CHURCH DISCIPLINE

CHAPTER I

PRINCIPLES OF CHURCH DISCIPLINE

PREAMBLE

D-1.01 Church Discipline Defined

D-1.0101 Church Discipline Defined

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

D-1.0102 Limits of Church Discipline

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

D-1.02 Purpose of Church Discipline

D-1.0201 Purpose of Church Discipline

Thus, the purpose of church discipline is:

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

D-1.0202 Due Process

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

D-1.03 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.

D-1.04 Conciliate and Mediate

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

JUDICIAL PROCESS DEFINED

D-2.01 Judicial Process

D-2.0101 Processes of Accountability

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

D-2.0102 Councils of the Church

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

D-2.02 Remedial Process

D-2.0201 Accountability of Councils

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

D-2.03 Disciplinary Process

D-2.0301 Accountability of Individuals

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

D-2.0302 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.) as defined in D-7.0103.

D-2.04 Standards and Process

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

PERMANENT JUDICIAL COMMISSIONS

D-3.01 Election

D-3.0101 Composition

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

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

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

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

D-3.0102 Reviewers and Effect on Quorum

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

D-3.02 Service

D-3.0201 Classes and Terms

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

D-3.0202 Vacancies
a. Continuing membership on a presbytery permanent judicial commission is dependent on membership in a congregation of the presbytery or in the presbytery. Membership on a synod permanent judicial commission is contingent on the synod’s rules of representation. Membership on the permanent judicial commission of the General Assembly shall end when that member transfers membership to a church or presbytery outside the synod from which nominated. In each even-numbered year, the General Assembly shall elect members for the next class and to fill any vacancies then occurring. Members’ terms of office will begin with the dissolution of the General Assembly at which they are elected.

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

D-3.0203 Eligibility

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

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

D-3.03 Commission Expenses

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

D-3.04 Officers

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

D-3.05 Powers

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

D-3.06 Meetings

D-3.0601 Times and Places
The meetings of the permanent judicial commission shall be held at such times and places as the
electing council or councils shall direct, or, if no directions are given, at such times and places as the
commission shall determine.

D-3.0602  Quorum

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

a.  Who Shall Not Participate

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

b.  Lack of Quorum

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

c.  Inability to Reach a Quorum

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

d.  Roster of Former Members –

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

e.  Participant Expenses

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

REMEDIAITION

D-4.01 Remedial Process

D-4.0101 Purpose

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

D-4.0102 Limitations of Judicial Process

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

D-4.02 Filing a Complaint

D-4.0201 Initiation

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

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

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

D-4.0202 Stated Clerk Responsibility

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

D-4.0203 Parties

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

D-4.0204 Committees of Counsel
When a council or an entity of the General Assembly becomes either a complainant or a respondent, it shall designate no more than three persons to be a committee of counsel. This committee shall represent that complainant or respondent in the case until final decision is reached in the highest council to which the case is appealed. All members of a committee of counsel shall be members of the Presbyterian Church (U.S.A.).

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

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

D-4.0205 Time Limits

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

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

D-4.0206 Standing and Jurisdiction in Remedial Cases

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

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

Ruling elder commissioners to a presbytery may file complaints to the synod alleging irregularities or delinquencies that occurred during presbytery meetings at which they were present and enrolled.
d. Minister members of a presbytery and ruling elders elected by and enrolled with the
presbytery for terms of service in accordance with the presbytery’s rules may file complaints against the
presbytery to the synod regardless of whether or not they were in attendance when the alleged
irregularity or delinquency occurred.

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

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

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

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

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

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

D-4.0207 Effects of Jurisdiction

Jurisdiction in remedial process has the following particular effects:

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

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

D-4.03 Contents of a Complaint

D-4.0301 Items to be Included

Items to be included in a complaint are as follows:

a. The name of the complainant(s) and the name of the respondent.
b. The particular irregularity including the date, place, and circumstances thereof; or the particular delinquency including the dates of the written request to cure the delinquency and of the next meeting at which the respondent failed to do so.

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

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

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

D-4.0302 Method of Filing

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

D-4.04 Request for a Stay of Enforcement

D-4.0401 Requesting a Stay of Enforcement

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

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

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

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

D-4.05 Preliminary Ruling

D-4.0501 Examination of Papers

The complaint (or appeal for purposes of processing a request for a stay of enforcement on appeal) shall be promptly transmitted by the stated clerk along with the request for a stay of enforcement, if one has been received, to the permanent judicial commission moderator and clerk for their preliminary determination as to the following questions:
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
If a request for a stay of enforcement is made under D-4.0401c, a stay of enforcement may be entered by three members of the permanent judicial commission that will hear the case filing within ten (10) days of their receipt of the preliminary ruling, the complaint, and the request for a stay of enforcement, a statement that in their judgment:

a. substantial harm will occur if the action or decision is not stayed, and

b. probable grounds exist for finding the decision or action erroneous.

D-4.0602 Determination and Filings

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

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

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

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

D-4.07 Response and Next Actions

D-4.0701 If the Preliminary Ruling Accepts the Case

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

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

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

D-4.0702 If the Initial or Modified Preliminary Ruling Dismisses the Case
a. Within fifteen (15) days of notification that the officers have dismissed the case, one or more of the complainants or a member of the permanent judicial commission may file a challenge to the dismissal, in which case the respondent, if it has not already done so, shall prepare and file its answer as described in D-4.0703 below, which shall be distributed to the permanent judicial commission, and the challenge shall be processed in accordance with D-4.0704 below.

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

D-4.0703 Answer to Complaint

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

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

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

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

D-4.0704 Challenge to Preliminary Ruling and Stay of Enforcement

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

TRIAL IN A REMEDIAL CASE

D-5.01 Pretrial Procedures

D-5.0101 Duties of Respondent Stated Clerk

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

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

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

D-5.0102 Record of the Case

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

D-5.0103 Additional Filings

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

D-5.0104 Pretrial Conference

At any time after a case is received by a permanent judicial commission, the commission may provide for the parties or their counsel, if any, to explore settlement possibilities; or, in a pretrial conference, to seek agreement on a statement of facts and disputed issues, to exchange documents and other evidence, and to take other action which might reasonably and impartially narrow the dispute and expedite its resolution. The moderator and clerk of the session, or their designees, or the moderator and clerk of the permanent judicial commission, or their designees, shall set a date, time and place for the pretrial conference, and conduct it on the commission’s behalf.
D-5.02  Conduct of Trial

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

D-5.03  Citations and Testimony

D-5.0301  Citation of Parties and Witnesses

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

D-5.0302  Who May Be Cited

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

D-5.0303  Witnesses from Another Council

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

D-5.0304  Expenses

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

D-5.0305  Service of Citation

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

D-5.04  Electronically Received Testimony

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

**D-5.05 Procedures in Trial**

**D-5.0501 Counsel**

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

**D-5.0502 Circulation of Materials and Communication**

a. Any materials pertaining to the case shall be filed with the stated clerk of the council. Parties to a remedial case or their counsel or any other person shall not circulate or cause to be circulated directly to the members of the 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 permanent judicial commission regarding any matter related to the case unless the other party and their counsel, if any, are included.

**D-5.0503 Control of Conduct of Trial**

The moderator of the 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 commission by any member of the commission, which shall decide the question by majority vote.

**D-5.0504 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 permanent judicial commission may appeal from the decision of the moderator to the commission, which shall decide the question by majority vote.

**D-5.0505 Absences**
Members of a permanent judicial commission must be present in person at trials. The absence of any member of the permanent judicial commission after a trial has commenced shall be recorded. That member shall not thereafter participate in that case.

D-5.0506 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 permanent judicial commission.

D-5.06 Trial

D-5.0601 Announcement by the Moderator

The trial of a remedial 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-5.0602 Objections of Parties

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

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

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

D-5.0603 Preliminary Determinations and Objections

The permanent judicial commission shall place all preliminary determinations on the record and shall decide by majority vote any 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 permanent judicial commission has heard the evidence, unless in a pretrial conference the parties agree on a statement of facts in which no factual disputes exist, waive their right to present additional evidence at a trial, and are willing to have the dispute settled on the basis of their briefs.

D-5.0604 Amendment of Complaint

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

D-5.0605 Opening Statements
The parties shall be given an opportunity to make opening statements.

D-5.07   Evidence

D-5.0701 Definition

The complainant and respondent 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-5.0702 Records as Evidence

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

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

D-5.0703 Witnesses

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

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

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

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

D-5.0704 Testimony

a. At the direction of the moderator or on the request of either party, no fact witness shall be present during the examination of another witness. This shall not limit the right of any complainant or the committee of counsel of the respondent to be present and to have expert witnesses present.
b. Witnesses shall be examined first by the party producing them, and then they may be
cross-examined by the opposing party. The moderator may permit additional questions from the parties
(including both re-examination, followed by re-cross-examination) if so requested. Thereafter, any
member of the permanent judicial commission may ask additional questions.

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

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

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

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

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

D-5.08 Final Statements

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

D-5.09 Decision

D-5.0901 Deliberation

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

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

D-5.0902 Decision

a. The permanent judicial commission shall then decide the case. If the complaint is
sustained either in whole or in part, the commission shall order such action as is appropriate.
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
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
arrangement for payment, and one additional copy shall be made for inclusion in the record to be sent forward upon any appeal pursuant to D-6.0802.

D-5.1002 Additions to the Record

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

D-5.1003 Duty of the Stated Clerk

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

REMEDIAL APPEALS

D-6.01  Filing an Appeal

D-6.0101  Definition

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

D-6.0102  Initiation of Appeal

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

b. The ruling must be the commission’s final order disposing of the complaint, whether that order is a dismissal in accordance with D-4.0702b, or a written decision in accordance with D-5.09.

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

D-6.02  Notice of Appeal

D-6.0201  Notice Filed

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

D-6.0202  Items to be Included

a. the name of the party filing the appeal (the appellant or appellants) and their counsel, if any;

b. the name of the other party (the appellee or appellees) and their counsel, if any;

c. the council from whose decision the appeal is taken;
d. the actual ruling being appealed from, including the date and place thereof, and a copy of the ruling; and

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

(1) irregularity in the proceedings;

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

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

(4) hastening to file an appeal before the evidence or testimony is fully received;

(5) manifestation of prejudice in the conduct of the case;

(6) injustice in the process or decision; and

(7) error in constitutional interpretation.

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

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

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

**D-6.04 Duty of Stated Clerk**

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

**D-6.05 Effect of Appeal**

*D-6.0501 If No Stay of Enforcement*

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

D-6.0502  Seeking Stay of Enforcement

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

D-6.06  Withdrawal of Appeal

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

D-6.07  Preliminary Process

D-6.0701  Examination of Notice of Appeal

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

a. the council has jurisdiction;

b. the appellant has standing to file the appeal;

c. the appeal was timely and properly filed; and

d. the appeal states and describes one or more of the grounds for appeal listed in D-6.0201d.

D-6.0702  Preliminary Ruling

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

D-6.0703  Challenge to Preliminary Ruling

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

D-6.0704 When No Challenge is Received

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

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

D-6.08 Record of the Case

D-6.0801 List of Papers

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

D-6.0802 Filing of Record on Appeal

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

D-6.0803 Correction of the Record

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

D-6.09 Briefs
D-6.0901 Filing of Appellant Brief

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

D-6.0902 Failure of Appellant to File Brief

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

D-6.0903 Filing of Appellee Brief

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

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

D-6.0904 Failure of Appellee to File Brief

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

D-6.0905 Appellant Supplemental Brief

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

D-6.10 Extensions

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

D-6.11 Transmittal of Record and Briefs

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

D-6.12 Prehearing Conference
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.
a. Decisions of permanent judicial commissions other than the General Assembly’s Permanent Judicial Commission are binding only on the parties to the case.

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

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

d. 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.

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

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

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

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

d. Members Receiving Allegations from Any Source

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

e. Self-Accusation

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

D-7.0202 Initiating a Request for Vindication

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

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

b. The council shall appoint an investigating committee in accordance with its rule.
c. The investigating committee shall conduct an inquiry to ascertain the facts and circumstances and shall either:

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

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

D-7.03 Jurisdiction

D-7.0301 Rules of Jurisdiction

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

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

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

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

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

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

D-7.04 Reference
D-7.0401 Definition of Reference

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

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

D-7.0402 Duty of Lower Council

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

D-7.0403 Duty of Higher Council

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

D-7.0404 Action on Request

a. If the permanent judicial commission decides to accept the reference, it shall instruct the stated clerk to proceed with the appointment of an investigating committee, if needed. The permanent judicial commission shall conduct the trial or hearing on appeal.

b. The higher council’s permanent judicial commission may decline to accept the case for reference and return it to the lower council, stating its reasons. The session or permanent judicial commission of the lower council shall conduct the investigation, trial, or hearing on appeal and proceed to a decision.

D-7.05 Investigation

D-7.0501 Referral to Investigating Committee

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

a. Sessions may and presbyteries shall provide by rule for the appointment of an investigating committee.
b. If a session is notified of the receipt of an allegation, it shall determine whether to
proceed with an investigation or request a reference to the presbytery (D-7.04).

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

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

D-7.06 Membership of the Investigating Committee

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

D-7.07 Expenses of the Investigating Committee

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

D-7.08 Allegations of Sexual Abuse

D-7.0801 Definition

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

D-7.0802 Administrative Leave

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

b. Regardless of the employment status of the minister of the Word and Sacrament, the
members designated in accordance with D-3.0102, shall determine as quickly as possible, after
reviewing the written allegations and providing the accused the opportunity to be heard, whether the risk
to a congregation and/or to other potential victims of abuse requires administrative leave or other
restrictions upon the minister's service, when considered in light of the nature and probable truth of the
allegations. Such administrative leave or restrictions will continue until either the matter is resolved in
one of the ways prescribed in the disciplinary process or until the leave or restrictions are altered or
removed by the members of the commission.
D-7.0803  Effect of Administrative Leave

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

D-7.0804  If Leave is Not Required

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

D-7.0805  Presbytery Policies on Administrative Leave

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

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

D-7.0901  Rights of the Accuser

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

D-7.0902  Rights of Those Alleged to Have Been Harmed

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

D-7.0903  Rights of the Accused

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

D-7.0904  Responsibilities of All Participants
All participants in an investigation have the responsibility to work cooperatively in the investigation. This includes, but is not limited to, the preservation of records which may be pertinent, and maintaining appropriate confidentiality throughout the process (see D-7.1003).

D-7.10 Investigating Process

D-7.1001 Preliminary Review

a. The investigating committee shall review the allegation to determine whether it alleges any facts that, if true, constitute an offense, as defined in D-7.0103.

b. If no offense is alleged, the investigating committee shall report this fact to the clerk of the council.

c. If the investigating committee determines that the allegation repeats allegations previously made against the accused, it shall report to the clerk of the council that it will not file charges unless the allegation contains new information warranting investigation or is the subject of an investigation that has not been concluded.

d. The clerk shall communicate the decision not to move to an investigation to the person who filed the allegation and to the person against whom the allegation was filed.

e. Within thirty (30) days of receipt of the report, the person who submitted the allegation may petition the session or permanent judicial commission for a review of the decision of the investigating committee not to file charges (D-7.1302).

D-7.1002 Notification to Participants

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

a. notify the accused in writing of:

   (1) the date of the investigating committee’s first meeting, which begins the one-year timeline (D-7.1402f);

   (2) the reason for the investigation, including a copy of the statement of alleged offense, excluding the name of the accuser at the discretion of the investigating committee;

   (3) the confidentiality of the investigating process; and

   (4) the rights and responsibilities of the accused defined in D-7.0903.

b. notify the person making the allegation in writing of:

   (1) the date of the investigating committee’s first meeting which begins the one-year timeline (D-7.1402f.);

   (2) the confidentiality of the investigating process;
(3) the rights and responsibilities of the accuser as defined in D-7.0901; and

(4) the investigating committee’s commitment to keep the person making the allegation informed as the investigation proceeds.

### D-7.1003 Conduct of Investigation

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

The investigating committee shall:

a. examine all relevant papers, documents, and records available to it;

b. ascertain all available witnesses who have knowledge of the alleged offense and inquire of them;

c. determine, in accordance with G-3.0102 and D-7.0103, whether there are reasonable grounds to believe that an offense was committed by the accused;

d. decide whether the offense alleged can be proved so that the comparison and consideration of all the evidence compels an abiding conviction that the material facts necessary to prove the charge are true.

e. report to the council having jurisdiction over the accused, or in the case of a joint investigation, report to both councils, only whether or not the investigating committee will file charges;

f. if charges are to be filed, prepare them in accordance with the procedures described in D-7.1402 and designate one or more of its members to prosecute the case; and

g. determine if alternate resolution to a trial on the charges should be pursued (see D-7.15).

### D-7.1004 Request for Reference

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

### D-7.11 Review of Investigating Procedures

#### D-7.1101 Petition for Review
a. At any time during the course of the investigation, the person against whom an allegation has been made may petition the permanent judicial commission to review procedures of the investigating committee.

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

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

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

**D-7.1201 Investigating Committee Conclusion**

The investigating committee may determine:

a. not to file charges,

b. to file charges and proceed to trial, or

c. to file charges together with an alternative resolution.

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

**D-7.1301 Written Report**

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

**D-7.1302 Review of Decision**

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

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

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

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

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

D-7.14 If Charges Are Filed

D-7.1401 Duties of the Investigating Committee

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

a. inform the accused in writing that charges will be filed, and list each charge separately;

b. include a summary of the facts it expects to prove at trial to support the charges; and

c. designate one or more of its members to serve as the prosecuting committee. The prosecuting committee shall prosecute the case and represent the church during any appeals. The prosecuting committee may include additional members at the council’s discretion.

D-7.1402 Charges

a. Each charge shall state only one offense.

b. 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.) as defined in D-7.0103.

c. Each charge shall state the specific provision or provisions of Scripture and/or the Constitution that have been violated.

d. Each charge shall be numbered, and state (as far as possible) the time, place and circumstances of the commission of the offense. Multiple occurrences of the same offense may be consolidated in one charge.

e. Each charge shall be accompanied by a summary of the facts expected to be proved at trial.

f. Filing Deadlines.
Charges shall be filed within one year of the date of the first meeting of the investigating committee, unless civil proceedings have commenced during the investigation.

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

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

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

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

D-7.15 Alternative Resolution

D-7.1501 Initiation of Alternative Resolution

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

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

D-7.1502 Forms of Alternative Resolution

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

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

D-7.1503 Mediation in Alternative Resolution
Mediators, if utilized, should be persons known for calm, wise counsel, and need not be attorneys or certified mediators. Anyone serving as a mediator must be familiar with the Church Discipline of the Presbyterian Church (U.S.A.). Presbyteries may identify in advance mediators and persons with experience in the restorative justice process to be called on to assist with alternative resolution when needed. Any fees for mediation shall be negotiated in advance and paid for by the council of jurisdiction.

**D-7.1504 Reporting Requirement**

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

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

The session or permanent judicial commission shall convene to:

a. receive the agreement and the charges together with a statement of the investigating committee’s rationale for adoption of the agreement;

b. vote to approve it by at least two-thirds of the members eligible to vote (D-3.0602);

c. make a record of its proceedings according to the provisions of D-8.1201d, including the name of the accused, the substance of the charge(s), and censure if any; and

d. transmit its decision to the clerk of session or the stated clerk, who shall report it according to the provisions of D-9.0102.

e. If the session or permanent judicial commission does not approve the alternative resolution agreement by a two-thirds vote, the investigating committee may seek another alternative resolution to present to the permanent judicial commission within the one-year deadline or proceed with the filing of charges, or

f. if an alternative resolution agreement is not reached, the investigating committee shall designate a prosecuting committee and the matter shall proceed on the charges filed.
CHAPTER VIII
TRIAL IN A DISCIPLINARY CASE

D-8.01  Pretrial Procedures

D-8.0101  Parties

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

D-8.0102  Pretrial Conference

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

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

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

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

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

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

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

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

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

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

ii. hear any challenges to the appropriateness of charges, make recommendations to dismiss some of the charges, consolidate the charges, or permit amendments to the charges. The moderator and clerk of the session, or their designees, or
the moderator and clerk of the permanent judicial commission, or their designees, shall refer all disputes of fact to the trial.

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

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

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

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

D-8.0103 Between the Pretrial Conference and the Trial

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

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

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

D-8.02 Conduct of Trial

D-8.0201 Trial of a Disciplinary Case

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

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

D-8.03 Citations and Testimony

D-8.0301 Citations

Citations to appear at trial for parties or such witnesses as either party may request shall be signed by the moderator or clerk of the session or the permanent judicial commission and served by the clerk of the council. Witnesses may be either fact witnesses or expert witnesses (see D-8.0704b).
D-8.0302 Who May Be Cited

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

D-8.0303 Witnesses from Another Council

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

D-8.0304 Expenses

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

D-8.0305 Service of Citation

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

D-8.04 Electronically Received Testimony

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

D-8.05 Procedures in Trial

D-8.0501 Counsel

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

D-8.0502 Circulation of Materials and Communication
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
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.
b. An authenticated record or transcript of testimony taken by a council or permanent judicial commission shall be admissible in any proceeding in another council.

D-8.0703 Hearsay Evidence

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

D-8.0704 Witnesses

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

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

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

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

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

D-8.0705 Testimony

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

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

c. Prior to giving testimony, a witness shall make an oath by answering the following question in the affirmative: “Do you solemnly swear that the evidence you will give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?”
d. If a witness objects to making an oath, the witness shall answer the following question in the affirmative: “Do you solemnly affirm that you will declare the truth, the whole truth, and nothing but the truth in the matter in which you are called to testify?”

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

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

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

**D-8.08 Final Statements**

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

**D-8.09 Decision**

**D-8.0901 Deliberation**

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

**D-8.0902 Decision on Guilt**

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

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

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

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

If the accused is found guilty or after the guilty plea, the session or permanent judicial commission should hear evidence within thirty (30) days of the decision as to the extent of the injury suffered, mitigation, rehabilitation, and redemption. This evidence may be offered by either party, or the original accuser or that person's representative. Each person who was directly harmed by the offense may
submit a victim impact statement, which shall become part of the record. The statement shall not be subject to cross-examination. The accused may offer a plan to address the harm done and to seek reconciliation with the victim(s) and the church. The session or permanent judicial commission shall then meet privately to determine the degree of censure to be imposed. Following such determination and in an open meeting, the moderator of the session or permanent judicial commission shall then pronounce the censure.

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

**D-8.1001 Filed Promptly**

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

**D-8.1002 Notification of Parties**

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

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

**D-8.11 New Evidence**

**D-8.1101 New Evidence Received**

a. Prior to filing a notice of appeal, but without extending the time for appeal, the person found guilty may apply for a new trial on the ground of newly discovered evidence. The permanent judicial commission – when 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 a person found guilty of a notice of appeal, new evidence is discovered by the person found guilty, 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, in its discretion, immediately remand the matter for a new trial.

**D-8.12 Record of Proceedings**

**D-8.1201 Duty of Clerk**

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

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

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

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

   (1) the charges;
   (2) a record of the plea entered by the accused on each charge;
   (3) a certified transcript, if requested;
   (4) all properly marked exhibits, records, documents, and other papers;
   (5) the written decision, including the verdict for each charge and the degree of censure, if any, to be imposed by the council; and
   (6) any actions or orders of the session or permanent judicial commission relating to the case, with the vote on each.

e. The clerk of session shall preserve the record of the case for at least ten (10) years, and in accordance with the policy of the council for the preservation of records. The clerk of the permanent judicial commission shall, within thirty (30) days after the decision becomes final, certify and transmit the record of the case to the stated clerk of the electing presbytery, who shall preserve it for at least ten (10) 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 a true and complete transcript be prepared of all the testimony and oral proceedings during the course of the trial. A copy of this transcript, when certified by the person making the same to be true and complete, shall be delivered to each party requesting the same upon satisfactory arrangement for payment, and one additional copy shall be made for inclusion in the record to be sent forward upon any appeal (D-11).

D-8.1202 Additions to the Record

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

D-8.13 Enforcement

When a session or presbytery has completed the trial and found the accused guilty and the decision has been pronounced in accordance with the censure imposed in the following chapter, the session or presbytery shall proceed to enforce the decision regardless of an appeal.
CENSURE AND RESTORATION IN A DISCIPLINARY CASE

D-9.01 Censure

D-9.0101 Degrees of Censure

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

D-9.0102 Reporting of Decision and Censure

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

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

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

D-9.0103 Rebuke
Rebuke is the lowest degree of censure for an offense and is completed when pronounced. It consists of setting forth publicly the character of the offense, together with reproof, which shall be pronounced in the following or like form:

“Whereas, you, (Name) ________________, have been found guilty of the offense(s) of ________________ (here insert a summary of 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 authority of the Presbyterian Church (U.S.A.), expresses its condemnation of this offense, and rebukes you. This rebuke is given not with malice or vindictiveness but in Christian love to offer you correction in error and restoration that you may be more watchful and avoid such offense in the future. We urge you to use diligently the means of grace to the end that you may be more obedient to our Lord Jesus Christ.”

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

D-9.0104 Rebuke with Supervised Rehabilitation

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

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

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

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

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

“Whereas, you, (Name) ________________, have been found guilty of the offense(s) of ________________, 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 authority of the Presbyterian Church (U.S.A.), expresses its condemnation of this offense, rebukes you, and orders you to complete a program of supervised rehabilitation supervised by ________________ as described below: _______________________. This rebuke is given not with malice or vindictiveness but in Christian love to offer you correction in error and the possibility of full community restoration. You are enjoined to be more watchful and avoid such
offense in the future. We urge you to use diligently the means of grace to the end that you may be more obedient to our Lord Jesus Christ.”

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

_D-9.0105 Temporary Exclusion_

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

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

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

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

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

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

f. Notice of Temporary Exclusion – When the censure of temporary exclusion has been pronounced with respect to a teaching elder, the stated clerk of the 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.

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

h. Early Restoration – A person under the censure of temporary exclusion from the exercise of ordered ministry or from membership may apply in writing to the council that imposed the censure
(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
restore the unity of the church by removing from it the discord and division the offense(s) have caused.”

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

D-9.02 Restoration

D-9.0201 Restoration to Membership or Ordered Ministry

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

D-9.0202 Restoration to Membership

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

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

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

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

D-9.0203 Restoration to Ordered Ministry

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

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

Thereafter, a full service of ordination shall take place in accordance with W-4.04 and the individual’s name shall be restored to the appropriate roll.
CHAPTER X
DISCIPLINARY APPEALS

D-10.01  Filing an Appeal

D-10.0101 Definition

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

D-10.0102 Initiation of Appeal

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

a. Only the person found guilty of an offense may initiate the first level of appeal.

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

D-10.0103 Parties

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

D-10.02  Notice of Appeal

D-10.0201 Notice Filed

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

D-10.0202 Items to be Included:

a. the name of the party filing the appeal (the appellant) and their counsel, if any;

b. the name of the other party (the appellee) and their counsel, if any;

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

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

(1) irregularity in the proceedings,
(2) refusing a party reasonable opportunity to be heard or to obtain or present evidence,
(3) receiving improper, or declining to receive proper evidence or testimony,
(4) hastening to file an appeal before the evidence or testimony is fully received,
(5) manifestation of prejudice in the conduct of the case,
(6) injustice in the process or decision,
(7) error in constitutional interpretation, and
(8) undue severity of censure.

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

D-10.03 Duty of Stated Clerk

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

D-10.04 Withdrawal of Appeal

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

D-10.05 Preliminary Process
D-10.0501 Examination of Notice of Appeal

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

a. the council has jurisdiction,

b. the appellant has standing to file the appeal,

c. the appeal was timely and properly filed, and

d. the appeal states and describes one or more of the grounds for appeal listed in D-10.0202.

D-10.0502 Preliminary Ruling

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

D-10.0503 Challenge to Preliminary Ruling

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

D-10.0504 When No Challenge is Received

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

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

D-10.06 Record of the Case

D-10.0601 List of Papers

Within forty-five (45) days after receipt of a notice of appeal, the stated clerk of the lower council shall list in writing to the parties all of the papers and other materials that would constitute the record of
the case (see D-8.1201d & e). Within fifteen (15) days thereafter, either party may challenge the completeness or accuracy of the record as listed by the stated clerk. The stated clerk may, but is not required, to amend the list at the request of a party; however, any such challenge shall be added to the record when it is filed.

D-10.0602 Filing of Record on Appeal

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

D-10.0603 Correction of the Record

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

D-10.07 Briefs

D-10.0701 Filing of Appellant Brief

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

D-10.0702 Failure of Appellant to File Brief

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

D-10.0703 Filing of Appellee Brief

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

D-10.0704 Failure of Appellee to File Brief
Failure of the appellee to file a brief within the time allowed, without good cause, shall constitute waiver of the rights to file a brief, to appear, and to be heard.

D-10.08 Extensions

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

D-10.09 Transmittal of Records and Briefs

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

D-10.10 Prehearing Conference

At any time after an appeal has been received by a permanent judicial commission, the commission may provide for the parties and their counsel, if any, for the opportunity 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.

D-10.11 Hearing of Appeal

D-10.1101 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. 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 new evidence (D-8.1101b), providing for the verbatim record of such new evidence;

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-10.12 Decision of the Permanent Judicial Commission

D-10.1201 Standard of Review

a. 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.

b. If new evidence is accepted and the permanent judicial commission determines that it could change the verdict, it should remand the case for a new trial.
D-10.1202 Voting Procedure

After the hearing and after 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-10.1203 Decision

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

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

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

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

d. 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.

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

D-10.1204 Effect of Reversal on Appeal in Disciplinary Case

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