense;
- 1071 b. provide the person making the allegation with a statement of the investigating committee's
1072 procedures;
- 1073 c. determine whether the accusation repeats allegations previously made against the accused, and if
1074 so, report to the council having jurisdiction over the accused that it will not file charges unless
1075 the accusation contains new information warranting investigation or is the subject of an
1076 investigation that has not been concluded.
- 1077 d. make a thorough inquiry into the facts and circumstances of the alleged offense if the accusation
1078 has been determined to contain new information warranting investigation;
- 1079 e. examine all relevant papers, documents, and records available to it;
- 1080 f. ascertain all available witnesses who have knowledge of the alleged offense-and inquire of them;
- 1081 g. determine, in accordance with G-3.0102 and D-7.1b, whether there are probable grounds or
1082 cause to believe that an offense as described in the principles and standards of the Constitution
1083 was committed by the accused;
- 1084 h. decide whether the offense alleged can reasonably be proved having due regard for the character,
1085 availability, and credibility of the witnesses and evidence available;
- 1086 i. initiate alternate resolution, if it deems appropriate, ordinarily after the investigation has been
1087 completed, reasonable proof has been determined, but before charges have been filed. The
1088 process for alternative resolution is defined in D-7.13.
- 1089 j. report to the council having jurisdiction over the accused, or in the case of a joint investigation,
1090 report to both councils, only whether or not it will file charges; and
- 1091 k. if charges are to be filed, prepare and file them in accordance with the filing procedures
1092 described in D-7.14 and D-7.15, and designate one or more of its members to prosecute the case.
1093

1094 **10. Review of Investigative Procedures**

1095 At any time during the course of the investigation, the person against whom an allegation has
1096 been made may petition the permanent judicial commission to review procedures of the investigating
1097 committee.

- 1098 a. The subject of such a petition shall be limited to whether the committee has followed a proper
1099 trail of evidence, whether the evidence being considered is properly in the hands of the
1100 investigating committee, and whether the committee has examined relevant evidence proposed
1101 by the accused.
- 1102 b. The review shall be completed by the three designated members of the permanent judicial
1103 commission within thirty days of receipt. The review may include a hearing with the
1104 investigating committee and the accused at the sole discretion of the designated members.
1105 Decisions shall be communicated to the parties within fifteen days of the review.
- 1106 c. The results of the review shall be communicated to the moderator and clerk of the permanent
1107 judicial commission.
1108

1109 **11. Communication of Results of an Investigation**

1110 The investigating committee has three choices:

1. Not to file charges;
2. File charges together with an alternative resolution; or
3. Immediately file charges and proceed to trial.

12. Charges Not Filed

If no charges are filed, the investigating committee shall file a written report of that fact alone with the clerk of session or stated clerk of the presbytery. The clerk of session or stated clerk of the presbytery shall notify the person who submitted the written allegations that charges will not be filed.

- a. Within 30 days of receipt of the report, the person who submitted the written allegation may petition the permanent judicial commission to review the decision of the investigating committee not to file charges. The petition shall allege those instances in which the investigating committee has not fulfilled the duties specified in D-7.9.
- b. The investigating committee shall submit a written response to the facts alleged in the petition within thirty (30) days.
- c. The designated members of the permanent judicial commission shall consider the petition and the response, giving attention to the duties specified in D-7.9 and to the question of whether the principles of the restorative process will be preserved by the decision of the investigating committee not to file charges. The decision of the designated members of the commission upon the petition and response shall be rendered within ninety (90) days.
- d. If the designated members sustain the petition, a new investigating committee shall be appointed by the session or presbytery.
- e. If once again no charges are filed, the restorative process is concluded. The disposition of the investigating committee's records shall be in accordance with session or presbytery policy.

13. Alternative Resolution

If it deems appropriate, the investigating committee may initiate alternative resolution, ordinarily after the investigation has been completed, reasonable proof has been determined, but before the charges have been filed. If the investigating committee initiates an alternative resolution, it shall notify the council through its clerk of session or stated clerk. The alternative resolution shall be completed within the one-year time limit for filing charges.

Alternative resolution can take one of two forms:

- (1) In those instances where the accused is willing to take responsibility for harm done and the accuser or the person(s) on whose behalf an accuser has filed an allegation are willing to find outcomes that repair damage and address the reasons for the offense, with the written consent of all parties to the allegation, the investigating committee if it deems appropriate can initiate a process of remediation using principles of restorative justice to bring closure to the parties involved and restoration to the community of faith.
- (2) In those instances where the accused is willing to take responsibility for harm done but the process as described above is not possible or appropriate, the investigating committee may initiate, if it deems appropriate and with the written consent of the accused, an alternative resolution to achieve justice and compassion for all involved and repentance and restoration to the accused.

Mediators, if utilized, should be persons known for calm, wise counsel, and need not be attorneys or certified mediators. Anyone serving as a mediator must be familiar with the Church Discipline of the Presbyterian Church (U.S.A.). Presbyteries may want to identify in advance mediators and persons with experience in the restorative justice process to be called on to assist with alternate resolution when needed. Any fees for mediation shall be negotiated in advance by the council of jurisdiction.

1159 While payment of fees for expenses such as training or counseling may be a part of any agreement
1160 reached, in no case shall financial awards for damages be included.

1161
1162 The investigating committee shall report any agreement for alternative resolution to the session or
1163 permanent judicial commission for its approval together with the charges to be filed.

1164
1165 The session or permanent judicial commission shall convene to:

- 1166 a. receive the agreement and the charges;
- 1167 b. vote to approve it by at least two-thirds of the members eligible to vote (D-3.7);
- 1168 c. make a record of its proceedings according to the provisions of D-8.10, including the name of the
1169 accused, the substance of the charge(s), and censure if any; and
- 1170 d. transmit its decision to the clerk of session or the stated clerk, who shall report it according to the
1171 provisions of D-8.12.
- 1172 e. If the session or permanent judicial commission does not approve the alternative resolution
1173 agreement by a two-thirds vote, the investigating committee may seek another alternative
1174 resolution to present to the permanent judicial commission within the one-year deadline or
1175 proceed with the filing of charges.
- 1176 f. If an alternative resolution agreement is not reached, the investigating committee shall designate
1177 a prosecuting committee and the matter shall proceed on the charges filed.

1178 1179 **14. If Charges are Filed**

1180 If the investigating committee decides to file charges, it shall:

- 1181 a. Inform the accused in writing that charges will be filed, and list each charge separately; and
- 1182 b. Include a summary of the facts it expects to prove at trial to support the charges.

1183 1184 **15. Pretrial Procedures**

1185 If charges are filed, the investigating committee shall designate one or more of its members to serve as
1186 the prosecuting committee. The prosecuting committee shall prosecute the case and represent the
1187 church during any appeals. The prosecuting committee may include additional members at the council's
1188 discretion.

- 1189 a. If charges are filed and the accused is unable to afford counsel, the permanent judicial
1190 commission shall, after reviewing financial records of the accused, appoint counsel for
1191 the accused. Fees, if any, for this representation at the expense of the council shall be
1192 agreed upon before or soon after representation has begun, such agreement to be in
1193 writing.
- 1194 b. Parties: All restorative cases shall be filed and prosecuted by a council through a
1195 prosecuting committee in the name of the Presbyterian Church (U.S.A.). The prosecuting
1196 committee is the representative of the church and, as such, has all of the rights of the
1197 appropriate council in the case. The only parties in a restorative case are the prosecuting
1198 council and the accused.
- 1199 c. Charges
1200 (1) Each charge shall state only one offense.

1201 1. An offense is any act or omission by a member of a congregation or a
1202 minister of the Word and Sacrament that is contrary to the Scriptures or the
1203 Constitution of the Presbyterian Church (U.S.A.).

1204 2. Each charge shall state the specific provision of Scripture and/or the
1205 Constitution which has been violated.

- 1206 3. Each charge shall be numbered, and state (as far as possible) the time,
1207 place and circumstances of the commission of the offense. Multiple occurrences
1208 of the same offense may be consolidated in one charge.
1209 4. Each charge shall be accompanied by a summary of the facts it expects to
1210 prove at trial.

1211 (2) Charges must be filed within one year of the receipt of the allegations by the investigating
1212 committee, unless civil proceedings have commenced during the investigation. In the event of
1213 civil proceedings, an investigating committee may request of its session or permanent judicial
1214 commission an extension of its time to file charges of up to six months from the conclusion of
1215 any investigation or resulting trial undertaken by the civil authorities. The investigating
1216 committee shall maintain contact with the civil authorities to determine when such civil
1217 proceedings have concluded.

1218 (3) The investigating committee shall file these charges with the clerk of session or the stated
1219 clerk of the presbytery.

1220 (4) If the charges are filed with the clerk of session, upon its receipt, the clerk shall
1221 present the charge to the session at its next meeting and determine whether it will try the case or
1222 refer it to the presbytery. (D-7.3)

1223 (5) If the charges are filed with the stated clerk of the presbytery, the stated clerk shall
1224 immediately forward the document to the permanent judicial commission.

1225 (6) A pretrial conference is scheduled, which may be held electronically.
1226

1227 d. Pretrial Conference

1228 The moderator and clerk of the session, or their designees, or the moderator and clerk of the
1229 permanent judicial commission, or their designees, shall set a date, time and place for the pretrial
1230 conference. The session or permanent judicial commission, which is to try the case, shall hold a
1231 pretrial conference no later than forty five (45) days after confirmation of the receipt of the
1232 charge(s).

1233 (1) The clerk shall notify the accused, the counsel for the accused, if any, and the prosecuting
1234 committee of the date, time and place of this meeting and request their presence.

- 1235 1. The accuser shall be informed of the pretrial conference but is not required to be present
1236 for the meeting.
- 1237 2. The accused shall be informed of the pretrial conference and is expected to attend. If the
1238 accused is unable or unwilling to attend, the pretrial conference shall move forward.
- 1239 3. Other appropriate persons, at the discretion of the moderator and clerk, may be invited to
1240 attend.

1241 (2) At the pretrial conference, the moderator or the moderator's designee shall:

- 1242 1. Read aloud the preamble to Church Discipline (D-1);
- 1243 2. Inform the accused of the right to counsel and the right to remain silent throughout the
1244 process;
- 1245 3. Read the charges to the accused and ask the accused to plead guilty or not guilty to each
1246 charge for the record;
- 1247 4. Furnish the accused a description of the records and documents that may be offered to
1248 support each charge, and a list of witnesses then known and their relevance to the matter
1249 at trial;
- 1250 5. Determine with the accused and the prosecuting committee those charges that are not in
1251 dispute and discuss alternatives to a full trial;
- 1252 6. Review any reports of petitions for review (D-7.10);
- 1253 7. Hear any challenges to the appropriateness of charges, make recommendations to dismiss
1254 some of the charges, consolidate the charges, or permit amendments to the charges. All

1255 of these actions shall be reviewed by the session or permanent judicial commission. The
1256 session or permanent judicial commission shall vote on all actions taken at the pretrial
1257 conference.

- 1258 8. Receive from the prosecuting committee and the accused any agreement to plead guilty
1259 to any or all of the charges together with a recommended censure in order to expedite or
1260 avoid a trial. Any such agreement shall be referred to the session or the permanent
1261 judicial commission for their approval.

1262 e. Between the Pretrial Conference and the Trial

1263 (1) The moderator of the session or permanent judicial commission shall schedule a trial or
1264 censure hearing to be held no sooner than thirty (30) days following the pretrial conference.

1265 (2) At least fifteen (15) days in advance of the trial, the prosecuting committee shall provide the
1266 clerk of session or clerk of the permanent judicial commission and the other party with their list
1267 of witnesses and an outline of the evidence to be presented at trial. The accused shall provide the
1268 clerk of session or clerk of the permanent judicial commission and the other party with a
1269 preliminary list of witnesses. Neither party shall contact the other party's witnesses prior to the
1270 trial.

1271 (3) At any time, the parties shall be open to alternative resolution.
1272

1273 CHAPTER VIII 1274 TRIAL IN A RESTORATIVE CASE

1275 1. Conduct of Trial

1276 The trial of a restorative case shall be conducted by a session or permanent judicial commission of a
1277 presbytery. The session or permanent judicial commission shall have full authority and power to control
1278 the conduct of the trial and of all parties, witnesses, counsel, and the public, including removal of them,
1279 to the end that proper dignity and decorum shall be maintained. The trial shall be conducted formally
1280 with full decorum in a neutral place suitable to the occasion.

1281 a. The accused in a restorative case is presumed to be innocent until the contrary is proved, and
1282 unless a determination of guilt is rendered by the trial court they shall be entitled to be found not
1283 guilty.

1284 b. Questions as to procedure or the admissibility of evidence arising in the course of a trial shall be
1285 decided by the moderator after the parties have had an opportunity to be heard. A party or a member
1286 of the session or permanent judicial commission may appeal from the decision of the moderator to the
1287 session or commission, which shall decide the question by majority vote.

1288 c. The proceedings shall ordinarily be conducted in open session; however, at the request of any party,
1289 or on its own initiative, the session or permanent judicial commission may determine at any stage of
1290 the proceedings, by a vote of two-thirds of the members present, to exclude persons other than the
1291 parties and their counsel.
1292

1293 2. Citations and Testimony

1294 Citations to appear at trial for parties or such witnesses as either party may request shall be
1295 signed by the moderator or clerk of the session or the permanent judicial commission and served by the
1296 clerk of the council. Witnesses may be both factual and expert if qualified and if the permanent judicial
1297 commission finds that the parties have established a proper foundation. Witnesses should be competent,
1298 credible, and relevant. Experts should have sufficient expertise to aid the trial court and the ability to
1299 express opinions that assist the trial court.

1300 a. Because of the limitations of a council's authority to compel witnesses to testify in a restorative
1301 process, as well as the limitations of resources in investigations, hearsay evidence is admissible in trials
1302 and the decisions of permanent judicial commissions may be based on it, when necessary.
1303

- 1304 b. Only members of the Presbyterian Church (U.S.A.) may be cited to appear. Persons who are not
1305 members of the Presbyterian Church (U.S.A.) and expert witnesses (regardless of their denominational
1306 membership) can only be requested to attend.
- 1307 c. When it is necessary in the trial to summon witnesses who are under the jurisdiction of another
1308 council of the church, the clerk or stated clerk of the other council shall, on the application of the session
1309 or permanent judicial commission trying the case, issue a citation to the witnesses to appear at the place
1310 of trial and give evidence as may be required.
- 1311 d. A citation shall be delivered by personal service, by certified delivery, or by electronic delivery
1312 acknowledged by the recipient. The moderator or clerk of the session or permanent judicial commission
1313 trying the case shall certify the fact and date of service or delivery. If a party or a witness who is a
1314 member of the Presbyterian Church (U.S.A.) fails to obey a citation to appear or having appeared and
1315 refuses without good cause to testify, and after warning continues to refuse, may be subject to church
1316 discipline.
- 1317 e. Any witness shall be entitled to receive from the party calling the witness reimbursement for expenses
1318 incurred in attendance at the trial, but this does not constitute a monetary award.
- 1319 f. Witnesses may appear electronically if unable to attend the trial in person, provided that they may be
1320 both seen and heard by the permanent judicial commission.

1321 1322 **3. Procedures in Trial**

1323 The session or permanent judicial commission shall have full authority and power to control the
1324 conduct of the trial and of all parties, witnesses, counsel, and the public, including removal of them, to
1325 the end that proper dignity and decorum shall be maintained.

- 1326 a. Questions as to procedure or the admissibility of evidence arising in the course of a trial shall be
1327 decided by the moderator after the parties have had an opportunity to be heard. A party or a member of
1328 the session or permanent judicial commission may appeal from the decision of the moderator to the
1329 body, which shall decide the question by majority vote.
- 1330 b. The absence of any member of the session or permanent judicial commission after a trial has
1331 commenced shall be recorded. That person shall not thereafter participate in that case.
- 1332 c. Loss of a quorum shall result in a mistrial and the case shall be tried again from the beginning.

1333 1334 **4. Conduct of Trial**

1335 All meetings of a trial shall be opened and closed with prayer.

1336 The trial of a restorative case shall proceed as follows:

- 1337 a. The moderator shall read aloud section D-1, Preamble to Church Discipline, shall announce that
1338 the council is about to proceed to trial, and shall enjoin the members to recollect and regard their
1339 high character as judges of a council of the Church of Jesus Christ and the solemn duties they are
1340 about to undertake.
- 1341 b. The parties or their counsel may object and be heard on the organization and jurisdiction of the
1342 permanent judicial commission.
- 1343 (1) A member of a session or permanent judicial commission is disqualified if the member is
1344 personally interested in the case, is related by blood or marriage to any party, or has been active
1345 for or against any party.
- 1346 (2) Any member of a session or permanent judicial commission may be challenged by any
1347 party, and the validity of the challenge shall be determined by the remaining members of the
1348 session or permanent judicial commission.
- 1349 (3) The session or permanent judicial commission shall determine all preliminary objections,
1350 and any other objections affecting the order or regularity of the proceedings. Final judgment is
1351 not permissible until the session or permanent judicial commission has heard the evidence.

- 1352 c. The prosecuting committee shall be permitted to amend the charges at the time of the trial,
1353 provided that the amendment does not change the substance of the charges or prejudice the
1354 accused.
1355 d. The parties shall be given an opportunity to make opening statements.
1356

1357 **4. Evidence**

1358 Evidence as is deemed necessary or proper, if any, shall be presented on behalf of the council
1359 and the accused. Where there is subsequent and properly accomplished action which achieves the
1360 remedy that might otherwise be imposed by a judicial commission, it is appropriate to receive such
1361 evidence. The moderator of the session or permanent judicial commission shall decide questions about
1362 the admissibility of evidence. A party or a member of the session or permanent judicial commission
1363 may appeal from the decision of the moderator to the session or commission, which shall decide the
1364 question by majority vote.

1365 No party to a restorative case or any other person shall circulate or cause to be circulated among
1366 the members of the session or permanent judicial commission any written, printed, electronic, or
1367 materials of any kind upon any matter pertaining to the case before its final disposition.
1368 Notwithstanding this prohibition, the session or permanent judicial commission may request, or grant
1369 leave to file, additional materials. Parties or their counsel may not speak with members of the session or
1370 permanent judicial commission regarding any matter related to the case unless the other party and
1371 counsel consent or are present.

1372 a. Evidence

1373 Evidence, in addition to oral testimony of witnesses, may include records, writings,
1374 material objects, or other things presented to prove the existence or nonexistence of a fact.
1375 Evidence must be relevant to be received. No distinction should be made between direct and
1376 circumstantial evidence as to the degree of proof required.

1377 b. Witnesses

1378 Any party may challenge the ability of a witness to testify, and the session or permanent
1379 judicial commission shall determine the competence of the witness so challenged.

1380 A married person, otherwise competent to testify, may be a witness for or against the
1381 spouse, but neither shall be compelled to testify against the other.

1382 The counsel for the parties involved in a case may not be compelled to testify about
1383 confidential matters, nor may they testify concerning any matters without the express permission
1384 of the party they represent.

1385 Credibility means the degree of belief that may be given to the testimony of a witness.
1386 The session or permanent judicial commission may consider, in determining the credibility of a
1387 witness, any matter that bears upon the accuracy or truthfulness of the testimony of the witness.

1388 c. Testimony

1389 Witnesses shall be examined first by the party producing them, and then they may be
1390 cross-examined by the opposing party. Thereafter, any member of the permanent judicial
1391 commission may ask additional questions.

1392 Prior to giving testimony, a witness shall make an oath by answering the following
1393 question in the affirmative:

1394 "Do you solemnly swear that the evidence you will give in this matter shall be the truth,
1395 the whole truth, and nothing but the truth, so help you God?"

1396 If a witness objects to making an oath, the witness shall answer the following question in
1397 the affirmative:

1398 "Do you solemnly affirm that you will declare the truth, the whole truth, and nothing but
1399 the truth in the matter in which you are called to testify?"

1400 The testimony of each witness shall be accurately and fully recorded by a qualified
1401 reporter or other means that can be accurately transcribed, including digital voice recording.

1402 A member of the permanent judicial commission before which the case is pending may
1403 testify but shall not otherwise participate in the case.

1404 d. **Records as Evidence**

1405 The authenticated written records of a council or permanent judicial commission shall be
1406 admissible in evidence in any proceeding.

1407 A record or transcript of testimony taken by one council or permanent judicial commission and
1408 authenticated shall be admissible in any proceeding in another council.

1410 **5. Final Statements**

1411 The parties shall be given an opportunity to make final statements, the prosecuting committee
1412 having the right of opening and closing the argument.

1414 **6. Decision**

1415 The session or permanent judicial commission shall then meet privately. All persons not
1416 members of the session or permanent judicial commission shall be excluded.

1417 After careful deliberation, the session or permanent judicial commission shall vote on each
1418 charge separately and record the vote in its minutes. Members of the session or permanent judicial
1419 commission must be morally convinced, on the basis of the evidence presented, that the accused is
1420 guilty. No judgment of guilt may be found on a charge unless at least two-thirds of the members of the
1421 session or permanent judicial commission eligible to vote agree on the judgment. (D-3.7).

1422 A written decision stating the judgment on each charge and the determination of the degree of
1423 censure, if any, shall be prepared while in session. It shall become the final decision when signed by the
1424 moderator and clerk of the session or the permanent judicial commission.

1425 When a session or permanent judicial commission has arrived at a decision, the moderator shall,
1426 in open meeting, announce the verdict for each charge separately.

1428 **7. Degree of Censure**

1429 If the accused is found guilty or after the guilty plea, the session or permanent judicial
1430 commission should hear evidence as to the extent of the injury suffered, mitigation, rehabilitation, and
1431 redemption. This evidence may be offered by either party, or the original accuser or that person's
1432 representative. Each person who was directly harmed by the offense may submit a victim impact
1433 statement, which shall become part of the record. The statement shall not be subject to cross-
1434 examination. The accused may offer a plan to address the harm done and to seek reconciliation with the
1435 victim(s) and the church. The session or permanent judicial commission shall then meet privately to
1436 determine the degree of censure to be imposed.

1437 Following such determination and in an open meeting, the moderator of the session or permanent
1438 judicial commission shall then pronounce the censure.

1440 **8. Filed Promptly**

1441 The decision shall be filed promptly with the clerk or stated clerk of the council together with
1442 any plan to address the harm done and a statement of the oversight of the plan.

1444 **9. Notification of Parties**

1445 The clerk of session or clerk of the permanent judicial commission shall deliver a copy of the
1446 decision to each party named in the decision either by personal service or by certified delivery.

1447 The moderator or clerk of session or of the permanent judicial commission shall disseminate the
1448 decision as the session or permanent judicial commission may direct.

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10. Record of Proceedings

The clerk of session or the clerk of the permanent judicial commission shall do the following:

- a. Arrange in advance for the accurate verbatim recording of all testimony and oral proceedings. This may be accomplished through a digital voice recording.
- b. Identify and maintain all exhibits offered in evidence (noting whether or not they were accepted as evidence) and keep a list of all exhibits.
- c. Record minutes of the proceedings, which shall include any actions or orders of the session or permanent judicial commission relating to the case with the vote thereon.
- d. Prepare the record of the case, which shall consist of
 1. the charges;
 2. a record of the plea entered by the accused on each charge;
 3. a certified transcript, if requested;
 4. all properly marked exhibits, records, documents, and other papers;
 5. the written decision, including the verdict for each charge and the degree of censure, if any, to be imposed by the council; and
 6. any actions or orders of the session or permanent judicial commission relating to the case, with the vote thereon.
- e. Preservation of the record

The clerk will reserve the original of all records in the following manner:

 1. The clerk of session shall, after the decision becomes final, retain the record of the case for at least two years, or in accordance with the policy of the session.
 2. The clerk of the permanent judicial commission shall, within 14 days after the decision becomes final, certify and transmit the record of the case to the stated clerk of the electing council, who shall preserve it for at least two years, or in accordance with the policy of the session.
- f. Transcript

When requested, and at the expense of any requesting party, the clerk will cause to be prepared, as promptly as circumstances permit, a true and complete transcript of all the testimony and oral proceedings during the course of the trial. A copy of this transcript, when certified by the person making the same to be true and complete, shall be delivered to each party requesting the same upon satisfactory arrangement for payment, and one additional copy shall be made for inclusion in the record to be sent forward upon any appeal pursuant to D-10.3.

11. Additions to the Record

No person may supplement or add to the record in a case except for good cause as determined by the moderator and clerk of the session or of the permanent judicial commission responsible for conducting the trial. No request to supplement the record shall be considered until received in writing by the clerk of session or the stated clerk of the lower council who shall transmit it to the moderator of the session or moderator and clerk of the permanent judicial commission. A copy of the request shall be delivered to all parties and every party shall have ten (10) days to respond in writing.

12. Duty of Stated Clerk

If the presbytery is meeting when the decision is received from the clerk of the permanent judicial commission, the stated clerk shall read the decision to the presbytery immediately and enter the full decision upon the minutes of the presbytery. If the presbytery is not meeting, the stated clerk shall read the decision to the presbytery at its first stated or adjourned meeting thereafter, or at a meeting called for that purpose, and enter the full decision upon the minutes of the presbytery.

13. New Evidence

1498 Prior to filing a notice of appeal, but without extending the time for appeal, any party against
1499 whom an order or decision has been entered may apply for a new trial on the ground of newly
1500 discovered evidence. The permanent judicial commission – when satisfied that such evidence could
1501 reasonably have resulted in a different decision and which, in the exercise of reasonable diligence, could
1502 not have been produced at the time of trial – may grant such application.

1503 If, subsequent to the filing by any party of a notice of appeal, new evidence is discovered, which
1504 in the exercise of reasonable diligence could not have been discovered prior to the filing of the notice of
1505 appeal, the permanent judicial commission receiving the appeal may, in its discretion, receive the newly
1506 discovered evidence and proceed to hear and determine the case. However, no newly discovered
1507 evidence may be admitted unless the party seeking to introduce it shall have made application, with
1508 copies to the adverse party, at least thirty days prior to the appeal hearing. That application shall be
1509 accompanied by a summary of the evidence.

1510 **14. Enforcement**

1511 When a session has completed the trial and found the accused guilty and the decision has been
1512 pronounced, or when the stated clerk of a higher council has received the decision of its permanent
1513 judicial commission in which the accused was found guilty, the session or higher council shall proceed
1514 to enforce the decision. The person against whom the decision has been pronounced shall refrain from
1515 the exercise of ordered ministry or from participating and voting in meetings, according to the situation,
1516 until an appeal has been decided or the time for appeal has expired, unless the session or the presbytery
1517 specifically grants a request to allow the person to continue in ordered ministry pending an appeal.
1518

1519 **CHAPTER IX**

1520 **CENSURE AND RESTORATION IN A RESTORATIVE CASE**

1521 **1. Degrees of Church Censure**

1522 The degrees of church censure are rebuke, rebuke with supervised rehabilitation, temporary
1523 exclusion from exercise of ordered ministry or membership, and removal from ordered ministry or
1524 membership. Whatever the censure is, it is never given with malice and vindictiveness but in Christian
1525 love to offer correction in error and restoration to the community.
1526

1527 The full decision becomes a part of the minutes of the council. The verbal report to the council
1528 will contain only a summary of the offense and censure.

1529 **A. Rebuke**

1530 Rebuke is the lowest degree of censure for an offense and is completed when pronounced. It
1531 consists of setting forth publicly the character of the offense, together with reproof, which shall be
1532 pronounced in the following or like form:

1533 “Whereas, you, (Name) _____, have been found guilty of the offense(s) of
1534 _____ (here insert a summary of the offense), and by such offense(s) you have acted
1535 contrary to the Scriptures and/or the Constitution of the Presbyterian Church (U.S.A.); now, therefore,
1536 the Presbytery (or Session) of _____, in the name and authority of the
1537 Presbyterian Church (U.S.A.), expresses its condemnation of this offense, and rebukes you. This rebuke
1538 is given not with malice or vindictiveness but in Christian love to offer you correction in error and
1539 restoration that you may be more watchful and avoid such offense in the future. We urge you to use
1540 diligently the means of grace to the end that you may be more obedient to our Lord Jesus Christ.”

1541 This formal rebuke shall be followed by intercessory prayer to Almighty God.

1542 **B. Rebuke with Supervised Rehabilitation**

1543 Rebuke with supervised rehabilitation is the next to lowest degree of censure. It consists of
1544 setting forth the character of the offense, together with reproof and mandating a period of supervised
1545

1547 rehabilitation imposed by the session or permanent judicial commission as described item b. of this
1548 section. This censure shall be pronounced in the following or like form:

1549 “Whereas, you, (Name) _____, have been found guilty of the offense(s) of
1550 _____, and by such offense(s) you have acted contrary to the Scriptures and/or
1551 the Constitution of the Presbyterian Church (U.S.A.); now, therefore, the Permanent Judicial
1552 Commission (or Session) of _____, in the name and authority of the Presbyterian
1553 Church (U.S.A.), expresses its condemnation of this offense, rebukes you, and orders you to complete a
1554 program of supervised rehabilitation supervised by _____ as described below:
1555 _____.

1556 This rebuke is given not with malice or vindictiveness but in Christian love to offer you
1557 correction in error and the possibility of full community restoration. You are enjoined to be more
1558 watchful and avoid such offense in the future. We urge you to use diligently the means of grace to the
1559 end that you may be more obedient to our Lord Jesus Christ.”

1560 This formal rebuke shall be followed by intercessory prayer to Almighty God.

1561 a. Communicate Goals

1562 The session or permanent judicial commission shall formally communicate to the supervising
1563 entity and the person censured the goals of the rehabilitation and the specific authority conferred on the
1564 supervisor(s).

1565

1566 b. Supervised Rehabilitation

1567 The description of the rehabilitation program shall include a clear statement of how progress will
1568 be evaluated and how it will be determined when and if the supervised rehabilitation has been
1569 satisfactorily completed.

1570

1571 c. Voluntary Acts of Repentance

1572 The rehabilitation program may include the advice that the person found guilty complete a
1573 voluntary act or acts of repentance. Such acts may include: public acknowledgement of guilt,
1574 community service, symbolic restoration of what was lost by the person who was harmed, and, in a case
1575 where the offense is sexual abuse of another person, possibly contributions toward documented
1576 medical/psychological expenses incurred by the person who was harmed.

1577

1578 **C. Temporary Exclusion**

1579 Temporary exclusion from the exercise of ordered ministry or membership is a higher degree of
1580 censure for a more aggravated offense and shall be for a definite period of time, or for a period defined
1581 by completion of supervised rehabilitation imposed by the session or the permanent judicial
1582 commission. This censure shall be pronounced in the following or like form:

1583 “Whereas, you, (Name) _____, have been found guilty of the offense(s) of
1584 _____ (here insert the offense), and by such offense(s) you have acted contrary to the
1585 Scriptures and/or the Constitution of the Presbyterian Church (U.S.A.); now, therefore, the Presbytery
1586 (or Session) of _____, in the name and by the authority of the Presbyterian Church
1587 (U.S.A.), does now declare you temporarily excluded from _____ for a period of
1588 _____, or until completion of the following rehabilitation program supervised by
1589 _____, as described below: _____.

1590 This exclusion is given not with malice or vindictiveness but in Christian love to offer you
1591 correction in error and the possibility of full community restoration.”

1592 This formal declaration shall be followed by intercessory prayer to Almighty God.

1593

1594 a. Supervised Rehabilitation

1595 If the period of temporary exclusion is defined by completion of supervised rehabilitation, the
1596 session or permanent judicial commission shall formally communicate to the supervising entity and the
1597 person found guilty the specific authority conferred on the supervisor.
1598

1599 b. Voluntary Acts of Repentance

1600 The rehabilitation program may include the advice that the person found guilty complete a
1601 voluntary act or acts of repentance. Such acts may include: public acknowledgement of guilt,
1602 community service, symbolic restoration of what was lost by the person harmed, and in a case in which
1603 the offense is sexual abuse of another person possibly contributions toward documented medical /
1604 psychological expenses incurred by the person who was harmed.
1605

1606 c. Refrain from Exercise of Ordered Ministry

1607 During the period of temporary exclusion from ordered ministry, the person found guilty shall
1608 refrain from the exercise of any function of ordered ministry.
1609

1610 d. Cannot Vote or Hold Office

1611 During the period of temporary exclusion from membership, the person found guilty shall refrain
1612 from participating and voting in meetings of church councils and from holding or exercising any
1613 ecclesiastical office.
1614

1615 e. Effect of Temporary Exclusion of a Pastor

1616 If a pastor is temporarily excluded from the exercise of ordered ministry, the presbytery may, if
1617 no appeal from the case is pending, declare the pastoral relationship dissolved.
1618

1619 f. Notice of Temporary Exclusion

1620 When the censure of temporary exclusion has been pronounced with respect to a teaching elder,
1621 the stated clerk of the presbytery shall immediately send the information of the action taken to the Stated
1622 Clerk of the General Assembly, who shall make a quarterly report of all such information to every
1623 presbytery of the church.
1624

1625 g. Termination of Censure of Temporary Exclusion

1626 A person under the censure of temporary exclusion shall apply in writing to the council, through
1627 the clerk of session or stated clerk, for restoration upon the expiration of the time of exclusion or
1628 completion of the supervised rehabilitation pronounced. The council that imposed the censure may
1629 approve the restoration when the time of exclusion has expired, or when the council is fully satisfied that
1630 the supervised rehabilitation pronounced has been successfully completed. If after the period of
1631 temporary exclusion has expired, the supervised rehabilitation has not been completed to the satisfaction
1632 of the council, the council may grant a one-time extension for a definite period of time for the
1633 completion of the supervised rehabilitation. If at the completion of that time period the supervised
1634 rehabilitation has not been completed to the satisfaction of the council, the temporary exclusion shall
1635 become permanent.

1636 i. Early Restoration

1637 A person under the censure of temporary exclusion from the exercise of ordered ministry or from
1638 membership may apply in writing to the council that imposed the censure (through its clerk) to be
1639 restored prior to the expiration of the time of exclusion or the completion of the supervised rehabilitation
1640 fixed in the censure. The council may approve such a restoration when it is fully satisfied that the action
1641 is justified.
1642

1643 **D. Removal from Ordered Ministry and/or Membership**

1644 Removal from ordered ministry and/or membership is the highest degree of censure.

1645 Removal from ordered ministry is the censure by which the ordination and election of the person found
1646 guilty are set aside, and the person is removed from all ordered ministries without removal from
1647 membership.

1648 Removal from membership is the censure by which the membership of the person found guilty is
1649 terminated, the person is removed from all rolls, and the person's ordination and election to all ordered
1650 ministries are set aside.

1651 This censure shall be pronounced in the following or like form:

1652 "Whereas, you, (Name) _____, have been found guilty of the offense(s) of
1653 _____ (here insert the offense), and by such offense(s) you have acted
1654 contrary to the Scriptures and/or the Constitution of the Presbyterian Church (U.S.A.); now, therefore,
1655 the Presbytery (or Session) of _____, acting in the name and under the authority of
1656 the Presbyterian Church (U.S.A.), does hereby set aside and remove you from _____
1657 (here state whether removal is from all ordered ministries and elected offices or from membership).
1658 This removal is given not with malice or vindictiveness but in Christian love to offer you correction in
1659 error and to restore the unity of the church by removing from it the discord and division the offense(s)
1660 have caused."

1661 This formal declaration shall be followed by intercessory prayer to Almighty God.

1662 a. Consequences of Removal from Ordered Ministry

1663 If a teaching elder is removed from ordered ministry without removal from membership, the
1664 presbytery shall give the teaching elder a certificate of membership to a Christian church of the teaching
1665 elder's choice with the approval of the session or governing body of that church. If the teaching elder is a
1666 pastor, the pastoral relationship is automatically dissolved by the censure.
1667

1668 b. Notice of Removal

1669 When the censure of removal has been pronounced with respect to a teaching elder, the stated
1670 clerk of that presbytery shall immediately send the information of the action taken to the Stated Clerk of
1671 the General Assembly, who shall make a quarterly report of all such information to every presbytery of
1672 the church.
1673

1674 2. Restoration

1675 A person under the censure of removal from ordered ministry or from membership may be
1676 restored by the council imposing the censure when the council is fully satisfied that the action is justified
1677 and the person makes a reaffirmation of faith for membership restoration or is again ordained for
1678 restoration to ordered ministry.
1679

1680 A. Restoration to Ordered Ministry

1681 The restoration to ordered ministry shall be announced by the moderator in the following or like
1682 form:
1683

1684 "Whereas, you, (Name) _____, have manifested such repentance as satisfies
1685 the church, the Presbytery of _____ (or Session of this church) does now restore you
1686 to the ordered ministry of _____ and authorize you to perform the functions of that
1687 ministry in accordance with the Constitution of this church by this act of ordination."

1688 Thereafter, a full service of ordination shall take place and the name shall be restored to the
1689 appropriate roll. (W-4.04)

1690 B. Restoration to Membership

1691

1692 The restoration to membership shall be announced by the moderator in a meeting of the council
1693 in the following or like form:

1694 "Whereas, you, (Name) _____, have manifested such repentance as satisfies
1695 the church, the Presbytery (or Session) of _____ does now restore you to full
1696 membership in the church by this act of reaffirmation."

1697 Thereafter, the act of reaffirmation shall take place and the name of the person shall be restored
1698 to the appropriate roll or a certificate of membership shall be issued to a Christian church of that
1699 person's choice.

1700 If the member is also to be restored to an ordered ministry, the procedure prescribed in
1701 Restoration to Ordered Ministry shall be followed.

1702

1703 **CHAPTER X**

1704 **RESTORATIVE APPEALS**

1705 An appeal of a restorative case is the transfer to the next higher council of a case in which a
1706 decision has been rendered in a lower council, for the purpose of obtaining a review of the proceedings
1707 and decision to correct, modify, set aside, or reverse the decision.

1708 The time for filing an appeal shall begin from the date the decision is delivered to, or refused by,
1709 the person found guilty.

1710 Only the person found guilty may initiate the first level of appeal.

1711 Once the first appeal has been decided, either party may initiate the next level of appeal.

1712 A case may ultimately be appealed to the General Assembly Permanent Judicial Commission by
1713 either party. However, the General Assembly Permanent Judicial Commission may decline to hear the
1714 appeal by majority vote. Such action would end the appeal with the Synod Permanent Judicial
1715 Commission decision.

1716

1717 **1. Grounds for Appeal**

1718 The grounds for appeal are:

- 1719 a. Irregularity in the proceedings
- 1720 b. Refusing a party reasonable opportunity to be heard or to obtain or present
1721 evidence
- 1722 c. Receiving improper, or declining to receive proper evidence or testimony
- 1723 d. Manifestation of prejudice in the conduct of the case
- 1724 e. Injustice in the process or decision
- 1725 f. Error in constitutional interpretation
- 1726 g. Undue severity of censure

1727 **2. Steps in the Appeal Process**

1728 a. Filing

1729 A written notice of appeal shall be filed within forty-five (45) days after a copy of the judgment
1730 has been delivered by certified delivery or personal service to the party appealing. This written notice
1731 must be sent by certified mail and copies delivered to the clerk of session or stated clerk of the next level
1732 of council where the judgment was rendered, to each of the other parties, and to the stated clerk of the
1733 council that will hear the appeal.

1734 This written notice shall state and include the following:

- 1735 1. The name of the party/parties filing the appeal (the appellant) and their counsel, if any
- 1736 2. The name of the other party/parties (the appellee) and their counsel, if any
- 1737 3. The council from whose judgment the appeal is taken
- 1738 4. The actual judgment that had been rendered from which the appeal is taken. A copy of the
1739 judgment shall be included.
- 1740 5. A statement and description of the errors which serve as the grounds of the appeal (D-10.1)

1741 6. Authentication that a copy of this appeal was provided by certified delivery or by personal
1742 service to the other parties as indicated in D-10.2a.

1743 b. When the stated clerk of the higher council receives the notice of appeal, the clerk shall transmit the
1744 appeal to the moderator and clerk of the permanent judicial commission.

1745 c. The moderator and clerk of the permanent judicial commission of the council that will hear the case
1746 shall then examine the documents to determine the following Preliminary Questions:

1747 1. Does the council have jurisdiction?

1748 2. Does the appellant have standing to file the appeal?

1749 3. Has the appeal paperwork been properly and timely filed?

1750 4. Does the appeal state and describe one or more of the grounds for appeal as stated in D-10.1?
1751

1752 The findings may be challenged by either party or by a member of the permanent judicial
1753 commission within thirty (30) days after receipt of the findings. If a challenge is made, an opportunity
1754 shall be provided to present evidence and argument on the finding in question.

1755 e. If a hearing is necessary to decide the finding in question, the hearing shall be scheduled at least thirty
1756 (30) days prior to the hearing on the appeal itself.

1757 f. If the permanent judicial commission determines the answer to any of the four preliminary questions
1758 has been answered in the negative, the commission shall dismiss the appeal.

1759 g. If no challenge was made to the finding of the moderator and clerk on the four preliminary questions,
1760 the appeal will proceed to a hearing.
1761

1762 3. Record of the Case

1763 Within forty (40) days after the receipt of a written notice of appeal, the clerk of session or stated
1764 clerk of the lower council shall provide to the parties a list in writing of the papers and materials that
1765 constitute the record of the case. Either party may challenge the completeness of the record of the case.
1766 If a challenge occurs, it must be filed within fifteen (15) days from the date of the receipt of the record.
1767 This challenge shall state specifically what item or items listed in D-8.10d which are claimed to be
1768 omitted from the record of the case.

1769 When the higher council accepts the case, that council will notify the stated clerk of the lower
1770 council that the case has been accepted. The stated clerk of the lower council shall certify and file the
1771 record of the case, which may include authenticated copies of parts of the record and shall include any
1772 written challenges disputing the completeness or accuracy of the record, with the stated clerk of the
1773 higher council.

1774 If an item material to either party is omitted from the record by error or accident or is misstated,
1775 the omission or misstatement may be corrected. The record may be corrected as follows:

1776 1. The parties may agree to the correction;

1777 2. The appropriate lower council may certify and transmit a supplemental record; or

1778 3. The permanent judicial commission of the higher council may direct that the omission or
1779 misstatement be corrected.

1780 All other questions as to the form and content of the record shall be presented to the permanent
1781 judicial commission of the higher council.

1782 The stated clerk of the higher council shall notify the parties of the date the record on appeal was
1783 received.

1784 Upon written request, the stated clerk of the higher council shall furnish any party to the appeal,
1785 at cost to that party, a copy of the record on appeal.
1786

1787 4. Briefs

1788 a. The appellant has thirty days from the filing of the record on appeal to submit a written brief to the
1789 stated clerk of the council who will hear the appeal. This written brief shall contain specifications of

1790 the errors alleged in the notice of appeal, and the arguments, reasons, and citations of authorities in
1791 support of the appeal.

- 1792 1. This brief shall be accompanied by a certification that a copy has been furnished to the other
1793 party or parties.
 - 1794 2. The stated clerk of the higher council may extend the time limit of thirty days for a reasonable
1795 period, if good cause can be shown.
 - 1796 3. Failure of appellant to file this brief within the thirty (30) days without good cause, shall be
1797 deemed by the permanent judicial commission as an abandonment of the appeal.
- 1798 b. The appellee has thirty (30) days from the filing of the appellant's brief to provide a written brief
1799 in response to the appellant's brief. This written brief shall be filed with the stated clerk of the
1800 council who will hear the appeal.

- 1801 1. This brief shall be accompanied by a certification that a copy has been furnished to the other
1802 party or parties.
 - 1803 2. The stated clerk of the higher council may extend the time limit of thirty days for a reasonable
1804 period, if good cause can be shown.
 - 1805 3. Failure by the appellee to file this brief within the time allowed, without good cause, shall be
1806 understood as a waiver of the rights to file a brief, to appear, and to be heard.
- 1807 c. When the record and briefs have been received, or upon the expiration of the time for filing them,
1808 the stated clerk of the council where the appeal will be heard shall transmit the records and briefs
1809 received to the clerk of the permanent judicial commission of that council.
- 1810 d. No member of the permanent judicial commission who is a member of the church or presbytery in
1811 which the appeal originated shall be eligible to hear the appeal.
- 1812 e. At any time after an appeal has been received by a permanent judicial commission, the
1813 commission may provide by rule for the parties and their counsel, if any, for the opportunity in a
1814 prehearing conference to seek agreement on any of the disputed issues in the appeal and to take other
1815 action which might reasonable and impartially narrow the dispute and expedite its resolution.

1816 **5. The Hearing of the Appeal**

1817 The moderator or clerk of the permanent judicial commission shall notify the parties of the date
1818 when they may appear in person or by counsel to present the appeal. Failure of a party to appear in
1819 person or by counsel shall constitute a waiver of participation in the hearing of the appeal.

1820 At the hearing, the Permanent judicial commission shall

1821 Determine whether to receive new evidence (D-8.13), providing for the verbatim record of such
1822 new evidence;

1823 Give opportunity to be heard for those who have not waived that right. The appellant has the right of
1824 opening and closing arguments.

1825 Upon the completion of the hearing, the parties will be dismissed and the permanent judicial
1826 commission shall move towards their deliberation.

1827 The permanent judicial commission shall deliberate and vote separately on each specification of
1828 error. The vote shall be on the question: "Shall the specification of error be sustained?" The minutes
1829 shall record the numerical vote on each specification of error.

- 1830 a. If the appeal was initiated by a prosecuting committee appealing a verdict of not guilty and the
1831 permanent judicial commission sustains that portion of the appeal, the permanent judicial
1832 commission shall remand the case for a new trial.
 - 1833 b. If none of the specifications of error is sustained, and no other error is found, the decision of the
1834 lower council shall be affirmed.
 - 1835 c. If one or more errors are found, the permanent judicial commission shall determine whether the
1836 decision of the lower council should be affirmed, set aside, reversed, modified, or the case
1837 remanded for a new trial.
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5. Decision of the Permanent Judicial Commission

A written decision shall be prepared while the permanent judicial commission is in session. The written decision shall become the final decision when a copy of the written decision is signed by the moderator and clerk of the commission.

- a. The decision shall include the determination of errors specified and state whether its remedy is to correct, modify, set aside, or reverse the decision on appeal. The commission may include an explanation of its determination.
- b. The decision shall be filed promptly with the stated clerk of the council that heard the appeal and the parties to the case by personal service or certified delivery.
- c. The moderator or clerk of the permanent judicial commission may disseminate the decision as the commission may direct.

If the permanent judicial commission reverses all findings of guilt, it becomes an acquittal and the person is automatically restored to ordered ministry or membership in the church. This declaration shall be made in the lower council and recorded in the minutes of the lower council.