

1 **CHURCH DISCIPLINE**

2
3 **CHAPTER I**

4
5 **PRINCIPLES OF CHURCH DISCIPLINE**

6
7 **PREAMBLE**

8
9 **D-1.01 Church Discipline Defined**

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11 *D-1.0101 Church Discipline Defined*

12
13 Church discipline is the church's exercise of authority given by Christ, both to guide, control, and
14 nurture its members, and for the constructive criticism of offenders. The church's judicial process does
15 not exist as a substitute for the secular judicial system, but to do what the secular judicial system cannot
16 do. The Constitution of the Presbyterian Church (U.S.A.) is infused with principles and standards to
17 which ordained officers voluntarily submit when they answer the ordination questions, and to which all
18 active members voluntarily submit.

19
20 *D-1.0102 Limits of Church Discipline*

21
22 Church discipline alone is not adequate to mediate intrinsic differences of theology, polity, policy,
23 power, or trust. Broader issues of conflict are also addressed by constitutional amendment, mediation,
24 administrative review, and administrative commissions. Church discipline through the judicial process
25 shall be used when individuals or councils of the church are unable to bring about settlement of issues
26 and have determined, after prayerful deliberation, that judicial process is necessary to ensure that
27 individuals or councils are held accountable for their actions or inactions.

28
29 **D-1.02 Purpose of Church Discipline**

30
31 *D-1.0201 Purpose of Church Discipline*

32
33 Thus, the purpose of church discipline is:

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35
- 36 • to honor God by making clear the significance of membership in the body of Christ;
 - 37 • to preserve the purity of the church by nourishing the individual within the life of the believing community;
 - 38 • to achieve justice and compassion for all participants involved;
 - 39 • to correct or restrain wrongdoing in order to bring members to repentance and restoration;
 - 40 • to uphold the dignity of those who have been harmed by offenses;
 - 41 • to restore the unity of the church by removing the causes of discord and division; and
 - 42 • to secure the just, speedy, and economical determination of proceedings.
- 43

44 *D-1.0202 Due Process*

45
46 In all respects, participants are to be accorded procedural safeguards and due process.

47
48 **D-1.03 Power Vested in Christ's Church**

49

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

54

55 **D-1.04 Conciliate and Mediate**

56

57 The traditional biblical obligation to conciliate, mediate, and adjust differences without strife is
58 not diminished by church discipline. Although these rules describe the way in which judicial process
59 within the church shall be conducted, it is not their intent or purpose to encourage judicial process or to
60 make it more expensive or difficult. Those contemplating the use of judicial process shall recall the
61 biblical duty to “come to terms quickly with your accuser while you are on the way to court . . .”
62 (Matthew 5:25). They shall attempt prayerfully and seriously to bring about an adjustment or settlement
63 of the issue asserted and avoid formal proceedings under judicial process unless after prayerful
64 deliberation, it is determined to be necessary to preserve the peace, unity, and purity, or accomplish the
65 purposes of the church.

66 **CHAPTER II**

67 **JUDICIAL PROCESS DEFINED**

68
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70 **D-2.01 Judicial Process**

71
72 *D-2.0101 Processes of Accountability*

73
74 Church discipline in the Presbyterian Church (U.S.A.) is accomplished through judicial processes of
75 accountability. Accountability of councils is accomplished through remedial process. Accountability of
76 individuals is accomplished through disciplinary process.

77
78 *D-2.0102 Councils of the Church*

79
80 The councils of the church are sessions, presbyteries, synods, and the General Assembly. Sessions
81 conduct trials themselves. Presbyteries, synods, and the General Assembly conduct trials and hearings
82 on appeal through permanent judicial commissions.

83
84 **D-2.02 Remedial Process**

85
86 *D-2.0201 Accountability of Councils*

87
88 Remediation is the process by which councils are held accountable to God, to their members, and to
89 each other. Through remediation, actions or omissions contrary to the Constitution by a lower council or
90 an entity of the General Assembly may be corrected by a higher council.

91
92 **D-2.03 Disciplinary Process**

93
94 *D-2.0301 Accountability of Individuals*

95
96 Disciplinary process is the process by which members of congregations and ministers of the Word
97 and Sacrament are held accountable to God and to each other, and may be censured for an offense for
98 the purpose of restoring the wholeness of the body of Christ.

99
100 *D-2.0302 Definition of an Offense*

101
102 An offense is any act or omission by a member of a congregation or a minister of the Word and
103 Sacrament that is contrary to the Scriptures or the Constitution of the Presbyterian Church (U.S.A.) as
104 defined in D-7.0103.

105
106 **D-2.04 Standards and Process**

107
108 Standards and procedures used in judicial processes are those contained in the Constitution of the
109 Presbyterian Church (U.S.A.) and its parliamentary authority, in accordance with G-3.0105.

110 **CHAPTER III**

111 **PERMANENT JUDICIAL COMMISSIONS**

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114 **D-3.01 Election**

115
116 *D-3.0101 Composition*

117
118 The General Assembly, each synod or cooperating synods, and each presbytery shall elect a
119 permanent judicial commission from the ministers of the Word and Sacrament and ruling elders subject
120 to its jurisdiction. Each commission shall be composed of ministers of the Word and Sacrament and
121 ruling elders in numbers as nearly equal as possible. When the commission consists of an odd number of
122 members, the additional member may be either a minister of the Word and Sacrament or a ruling elder.

123
124 a. The General Assembly commission shall be composed of one member from each of its
125 constituent synods.

126
127 b. Synod commissions shall be composed of no fewer than eleven members distributed
128 equally, insofar as possible, among the constituent presbyteries. In those synods with fewer than eleven
129 presbyteries, each presbytery shall have at least one member. When two or more synods form a shared
130 permanent judicial commission, the commission shall be composed of no fewer than twelve members,
131 with each synod electing members proportional to the number of the presbyteries in each synod, insofar
132 as possible. The cooperating synods shall designate between them one stated clerk to process the cases
133 filed with the shared permanent judicial commission.

134
135 c. Presbytery commissions shall be composed of no fewer than seven members, with no
136 more than one of its ruling elder members from any one of its constituent congregations.

137
138 *D-3.0102 Reviewers and Effect on Quorum*

139
140 Three permanent judicial commission members, up to two of whom may be former commission
141 members, shall be designated by the stated clerk to review any petition for review of the procedures of
142 the investigating committee while the investigation in a disciplinary case is in process (D-7.11), to
143 review any petition for review of the decision not to file charges (D-7.1302d), and to determine the need
144 for administrative leave (D-7.0802). These three members shall not take part in any subsequent trial.
145 When a case proceeds to trial after a review, the quorum of the permanent judicial commission shall be a
146 majority of these members who did not participate in the review, but in no case shall a quorum be fewer
147 than five members (D-3.0602). A session shall refer either form of petition to the presbytery
148 commission.

149
150 **D-3.02 Service**

151
152 *D-3.0201 Classes and Terms*

153
154 Permanent judicial commissions shall be arranged in three classes of six years each, with each
155 class as equal as possible in size and with one class completing its term every two years.

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157 *D-3.0202 Vacancies*

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

167
168 b. Any vacancy due to resignation, death, or any other cause may be filled by the electing
169 council, which may elect a person to fill the unexpired term at any future meeting.

170
171 *D-3.0203 Eligibility*

172
173 a. In filling vacancies for unexpired terms, a member who has served more than half a term
174 is considered to have served a full term, and is ineligible for immediate re-election.

175
176 b. No person who has served on a permanent judicial commission for a full term shall be
177 eligible for reelection until two years have elapsed after the expired six-year term. No person shall serve
178 on more than one permanent judicial commission at the same time. No person shall serve on the
179 permanent judicial commission of the General Assembly who is a member of any other entity elected by
180 the General Assembly until that person shall have resigned such membership. The moderator, stated
181 clerk, or any member of the staff of a council or the staff of any of its entities shall not serve on its
182 permanent judicial commission.

183
184 **D-3.03 Commission Expenses**

185
186 All necessary expenses of a permanent judicial commission shall be paid by the electing council or
187 councils. Cooperating synods shall pay the necessary expenses of a shared permanent judicial
188 commission equally; however, each synod shall pay the necessary expenses for processing a particular
189 judicial case arising within its bounds.

190
191 **D-3.04 Officers**

192
193 Each permanent judicial commission shall meet and elect from its members a moderator and a clerk,
194 according to its rules. A permanent judicial commission may also provide by rule for another member of
195 the commission to serve as moderator or clerk *pro tem*, if necessary.

196
197 **D-3.05 Powers**

198
199 In the cases transmitted to it, the permanent judicial commission shall have only the powers
200 prescribed by the Constitution of the Presbyterian Church (U.S.A.), and shall conduct its proceedings
201 accordingly.

202
203 **D-3.06 Meetings**

204
205 *D-3.0601 Times and Places*

206

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

210
211 *D-3.0602 Quorum*

212
213 The quorum of a permanent judicial commission shall be a majority of the members, except that the
214 quorum of a presbytery commission for a disciplinary case shall be a majority of the membership other
215 than the currently serving member(s) assigned responsibilities under D-3.0102. In no instance shall the
216 quorum be fewer than five members. The quorum of a session for judicial process shall be the
217 moderator of the session and a majority of the ruling elder members.

218
219 a. Who Shall Not Participate

220
221 When a church or lower council is a party to a case, members of a permanent judicial
222 commission who are members of that church, or of that lower council, or of churches within that lower
223 council shall not participate in the case. Members designated under D-3.0102 shall not otherwise
224 participate in the case.

225
226 b. Lack of Quorum

227
228 If, through absence, disqualification, or recusal, a sufficient number of the members of a
229 permanent judicial commission is not present to constitute a quorum, the permanent judicial commission
230 shall recess until a quorum can be obtained.

231
232 c. Inability to Reach a Quorum

233
234 The permanent judicial commission shall report its inability to reach a quorum to the stated clerk
235 designated for processing the case.

236
237 d. Roster of Former Members –

238
239 The stated clerk shall keep a current roster of those members of the permanent judicial
240 commission whose terms have expired within the past six years. The names shall be arranged
241 alphabetically within classes beginning with the most recent class. Whenever the permanent judicial
242 commission reports its inability to obtain a quorum, or the stated clerk believes a quorum is not likely to
243 be present, the stated clerk shall immediately select, by rotation from that roster, a sufficient number of
244 former members of the permanent judicial commission to ensure a quorum. Such members, once
245 recruited, may serve for that case. The stated clerk shall report the roster annually to the council or
246 councils.

247
248 e. Participant Expenses

249
250 If a permanent judicial commission is unable to try a case for lack of a quorum, the council in
251 whose geographic boundary the case arose shall reimburse the expenses reasonably incurred by those
252 persons required to be present.

253

254 **CHAPTER IV**

255 **REMEDIATION**

256
257
258 **D-4.01 Remedial Process**

259
260 *D-4.0101 Purpose*

261
262 The purpose of remediation is to further the peace, unity, and purity of the church by ensuring that
263 the Constitution of the Presbyterian Church (U.S.A.) is upheld, and that disputes in understanding
264 regarding its requirements are addressed in a manner that is both fair and just to all concerned.

265
266 *D-4.0102 Limitations of Judicial Process*

267
268 While a remedial complaint may be filed *by* individuals, it can never be filed *against* individuals.
269 Nor may it be filed against a congregation or a committee or commission of a council below the General
270 Assembly. Complaints may only be filed against sessions, presbyteries, synods, and entities of the
271 General Assembly as explained below, and only by one or more individuals or councils of the church
272 who have standing to complain, as explained below.

273
274 **D-4.02 Filing a Complaint**

275
276 *D-4.0201 Initiation*

277
278 Remedial process is initiated by the filing of a complaint with the stated clerk of the council
279 having jurisdiction that alleges one or more specific irregularities or delinquencies of a council.

- 280
281 a. A decision or action contrary to the Constitution of the Presbyterian Church (U.S.A.) is
282 known as an irregularity.
283
284 b. The omission or failure to act on a constitutional requirement is known as a delinquency.

285
286 *D-4.0202 Stated Clerk Responsibility*

287
288 The stated clerk shall immediately transmit copies of the complaint to the party against whom
289 the complaint is filed and to the officers of the council's permanent judicial commission. If a different
290 clerk has been designated to process judicial cases for a shared judicial commission, the stated clerk
291 having jurisdiction shall immediately transmit the complaint to that clerk.

292
293 *D-4.0203 Parties*

294
295 The parties in a case of remedial process are known as the complainant or complainants (the
296 person or persons who file the complaint) and the respondent (the council complained against).

297
298 *D-4.0204 Committees of Counsel*

300 a. Composition

301

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

307

308 b. Provide by Rule

309

310 A council or an entity of the General Assembly may provide by rule for the appointment of a
311 committee of counsel. The membership of the committee of counsel, as well as any changes to its
312 composition that may occur, shall be promptly reported to the stated clerk of the council having
313 jurisdiction, who will notify the other party and the permanent judicial commission.

314

315 c. Who Shall Not Serve

316

317 The clerk of session or the stated clerk shall not serve on a committee of counsel for the council
318 they serve. Employees of the council hearing a case or of a higher council that would have jurisdiction
319 in any appellate proceeding shall also not serve on a committee of counsel.

320

321 *D-4.0205 Time Limits*

322

323 a. In the case of an alleged irregularity, if a stay of enforcement is also sought, (as described
324 below in section 4.04), then a complaint of an alleged irregularity may be filed no later than thirty (30)
325 days after the council's action being complained against (or in the case of an appeal, from the date on
326 which the appealing party was notified of the decision of the permanent judicial commission). If no stay
327 of enforcement is being requested, then a complaint of an alleged irregularity may be filed no later than
328 ninety (90) days after the council's action.

329

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

333

334 *D-4.0206 Standing and Jurisdiction in Remedial Cases*

335

336 a. Councils may file complaints against any other council of the same level, to the council
337 immediately higher than the council complained against and to whose jurisdiction the latter council is
338 subject.

339

340 b. Members of a congregation may file complaints against their session, to the presbytery.

341

342 c. Ruling elder commissioners to a presbytery may file complaints to the synod alleging
343 irregularities or delinquencies that occurred during presbytery meetings at which they were present and
344 enrolled.

345

346 d. Minister members of a presbytery and ruling elders elected by and enrolled with the
347 presbytery for terms of service in accordance with the presbytery's rules may file complaints against the
348 presbytery to the synod regardless of whether or not they were in attendance when the alleged
349 irregularity or delinquency occurred.

350
351 e. Sessions may file complaints against their presbytery, to their synod.

352
353 f. Commissioners to a synod may file complaints to the General Assembly alleging
354 irregularities or delinquencies that occurred during synod meetings at which they were present and
355 enrolled.

356
357 g. Ministers and ruling elders elected by and enrolled with the synod for terms of service in
358 accordance with the synod's rules may file complaints against the synod to the General Assembly
359 regardless of whether or not they were in attendance when the alleged irregularity or delinquency
360 occurred.

361
362 h. Presbyteries may file complaints against their synod, to the General Assembly.

363
364 i. Sessions, presbyteries, and synods may file complaints against entities of the General
365 Assembly, to the General Assembly.

366
367 j. When the council of jurisdiction as defined in this section fails to act in a particular
368 remedial case for a period of sixty days after the filing of a complaint or thirty days after the filing of a
369 complaint with a request for a stay of enforcement, the next higher council, at the written request of any
370 party, may assume jurisdiction in the case. It may then either and return jurisdiction to the lower council
371 with specific instructions on how to proceed, or it may retain jurisdiction and conclude the matter itself.

372
373 *D-4.0207 Effects of Jurisdiction*

374
375 Jurisdiction in remedial process has the following particular effects:

376
377 a. when a remedial case has been transmitted to a permanent judicial commission, the
378 electing council shall take no further judicial action on the case, and

379
380 b. each council shall enforce and recognize the judgments, decisions, and orders of higher
381 councils which have jurisdiction over them under the provisions of the Rules of Discipline.

382
383 **D-4.03 Contents of a Complaint**

384
385 *D-4.0301 Items to be Included*

386
387 Items to be included in a complaint are as follows:

388
389 a. The name of the complainant(s) and the name of the respondent.

390

391 b. The particular irregularity including the date, place, and circumstances thereof; or the
392 particular delinquency including the dates of the written request to cure the delinquency and of the next
393 meeting at which the respondent failed to do so.

394 c. The reasons for complaint of the irregularity or delinquency.

395 d. A statement of facts demonstrating that the complainant(s) may file the complaint in
396 accordance with D-4.0206 above.

397 e. The remedy or correction requested (called “relief”), which must be within the power of
398 the council receiving the complaint to grant.

402 *D-4.0302 Method of Filing*

403 The complaint shall be delivered to the stated clerk of the council that will hear the complaint
404 and to the respondent by certified delivery or personal service. The complainant(s) shall then file with
405 the stated clerk a receipt signed by the addressee or an affidavit of personal service. At the written
406 agreement of both parties, all further communication may be handled electronically.

409 **D-4.04 Request for a Stay of Enforcement**

410 *D-4.0401 Requesting a Stay of Enforcement*

411 A stay of enforcement is a written instruction from the permanent judicial commission having
412 jurisdiction that orders suspension of a decision or an action until a complaint (or appeal) is finally
413 determined. Any such request for a stay of enforcement shall be filed along with the complaint (or notice
414 of appeal) as described above. The request must be made in one of the following forms:

415 a. A request signed by one-third of the members recorded as present when the decision or
416 action was taken by the council,

417 b. A request signed by one-third of the members of the permanent judicial commission that
418 decided a remedial case that is being appealed, or

419 c. A request signed by a complainant or appellant requesting that at least three members of
420 the permanent judicial commission having jurisdiction to hear the complaint or appeal sign the stay of
421 enforcement.

422 **D-4.05 Preliminary Ruling**

423 *D-4.0501 Examination of Papers*

424 The complaint (or appeal for purposes of processing a request for a stay of enforcement on appeal)
425 shall be promptly transmitted by the stated clerk along with the request for a stay of enforcement, if one
426 has been received, to the permanent judicial commission moderator and clerk for their preliminary
427 determination as to the following questions:
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- a. For the complaint, whether:
- (1) the council has jurisdiction,
 - (2) one or more of the complainants has standing to file the case,
 - (3) the complaint was timely filed,
 - (4) the complaint alleges facts that if proved true would constitute an irregularity or delinquency, and
 - (5) the complaint states a claim upon which relief can be granted. Permanent judicial commissions may, but shall not be required, to proceed to trial when they determine that the relief requested cannot be granted but that there is potential relief, declaratory or otherwise, that could potentially be granted. Relief that a council may not grant includes but is not limited to:
 - i. relief that is not within the authority of the council to grant,
 - ii. monetary damages beyond financial restitution,
 - iii. relief that has been rendered moot,
 - iv. relief that is contrary to the Constitution of the Presbyterian Church (U.S.A.).
- b. For the request for a stay of enforcement if made under D-4.0401a or b, whether the request is complete and timely.

D-4.0502 Preliminary Ruling

- a. If a request for a stay of enforcement is made under D-4.0401a or b, a stay of enforcement may be entered immediately by the moderator and clerk if they determine that the request is complete and timely and the preliminary issues are met for the complaint or appeal.
- b. In their consideration of the preliminary questions in D-4.0501a, the officers shall assume the truth of the facts alleged.
- c. Within ten (10) days after their receipt of the complaint, the officers shall report their determinations to the stated clerk of the council in a preliminary ruling either accepting the case for trial or dismissing the case because one or more of the five questions is answered in the negative. The stated clerk shall immediately distribute the preliminary ruling to the parties, and to the members of the permanent judicial commission along with the complaint (or appeal, for purposes of processing a request for a stay of enforcement on appeal) and the request for a stay of enforcement, if one has been received.

D-4.06 Processing a Request for a Stay of Enforcement If Made Under D-4.0401c.

D-4.0601 Consideration of Request

483 If a request for a stay of enforcement is made under D-4.0401c, a stay of enforcement may be
484 entered by three members of the permanent judicial commission that will hear the case filing within ten
485 (10) days of their receipt of the preliminary ruling, the complaint, and the request for a stay of
486 enforcement, a statement that in their judgment:

- 487 a. substantial harm will occur if the action or decision is not stayed, and
- 488 b. probable grounds exist for finding the decision or action erroneous.

491 *D-4.0602 Determination and Filings*

492 a. The statements of members of the permanent judicial commission shall be filed with the
493 stated clerk of the council that has jurisdiction to hear the case. The statements shall include a summary
494 of the specific council action(s) or decision(s) being stayed.

495 b. If the stated clerk receives three or more statements from members of the permanent
496 judicial commission, the stay shall be granted, and the stated clerk shall send a copy of the stay of
497 enforcement to the parties and to the permanent judicial commission members.

498 c. The stay of enforcement shall be effective until the permanent judicial commission
499 having jurisdiction has decided the case, except as hereafter provided.

500 d. If a stay of enforcement is not granted, the stated clerk shall so notify the parties and the
501 permanent judicial commission members.

502 **D-4.07 Response and Next Actions**

503 *D-4.0701 If the Preliminary Ruling Accepts the Case*

504 a. If the officers initially accept the case, the respondent council shall prepare and file its
505 answer as described in D-4.0703 below. When the answer has been received, the officers shall review
506 the answer and may either affirm their preliminary ruling as filed or modify it in light of the new
507 information received. The affirmed or modified preliminary ruling shall then be filed with the stated
508 clerk who shall distribute it to the parties and the permanent judicial commission members, and the
509 answer shall also be distributed to the permanent judicial commission.

510 b. If the preliminary ruling to accept the case is affirmed, the respondent or a member of the
511 permanent judicial commission may challenge the determination within fifteen (15) days of receiving
512 the notification, in which case the matter proceeds as described in D-4.0704 below.

513 c. If the modified preliminary ruling dismisses the case, then the case proceeds as described
514 in D-4.0702 below.

515 *D-4.0702 If the Initial or Modified Preliminary Ruling Dismisses the Case*

528 a. Within fifteen (15) days of notification that the officers have dismissed the case, one or
529 more of the complainants or a member of the permanent judicial commission may file a challenge to the
530 dismissal, in which case the respondent, if it has not already done so, shall prepare and file its answer as
531 described in D-4.0703 below, which shall be distributed to the permanent judicial commission, and the
532 challenge shall be processed in accordance with D-4.0704 below.

533

534 b. If no challenge is received within fifteen (15) days, the case is dismissed and any stay of
535 enforcement is lifted.

536

537 *D-4.0703 Answer to Complaint*

538

539 a. The committee of counsel of the respondent shall file with the stated clerk of the higher
540 council a concise answer within thirty (30) days of its notification of either acceptance of the case by the
541 officers of the permanent judicial commission or receipt of a challenge to the officers' dismissal of the
542 case. The answer shall admit those facts alleged in the complaint that are true, deny those that are not
543 true or are mistakenly stated, and present other facts that may explain the situation identified as an
544 irregularity or delinquency.

545

546 b. The answer may also raise any issues related to the determinations contained in D-
547 4.0501a and may include a motion to dismiss the complaint.

548

549 c. If a stay of enforcement has been entered, the respondent's answer may also challenge
550 the stay of enforcement, in which case the matter shall proceed as described in D-4.0704.

551

552 d. The stated clerk shall distribute the answer to the complainant(s) and to the permanent
553 judicial commission.

554

555 *D-4.0704 Challenge to Preliminary Ruling and Stay of Enforcement*

556

557 If a preliminary ruling or a stay of enforcement is challenged under the provisions of this chapter,
558 opportunity shall be provided to present evidence and argument on the determination(s) in question, or
559 on the stay of enforcement. Parties shall be invited to submit briefs, and may agree to allow the
560 permanent judicial commission to decide the matter on the basis of those briefs in place of a hearing.
561 The permanent judicial commission shall then enter a final ruling on the matter either dismissing the
562 case or accepting it for trial, and either affirming or lifting the stay of enforcement, if one has been
563 entered.

564

565 CHAPTER V

566 TRIAL IN A REMEDIAL CASE

567 **D-5.01 Pretrial Procedures**

570 *D-5.0101 Duties of Respondent Stated Clerk*

571 a. Within forty-five (45) days after the receipt of a complaint, the clerk of session or stated
572 clerk of the respondent council shall list in writing to the parties all of the papers and other materials
573 pertaining to the case.

574 b. Within thirty (30) days thereafter, the complainant may request in writing that the
575 respondent clerk file additional minutes or papers pertaining to the case. Questions as to the relevance or
576 reasonableness of requests shall be decided by the officers of the permanent judicial commission or their
577 designees.

578 c. Upon notification by the stated clerk of the higher council of jurisdiction that the case has
579 been accepted, the clerk of session or stated clerk of the respondent council shall transmit to the stated
580 clerk of the higher council without delay the minutes and papers pertaining to the case, along with the
581 list of the record.

582 *D-5.0102 Record of the Case*

583 When the minutes and papers have been filed with the stated clerk of the higher council, the stated
584 clerk shall organize and transmit them to the parties and to the permanent judicial commission and give
585 notice to the parties of an estimated date for trial.

586 *D-5.0103 Additional Filings*

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

590 *D-5.0104 Pretrial Conference*

591 At any time after a case is received by a permanent judicial commission, the commission may provide
592 for the parties or their counsel, if any, to explore settlement possibilities; or, in a pretrial conference, to
593 seek agreement on a statement of facts and disputed issues, to exchange documents and other evidence,
594 and to take other action which might reasonably and impartially narrow the dispute and expedite its
595 resolution. The moderator and clerk of the session, or their designees, or the moderator and clerk of the
596 permanent judicial commission, or their designees, shall set a date, time and place for the pretrial
597 conference, and conduct it on the commission's behalf.

608 **D-5.02 Conduct of Trial**

609

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

612

613 **D-5.03 Citations and Testimony**

614

615 *D-5.0301 Citation of Parties and Witnesses*

616

617 Citations to appear at trial for parties or such witnesses as either party may request shall be signed by
618 the moderator or clerk of the permanent judicial commission and served by the stated clerk of the
619 council. Witnesses may be either fact witnesses or expert witnesses (see D-5.0703b).

620

621 *D-5.0302 Who May Be Cited*

622

623 Only members of the Presbyterian Church (U.S.A.) may be cited to appear. Persons who are not
624 members of the Presbyterian Church (U.S.A.) and expert witnesses (regardless of their denominational
625 membership) may only be requested to appear.

626

627 *D-5.0303 Witnesses from Another Council*

628

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

633

634 *D-5.0304 Expenses*

635

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

638

639 *D-5.0305 Service of Citation*

640

641 A citation shall be delivered by personal service, by certified delivery, or by electronic delivery
642 acknowledged by the recipient within seven (7) days. The moderator or clerk of the permanent judicial
643 commission trying the case shall keep a record of the fact and date of service or delivery. If a party or a
644 witness who is a member of the Presbyterian Church (U.S.A.) fails to obey a citation to appear or having
645 appeared, refuses without good cause to testify, and after warning continues to refuse, the party or
646 witness shall be considered guilty of disobedience and contempt, and for such offense may be subject to
647 disciplinary action by their council of jurisdiction.

648

649 **D-5.04 Electronically Received Testimony**

650

651 Witnesses may appear electronically if unable to attend the trial in person, provided that the
652 technology employed allows witnesses to be seen and heard clearly by the parties and the trial court, and
653 to respond to their questions. If the parties agree, and with the concurrence of the permanent judicial

654 commission, the testimony of a witness who is unable to attend the trial may be taken under oath, with
655 an opportunity for cross-examination, recorded videographically, and may be played and entered into
656 evidence at the trial. All questions of the admissibility of such evidence shall be determined by the
657 permanent judicial commission when the recording is offered as evidence.
658

659 **D-5.05 Procedures in Trial**

660 *D-5.0501 Counsel*

661
662 Each of the parties in a remedial case shall be entitled to appear and may be represented by counsel.
663 Counsel need not be a paid representative or an attorney-at-law. Counsel shall be a member of the
664 Presbyterian Church (U.S.A.). No member of a permanent judicial commission shall appear as counsel
665 before that commission while a member.
666

667 *D-5.0502 Circulation of Materials and Communication*

668
669 a. Any materials pertaining to the case shall be filed with the stated clerk of the council.
670 Parties to a remedial case or their counsel or any other person shall not circulate or cause to be circulated
671 directly to the members of the permanent judicial commission any written, printed, electronic, or visual
672 materials of any kind upon any matter pertaining to the case before its final disposition. Notwithstanding
673 this prohibition, the permanent judicial commission may request, or grant leave to file, additional
674 materials.
675

676
677 b. Parties or their counsel shall not communicate with members of the permanent judicial
678 commission regarding any matter related to the case unless the other party and their counsel, if any, are
679 included.
680

681 *D-5.0503 Control of Conduct of Trial*

682
683 The moderator of the permanent judicial commission shall have full authority and power to control
684 the conduct of the trial and of all parties, witnesses, counsel, and the public, including removal of them,
685 to the end that proper dignity and decorum shall be maintained. Rulings of the moderator related to
686 control of the trial are subject to appeal to the full commission by any member of the commission, which
687 shall decide the question by majority vote.
688

689 *D-5.0504 Procedural Questions*

690
691 Questions as to procedure or the admissibility of evidence arising in the course of a trial shall be
692 decided by the moderator after the parties have had an opportunity to be heard. A party or a member of
693 the permanent judicial commission may appeal from the decision of the moderator to the commission,
694 which shall decide the question by majority vote.
695

696 *D-5.0505 Absences*

697

698 Members of a permanent judicial commission must be present in person at trials. The absence of any
699 member of the permanent judicial commission after a trial has commenced shall be recorded. That
700 member shall not thereafter participate in that case.

701

702 *D-5.0506 Loss of Quorum*

703

704 Loss of a quorum shall result in a mistrial and the case shall be tried again from the beginning at a
705 time and place to be determined by the permanent judicial commission.

706

707 **D-5.06 Trial**

708

709 *D-5.0601 Announcement by the Moderator*

710

711 The trial of a remedial case shall be opened with prayer, after which the moderator shall read aloud
712 the preamble to Church Discipline (D-1), shall announce that the council is about to proceed to trial, and
713 shall enjoin the members to recollect and regard their high character as judges of a council of the Church
714 of Jesus Christ and the solemn duties they are about to undertake.

715

716 *D-5.0602 Objections of Parties*

717

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

720

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

724 b. Any member of a permanent judicial commission may be challenged by any party for
725 conflict of interest, and the validity of the challenge shall be determined by a majority vote of the
726 remaining members of the permanent judicial commission.

727

728 *D-5.0603 Preliminary Determinations and Objections*

729

730 The permanent judicial commission shall place all preliminary determinations on the record and
731 shall decide by majority vote any objections to the preliminary determinations and any other objections
732 affecting the order or regularity of the proceedings. A final decision is not permissible until the
733 permanent judicial commission has heard the evidence, unless in a pretrial conference the parties agree
734 on a statement of facts in which no factual disputes exist, waive their right to present additional evidence
735 at a trial, and are willing to have the dispute settled on the basis of their briefs.

736

737 *D-5.0604 Amendment of Complaint*

738

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

741

742 *D-5.0605 Opening Statements*

743
744 The parties shall be given an opportunity to make opening statements.

745
746 **D-5.07 Evidence**

747
748 *D-5.0701 Definition*

749
750 The complainant and respondent shall be accorded the opportunity to present evidence on their
751 behalf. Evidence, in addition to oral testimony of witnesses, may include records, writings, material
752 objects, or other items presented to prove the existence or nonexistence of a fact. Evidence must be
753 relevant to be received. No distinction should be made between direct and circumstantial evidence as to
754 the degree of proof required.

755
756 *D-5.0702 Records as Evidence*

757
758 a. The authenticated written records of a council or permanent judicial commission shall be
759 admissible in evidence in any proceeding.

760
761 b. An authenticated record or transcript of testimony taken by a council or permanent
762 judicial commission shall be admissible in any proceeding in another council.

763
764 *D-5.0703 Witnesses*

765
766 a. Any party may challenge whether a witness may testify, and the moderator of the
767 permanent judicial commission shall determine the competence of the witness. The ruling of the
768 moderator may be appealed by any party or a member of the permanent judicial commission and
769 decided by majority vote of the permanent judicial commission.

770
771 b. Witnesses may be both factual and expert if qualified and if the permanent judicial
772 commission finds that the parties have established a proper foundation. Witnesses should be competent,
773 credible, and relevant. Experts should have both sufficient expertise and the ability to express opinions
774 that assist the trial court.

775
776 c. The counsel for the parties involved in a case may not be compelled to testify about
777 confidential matters, nor may they testify concerning any matters without the express permission of the
778 party they represent.

779
780 d. Credibility means the degree of belief that may be given to the testimony of a witness. In
781 determining the credibility of a witness, the permanent judicial commission may consider any matter
782 that bears upon the accuracy of the testimony or the truthfulness of the witness.

783
784 *D-5.0704 Testimony*

785
786 a. At the direction of the moderator or on the request of either party, no fact witness shall be
787 present during the examination of another witness. This shall not limit the right of any complainant or
788 the committee of counsel of the respondent to be present and to have expert witnesses present.

789

790 b. Witnesses shall be examined first by the party producing them, and then they may be
791 cross-examined by the opposing party. The moderator may permit additional questions from the parties
792 (including both re-examination, followed by re-cross-examination) if so requested. Thereafter, any
793 member of the permanent judicial commission may ask additional questions.

794

795 c. Prior to giving testimony, a witness shall make an oath by answering the following
796 question in the affirmative: “Do you solemnly swear that the evidence you will give in this matter shall
797 be the truth, the whole truth, and nothing but the truth, so help you God?”

798

799 d. If a witness objects to making an oath, the witness shall answer the following question in
800 the affirmative: “Do you solemnly affirm that you will declare the truth, the whole truth, and nothing but
801 the truth in the matter in which you are called to testify?”

802

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

805

806 f. Witnesses may appear electronically if unable to attend the trial in person, in accordance
807 with the provisions of D-5.04.

808

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

811

812 **D-5.08 Final Statements**

813

814 The parties shall be given an opportunity to make final statements, the complainant having the right
815 of opening and closing the argument, after which the trial shall be closed with prayer.

816

817 **D-5.09 Decision**

818

819 *D-5.0901 Deliberation*

820

821 a. The permanent judicial commission shall then meet privately to deliberate. All persons
822 not members of the commission shall be excluded.

823

824 b. No complaint in a remedial case shall be sustained unless it has been proved by a
825 preponderance of the evidence. Preponderance means such evidence as, when weighed with that
826 opposed to it, has more convincing force and the greater probability of truth. After careful deliberation
827 the commission shall vote by counted vote on each alleged irregularity or delinquency accepted for trial
828 and record the vote in its minutes. A majority vote is required to sustain each irregularity or
829 delinquency.

830

831 *D-5.0902 Decision*

832

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

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

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

d. Within thirty (30) days of the conclusion of the trial, the decision shall be filed with the stated clerk of the council that appointed the permanent judicial commission.

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

D-5.0903 Effect of Decision

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

D-5.0904 New Evidence

a. Prior to filing a notice of appeal, but without extending the time for appeal, any party against whom an order or decision has been entered may apply for a new trial on the basis of newly discovered evidence. The permanent judicial commission – when it is satisfied that such evidence could reasonably have resulted in a different decision and that in the exercise of reasonable diligence it could not have been produced at the time of trial – may grant such application. An appeal filed while such an application is pending shall be held in abeyance until such time as the permanent judicial commission that conducted the trial has made its determination. The higher council shall be notified of the determination by the stated clerk of the lower council.

b. If, subsequent to the filing by any party of a notice of appeal, new evidence is discovered which in the exercise of reasonable diligence could not have been discovered prior to the filing of the notice of appeal, the permanent judicial commission receiving the appeal may either remand the case for a new trial, or receive the newly discovered evidence and proceed to hear and determine the case. The application for admission of newly discovered evidence shall be made to the permanent judicial commission at least thirty (30) days prior to the hearing with copies to the other party. That application shall be accompanied by a summary of the evidence.

D-5.0905 Appeal

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

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

D-5.10 Record of Proceedings

D-5.1001 Duties of the Clerk of the Permanent Judicial Commission

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 (which 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 permanent judicial commission relating to the case with the vote on each;

d. prepare the record of the case, which shall consist of:

(1) the complaint and the answer;

(2) all minutes and papers filed in the case;

(3) a certified transcript, if requested;

(4) all properly marked exhibits, records, documents, and other papers;

(5) the written decision; and

(6) any actions or orders of the permanent judicial commission relating to the case with the vote on each.

e. within thirty (30) 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 five years, and in accordance with the policy of the council for the preservation of records;

f. upon the request, and at the expense of any requesting party, the clerk shall 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. When the person making the transcript has certified it to be true and complete, a copy shall be delivered to each party requesting one upon satisfactory

926 arrangement for payment, and one additional copy shall be made for inclusion in the record to be sent
927 forward upon any appeal pursuant to D-6.0802.

928

929 *D-5.1002 Additions to the Record*

930

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

937

938 *D-5.1003 Duty of the Stated Clerk*

939

940 If the council is meeting when the decision is received from the clerk of the permanent judicial
941 commission, the stated clerk shall report the decision immediately and enter the full decision upon the
942 minutes of the council. If the council is not meeting, the stated clerk shall report the decision to the
943 council at its first stated or adjourned meeting or at a meeting called to hear the decision, whichever
944 comes first, and enter the full decision upon the minutes of the council.

945 **CHAPTER VI**

946 **REMEDIAL APPEALS**

947
948
949 **D-6.01 Filing an Appeal**

950
951 *D-6.0101 Definition*

952
953 An appeal of a remedial case is the transfer to the next higher council of a case in which a decision
954 has been rendered in a lower council, for the purpose of obtaining a review of the proceedings and a
955 decision to correct, modify, set aside, or reverse the decision.

956
957 *D-6.0102 Initiation of Appeal*

- 958
959 a. Only the parties to an original complaint (one or more of the complainants or the
960 respondent) may appeal a ruling of a permanent judicial commission.
961
962 b. The ruling must be the commission’s final order disposing of the complaint, whether that
963 order is a dismissal in accordance with D-4.0702b, or a written decision in accordance with D-5.09.
964
965 c. The parties in a remedial appeal are the appellant or appellants, and the appellee or
966 appellees.
967

968 **D-6.02 Notice of Appeal**

969
970 *D-6.0201 Notice Filed*

971
972 A written notice of appeal shall be filed within forty-five (45) days after a copy of the final order
973 was received by the appealing party. The written notice may be delivered by means of electronic
974 communication, provided that the stated clerk certifies receipt of the notice, which may also be
975 communicated electronically. If filing the notice electronically, care should be taken to deliver the notice
976 in a manner that can clearly demonstrate timely filing. By written agreement of the parties, all additional
977 filings may be electronic. The appealing party shall provide a copy of the written notice of appeal to the
978 stated clerk of the council whose permanent judicial commission issued the ruling, as well as to the
979 stated clerk of the council that would hear the appeal, who shall distribute the notice to the other party or
980 parties.
981

982 *D-6.0202 Items to be Included*

- 983
984 a. the name of the party filing the appeal (the appellant or appellants) and their counsel, if
985 any;
986
987 b. the name of the other party (the appellee or appellees) and their counsel, if any;
988
989 c. the council from whose decision the appeal is taken;
990

991 d. the actual ruling being appealed from, including the date and place thereof, and a copy of
992 the ruling; and
993

994 e. a statement and description of the errors alleged to have been made in the ruling that are
995 the grounds for the appeal. The grounds for which an appeal may be filed are:

- 996
- 997 (1) irregularity in the proceedings;
 - 998
 - 999 (2) refusing a party reasonable opportunity to be heard or to obtain or present
1000 evidence;
 - 1001
 - 1002 (3) receiving improper, or declining to receive proper, evidence or testimony;
 - 1003
 - 1004 (4) hastening to file an appeal before the evidence or testimony is fully received;
 - 1005
 - 1006 (5) manifestation of prejudice in the conduct of the case;
 - 1007
 - 1008 (6) injustice in the process or decision; and
 - 1009
 - 1010 (7) error in constitutional interpretation.
 - 1011

1012 f. A certification that a copy of the notice of appeal was received by the stated clerk of the
1013 council whose permanent judicial commission would hear the appeal, which may be in the form of an
1014 electronic communication.
1015

1016 **D-6.03 Obligation of General Assembly Permanent Judicial Commission**

1017

1018 The General Assembly Permanent Judicial Commission is not obligated to accept any appeal of
1019 preliminary determinations under D-4.05 in a remedial case where a trial was not held, provided that the
1020 initial decision has already been reviewed as an appeal to the synod. Refusal to accept an appeal does
1021 not constitute a decision on the merits of the original complaint or the appeal. Notice of the refusal shall
1022 be delivered to the parties and to the stated clerk of the synod from whose permanent judicial
1023 commission the appeal was taken.
1024

1025 **D-6.04 Duty of Stated Clerk**

1026

1027 Upon receipt of the written notice of appeal, the stated clerk of the council that will hear the appeal
1028 shall transmit it to the officers of that council's permanent judicial commission.
1029

1030 **D-6.05 Effect of Appeal**

1031

1032 *D-6.0501 If No Stay of Enforcement*

1033

1034 The filing of a notice of appeal shall not suspend any action of a council taken to implement the
1035 ruling being appealed unless a stay of enforcement was obtained with the original complaint, or one is

1036 obtained as described in the next paragraph, in which case the implementation of the ruling being
1037 appealed is stayed until the appeal is finally disposed of.

1038
1039 *D-6.0502 Seeking Stay of Enforcement*

1040
1041 If no stay of enforcement was in place when the ruling being appealed was rendered, one may be
1042 requested by means of a request filed along with the notice of appeal in any of the methods described in
1043 D-4.04, and processed as described in D-4.05 or D-4.06.

1044
1045 **D-6.06 Withdrawal of Appeal**

1046
1047 The parties in a remedial appeal are encouraged to seek resolution of their differences in a manner
1048 acceptable to all parties. If at any time in the appeal process the parties to a remedial appeal jointly file
1049 with the stated clerk of the council hearing the appeal a petition for the withdrawal of the appeal, the
1050 stated clerk shall inform the members of the permanent judicial commission that the appeal has been
1051 withdrawn, which shall end the judicial process unless within seven (7) days any member of the
1052 permanent judicial commission challenges the withdrawal. If the withdrawal is so challenged, a majority
1053 of the commission at a duly constituted meeting may conclude that the withdrawal would defeat the ends
1054 of justice and deny the request.

1055
1056 **D-6.07 Preliminary Process**

1057
1058 *D-6.0701 Examination of Notice of Appeal*

1059
1060 Upon receiving the notice of appeal, the officers of the permanent judicial commission of the council
1061 that will hear the appeal shall promptly examine the notice of appeal to determine whether:

- 1062
1063 a. the council has jurisdiction;
1064
1065 b. the appellant has standing to file the appeal;
1066
1067 c. the appeal was timely and properly filed; and
1068
1069 d. the appeal states and describes one or more of the grounds for appeal listed in D-6.0201d.

1070
1071 *D-6.0702 Preliminary Ruling*

1072
1073 The officers of the permanent judicial commission shall report their determinations to the parties and
1074 to the members of the commission in a preliminary ruling.

1075
1076 *D-6.0703 Challenge to Preliminary Ruling*

1077
1078 Within thirty (30) days after their receipt of the determination, the parties and members of the
1079 permanent judicial commission may challenge the determination, in which case opportunity shall be
1080 provided for the parties to present evidence and argument on the determination(s) in question. A hearing
1081 may be requested by either party for the purpose of hearing the challenge, or if the parties agree, the

1082 matter may be decided by the permanent judicial commission on the basis of documents submitted by
1083 the parties. If a hearing is requested, it should be held at least thirty (30) days prior to the hearing on the
1084 appeal, unless the officers of the permanent judicial commission determine that the circumstances,
1085 including expenditures of time and resources, warrant disposition of the challenge immediately prior to
1086 the hearing on the appeal. If the permanent judicial commission determines the answer to any of the four
1087 preliminary questions has been answered in the negative, the commission shall dismiss the appeal.
1088

1089 *D-6.0704 When No Challenge is Received*

1090
1091 a. If no challenge is made to the determinations of the officers that one or more points are
1092 answered in the negative, the case shall be dismissed without further action or order of the permanent
1093 judicial commission.
1094

1095 b. If no challenge is made to the determinations of the officers that all of the points are
1096 answered in the affirmative, the stated clerk of the council shall schedule a hearing at a time acceptable
1097 to the parties and at which a quorum of the commission can be present.
1098

1099 **D-6.08 Record of the Case**

1100
1101 *D-6.0801 List of Papers*

1102
1103 Within forty-five (45) days after receipt of a notice of appeal, the stated clerk of the lower council
1104 shall list in writing to the parties all of the papers and other materials that would constitute the record of
1105 the case (see D-5.1001d & e). Within fifteen (15) days thereafter, either party may challenge the
1106 completeness or accuracy of the record as listed by the stated clerk. The stated clerk may, but is not
1107 required, to amend the list at the request of a party; however, any such challenge shall be added to the
1108 record when it is filed.
1109

1110 *D-6.0802 Filing of Record on Appeal*

1111
1112 Upon notice by the stated clerk of the council whose permanent judicial commission will hear the
1113 appeal that the case has been accepted, the stated clerk of the council from whose ruling the appeal is
1114 taken shall compile and file the record of the case with the stated clerk of the higher council, who shall
1115 distribute it to the members of the permanent judicial commission.
1116

1117 *D-6.0803 Correction of the Record*

1118
1119 If anything material to either party is omitted from the record by error or accident, or is misstated
1120 therein, the omission or misstatement may be corrected. The parties may stipulate to the correction, or
1121 the stated clerk of the lower council may certify and transmit a supplemental record, or the permanent
1122 judicial commission of the higher council may direct that the omission or misstatement be corrected.
1123 All other questions as to the form and content of the record shall be presented to the permanent judicial
1124 commission of the higher council, which shall be decided by majority vote at a duly constituted meeting,
1125 which may occur immediately prior to the hearing on the appeal.
1126

1127 **D-6.09 Briefs**

1128
1129 *D-6.0901 Filing of Appellant Brief*
1130

1131 Within thirty (30) days after the date of receiving the record on appeal, the appellant shall file with
1132 the stated clerk of the higher council a written brief containing specifications of the errors alleged in the
1133 notice of appeal and arguments, reasons, and citations of authorities in support of the appellant's
1134 contentions. Copies of the brief shall be distributed by the stated clerk to the members of the
1135 commission and to the parties.

1136
1137 *D-6.0902 Failure of Appellant to File Brief*
1138

1139 Failure of the appellant to file a brief within the timeline allowed, without good cause, shall be
1140 deemed by the permanent judicial commission as an abandonment of the appeal.

1141
1142 *D-6.0903 Filing of Appellee Brief*
1143

1144 a. Within thirty (30) days of the receipt of the appellant's brief, the appellee shall file with
1145 the stated clerk of the council whose permanent judicial commission will hear the appeal a brief in
1146 response to the appellant's brief.

1147
1148 b. In its brief, an appellee may raise additional issues related to the decision being appealed.
1149 Copies of the brief shall be distributed by the stated clerk to the members of the commission and to the
1150 parties.

1151
1152 *D-6.0904 Failure of Appellee to File Brief*
1153

1154 Failure of the appellee to file a brief within the time allowed, without good cause, shall constitute
1155 waiver of the rights to file a brief, to appear, and to be heard.

1156
1157 *D-6.0905 Appellant Supplemental Brief*
1158

1159 If additional issues are raised by the appellee, then the appellant may file within thirty (30) days a
1160 supplemental brief in response to those issues, in the same manner as its original brief was filed.

1161
1162 **D-6.10 Extensions**
1163

1164 For good cause shown, the stated clerk of the higher council may extend any of the time limits
1165 contained in this section for a reasonable period.

1166
1167 **D-6.11 Transmittal of Record and Briefs**
1168

1169 Upon receipt of the record and the briefs, or upon the expiration of the time for filing them, the
1170 stated clerk of the higher council shall transmit the record and briefs to the clerk of the permanent
1171 judicial commission.

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1173 **D-6.12 Prehearing Conference**

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At any time after an appeal has been received by a permanent judicial commission, the commission may determine or may provide by rule for the parties or their counsel, if any, in a prehearing conference, to seek agreement on any of the disputed issues in the appeal, and to take other action which might reasonably and impartially narrow the dispute and expedite its resolution. Such conference may also result in a settlement agreement including a request for withdrawal of the appeal, which is then processed in accordance with D-6.06.

D-6.13 Hearing of Appeal

D-6.1301 Hearing Process

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

- a. determine whether to receive newly discovered evidence, in accordance with the provisions of D-5.0904b, providing for the verbatim recording of such new evidence; and
- b. give opportunity to be heard on the grounds of the appeal to those parties who have not waived that right. The appellant has the right of opening and closing the argument.

D-6.14 Decision of the Permanent Judicial Commission

D-6.1401 Standard of Review

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

D-6.1402 Voting Procedure

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

D-6.1403 Decision

The decision of the permanent judicial commission shall include the determination of errors specified, and state the remedy as provided in D-6.0101. The permanent judicial commission may prepare its decision in a manner that will dispose of all substantive questions without redundancy. It should include an explanation of its determinations.

- 1220 a. Decisions of permanent judicial commissions other than the General Assembly's
1221 Permanent Judicial Commission are binding only on the parties to the case.
1222
- 1223 b. If none of the specifications of error is sustained, and no other error is found, the decision
1224 of the lower council shall be affirmed.
1225
- 1226 c. If one or more errors are found, the permanent judicial commission shall determine
1227 whether the decision of the lower council shall be affirmed, modified, set aside, reversed, or the case
1228 remanded for a new trial.
1229
- 1230 d. The questions presented for decision shall be fully debated and voted upon while all
1231 participating commission members are present. A written outline of a decision shall be prepared while in
1232 session. A written decision shall be reviewed by all participating members of the panel, which may take
1233 place either while the participating commission members are present or by meeting within ten (10) days
1234 either in person, or by appropriate electronic means if authorized in the council's manual of
1235 administrative operations.
1236
- 1237 e. The decision shall become the final decision when a copy of the written decision is
1238 signed by the moderator and clerk of the permanent judicial commission. A copy of the decision shall
1239 immediately be delivered to the parties to the case by personal service, certified delivery, or electronic
1240 communication if agreed upon in advance by the parties.
1241

CHAPTER VII

DISCIPLINARY PROCESS

D-7.01 Disciplinary Process

D-7.0101 Purpose

The disciplinary process provides for the accountability of individuals to the church. When it is alleged that trust is broken by an individual, it is important to restore that trust within the community of faith. Church discipline is not punishment; rather, it is the exercise of authority given by Christ, both to guide, control, and nurture the church's members and for the constructive criticism of offenders. The purpose of the discipline is to honor God by making clear the significance of membership in the body of Christ, to achieve justice and compassion for all participants involved, to correct or restrain wrongdoing in order to bring members to repentance and restoration where possible, to restore peace and unity in the body of Christ, and to secure the just, speedy, and economical determination of proceedings.

D-7.0102 Initiation

The disciplinary process begins when a written statement that alleges an offense is submitted to the clerk of session or stated clerk of the presbytery having jurisdiction over the member. If, after investigation and trial, the offense is proved true, the person found guilty is subject to censure by the Presbyterian Church (U.S.A.). Allegations may be brought regardless of the date on which an offense is alleged to have occurred.

D-7.0103 Definition of an Offense

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

D-7.02 Filing an Allegation

D-7.0201 Allegation

a. Who May File

Any member of the Presbyterian Church (U.S.A.) may file a written allegation against a member of a congregation of the Presbyterian Church (U.S.A) or a minister of the Word and Sacrament. Anyone who is not a member of the Presbyterian Church (U.S.A.) may request that a member file a written allegation on their behalf.

b. Contents of Allegation

The allegation shall include:

- 1289 (1) a written statement of the alleged offense or offenses; and
1290
1291 (2) facts which, if proved true, would likely result in censure.
1292

1293 c. Submitting an Allegation
1294

1295 An allegation shall be submitted in writing to the clerk or stated clerk of the council with
1296 jurisdiction over the individual who is accused.
1297

1298 (1) If the allegation is against a member of a congregation not serving as a
1299 commissioned pastor at the time of the alleged offense, the allegation shall be sent to the clerk of
1300 session with jurisdiction over the accused member.
1301

1302 (2) If the allegation is against a minister member of a presbytery or a commissioned
1303 pastor in validated ministry at the time of the alleged offense, the allegation shall be sent to the
1304 stated clerk of the presbytery with jurisdiction over the accused member of the presbytery or
1305 commissioned pastor.
1306

1307 d. Members Receiving Allegations from Any Source
1308

1309 Members of the Presbyterian Church (U.S.A.) who receive an allegation from any source against
1310 a member of the Presbyterian Church (U.S.A.) should file a written allegation with the clerk or stated
1311 clerk of the council with jurisdiction over the individual who is accused. Clerks of session and stated
1312 clerks who receive a written statement of offense from a non-member of the Presbyterian Church
1313 (U.S.A.) that contains sufficient information to allow an investigation and to suggest that an offense has
1314 been committed, should file a written allegation.
1315

1316 e. Self-Accusation
1317

1318 An individual member of the Presbyterian Church (U.S.A.) may self-accuse by filing an
1319 allegation oneself with the clerk or stated clerk of the council with jurisdiction over the individual
1320 member.
1321

1322 *D-7.0202 Initiating a Request for Vindication*
1323

1324 A member of the Presbyterian Church (U.S.A) who feels injured by a rumor or gossip which is
1325 from an unidentified source or is from a source not accountable to the Presbyterian Church (U.S.A.) may
1326 request an investigation for the purpose of vindication. Request for vindication should not be used for
1327 matters that can be resolved by filing an allegation.
1328

1329 a. A member requesting vindication shall submit a written statement of the rumor or gossip
1330 to the clerk or stated clerk of the council with jurisdiction over the member.
1331

1332 b. The council shall appoint an investigating committee in accordance with its rule.
1333

1334 c. The investigating committee shall conduct an inquiry to ascertain the facts and
1335 circumstances and shall either:

1336
1337 (1) report its determinations in writing to the council within one year of being formed.
1338 The council will include the written report in its minutes and that will conclude the matter, or

1339
1340 (2) file charges as described in D-7.14 with the session or permanent judicial
1341 commission against the individual who initiated the investigation if the investigating committee
1342 finds that a comparison and consideration of all the evidence compels an abiding conviction that
1343 the material facts necessary to prove the charge are true that the individual has committed an
1344 offense contrary to Scripture or the Constitution of the Presbyterian Church (U.S.A.).

1345 1346 **D-7.03 Jurisdiction**

1347 *D-7.0301 Rules of Jurisdiction*

1348 Each council is responsible for the discipline of its members and has primary jurisdiction over any
1349 allegation against one of its members including any trial (church members to their sessions and ministers
1350 of Word and Sacrament to their presbyteries) except as provided herein.

1351
1352 a. Ruling elders commissioned to service by presbyteries are accountable as provided in D-
1353 7.0201c(2).

1354
1355 b. When ministers of the Word and Sacrament are engaged in work within the geographic
1356 bounds of a presbytery other than the presbytery of membership, the presbytery of membership may
1357 request the presbytery within whose bounds the member works to investigate any allegation and file a
1358 report of the investigation with the stated clerk of the presbytery of membership and cooperate with the
1359 presbytery of membership in any disciplinary inquiry, alternative form of resolution, or trial.

1360
1361 c. If an allegation includes facts that originated within a council other than the council with
1362 jurisdiction over the individual who is accused, the councils involved shall appoint a joint investigating
1363 committee. The expenses of the joint investigating committee shall be shared by the councils involved.

1364
1365 d. If the council of jurisdiction fails to act in a particular case for a period of sixty (60) days
1366 after the filing of charges in a disciplinary case, the next higher council, on the request of any party, may
1367 assume jurisdiction in the case. It may either issue specific instructions to the lower council as to its
1368 disposition or conclude the matter itself.

1369
1370 e. Jurisdiction in a disciplinary process ends when a church member or a minister of the
1371 Word and Sacrament against whom an allegation has been filed renounces the jurisdiction of the
1372 Presbyterian Church (U.S.A.) in accordance with G-2.0407 or G-2.0509, in which case the clerk of
1373 session or stated clerk shall report to the council both the renunciation and the status of the matter at that
1374 time, including the name of the accused, the date and fact of renunciation during an investigation or trial,
1375 and the charges, if filed.

1376 1377 1378 1379 **D-7.04 Reference**

1380
1381 *D-7.0401 Definition of Reference*
1382

1383 A reference in a disciplinary process is a written request, made by a session or a permanent judicial
1384 commission of a presbytery or synod to the permanent judicial commission of the next higher council to
1385 assume jurisdiction of the case, for:

- 1386
1387 a. investigation of an alleged offense and all subsequent proceedings (D-7.05 and
1388 following),
1389
1390 b. proceedings subsequent to the filing of charges (D-7.14 and following), or
1391
1392 c. a hearing on the appeal of a disciplinary case from a lower council.
1393

1394 *D-7.0402 Duty of Lower Council*
1395

1396 With its written request for reference to a higher council, the lower council shall specify its reasons
1397 for the request and transmit the entire record of proceedings in the case and shall take no further action
1398 thereon. If the reference is accepted, all proceedings, including the trial or hearing on appeal, shall
1399 thereafter be held in the higher council.
1400

1401 *D-7.0403 Duty of Higher Council*
1402

1403 Upon receipt of a request for reference, the stated clerk of the higher council shall transmit the
1404 request to the permanent judicial commission for a decision whether or not to accept the case.
1405

1406 *D-7.0404 Action on Request*
1407

- 1408 a. If the permanent judicial commission decides to accept the reference, it shall instruct the
1409 stated clerk to proceed with the appointment of an investigating committee, if needed. The permanent
1410 judicial commission shall conduct the trial or hearing on appeal.
1411
1412 b. The higher council's permanent judicial commission may decline to accept the case for
1413 reference and return it to the lower council, stating its reasons. The session or permanent judicial
1414 commission of the lower council shall conduct the investigation, trial, or hearing on appeal and proceed
1415 to a decision.
1416

1417 **D-7.05 Investigation**
1418

1419 *D-7.0501 Referral to Investigating Committee*
1420

1421 When a clerk of session or the stated clerk of a presbytery receives an allegation, without
1422 undertaking further inquiry, that clerk shall then report to the council only that an offense has been
1423 alleged without naming the accused or the nature of the alleged offense and refer the statement
1424 immediately to an investigating committee.
1425

- 1426 a. Sessions may and presbyteries shall provide by rule for the appointment of an
1427 investigating committee.
1428

1429 b. If a session is notified of the receipt of an allegation, it shall determine whether to
1430 proceed with an investigation or request a reference to the presbytery (D-7.04).

1431
1432 c. When an allegation is received by a clerk of session or a stated clerk other than the one of
1433 the council having jurisdiction over the member, it shall be the duty of the clerk of that session or the
1434 stated clerk of that presbytery to submit the written statement to the clerk of session or the stated clerk of
1435 the presbytery having jurisdiction over the member. The involved councils shall proceed cooperatively
1436 with judicial process (D-7.0301c).

1437
1438 d. A session shall not grant a transfer of membership to a member, nor shall a presbytery
1439 grant transfer of membership to a minister of the Word and Sacrament, while an inquiry or charges are
1440 pending. The reasons for not granting transfer of membership may be communicated by the clerk of
1441 session or the stated clerk of the presbytery to the appropriate persons.

1442 **D-7.06 Membership of the Investigating Committee**

1443
1444 An investigating committee shall have no more than five but no fewer than three members, and may
1445 include members from another council. Sessions shall not appoint elders currently on the session to an
1446 investigating committee. All members of an investigating committee shall be members of the PC(USA).

1447 **D-7.07 Expenses of the Investigating Committee**

1448
1449 The expenses of an investigating committee shall be paid by the council which designates it. In cases
1450 where the investigation is shared in accordance with D-7.0301d, expenses shall be shared.

1451 **D-7.08 Allegations of Sexual Abuse**

1452 *D-7.0801 Definition*

1453
1454 Sexual abuse is any offense involving sexual conduct in relation to any person under the age of
1455 eighteen years or anyone without the capacity to consent, or any person when the conduct includes
1456 force, threat, coercion, intimidation, or misuse of ordered ministry or position. Sexual abuse is contrary
1457 to the Scriptures and the Constitution of the Presbyterian Church (U.S.A.), and is therefore always an
1458 offense for the purpose of discipline.

1459 *D-7.0802 Administrative Leave*

1460
1461 a. When an allegation of sexual abuse as defined in D-7.0801 toward any person has been
1462 received against a minister of the Word and Sacrament, the stated clerk receiving the allegation shall
1463 immediately communicate the allegation to the three members designated in accordance with D-3.0102.

1464
1465 b. Regardless of the employment status of the minister of the Word and Sacrament, the
1466 members designated in accordance with D-3.0102, shall determine as quickly as possible, after
1467 reviewing the written allegations and providing the accused the opportunity to be heard, whether the risk
1468 to a congregation and/or to other potential victims of abuse requires administrative leave or other
1469 restrictions upon the minister's service, when considered in light of the nature and probable truth of the
1470 allegations. Such administrative leave or restrictions will continue until either the matter is resolved in
1471 one of the ways prescribed in the disciplinary process or until the leave or restrictions are altered or
1472 removed by the members of the commission.

1478
1479 *D-7.0803 Effect of Administrative Leave*
1480

1481 While administrative leave is in effect, the minister of the Word and Sacrament shall not perform
1482 any pastoral, administrative, educational, or supervisory duties, and shall not officiate at any functions
1483 such as baptism, funerals, or weddings. The effect of administrative leave for a minister of the Word and
1484 Sacrament in a validated ministry beyond the jurisdiction of the Presbyterian Church (U.S.A.) is the
1485 suspension of the validation of the ministry until the matter is resolved, which shall be communicated to
1486 the employer by the stated clerk of the presbytery.
1487

1488 *D-7.0804 If Leave is Not Required*
1489

1490 If the designated members of the commission determine that no administrative leave or restriction is
1491 required, the investigating committee appointed to investigate the allegations shall be free at any point in
1492 its investigation to present additional evidence to the designated members supporting the imposition of
1493 administrative leave or other restrictions.
1494

1495 *D-7.0805 Presbytery Policies on Administrative Leave*
1496

1497 Nothing in this section shall preclude a presbytery from establishing its own rules for administrative
1498 leave or other restrictions on a minister's service in situations not involving alleged sexual abuse where
1499 it finds the church's mission under the Word imperatively demands such protection from possible harm.
1500

1501 **D-7.09 Rights and Responsibilities of the Persons in an Investigation**
1502

1503 *D-7.0901 Rights of the Accuser*
1504

1505 The investigating committee shall inform the person submitting the allegation of the right to be
1506 accompanied by an advocate at each and every conference between the person submitting the allegation
1507 and the investigating committee, the prosecuting committee, and the session or permanent judicial
1508 commission. The role of the advocate is to provide support and pastoral care.
1509

1510 *D-7.0902 Rights of Those Alleged to Have Been Harmed*
1511

1512 The investigating committee shall notify all persons alleged to have been harmed by the offense of
1513 their right to be accompanied by an advocate at each and every meeting with the investigating
1514 committee, the prosecuting committee, and the session or permanent judicial commission. The role of
1515 the advocate is to provide support and pastoral care.
1516

1517 *D-7.0903 Rights of the Accused*
1518

1519 At the beginning of each and every conference with an investigating committee or any of its
1520 members, the person against whom an allegation has been made shall be informed by the investigating
1521 committee of the right to remain silent, and to be represented by counsel. If charges are later filed, the
1522 person against whom charges have been filed has the right to be represented by counsel (D-8.0101) and
1523 the right to have counsel appointed if unable to afford counsel.
1524

1525 *D-7.0904 Responsibilities of All Participants*
1526

1527 All participants in an investigation have the responsibility to work cooperatively in the investigation.
1528 This includes, but is not limited to, the preservation of records which may be pertinent, and maintaining
1529 appropriate confidentiality throughout the process (see D-7.1003).
1530

1531 **D-7.10 Investigating Process**

1532
1533 *D-7.1001 Preliminary Review*
1534

- 1535 a. The investigating committee shall review the allegation to determine whether it alleges
1536 any facts that, if true, constitute an offense, as defined in D-7.0103.
1537
- 1538 b. If no offense is alleged, the investigating committee shall report this fact to the clerk of
1539 the council.
1540
- 1541 c. If the investigating committee determines that the allegation repeats allegations
1542 previously made against the accused, it shall report to the clerk of the council that it will not file charges
1543 unless the allegation contains new information warranting investigation or is the subject of an
1544 investigation that has not been concluded.
1545
- 1546 d. The clerk shall communicate the decision not to move to an investigation to the person
1547 who filed the allegation and to the person against whom the allegation was filed.
1548
- 1549 e. Within thirty (30) days of receipt of the report, the person who submitted the allegation
1550 may petition the session or permanent judicial commission for a review of the decision of the
1551 investigating committee not to file charges (D-7.1302).
1552

1553 *D-7.1002 Notification to Participants*
1554

1555 If the investigating committee determines that an offense as defined in D-7.0103 is alleged, the
1556 investigating committee shall, as quickly as it is practical,
1557

- 1558 a. notify the accused in writing of:
1559
 - 1560 (1) the date of the investigating committee’s first meeting, which begins the one-year
1561 timeline (D-7.1402f);
1562
 - 1563 (2) the reason for the investigation, including a copy of the statement of alleged
1564 offense, excluding the name of the accuser at the discretion of the investigating committee;
1565
 - 1566 (3) the confidentiality of the investigating process; and
1567
 - 1568 (4) the rights and responsibilities of the accused defined in D-7.0903.
1569
- 1570 b. notify the person making the allegation in writing of:
1571
 - 1572 (1) the date of the investigating committee’s first meeting which begins the one-year
1573 timeline (D-7.1402f.);
1574
 - 1575 (2) the confidentiality of the investigating process;

- 1576
1577 (3) the rights and responsibilities of the accuser as defined in D-7.0901; and
1578
1579 (4) the investigating committee's commitment to keep the person making the
1580 allegation informed as the investigation proceeds.
1581

1582 *D-7.1003 Conduct of Investigation*
1583

1584 The investigating committee shall make a thorough inquiry into the facts and circumstances of the
1585 alleged offense. The investigation is presumed to be confidential. Information is shared only on a need
1586 to know basis as determined by the investigating committee in consultation with the clerk or stated clerk
1587 of the council. In the event that information is shared, it shall be stated that the accused is presumed
1588 innocent. The investigating committee shall keep the clerk or stated clerk of the council informed of its
1589 progress in the process.
1590

1591 The investigating committee shall:
1592

- 1593 a. examine all relevant papers, documents, and records available to it;
1594
1595 b. ascertain all available witnesses who have knowledge of the alleged offense-and inquire
1596 of them;
1597
1598 c. determine, in accordance with G-3.0102 and D-7.0103, whether there are reasonable
1599 grounds to believe that an offense was committed by the accused;
1600
1601 d. decide whether the offense alleged can be proved so that the comparison and
1602 consideration of all the evidence compels an abiding conviction that the material facts necessary to
1603 prove the charge are true.
1604
1605 e. report to the council having jurisdiction over the accused, or in the case of a joint
1606 investigation, report to both councils, only whether or not the investigating committee will file charges;
1607
1608 f. if charges are to be filed, prepare them in accordance with the procedures described in D-
1609 7.1402 and designate one or more of its members to prosecute the case; and
1610
1611 g. determine if alternate resolution to a trial on the charges should be pursued (see D-7.15).
1612

1613 *D-7.1004 Request for Reference*
1614

1615 If within sixty (60) days of its first meeting the investigating committee determines that it is unable
1616 for any reason to conduct a thorough and fair investigation, it may ask the council to request a reference
1617 in accordance with D-7.04.
1618

1619 **D-7.11 Review of Investigating Procedures**
1620

1621 *D-7.1101 Petition for Review*
1622

1623 a. At any time during the course of the investigation, the person against whom an allegation
1624 has been made may petition the permanent judicial commission to review procedures of the
1625 investigating committee.
1626

1627 b. The subject of such a petition shall be limited to whether the committee has followed a
1628 proper trail of evidence, whether the evidence being considered is properly in the hands of the
1629 investigating committee, and whether the committee has examined relevant evidence proposed by the
1630 accused.
1631

1632 c. The review shall be conducted by the three members of the permanent judicial
1633 commission designated in accordance with D-3.0102. The review may include a hearing at the
1634 discretion of the three designated members at which the investigating committee and the accused may
1635 appear. The review shall be completed within forty-five (45) days and the decisions shall be
1636 communicated to the investigating committee, the accused, and the moderator and the clerk of the
1637 permanent judicial commission.
1638

1639 **D-7.12 Communication of Results of an Investigation**

1640 *D-7.1201 Investigating Committee Conclusion*

1641 The investigating committee may determine:

- 1642 a. not to file charges,
- 1643 b. to file charges and proceed to trial, or
- 1644 c. to file charges together with an alternative resolution.

1645 **D-7.13 If Charges Are Not Filed**

1646 *D-7.1301 Written Report*

1647 If no charges are filed, the investigating committee shall file a written report of that fact alone with
1648 the clerk of session or stated clerk of the presbytery. The clerk of session or stated clerk of the
1649 presbytery shall notify the person who submitted the allegation that charges will not be filed.
1650

1651 *D-7.1302 Review of Decision*

1652 a. Within thirty (30) days of receipt of the report, the person who submitted the allegation
1653 may petition the permanent judicial commission to review the decision of the investigating committee
1654 not to file charges.
1655

1656 b. The petition shall allege those instances in which the investigating committee has not
1657 fulfilled the duties specified in D-7.10.
1658

1659 c. The investigating committee shall submit a written response to the facts alleged in the
1660 petition within thirty (30) days.
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1671 d. The members of the permanent judicial commission designated in accordance with D-
1672 3.0102 shall consider the petition and the response, giving attention to the duties specified in D-7.10 and
1673 to the question of whether the principles of the disciplinary process will be preserved by the decision of
1674 the investigating committee not to file charges. The decision of the designated members of the
1675 commission upon the petition and response shall be rendered within ninety (90) days.
1676

1677 e. If the designated members sustain the petition, a new investigating committee shall be
1678 appointed by the session or presbytery.
1679

1680 f. If the designated members do not sustain the petition, or if a second investigating
1681 committee determines not to file charges, the disciplinary process is concluded. The disposition of the
1682 investigating committee's records shall be in accordance with session or presbytery policy for a
1683 minimum of ten years.
1684

1685 **D-7.14 If Charges Are Filed**

1686 *D-7.1401 Duties of the Investigating Committee*

1687 If the investigating committee decides to file charges, it shall:
1688

- 1689
- 1690 a. inform the accused in writing that charges will be filed, and list each charge separately;
 - 1691 b. include a summary of the facts it expects to prove at trial to support the charges; and
 - 1692 c. designate one or more of its members to serve as the prosecuting committee. The
1693 prosecuting committee shall prosecute the case and represent the church during any appeals. The
1694 prosecuting committee may include additional members at the council's discretion.
1695

1696 *D-7.1402 Charges*

- 1697
- 1698 a. Each charge shall state only one offense.
1699
 - 1700 b. An offense is any act or omission by a member of a congregation or a minister of the
1701 Word and Sacrament that is contrary to the Scriptures or the Constitution of the Presbyterian Church
1702 (U.S.A.) as defined in D-7.0103.
1703
 - 1704 c. Each charge shall state the specific provision or provisions of Scripture and/or the
1705 Constitution that have been violated.
1706
 - 1707 d. Each charge shall be numbered, and state (as far as possible) the time, place and
1708 circumstances of the commission of the offense. Multiple occurrences of the same offense may be
1709 consolidated in one charge.
1710
 - 1711 e. Each charge shall be accompanied by a summary of the facts expected to be proved at
1712 trial.
1713
 - 1714 f. Filing Deadlines.
1715
1716
1717
1718

1719 (1) Charges shall be filed within one year of the date of the first meeting of the
1720 investigating committee, unless civil proceedings have commenced during the investigation.

1721
1722 (2) In the event of civil proceedings, an investigating committee may request of its
1723 session or permanent judicial commission an extension of its time to file charges of up to six
1724 months from the conclusion of any investigation or resulting trial undertaken by the civil
1725 authorities. The clerk of session or stated clerk shall maintain contact with the civil authorities
1726 and shall notify the investigating committee when such civil proceedings have concluded.

1727
1728 g. The investigating committee shall file the charges with the clerk of session or the stated
1729 clerk of the presbytery.

1730
1731 (1) If the charges are filed with the clerk of session, upon its receipt, the clerk shall
1732 present the charges to the session at its next meeting and determine whether it will try the case or
1733 request a reference to the presbytery (D-7.04).

1734
1735 (2) If the charges are filed with the stated clerk of the presbytery, the stated clerk
1736 shall immediately forward the charges to the permanent judicial commission.

1737 1738 **D-7.15 Alternative Resolution**

1739 1740 *D-7.1501 Initiation of Alternative Resolution*

1741
1742 If it deems appropriate, the investigating committee may initiate alternative resolution after the
1743 investigation has been completed, the charges have been drafted, and the accused has agreed to plead
1744 guilty, but before the charges have been filed.

1745
1746 The outcome of any alternative resolution shall be a signed agreement between the accused and the
1747 investigating committee, to be filed alongside the charges with the session or the permanent judicial
1748 commission. Terms of an alternative resolution shall be agreed upon and submitted within the one-year
1749 time limit for filing charges.

1750 1751 *D-7.1502 Forms of Alternative Resolution*

1752
1753 a. At the discretion of the investigating committee, in those instances where the accused
1754 will plead guilty, taking responsibility for harm done, and the accuser or the person(s) on whose behalf
1755 an accuser has filed an allegation are willing to find outcomes that repair damage and address the
1756 reasons for the offense, the investigating committee can initiate a process of restorative justice to bring
1757 closure to the persons involved and restoration to the community of faith.

1758
1759 b. In those instances where the accused will plead guilty, taking responsibility for harm
1760 done, but the process as described above is not possible or appropriate, the investigating committee may
1761 initiate an alternative resolution in the hope of achieving justice and compassion for all involved and
1762 repentance and restoration to the accused. It shall also take into consideration the broken trust in the
1763 larger community of faith, and the time and energy that will be necessary for its trust to be restored.

1764 1765 *D-7.1503 Mediation in Alternative Resolution*

1766

1767 Mediators, if utilized, should be persons known for calm, wise counsel, and need not be attorneys or
1768 certified mediators. Anyone serving as a mediator must be familiar with the Church Discipline of the
1769 Presbyterian Church (U.S.A.). Presbyteries may identify in advance mediators and persons with
1770 experience in the restorative justice process to be called on to assist with alternative resolution when
1771 needed. Any fees for mediation shall be negotiated in advance and paid for by the council of
1772 jurisdiction.

1773
1774 *D-7.1504 Reporting Requirement*

1775
1776 The investigating committee shall report any agreement for alternative resolution to the session or
1777 permanent judicial commission for its approval together with the charges to be filed.

1778
1779 *D-7.1505 Session or Permanent Judicial Commission Action*

1780
1781 The session or permanent judicial commission shall convene to:

- 1782
1783 a. receive the agreement and the charges together with a statement of the investigating
1784 committee's rationale for adoption of the agreement;
- 1785
1786 b. vote to approve it by at least two-thirds of the members eligible to vote (D-3.0602);
- 1787
1788 c. make a record of its proceedings according to the provisions of D-8.1201d, including the
1789 name of the accused, the substance of the charge(s), and censure if any; and
- 1790
1791 d. transmit its decision to the clerk of session or the stated clerk, who shall report it
1792 according to the provisions of D-9.0102.
- 1793
1794 e. If the session or permanent judicial commission does not approve the alternative
1795 resolution agreement by a two-thirds vote, the investigating committee may seek another alternative
1796 resolution to present to the permanent judicial commission within the one-year deadline or proceed with
1797 the filing of charges, or
- 1798
1799 f. if an alternative resolution agreement is not reached, the investigating committee shall
1800 designate a prosecuting committee and the matter shall proceed on the charges filed.
- 1801
1802

1803 **CHAPTER VIII**

1804 **TRIAL IN A DISCIPLINARY CASE**

1805 **D-8.01 Pretrial Procedures**

1806 *D-8.0101 Parties*

1807 All disciplinary cases shall be filed and prosecuted by a council through a prosecuting committee in
1808 the name of the Presbyterian Church (U.S.A.). The prosecuting committee is the representative of the
1809 church and, as such, has all of the rights of the appropriate council in the case. The only parties in a
1810 disciplinary case are the prosecuting committee and the accused.

1811 *D-8.0102 Pretrial Conference*

1812 A pretrial conference shall be scheduled, which may be held electronically.

1813 a. The session or permanent judicial commission which is to try the case shall hold a
1814 pretrial conference no later than forty-five (45) days after confirmation of the receipt of the charge(s).
1815 The moderator and clerk of the session, or their designees, or the moderator and clerk of the permanent
1816 judicial commission, or their designees, shall set a date, time and place for the pretrial conference, and
1817 conduct it on the session's or commission's behalf.

1818 b. The clerk of session or the stated clerk shall notify the accused, the counsel for the
1819 accused, if any, and the prosecuting committee of the date, time and place of this meeting and request
1820 their presence.

1821 c. The accused is expected to attend the meeting. If the accused is unable or unwilling to
1822 attend, the pretrial conference shall proceed regardless of the accused's absence.

1823 d. At the pretrial conference, the moderator or the moderator's designee shall:

1824 (1) read aloud the Preamble to Church Discipline (D1);

1825 (2) inform the accused of the right to counsel and the right to remain silent
1826 throughout the process;

1827 (3) if the accused is unable to afford counsel, the permanent judicial commission
1828 shall, after reviewing financial records of the accused, appoint counsel for the accused. Fees, if
1829 any, for this representation at the expense of the council shall be agreed upon in writing.

1830 (4) Read the charges to the accused, and;

1831 i. determine with the accused and the prosecuting committee those charges
1832 that are not in dispute and discuss alternatives to a full trial;

1833 ii. hear any challenges to the appropriateness of charges, make
1834 recommendations to dismiss some of the charges, consolidate the charges, or permit
1835 amendments to the charges. The moderator and clerk of the session, or their designees, or

1851 the moderator and clerk of the permanent judicial commission, or their designees, shall
1852 refer all disputes of fact to the trial.

1853
1854 iii. Ask the accused to plead guilty or not guilty to each charge for the record.
1855

1856 (5) Furnish the accused with a description of the records and documents that may be
1857 offered to support each charge, and a list of witnesses then known and their relevance to the
1858 matter at trial; and

1859
1860 (6) review any reports of petitions for review conducted in accordance with D-7.10.
1861

1862 All actions taken at the pretrial conference are preliminary and shall be referred to the session or
1863 permanent judicial commission for approval at trial.

1864
1865 *D-8.0103 Between the Pretrial Conference and the Trial*
1866

1867 a. The moderator of the session or permanent judicial commission shall schedule a trial, or a
1868 censure hearing if the accused pleads guilty to all charges, to be held no sooner than thirty (30) days
1869 following the pretrial conference.

1870
1871 b. At least fifteen (15) days in advance of the trial, the prosecuting committee shall provide
1872 the clerk of session or clerk of the permanent judicial commission and the other party with their list of
1873 witnesses and an outline of the evidence to be presented at trial. The accused shall provide the clerk of
1874 session or clerk of the permanent judicial commission and the other party with a preliminary list of
1875 witnesses. Parties or their representatives shall not contact the other party's witnesses prior to the trial.
1876

1877 c. At any time, the permanent judicial commission shall be open to alternative resolution
1878 between the parties.
1879

1880 **D-8.02 Conduct of Trial**
1881

1882 *D-8.0201 Trial of a Disciplinary Case*
1883

1884 a. The trial of a disciplinary case shall be conducted by a session or permanent judicial
1885 commission of a presbytery. The trial shall be conducted formally with full decorum in a neutral place
1886 suitable to the occasion.
1887

1888 b. The accused in a disciplinary case is presumed to be innocent unless a determination of
1889 guilt is rendered by two-thirds of the session or permanent judicial commission eligible to vote (see D-
1890 3.0602).
1891

1892 **D-8.03 Citations and Testimony**
1893

1894 *D-8.0301 Citations*
1895

1896 Citations to appear at trial for parties or such witnesses as either party may request shall be signed by
1897 the moderator or clerk of the session or the permanent judicial commission and served by the clerk of
1898 the council. Witnesses may be either fact witnesses or expert witnesses (see D-8.0704b).
1899

1900 *D-8.0302 Who May Be Cited*

1901
1902 Only members of the Presbyterian Church (U.S.A.) may be cited to appear. Persons who are not
1903 members of the Presbyterian Church (U.S.A.) and expert witnesses (regardless of their denominational
1904 membership) can only be requested to attend.

1905
1906 *D-8.0303 Witnesses from Another Council*

1907
1908 When it is necessary in the trial to summon witnesses who are under the jurisdiction of another
1909 council of the church, the clerk or stated clerk of the other council shall, on the application of the session
1910 or permanent judicial commission trying the case, through the clerk of the council, issue a citation to the
1911 witnesses to appear at the place of trial and give evidence as may be required.

1912
1913 *D-8.0304 Expenses*

1914
1915 Any witness shall be entitled to receive from the party calling the witness reimbursement for
1916 expenses incurred in attendance at the trial, but this does not constitute a monetary award.

1917
1918 *D-8.0305 Service of Citation*

1919
1920 A citation shall be delivered by personal service, by certified delivery, or by electronic delivery
1921 acknowledged by the recipient within seven (7) days. The moderator or clerk of the session or
1922 permanent judicial commission trying the case shall keep a record of the fact and date of service or
1923 delivery. If a party or a witness who is compelled to attend (D-8.0302) fails to obey a citation to appear
1924 or having appeared, refuses without good cause to testify, and after warning continues to refuse, the
1925 party or witness shall be considered guilty of disobedience and contempt, and for such offense may be
1926 subject to disciplinary action by their council of jurisdiction.

1927
1928 **D-8.04 Electronically Received Testimony**

1929
1930 Witnesses may appear electronically if unable to attend the trial in person, provided that the
1931 technology employed allows witnesses to be seen and heard clearly by the parties and the trial court, and
1932 to respond to their questions. If the parties agree, and with the concurrence of the permanent judicial
1933 commission, the testimony of a witness who is unable to attend the trial may be taken under oath, with
1934 an opportunity for cross-examination, recorded videographically, and may be played and entered into
1935 evidence at the trial. All questions of the admissibility of such evidence shall be determined by the
1936 permanent judicial commission when the recording is offered as evidence.

1937
1938 **D-8.05 Procedures in Trial**

1939
1940 *D-8.0501 Counsel*

1941
1942 Each of the parties in a disciplinary case shall be entitled to appear and may be represented by
1943 counsel. Counsel need not be a paid representative or an attorney-at-law. Counsel shall be a member of
1944 the Presbyterian Church (U.S.A.). No member of a permanent judicial commission shall appear as
1945 counsel before that commission while a member.

1946
1947 *D-8.0502 Circulation of Materials and Communication*

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a. Any materials pertaining to the case shall be filed with the clerk of session or stated clerk of the presbytery. Parties to a disciplinary case or their counsel or any other person shall not circulate or cause to be circulated directly to the members of the session or permanent judicial commission any written, printed, electronic, or visual materials of any kind upon any matter pertaining to the case before its final disposition. Notwithstanding this prohibition, the permanent judicial commission may request, or grant leave to file, additional materials.

b. Parties or their counsel shall not communicate with members of the session or permanent judicial commission regarding any matter related to the case unless the other party and their counsel, if any, are included.

D-8.0503 Control of Conduct of Trial

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

D-8.0504 Procedural Questions

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

D-8.0505 Absences

Members of a session or permanent judicial commission must be present in person at trials. The absence of any member of the session or permanent judicial commission after a trial has commenced shall be recorded. That person shall not thereafter participate in deliberation and decision in the trial.

D-8.0506 Loss of Quorum

Loss of a quorum shall result in a mistrial and the case shall be tried again from the beginning at a time and place to be determined by the session or permanent judicial commission.

D-8.06 Trial

D-8.0601 Announcement by the Moderator

The trial of a disciplinary case shall be opened with prayer, after which the moderator shall read aloud the Preamble to Church Discipline (D-1), shall announce that the council is about to proceed to trial, and shall enjoin the members to recollect and regard their high character as judges of a council of the Church of Jesus Christ and the solemn duties they are about to undertake.

D-8.0602 Objections of Parties

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

a. A member of a session or permanent judicial commission is disqualified if the member is personally interested in the outcome of the case, is related by blood or marriage to any party, or has served as counsel for or against any party.

b. Any member of a session or permanent judicial commission may be challenged by any party for conflict of interest, and the validity of the challenge shall be determined by majority vote of the remaining members of the session or permanent judicial commission.

D-8.0603 Preliminary Determinations and Objections

The session or permanent judicial commission shall place all preliminary determinations on the record and shall decide by majority vote any objections, and any other objections to the preliminary determinations and any other objections affecting the order or regularity of the proceedings. A final decision is not permissible until the session or permanent judicial commission has heard the evidence and closing arguments.

D-8.0604 Plea

The accused shall be called upon to plead “guilty” or “not guilty” to each charge. The plea shall be entered on the record. If the accused declines to answer or pleads “not guilty,” a plea of “not guilty” shall be entered on the record and the trial shall proceed. If the accused pleads “guilty” to all charges, the council shall proceed in accordance with D-8.0903 unless the parties request an opportunity to seek an alternative resolution in accordance with D-7.15.

D-8.0605 Opening Statements

The parties shall be given an opportunity to make opening statements, beginning with the prosecuting committee.

D-8.07 Evidence

D-8.0701 Definition

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

D-8.0702 Records as Evidence

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

2044 b. An authenticated record or transcript of testimony taken by a council or permanent
2045 judicial commission shall be admissible in any proceeding in another council.

2046 *D-8.0703 Hearsay Evidence*

2047 It is the historic practice of the Presbyterian Church (U.S.A.) to allow hearsay evidence because of
2048 the limitations of a council's authority to compel witnesses to testify in a disciplinary process, as well as
2049 the limitations of resources in investigations.

2050 *D-8.0704 Witnesses*

2051 a. Any party may challenge whether a witness may testify, and the moderator of the
2052 permanent judicial commission shall determine the competence of the witness. The ruling of the
2053 moderator may be appealed by any party or a member of the permanent judicial commission and
2054 decided by majority vote of the permanent judicial commission.

2055 b. Witnesses may be both factual and expert if qualified and if the permanent judicial
2056 commission finds that the parties have established a proper foundation. Witnesses should be competent,
2057 credible, and relevant. Experts should have both sufficient expertise and the ability to express opinions
2058 that assist the trial court.

2059 c. The counsel for the parties involved in a case may not be compelled to testify about
2060 confidential matters, nor may they testify concerning any matters without the express permission of the
2061 party they represent.

2062 d. Credibility means the degree of belief that may be given to the testimony of a witness. In
2063 determining the credibility of a witness, the permanent judicial commission may consider any matter
2064 that bears upon the accuracy of the testimony or the truthfulness of the witness.

2065 e. A married person, otherwise competent to testify, may be a witness for or against the
2066 spouse, but shall not be compelled to testify against the other.

2067 *D-8.0705 Testimony*

2068 a. At the direction of the moderator or on the request of either party, no fact witness shall be
2069 present during the examination of another witness. This shall not limit the right of any party to be
2070 present and to have expert witnesses present.

2071 b. Witnesses shall be examined first by the party producing them, and then they may be
2072 cross-examined by the opposing party. The moderator may permit additional questions from the parties
2073 (including both re-examination, followed by re-cross-examination) if so requested. Thereafter, any
2074 member of the permanent judicial commission may ask additional questions.

2075 c. Prior to giving testimony, a witness shall make an oath by answering the following
2076 question in the affirmative: "Do you solemnly swear that the evidence you will give in this matter shall
2077 be the truth, the whole truth, and nothing but the truth, so help you God?"

2090
2091 d. If a witness objects to making an oath, the witness shall answer the following question in
2092 the affirmative: “Do you solemnly affirm that you will declare the truth, the whole truth, and nothing but
2093 the truth in the matter in which you are called to testify?”

2094
2095 e. The testimony of each witness shall be accurately and fully recorded by a qualified
2096 reporter or other means that can be accurately transcribed, including digital voice recording.

2097
2098 f. Witnesses may appear electronically if unable to attend the trial in person, in accordance
2099 with the provisions of D-8.04.

2100
2101 g. A member of the permanent judicial commission before which the case is pending may
2102 testify, but thereafter shall not otherwise participate in the case.

2103
2104 **D-8.08 Final Statements**

2105
2106 The parties shall be given an opportunity to make final statements, the prosecuting committee having
2107 the right of opening and closing the argument, after which the trial shall be closed with prayer.

2108
2109 **D-8.09 Decision**

2110
2111 *D-8.0901 Deliberation*

2112
2113 The session or permanent judicial commission shall then meet privately to deliberate. All persons
2114 not members of the session or permanent judicial commission shall be excluded.

2115
2116 *D-8.0902 Decision on Guilt*

2117
2118 a. After careful deliberation, the session or permanent judicial commission shall vote on
2119 each charge separately and record the vote in its minutes. Members of the session or permanent judicial
2120 commission may find that the accused is guilty when a comparison and consideration of all the evidence
2121 compels an abiding conviction that the material facts necessary to prove the charge are true. No
2122 decision of guilt may be found on a charge unless at least two-thirds of the members of the session or
2123 permanent judicial commission eligible to vote agree on the judgment (see D-3.0602).

2124
2125 b. A written decision stating the judgment on each charge shall be prepared while in
2126 session. It shall become the final decision when signed by the moderator and clerk of the session or the
2127 permanent judicial commission.

2128
2129 c. When a session or permanent judicial commission has arrived at a decision, the
2130 moderator shall, in open meeting, announce the verdict for each charge separately.

2131
2132 *D-8.0903 Decision on Degree of Censure*

2133
2134 If the accused is found guilty or after the guilty plea, the session or permanent judicial commission
2135 should hear evidence within thirty (30) days of the decision as to the extent of the injury suffered,
2136 mitigation, rehabilitation, and redemption. This evidence may be offered by either party, or the original
2137 accuser or that person's representative. Each person who was directly harmed by the offense may

2138 submit a victim impact statement, which shall become part of the record. The statement shall not be
2139 subject to cross-examination. The accused may offer a plan to address the harm done and to seek
2140 reconciliation with the victim(s) and the church. The session or permanent judicial commission shall
2141 then meet privately to determine the degree of censure to be imposed. Following such determination and
2142 in an open meeting, the moderator of the session or permanent judicial commission shall then pronounce
2143 the censure.

2144 **D-8.10 Filing and Notification of Parties**

2145 *D-8.1001 Filed Promptly*

2146
2147 The decision shall be filed promptly with the clerk or stated clerk of the council.
2148

2149 *D-8.1002 Notification of Parties*

2150
2151 a. The clerk of session or clerk of the permanent judicial commission shall deliver a copy of
2152 the decision to each party named in the decision either by personal service or by certified delivery.
2153

2154 b. The moderator or clerk of the session or permanent judicial commission shall disseminate
2155 the decision as the session or permanent judicial commission may direct.
2156

2157 **D-8.11 New Evidence**

2158 *D-8.1101 New Evidence Received*

2159 a. Prior to filing a notice of appeal, but without extending the time for appeal, the person
2160 found guilty may apply for a new trial on the ground of newly discovered evidence. The permanent
2161 judicial commission – when satisfied that such evidence could reasonably have resulted in a different
2162 decision and that in the exercise of reasonable diligence it could not have been produced at the time of
2163 trial – may grant such application. An appeal filed while such an application is pending shall be held in
2164 abeyance until such time as the permanent judicial commission that conducted the trial has made its
2165 determination. The higher council shall be notified of the determination by the stated clerk of the lower
2166 council.
2167

2168 b. If, subsequent to the filing by a person found guilty of a notice of appeal, new evidence is
2169 discovered by the person found guilty, which in the exercise of reasonable diligence could not have been
2170 discovered prior to the filing of the notice of appeal, the permanent judicial commission receiving the
2171 appeal may, in its discretion, immediately remand the matter for a new trial.
2172

2173 **D-8.12 Record of Proceedings**

2174 *D-8.1201 Duty of Clerk*

2175
2176 The clerk of session or the clerk of the permanent judicial commission shall do the following:
2177

2178 a. Arrange in advance for the accurate verbatim recording of all testimony and oral
2179 proceedings. This may be accomplished through a digital voice recording.
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2186 b. Identify and maintain all exhibits offered in evidence (noting whether or not they were
2187 accepted as evidence) and keep a list of all exhibits.
2188

2189 c. Record minutes of the proceedings, which shall include any actions or orders of the
2190 session or permanent judicial commission relating to the case with the vote thereon.
2191

2192 d. Prepare the record of the case, which shall consist of:

2193 (1) the charges;

2194 (2) a record of the plea entered by the accused on each charge;

2195 (3) a certified transcript, if requested;

2196 (4) all properly marked exhibits, records, documents, and other papers;

2197 (5) the written decision, including the verdict for each charge and the degree of
2198 censure, if any, to be imposed by the council; and
2199

2200 (6) any actions or orders of the session or permanent judicial commission relating to
2201 the case, with the vote on each.
2202

2203 e. The clerk of session shall preserve the record of the case for at least ten (10) years, and in
2204 accordance with the policy of the council for the preservation of records. The clerk of the permanent
2205 judicial commission shall, within thirty (30) days after the decision becomes final, certify and transmit
2206 the record of the case to the stated clerk of the electing presbytery, who shall preserve it for at least ten
2207 (10) years, and in accordance with the policy of the council for the preservation of records.
2208

2209 f. Upon the request, and at the expense of, any requesting party, the clerk shall cause a true
2210 and complete transcript be prepared of all the testimony and oral proceedings during the course of the
2211 trial. A copy of this transcript, when certified by the person making the same to be true and complete,
2212 shall be delivered to each party requesting the same upon satisfactory arrangement for payment, and one
2213 additional copy shall be made for inclusion in the record to be sent forward upon any appeal (D-11).
2214

2215 *D-8.1202 Additions to the Record*

2216 No person may supplement or add to the record in a case except for good cause as determined by the
2217 moderator and clerk of the session or of the permanent judicial commission responsible for conducting
2218 the trial. No request to supplement the record shall be considered until received in writing by the clerk
2219 of session or the stated clerk of council that conducted the trial, who shall transmit it to the moderator of
2220 the session or moderator and clerk of the permanent judicial commission. A copy of the request shall be
2221 delivered to all parties and every party shall have ten (10) days to respond in writing.
2222

2223 **D-8.13 Enforcement**

2224 When a session or presbytery has completed the trial and found the accused guilty and the decision
2225 has been pronounced in accordance with the censure imposed in the following chapter, the session or
2226 presbytery shall proceed to enforce the decision regardless of an appeal.
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2229

2234 **CHAPTER IX**

2235 **CENSURE AND RESTORATION IN A DISCIPLINARY CASE**

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2238 **D-9.01 Censure**

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2240 *D-9.0101 Degrees of Censure*

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2242 The degrees of church censure are rebuke, rebuke with supervised rehabilitation, temporary
2243 exclusion from exercise of ordered ministry or membership, and removal from ordered ministry or
2244 membership. Whatever the censure is, it is never given with malice and vindictiveness but in Christian
2245 love to offer correction in error and restoration of the community. A censure is about the accountability
2246 of an individual to the church and should not include names of persons who have been harmed.

2247
2248 *D-9.0102 Reporting of Decision and Censure*

2249
2250 a. When a censure is imposed on a church member, a congregational meeting shall be called
2251 by the session in accordance with G-1.0503g for the purpose of receiving the decision and censure. The
2252 verbal report to the congregation may contain only a summary of the decision and censure, but shall
2253 contain a statement of the nature of the offense, the name of the person being censured, and the censure.
2254 The summary shall be recorded in the minutes of the congregational meeting.

2255
2256 b. When a presbytery imposes a censure, if the council is meeting when the decision and
2257 censure are received from the clerk of the permanent judicial commission, the stated clerk shall report
2258 the decision and censure immediately and enter the full decision upon the minutes of the council. If the
2259 council is not meeting, the stated clerk shall report the decision to the council at its first stated or
2260 adjourned meeting or at a meeting called to hear the decision, whichever comes first, and enter the full
2261 decision upon the minutes of the council. The verbal report to the council may contain only a summary
2262 of the decision and censure, but shall contain a statement of the nature of the offense, the name of the
2263 person being censured, and the censure. If the censure is imposed on a church member, the provision of
2264 D-9.0102c shall also be followed.

2265
2266 c. If the censure imposed by a presbytery was on a church member, rather than a minister of
2267 the Word and Sacrament, either because the member was a commissioned pastor at the time the offense
2268 was committed or because a higher council assumed jurisdiction under either D-7.0301d or D-7.0401,
2269 once the decision and censure have been reported in accordance with D-9.0102b, the decision and
2270 censure shall be distributed to the clerk of session of the church of membership. The clerk of session
2271 shall report the decision at the first stated or adjourned meeting of the session or at a meeting called to
2272 hear the decision, whichever comes first, and enter the full decision upon the minutes of the session. The
2273 verbal report to the session may contain only a summary of the decision and censure, but shall contain a
2274 statement of the nature of the offense, the name of the person being censured, and the censure. The
2275 session shall call a congregational meeting in accordance with G-1.0501g and report the decision as
2276 described in D-9.0102a above.

2277
2278 *D-9.0103 Rebuke*

2279

2280 Rebuke is the lowest degree of censure for an offense and is completed when pronounced. It
2281 consists of setting forth publicly the character of the offense, together with reproof, which shall be
2282 pronounced in the following or like form:

2283
2284 “Whereas, you, (Name) _____, have been found guilty of the offense(s) of
2285 _____ (here insert a summary of the offense), and by such offense(s) you have acted
2286 contrary to the Scriptures and/or the Constitution of the Presbyterian Church (U.S.A.); now,
2287 therefore, the Session or the Permanent Judicial Commission of the Presbytery of
2288 _____, in the name and authority of the Presbyterian Church (U.S.A.),
2289 expresses its condemnation of this offense, and rebukes you. This rebuke is given not with malice or
2290 vindictiveness but in Christian love to offer you correction in error and restoration that you may be
2291 more watchful and avoid such offense in the future. We urge you to use diligently the means of
2292 grace to the end that you may be more obedient to our Lord Jesus Christ.”

2293
2294 This formal rebuke shall be followed by intercessory prayer to Almighty God.

2295
2296 *D-9.0104 Rebuke with Supervised Rehabilitation*

2297
2298 Rebuke with supervised rehabilitation is the next to lowest degree of censure. It consists of setting
2299 forth the character of the offense, together with reproof and mandating a period of supervised
2300 rehabilitation imposed by the session or permanent judicial commission as described at item b. of this
2301 section.

2302
2303 a. Communicate Goals – The session or permanent judicial commission shall formally
2304 communicate to the supervising entity and the person censured the goals of the rehabilitation and the
2305 specific authority conferred on the supervisor(s).

2306
2307 b. Supervised Rehabilitation – An outline of the rehabilitation program shall include a clear
2308 statement of how progress will be evaluated and how it will be determined when and if the supervised
2309 rehabilitation has been satisfactorily completed.

2310
2311 c. Voluntary Acts of Repentance – The rehabilitation program may include a voluntary act
2312 or acts of repentance by the person censured on their own initiative. Such acts may include: public
2313 acknowledgement of guilt, community service, symbolic restoration of what was lost by the person who
2314 was harmed, and, in a case where the offense is sexual abuse of another person, possibly contributions
2315 toward documented medical/psychological expenses incurred by the person who was harmed.

2316
2317 d. This censure shall be pronounced in the following or like form:

2318
2319 “Whereas, you, (Name) _____, have been found guilty of the offense(s) of
2320 _____, and by such offense(s) you have acted contrary to the Scriptures
2321 and/or the Constitution of the Presbyterian Church (U.S.A.); now, therefore, the Session or the
2322 Permanent Judicial Commission of the Presbytery of _____, in the name and
2323 authority of the Presbyterian Church (U.S.A.), expresses its condemnation of this offense, rebukes
2324 you, and orders you to complete a program of supervised rehabilitation supervised by
2325 _____ as described below: _____. This rebuke is given
2326 not with malice or vindictiveness but in Christian love to offer you correction in error and the
2327 possibility of full community restoration. You are enjoined to be more watchful and avoid such

2328 offense in the future. We urge you to use diligently the means of grace to the end that you may be
2329 more obedient to our Lord Jesus Christ.”

2330 This formal rebuke shall be followed by intercessory prayer to Almighty God.

2331
2332 *D-9.0105 Temporary Exclusion*

2333 Temporary exclusion from the exercise of ordered ministry or membership is a higher degree of
2334 censure for a more aggravated offense and shall be for a period defined by completion of supervised
2335 rehabilitation imposed by the session or the permanent judicial commission, which may include a
2336 minimum defined period of time.

2337
2338
2339 a. Supervised Rehabilitation – The session or permanent judicial commission shall formally
2340 communicate to the supervising entity and the person found guilty the specific authority conferred on
2341 the supervisor.

2342
2343 b. Voluntary Acts of Repentance – The rehabilitation program may include a voluntary act
2344 or acts of repentance by the censured on their own initiative. Such acts may include: public
2345 acknowledgement of guilt, community service, symbolic restoration of what was lost by the person
2346 harmed, and in a case in which the offense is sexual abuse of another person possibly contributions
2347 toward documented medical / psychological expenses incurred by the person who was harmed.

2348
2349 c. Refrain from Exercise of Ordered Ministry – During the period of temporary exclusion
2350 from ordered ministry, the person found guilty shall refrain from the exercise of any function of ordered
2351 ministry.

2352
2353 d. Cannot Vote or Hold Office – During the period of temporary exclusion from
2354 membership, the person found guilty shall refrain from participating and voting in meetings of church
2355 councils and from holding or exercising any ecclesiastical office.

2356
2357 e. Effect of Temporary Exclusion of a Pastor – If a pastor is temporarily excluded from the
2358 exercise of ordered ministry, the presbytery may, if no appeal from the case is pending, declare the
2359 pastoral relationship dissolved.

2360
2361 f. Notice of Temporary Exclusion – When the censure of temporary exclusion has been
2362 pronounced with respect to a teaching elder, the stated clerk of the presbytery shall immediately send the
2363 information of the action taken to the Stated Clerk of the General Assembly, who shall make a quarterly
2364 report of all such information to every presbytery of the church.

2365
2366 g. Termination of Censure of Temporary Exclusion – A person under the censure of
2367 temporary exclusion shall apply in writing to the council, through the clerk of session or stated clerk, for
2368 restoration upon the completion of the supervised rehabilitation pronounced. The council that imposed
2369 the censure may approve the restoration when the council is fully satisfied that the supervised
2370 rehabilitation pronounced has been successfully completed. The censure may include a time limit for the
2371 completion of all terms, after which, if the terms have not been met, the council may, at its discretion,
2372 grant an extension for a specified time or make the temporary exclusion permanent.

2373
2374 h. Early Restoration – A person under the censure of temporary exclusion from the exercise
2375 of ordered ministry or from membership may apply in writing to the council that imposed the censure
2376

(through its clerk) to be restored prior to any minimum period of time included in the censure. The council may approve such a restoration when it is fully satisfied that the action is justified.

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

“Whereas, you, (Name) _____, have been found guilty of the offense(s) of _____ (here insert the offense), and by such offense(s) you have acted contrary to the Scriptures and/or the Constitution of the Presbyterian Church (U.S.A.); now, therefore, the Session or the Permanent Judicial Commission of the Presbytery of _____, in the name and by the authority of the Presbyterian Church (U.S.A.), does now declare you temporarily excluded from _____ for a period of at least _____, and until completion of the following rehabilitation program supervised by _____, as described below: _____. This exclusion is given not with malice or vindictiveness but in Christian love to offer you correction in error and the possibility of full community restoration.”

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

D-9.0106 Removal from Ordered Ministry and/or Membership

Removal from ordered ministry and/or membership is the highest degree of censure. Removal from ordered ministry is the censure by which the ordination and election of the person found guilty are set aside, and the person is removed from all ordered ministries without removal from membership. Removal from membership is the censure by which the membership of the person found guilty is terminated, the person is removed from all rolls, and the person's ordination and election to all ordered ministries are set aside.

a. Consequences of Removal from Ordered Ministry – If a teaching elder is removed from ordered ministry without removal from membership, the presbytery shall transfer the teaching elder’s membership to a Christian congregation of the teaching elder's choice with the approval of the session or governing body of that congregation. If the teaching elder is a pastor, the pastoral relationship is automatically dissolved by the censure.

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

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

“Whereas, you, (Name) _____, have been found guilty of the offense(s) of _____ (here insert the offense), and by such offense(s) you have acted contrary to the Scriptures and/or the Constitution of the Presbyterian Church (U.S.A.); now, therefore, the Session or the Permanent Judicial Commission of the Presbytery of _____, acting in the name and under the authority of the Presbyterian Church (U.S.A.), does hereby set aside and remove you from _____ (here state whether removal is from all ordered ministries and elected offices or from membership). This removal is given not with malice or vindictiveness but in Christian love to offer you correction in error and to

2425 restore the unity of the church by removing from it the discord and division the offense(s) have
2426 caused.”

2427
2428 This formal declaration shall be followed by intercessory prayer to Almighty God.

2429
2430 **D-9.02 Restoration**

2431
2432 *D-9.0201 Restoration to Membership or Ordered Ministry*

2433
2434 A person under the censure of removal from ordered ministry or from membership may be restored
2435 by the council imposing the censure when the council is fully satisfied that the action is justified. The
2436 person makes a reaffirmation of faith for restoration of membership and/or is again ordained for
2437 restoration to ordered ministry.

2438
2439 *D-9.0202 Restoration to Membership*

2440
2441 The restoration to membership shall be announced by the moderator in a meeting of the council in
2442 the following or like form:

2443
2444 “Whereas, you, (Name) _____, have manifested such repentance as satisfies the
2445 church, the Presbytery (or Session) of _____ does now restore you to full
2446 membership in the church by this act of reaffirmation.”

2447
2448 a. Thereafter, the act of reaffirmation shall take place and the name of the person shall be
2449 restored to the appropriate roll or a certificate of membership shall be issued to a Christian church of that
2450 person's choice.

2451
2452 b. If the member is also to be restored to an ordered ministry, the procedure prescribed in
2453 Restoration to Ordered Ministry (D-9.0203) shall be followed.

2454
2455 *D-9.0203 Restoration to Ordered Ministry*

2456
2457 The restoration to ordered ministry shall be announced by the moderator in the following or like
2458 form:

2459
2460 “Whereas, you, (Name) _____, have manifested such repentance as satisfies the
2461 church, the Presbytery of _____ (or Session of this church) does now restore you
2462 to the ordered ministry of _____ and authorize you to perform the functions of
2463 that ministry in accordance with the Constitution of this church by this act of ordination.”

2464
2465 Thereafter, a full service of ordination shall take place in accordance with W-4.04 and the individual's
2466 name shall be restored to the appropriate roll.

2467
2468

2469 **CHAPTER X**

2470 **DISCIPLINARY APPEALS**

2471 **D-10.01 Filing an Appeal**

2472 *D-10.0101 Definition*

2473 An appeal of a disciplinary case is the transfer to the next higher council of a case in which a
2474 decision has been rendered in a lower council, for the purpose of obtaining a review of the proceedings
2475 and decision to correct, modify, set aside, reverse or uphold the decision.
2476

2477 *D-10.0102 Initiation of Appeal*

2478 The time for filing an appeal shall begin from the date the decision is delivered to, or refused by, the
2479 person found guilty.
2480

- 2481 a. Only the person found guilty of an offense may initiate the first level of appeal.
2482
2483 b. Once the first appeal has been decided, either party may initiate the next level of appeal.
2484

2485 *D-10.0103 Parties*

2486 The parties in a disciplinary appeal are the person found guilty and the Presbyterian Church (U.S.A.)
2487 through the prosecuting committee of the council that issued the censure.
2488

2489 **D-10.02 Notice of Appeal**

2490 *D-10.0201 Notice Filed*

2491 A written notice of appeal shall be filed within forty-five (45) days after a copy of the final order
2492 was received by the appealing party. The written notice may be delivered by means of electronic
2493 communication, provided that the stated clerk certifies receipt of the notice, which may also be
2494 communicated electronically. If filing the notice electronically, care should be taken to deliver the notice
2495 in a manner that can clearly demonstrate timely filing. By written agreement of the parties, all additional
2496 filings may be electronic. The appealing party shall provide a copy of the written notice of appeal to the
2497 stated clerk of the council whose permanent judicial commission issued the ruling, as well as to the
2498 stated clerk of the council that would hear the appeal, who shall distribute the notice to the other party or
2499 parties.
2500

2501 *D-10.0202 Items to be Included:*

- 2502 a. the name of the party filing the appeal (the appellant) and their counsel, if any;
2503
2504 b. the name of the other party (the appellee) and their counsel, if any;
2505
2506 c. the council from whose decision the appeal is taken;
2507
2508
2509
2510
2511
2512
2513
2514
2515
2516

2517 d. the actual decision that had been rendered from which the appeal is taken (a copy of the
2518 decision shall be included); and

2519
2520 e. A statement and description of the errors alleged to have been made in the ruling that
2521 serve as the grounds of the appeal. The grounds for which an appeal may be filed are:

- 2522
- 2523 (1) irregularity in the proceedings,
 - 2524
 - 2525 (2) refusing a party reasonable opportunity to be heard or to obtain or present
2526 evidence,
 - 2527
 - 2528 (3) receiving improper, or declining to receive proper evidence or testimony,
 - 2529
 - 2530 (4) hastening to file an appeal before the evidence or testimony is fully received,
 - 2531
 - 2532 (5) manifestation of prejudice in the conduct of the case,
 - 2533
 - 2534 (6) injustice in the process or decision,
 - 2535
 - 2536 (7) error in constitutional interpretation, and
 - 2537
 - 2538 (8) undue severity of censure.
 - 2539

2540 f. A certification that a copy of the notice of appeal was received by the stated clerk of the
2541 council whose permanent judicial commission would hear the appeal, which may be in the form of an
2542 electronic communication.

2543
2544 **D-10.03 Duty of Stated Clerk**

2545
2546 Upon receipt of the written notice of appeal, the stated clerk of the council that will hear the appeal shall
2547 transmit it to the officers of that council's permanent judicial commission. The notice of appeal, if
2548 properly and timely filed, shall suspend further proceedings by lower councils, except any censure shall
2549 continue until the appeal is finally decided.

2550
2551 **D-10.04 Withdrawal of Appeal**

2552
2553 The parties in a disciplinary appeal are encouraged to seek resolution of their differences in a manner
2554 acceptable to all parties. If at any time in the appeal process the parties to a disciplinary appeal jointly
2555 file with the stated clerk of the council hearing the appeal a petition for the withdrawal of the appeal, the
2556 stated clerk shall inform the members of the permanent judicial commission that the appeal has been
2557 withdrawn, which shall end the judicial process unless within seven (7) days any member of the
2558 permanent judicial commission challenges the withdrawal. If the withdrawal is so challenged, a majority
2559 of the commission at a duly constituted meeting may conclude that the withdrawal would defeat the ends
2560 of justice and deny the request.

2561
2562 **D-10.05 Preliminary Process**

2563

2564 *D-10.0501 Examination of Notice of Appeal*

2565
2566 The moderator and clerk of the permanent judicial commission of the council that will hear the case
2567 shall then promptly examine the notice of appeal to determine whether:

- 2568
- 2569 a. the council has jurisdiction,
 - 2570
 - 2571 b. the appellant has standing to file the appeal,
 - 2572
 - 2573 c. the appeal was timely and properly filed, and
 - 2574
 - 2575 d. the appeal states and describes one or more of the grounds for appeal listed in D-
2576 10.0202e.

2577
2578 *D-10.0502 Preliminary Ruling*

2579
2580 The officers of the permanent judicial commission shall report their determination to the parties and
2581 to the members of the commission in a preliminary ruling.

2582
2583 *D-10.0503 Challenge to Preliminary Ruling*

2584
2585 Within thirty (30) days after their receipt of the determination, the parties and members of the
2586 permanent judicial commission may challenge the determination, in which case opportunity shall be
2587 provided for the parties to present evidence and argument on the determination(s) in question. A hearing
2588 may be requested by either party for the purpose of hearing the challenge, or if the parties agree, the
2589 matter may be decided by the permanent judicial commission on the basis of documents submitted by
2590 the parties. If a hearing is requested, it should be held at least thirty (30) days prior to the hearing on the
2591 appeal, unless the officers of the permanent judicial commission determine that the circumstances,
2592 including expenditures of time and resources, warrant disposition of the challenge immediately prior to
2593 the hearing on the appeal. If the permanent judicial commission determines the answer to any of the four
2594 preliminary questions has been answered in the negative, the commission shall dismiss the appeal.

2595
2596 *D-10.0504 When No Challenge is Received*

- 2597
- 2598 a. If no challenge is made to the determinations of the officers that one or more points are
2599 answered in the negative, the case shall be dismissed without further action or order of the permanent
2600 judicial commission.
 - 2601
 - 2602 b. If no challenge is made to the determinations of the officers that all of the points are
2603 answered in the affirmative, the stated clerk of the council shall schedule a hearing at a time acceptable
2604 to the parties and at which a quorum of the commission can be present.

2605
2606 **D-10.06 Record of the Case**

2607
2608 *D-10.0601 List of Papers*

2609
2610 Within forty-five (45) days after receipt of a notice of appeal, the stated clerk of the lower council
2611 shall list in writing to the parties all of the papers and other materials that would constitute the record of

2612 the case (see D-8.1201d & e). Within fifteen (15) days thereafter, either party may challenge the
2613 completeness or accuracy of the record as listed by the stated clerk. The stated clerk may, but is not
2614 required, to amend the list at the request of a party; however, any such challenge shall be added to the
2615 record when it is filed.

2616
2617 *D-10.0602 Filing of Record on Appeal*

2618
2619 Upon notice by the stated clerk of the council whose permanent judicial commission will hear the
2620 appeal that the case has been accepted, the stated clerk of the council from whose ruling the appeal is
2621 taken shall compile and file the record of the case with the stated clerk of the higher council, who shall
2622 distribute it to the members of the permanent judicial commission.

2623
2624 *D-10.0603 Correction of the Record*

2625
2626 If anything material to either party is omitted from the record by error or accident, or is misstated
2627 therein, the omission or misstatement may be corrected. The parties may stipulate to the correction, or
2628 the stated clerk of the lower council may certify and transmit a supplemental record, or the permanent
2629 judicial commission of the higher council may direct that the omission or misstatement be corrected.
2630 All other questions as to the form and content of the record shall be presented to the permanent judicial
2631 commission of the higher council, which shall be decided by majority vote at a duly constituted meeting,
2632 which may occur immediately prior to the hearing on the appeal.

2633
2634 **D-10.07 Briefs**

2635
2636 *D-10.0701 Filing of Appellant Brief*

2637
2638 Within thirty (30) days after the date of receiving the record on appeal, the appellant shall file with
2639 the stated clerk of the higher council a written brief containing specifications of the errors alleged in the
2640 notice of appeal and arguments, reasons, and citations of authorities in support of the appellant's
2641 contentions. Copies of the brief shall be distributed by the stated clerk to the members of the
2642 commission and to the opposing party.

2643
2644 *D-10.0702 Failure of Appellant to File Brief*

2645
2646 Failure of the appellant to file a brief within the timeline allowed, without good cause, shall be
2647 deemed by the permanent judicial commission as an abandonment of the appeal.

2648
2649 *D-10.0703 Filing of Appellee Brief*

2650
2651 Within thirty (30) days of the receipt of the appellant's brief, the appellee shall file with the stated
2652 clerk of the council whose permanent judicial commission will hear the appeal a brief in response to the
2653 appellant's brief. Copies of the brief shall be distributed by the stated clerk to the members of the
2654 commission and to the opposing party.

2655
2656 *D-10.0704 Failure of Appellee to File Brief*

2657

2658 Failure of the appellee to file a brief within the time allowed, without good cause, shall constitute
2659 waiver of the rights to file a brief, to appear, and to be heard.

2660
2661 **D-10.08 Extensions**

2662
2663 For good cause shown, the stated clerk of the higher council may extend any of the time limits
2664 contained in this section for a reasonable period.

2665
2666 **D-10.09 Transmittal of Records and Briefs**

2667
2668 Upon receipt of the record and the briefs, or upon the expiration of the time for filing them, the
2669 stated clerk of the higher council shall transmit the record and briefs to the clerk of the permanent
2670 judicial commission.

2671
2672 **D-10.10 Prehearing Conference**

2673
2674 At any time after an appeal has been received by a permanent judicial commission, the commission
2675 may provide for the parties and their counsel, if any, for the opportunity in a prehearing conference to
2676 seek agreement on any of the disputed issues in the appeal and to take other action which might
2677 reasonably and impartially narrow the dispute and expedite its resolution.

2678
2679 **D-10.11 Hearing of Appeal**

2680
2681 *D-10.1101 Hearing Process*

2682
2683 The moderator or clerk of the permanent judicial commission shall notify the parties of the date
2684 when they may appear in person or by counsel before the permanent judicial commission. Failure of a
2685 party to appear in person or by counsel shall constitute a waiver of participation in the hearing of the
2686 appeal. At the hearing, the permanent judicial commission shall:

2687
2688 a. determine whether to receive new evidence (D-8.1101b), providing for the verbatim
2689 record of such new evidence;

2690
2691 b. give opportunity to be heard on the grounds of the appeal to those parties who have not
2692 waived that right. The appellant has the right of opening and closing the argument.

2693
2694 **D-10.12 Decision of the Permanent Judicial Commission**

2695
2696 *D-10.1201 Standard of Review*

2697
2698 a. Factual determinations by the trial court shall be accorded a presumption of correctness
2699 in appeals. Such determinations are not to be disturbed unless they are plainly wrong, without
2700 supporting evidence, or manifestly unjust. Determinations related to the correct interpretation and
2701 application of constitutional provisions are not accorded the same presumption.

2702
2703 b. If new evidence is accepted and the permanent judicial commission determines that it
2704 could change the verdict, it should remand the case for a new trial.

2705

2706 *D-10.1202 Voting Procedure*

2707
2708 After the hearing and after deliberation, the permanent judicial commission shall vote separately on
2709 each specification of error alleged. The vote, which shall be by counted vote, shall be on the question,
2710 “Shall the specification of error be sustained?” The minutes shall record the vote on each specification
2711 of error. A majority vote sustains each specification of error.

2712
2713 *D-10.1203 Decision*

2714
2715 The decision of the permanent judicial commission shall include the determination of errors
2716 specified, and state the remedy as provided in D-10.0101. The permanent commission may prepare its
2717 decision in a manner that will dispose of all substantive questions without redundancy. It should include
2718 an explanation of its determination.

2719
2720 a. Decisions of permanent judicial commissions other than the General Assembly’s
2721 Permanent Judicial Commission are binding only on the parties to the case.

2722
2723 b. If none of the specifications of error is sustained, and no other error is found, the decision
2724 of the lower council shall be affirmed.

2725
2726 c. If one or more errors are found, the permanent judicial commission shall determine
2727 whether the decision of the lower council shall be affirmed, modified, set aside, reversed, or the case
2728 remanded for a new trial.

2729
2730 d. The questions presented for decision shall be fully debated and voted upon while all
2731 participating commission members are present. A written outline of a decision shall be prepared while in
2732 session. A written decision shall be reviewed by all participating members of the panel, which may take
2733 place either while the participating commission members are present or by meeting within ten (10) days
2734 either in person, or by appropriate electronic means if authorized in the council’s manual of
2735 administrative operations.

2736
2737 e. The decision shall become the final decision when a copy of the written decision is
2738 signed by the moderator and clerk of the permanent judicial commission. A copy of the decision shall
2739 immediately be delivered to the parties to the case by personal service, certified delivery, or electronic
2740 communication if agreed upon in advance by the parties.

2741
2742 *D-10.1204 Effect of Reversal on Appeal in Disciplinary Case*

2743
2744 If the permanent judicial commission reverses all determinations of guilt, it becomes an acquittal and
2745 the person is automatically restored to ordered ministry or membership in the church. This declaration
2746 shall be made in the lower council and recorded in the minutes of the lower council with jurisdiction
2747 over the person found guilty.