CM - Note 3 - Appointing an Investigating Committee and Determining Offense

(See also ASC Handbook for Judicial Process, III. 17)

August 26, 2003

Many presbyteries meet infrequently during the summer months, hence the need for a mechanism to respond to allegations that arise between meetings becomes more acute.

Appointing an IC between meetings of presbytery

1. If your presbytery has not availed itself of the option provided in D-10.0201b.¹, perhaps it is time to do so. This permits a smaller group (typically the Stated Clerk, Moderator, Executive Presbyter and/or Committee on Ministry Chair) to appoint an investigating committee between meetings of the Presbytery. The Presbytery Moderator must be one of this small group since it is the moderator who actually appoints the persons on behalf of the Presbytery. The Stated Clerk should also be a member of this group because she/he is often the only one of the group who knows the identity of the accused. We have seen policies that have the Executive Presbyter as the third member of the appointing group. This seems to us quite consistent with the role and functions of an Executive. Some presbyteries have utilized the chairperson of the Committee on Ministry as the third person, in that very often the Committee on Ministry will have knowledge of the allegations as well. We can imagine a rule that authorizes the moderator, clerk, and either the executive or the COM chair. D-10.0201b provides no particular "rule", and the makeup of such an appointing team will vary with the structure, practice, and ethos of individual presbyteries.

We now have enough experience to believe it very wise for a presbytery to create a pool of persons from which such a committee may be appointed. That permits a particular Investigating Committee to "hit the ground running." This pool can be orientated and trained before any particular case is looming. Our office is pleased to assist in such orientation and training when requested to do so. We have also gained some experience thinking about the make up of Investigating Committees. Certain skills and backgrounds continue to be invaluable in this unique form of service: Accountants, attorneys, therapists, school administrators tend to have background and skills that greatly advance the Investigating Committee's work. Each case will require a different mix. Gender balance and therapists are critical to most sexual misconduct cases. Accountants and others possessing financial skills are critical when financial issues are at the heart of the allegations.

The size of the Investigating Committee depends on the complexity of the case. A "one issue" allegation, with few prospective witnesses, may be best served by a three person committee. Complex allegations with many prospective witnesses may be best served by a five person committee. If the allegations arose in, or are initiated from, a sister presbytery, it is often wise to ask that sister presbytery to appoint a member to the Investigating Committee (D-10.0104).
Determining If an Offense Has Occurred

2. Upon receiving allegations (D-10.0103) the Stated Clerk is to transmit the allegations to an Investigating Committee "without undertaking further inquiry". Often the Stated Clerk will quickly note some problem with the allegations; the temptation in such circumstances is try to "take care of the matter." This is always a mistake. Stated Clerks should never decline to receive accusations tendered, nor try to dissuade a person from making them. Rather if the Clerk has questions as to whether a particular accusation would constitute an offense, the appropriate role is to advise the Investigating Committee to begin their work at D-10.0202e. Sometimes an accuser becomes exercised about some behavior that is offensive to that person and files accusations which may allege something that is not an offense. For instance, an elder, who owns a sawmill becomes unhappy because the pastor has taken a public role in the local Sierra Club. Such action by the pastor might well be unwise, but it is unlikely to be an offense.

Another situation that occurs often enough to merit mention here is filing of accusations in violation of the terms of D-1.0102. Occasionally accusations will be made in an attempt to advance a political agenda or to "punish" positions, statements, or actions that the accuser disagrees with. In situations where there is no evidence of compliance with the responsibilities of D-1.10103 and where there is evidence of bad faith or reckless disregard by the accuser (thankfully a fairly rare occurrence in the PCUSA), an Investigating Committee may decide to file allegations against the accuser himself/herself with the governing body having jurisdiction over the accuser. This should be an extraordinary step, but Constitutional Services has now seen our Rules of Discipline used for a variety of inappropriate purposes ("discovery" in civil divorce cases, revenge, refusal to accept decisions, attempts to advance political agendas.) The Rules of Discipline are not designed to advance any such purposes.

We hope the above musings will be useful to Presbyteries as they faithfully attempt to carry out their constitutional obligations.

1 D-10.0201b: A presbytery may provide by rule for appointment of an investigating committee.
2 The GAPJC took the extraordinary act of advising the stated clerks of such: "The stated clerks have no ground to refuse to produce documents requested by any party, or to determine appropriate content of the record of a case, or to transmit to a judicial commission materials in addition to those requested by a party, or to offer advice on the disposition of a case which is a prejudgment of the merits of the case by the stated clerk." (Minutes, 1990, Part I, p. 40)
3 D-10.0202e says, "determine, in accordance with G-9.0102 and D-2.0203b, whether there are probable grounds or cause to believe that an offense was committed by the accused;"
4 D-1.0102 Power Vested in Christ's Church The power that Jesus Christ has vested in his Church, a power manifested in the exercise of church discipline, is one for building up the body of Christ, not for destroying it, for redeeming, not for punishing. It should be exercised as a dispensation of mercy and not of wrath so that the great ends of the Church may be achieved, that all children of God may be presented faultless in the day of Christ.
5 D-1.0103 Conciliate and Mediate The traditional biblical obligation to conciliate, mediate, and adjust differences without strife is not diminished by these Rules of Discipline. Although the Rules of Discipline describe the way in which judicial process within the church, when necessary, shall be conducted, it is not their intent or purpose to encourage judicial process of any kind or to make it more expensive or difficult. The biblical duty of church people to "come to terms quickly with your accuser while you are on the way to court..." (Matthew 5:25) is not abated or
diminished. It remains the duty of every church member to try (prayerfully and seriously) to bring about an adjustment or settlement of the quarrel, complaint, delinquency, or irregularity asserted, and to avoid formal proceedings under the Rules of Discipline unless, after prayerful deliberation, they are determined to be necessary to preserve the purity and purposes of the church.