

CHAPTER V

D-5.0000

PERMANENT JUDICIAL COMMISSIONS

D-5.0100

1. Service on Permanent Judicial Commissions

D-5.0101
Election

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. The General Assembly commission shall be composed of one member from each of its constituent synods. The synod commission 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. The presbytery commission 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 churches. Two of the members of the presbytery commission shall be designated to review any petition for review of the procedures of the investigating committee while the investigation in a disciplinary case is in process (D-10.0204) and to review any petition for review of the decision not to file charges (D-10.0303). These two members shall not take part in any subsequent trial. A session shall refer either form of petition to the presbytery commission.

D-5.0102
Term

The term of each member of a permanent judicial commission shall be six years, with the exception that 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 a term of six years to fill the vacancies then occurring. Their terms of office will begin with the dissolution of the General Assembly at which they are elected.

D-5.0103
Classes

In synods and presbyteries, commissioners shall be elected in three classes, with no more than one half of the members to be in one class. When established for the first time, one class shall serve for two years, the second class for four years, and the third class for six years.

D-5.0104
Vacancy

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 meeting thereof.

D-5.0105
Eligibility

No person who has served on a permanent judicial commission for a full term of six years shall be eligible for reelection until four 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-5.0106
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-5.0200 2. Meetings

D-5.0201
Officers

Each permanent judicial commission shall meet and elect from its members a moderator and a clerk.

D-5.0202
Bases of Power

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

D-5.0203
Meetings

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-5.0204
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 two members assigned responsibilities under D-10.0204 or D-10.0303. The quorum of a session for judicial process shall be the moderator of the session and a majority of the ruling elder members.

D-5.0205
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 trial or appeal of that case.

- D-5.0206
Lack of Quorum
- If, through absence, disqualification, or disability, a sufficient number of the members of a permanent judicial commission are not present to constitute a quorum, the permanent judicial commission shall recess until a quorum can be obtained.
- Inability to Reach a Quorum
- a. The permanent judicial commission shall report its inability to reach a quorum to the stated clerk designated for processing the cases.
- Roster of Former Members
- b. The designated 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, the stated clerk shall immediately select, by rotation from that roster, a sufficient number of former members of the permanent judicial commission to constitute a quorum. The stated clerk shall report the roster annually to the council or councils.
- Participant Expenses
- c. 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 VI

REMEDIAL CASES

D-6.0000

D-6.0100

1. Initiating a Remedial Case and Obtaining a Stay of EnforcementD-6.0101
Method of
Initiation

A remedial case is initiated by the filing of a complaint with the stated clerk of the council having jurisdiction. 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-6.0102
Definition of
Complaint

A complaint is a written statement alleging an irregularity in a particular decision or action, or alleging a delinquency. (D-2.0202) The filing of a complaint does not, by itself, stay enforcement of the decision or action.

D-6.0103
Stay of
Enforcement

A stay of enforcement is a written instruction from the permanent judicial commission having jurisdiction that orders the suspension of a decision or an action until a complaint or appeal is finally determined.

Time Limit to
File a Request
for a Stay

a. No later than thirty (30) days after the alleged irregular action of the council or the remedial decision of a permanent judicial commission being appealed, a person having standing to file a complaint or appeal may simultaneously file either a complaint or an appeal, and a request for a stay of enforcement with the stated clerk of the council having jurisdiction to hear the case. The request may be made in the following manner:

(1) A request signed by one third of the members recorded as present when the decision or action was made by the council;

(2) A request signed by one third of the members of the permanent judicial commission that decided the remedial case; or

(3) A request signed by the 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.

Request Given
to Moderator
and Clerk

b. The complaint or appeal shall be promptly transmitted by the most expeditious means available by the stated clerk along with the request for a stay of enforcement to the permanent judicial commission moderator and clerk for their determination as to:

(1) whether the complaint or appeal meets the preliminary issues in D-6.0305 or D-8.0301, and

(2) if the request is made under D-6.0103a(1) or D-6.0103a(2), either:

(a) whether the request made under D-6.0103a(1) is complete and timely, including validation of the signatures and intent of those who signed; or

(b) whether the request made under D-6.0103a(2) is complete and timely.

Time Line for Preliminary Questions

c. The moderator and clerk of the permanent judicial commission within seven (7) days after their receipt of the request shall report their findings to the permanent judicial commission and the parties.

Time Line for Entering a Stay of Enforcement

d. The permanent judicial commission may enter a stay of enforcement within ten (10) days of the moderator and clerk's findings in the following manner:

(1) By the moderator and the clerk in determining that the request made under D-6.0103a(1) or D-6.0103a(2) is complete and timely and the preliminary issues are met for the complaint or appeal.

(2) If the request is made under D-6.0103(a)(3), by three members of the permanent judicial commission filing with the stated clerk of the council that has jurisdiction to hear the case a statement that in his or her judgment substantial harm will occur if the action or decision is not stayed and that in her or his judgment probable grounds exist for finding the decision or action erroneous. Each permanent judicial commission member must include a summary of the specific council action or decision being stayed.

Distribution of Stay

e. The stated clerk shall send a copy of the stay of enforcement to the parties and to the permanent judicial commission members.

Effective Time

f. The stay of enforcement shall be effective until the time for filing a complaint or notice of appeal shall have expired or, if timely filed, until the decision of the permanent judicial commission having jurisdiction over the case, except as hereafter provided.

Objection to Stay of Enforcement

g. The respondent may, within forty-five days of the filing of a stay of enforcement, file with the permanent judicial commission having jurisdiction over the case an objection to the stay of enforcement, whereupon no fewer than three members of such permanent judicial commission shall conduct a hearing on all of the issues relating to the stay of enforcement. The parties may be present or represented at such hearing. At such hearing, the stay of enforcement may be modified, terminated, or continued until the decision on the merits of the case by the permanent judicial commission.

D-6.0200**2. Filing a Complaint in a Remedial Case**D-6.0201
Parties

In a remedial case the party or parties filing the complaint shall be known as the complainant or complainants and the party or parties against whom the complaint is made shall be known as the respondent or respondents.

D-6.0202
Who May File
Complaint

A complaint of an irregularity or a complaint of a delinquency may be filed by one or more persons or councils subject to and submitting to the jurisdiction of a council.

Against
Presbytery,
Synod, or
Council at
Same Level

a. In the instance of a complaint against a presbytery, a synod, or by a council against another council at the same level, a complaint of an irregularity shall be filed within ninety days after the alleged irregularity has occurred; and a complaint of a delinquency shall be filed within ninety days after failure or refusal of respondent to cure the alleged delinquency at its next meeting, provided that a written request to do so has been made prior to said meeting. Those eligible to file such a complaint are

(1) a minister of the Word and Sacrament or a ruling elder enrolled as a member of a presbytery concerning an irregularity or a delinquency during that period of enrollment, against the presbytery, with the synod;

(2) a commissioner to a synod, concerning an irregularity or a delinquency during that commissioner's period of enrollment, against the synod, with the General Assembly;

(3) a session against the presbytery, with the synod;

(4) a presbytery against the synod, with the General Assembly;

(5) any council against any other council of the same level, with the council immediately higher than the council complained against and to which the latter council is subject;

(6) a person who is an employee of a presbytery, a synod or cooperating synod, or an entity of a presbytery or synod, claiming to have sustained injury or damage to person or property by the council or entity, against the presbytery, with the synod, or against the synod or cooperating synod, with the General Assembly.

Against Session or
Presbyterian
Mission Agency or
Entity

b. In the instance of a complaint against a session, the Presbyterian Mission Agency, or an entity of the General Assembly, a complaint of an irregularity shall be filed within ninety days after the alleged irregularity has occurred; and a complaint of a delinquency shall be filed within ninety days after failure or refusal of respondent to cure the alleged delinquency at its next meeting, provided that a written request to do so has been made prior to said meeting. Those eligible to file such a complaint are

(1) a member of a particular church against the session of that church, with the presbytery;

(2) a session, a presbytery, or a synod against the Presbyterian Mission Agency or an entity of the General Assembly, with the General Assembly;

(3) a person who is an employee of the Presbyterian Mission Agency or an entity of the General Assembly, claiming to have sustained injury or damage to person or property by the Presbyterian Mission Agency or an entity of the General Assembly, with the General Assembly;

(4) a person who is an employee of a particular church claiming to have sustained injury or damage to person or property by the session or an entity of the session against the session of the church, with the presbytery.

D-6.0300

D-6.0301
Statements in
Complaint

3. Pretrial Procedures

A complaint shall state the following:

- a. The name of the complainant 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. The interest or relationship of the complainant, showing why that party has a right to file the complaint.
- e. The relief requested.
- f. That a copy of the complaint has been delivered to the respondent by certified delivery or personal service. The complainant shall file with the stated clerk of the higher council a receipt signed by the addressee or an affidavit of personal service.

D-6.0302
Committee
of Counsel

When a council, the Presbyterian Mission Agency, 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.

Provide by Rule

- a. A council, the Presbyterian Mission Agency, or an entity of the General Assembly may provide by rule for the appointment of a committee of counsel.

- Shall Not Serve b. The clerk of session, the stated clerk, or executive of presbytery or synod shall not serve on a committee of counsel of the council served.
- D-6.0303
Answer to
Complaint The committee of counsel of the respondent shall file with the stated clerk of the higher council a concise answer within forty-five days after receipt of the complaint, and shall furnish a copy of the answer to the complainant. The answer shall admit those facts alleged in the complaint that are true, deny those allegations that are not true or are mistakenly stated, and present other facts that may explain the situation identified as an irregularity or delinquency. The answer may also raise any issues mentioned in D-6.0305 and may include a motion to dismiss the complaint.
- D-6.0304
Procedure Prior
to Trial When the complaint and answer have been filed with the stated clerk of the higher council, the stated clerk shall transmit them at once to the officers of the permanent judicial commission of the council and shall give notice to the parties that the case has been received.
- D-6.0305
Examination
of Papers Upon receiving the papers specified in D-6.0304, the moderator and the clerk of the permanent judicial commission of the body that will try the case shall promptly examine the papers to determine whether
- a. the council has jurisdiction;
 - b. the complainant has standing to file the case;
 - c. the complaint was timely filed; and
 - d. the complaint states a claim upon which relief can be granted.
- D-6.0306
Preliminary
Questions
Determined The moderator and clerk shall report their findings to the parties and to the permanent judicial commission.
- a. If a challenge is made to the findings of the moderator and clerk within thirty days after receipt of those findings, either by a party to the case or by a member of the permanent judicial commission, opportunity shall be provided to present evidence and argument on the finding in question. Parties shall be invited to submit briefs prior to the hearing on the jurisdictional questions.
 - b. If a hearing is necessary to decide the finding in question, that hearing shall be scheduled at least thirty days prior to the trial on the complaint, unless the circumstances, including monetary considerations, render advisable the disposition of the preliminary questions immediately before the trial on the complaint.
 - c. If the permanent judicial commission determines that any point listed in D-6.0305 has been answered in the negative, the permanent judicial commission shall dismiss the case.

d. If no challenge is made to a finding of the moderator and clerk that one or more points listed in D-6.0305 (or D-8.0301, or D-13.0106, as applicable) has been answered in the negative, the case shall be dismissed without further action or order of the permanent judicial commission.

D-6.0307
Duty of
Respondent Clerk
of Session or
Stated Clerk

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

Minutes and
Papers

b. Within fifteen days thereafter, the complainant may request in writing that the respondent file additional minutes or papers pertaining to the case.

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 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 and any requests for additional papers which, if available, shall be included.

D-6.0308
Procedure
for Records

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

D-6.0309
Trial Briefs

The permanent judicial commission may require either party in an original proceeding to file a trial brief outlining the evidence to be produced and the theory upon which the evidence is considered to be relevant.

D-6.0310
Pretrial
Conference

At any time after a case is received by a permanent judicial commission, the commission may provide by rule for the parties or their counsel, if any, to explore settlement possibilities; or, in a pre-trial 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.

CHAPTER VII

TRIAL IN A REMEDIAL CASE

D-7.0000

D-7.0100

1. Conduct of Trial

D-7.0101
Trial—Remedial

The trial of a remedial case shall be conducted by a permanent judicial commission.

D-7.0102
Conducted
Formally

The trial shall be conducted formally with full decorum in a neutral place suitable to the occasion.

D-7.0200

2. Citations and Testimony

D-7.0201
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, who shall cause them to be served.

Members Cited

a. Only members of the Presbyterian Church (U.S.A.) may be cited to appear.

Others Requested

b. Other persons can only be requested to attend.

Witnesses
from Another
Council

c. 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, issue a citation to the witnesses to appear at the place of trial and give evidence as may be required.

Expenses

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

D-7.0202
Service of
Citation

A citation shall be delivered by personal service or by certified delivery. The moderator or clerk of the permanent judicial commission trying the case shall certify the fact and date of service or delivery.

D-7.0203
Second Citation

If a party or a witness who is a member of the Presbyterian Church (U.S.A.) fails to obey a citation, a second citation shall be issued accompanied by a notice that if the party or witness does not appear at the time appointed, unless excused for good cause, the party or witness shall be considered guilty of disobedience and contempt, and for such offense may be subject to disciplinary action.

D-7.0204
Refusal of
Witness to
Testify

A member of the Presbyterian Church (U.S.A.) who, having been summoned as a witness and having appeared, refuses without good cause to testify, and, after warning, continues to refuse may be subject to disciplinary action.

D-7.0205
Deposition Testimony by deposition may be taken and received in accordance with the provisions of D-14.0304.

D-7.0300 3. Procedures in Trial

D-7.0301
Counsel Each of the parties in a remedial case shall be entitled to appear and may be represented by counsel, provided, however, that no person shall act as counsel who is not 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-7.0302
Circulation
of Materials No party to a remedial case or any other person shall circulate or cause to be circulated among the members of the permanent judicial commission any written, printed, or visual materials of any kind upon any matter pertaining to the case before the final disposition thereof. Notwithstanding this prohibition, the permanent judicial commission may request, or grant leave to file, additional materials.

D-7.0303
Control Conduct
of Trial 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.

Questions as
to Procedure a. 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.

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

D-7.0304
Loss of
Quorum Loss of a quorum shall result in a mistrial and the case shall be tried again from the beginning.

D-7.0400 4. Trial

D-7.0401
Procedure in a
Remedial Case The trial of a remedial case shall proceed as follows:

Announcement by
the Moderator a. The moderator shall read aloud sections D-1.0101 and D-1.0102, 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.

Eligibility of Commission Members	b. The parties or their counsel may object and be heard on the organization and jurisdiction of the permanent judicial commission.
Disqualification	(1) A member of a permanent judicial commission is disqualified if the member is personally interested in the case, is related by blood or marriage to any party, has been active for or against any party, or is ineligible under the provisions of D-5.0205.
Challenges	(2) Any member of a permanent judicial commission may be challenged by any party, and the validity of the challenge shall be determined by the remaining members of the permanent judicial commission.
Procedural Objections	c. The permanent judicial commission shall determine all preliminary objections, and any other objections affecting the order or regularity of the proceedings.
Amend Complaint	d. 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.
Opening Statements	e. The parties shall be given an opportunity to make opening statements.
Rules of Evidence	f. The rules of evidence in D-14.0000 shall be followed.
Evidence	g. Evidence as is deemed necessary or proper, if any, shall be presented on behalf of the complainant and the respondent.
Final Statements	h. The parties shall be given an opportunity to make final statements, the complainant having the right of opening and closing the argument.
D-7.0402 Decision	The permanent judicial commission shall then meet privately. All persons not members of the commission shall be excluded.
Deliberation	a. 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 on each irregularity or delinquency assigned in the complaint and record the vote in its minutes.
Decision	b. The permanent judicial commission shall then decide the case. If the complaint is sustained either in whole or in part, the commission shall either order such action as is appropriate or direct the lower council to conduct further proceedings in the matter.

Written Decision c. A written decision shall be prepared while in session, and 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 written decision shall immediately be delivered to the parties to the case by personal service or by certified delivery.

Filed Promptly d. Within thirty 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.

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

D-7.0500 5. Provisions for Appeal

D-7.0501 For each party, the time for filing an appeal shall run from the
Appeal Time date the decision is delivered to, or refused by, that party.

D-7.0502 An appeal may be initiated only by one or more of the original
Appeals parties. Rules of appeal are found in D-8.0000.

D-7.0600 6. Record of Proceedings

D-7.0601 The clerk of the permanent judicial commission shall do the
Record of following:
Proceedings

Verbatim a. Arrange in advance for the accurate verbatim recording of
Recording all testimony and oral proceedings.

Exhibits 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;

Minutes 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 thereon.

Record d. Prepare the record of the case, which shall consist of
 (1) the complaint and the answer thereto;
 (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 thereon.

Preservation e. Within fourteen days after the decision becomes final, certify and transmit the record of the case to the stated clerk of the electing council, who shall preserve it for at least two years.

Transcript f. Upon the request, and at the expense of any requesting party, cause to be prepared, as promptly as circumstances permit, a true and complete transcript of all the testimony and oral proceedings during the course of the trial. A copy of this transcript, when certified by the person making the same to be true and complete, shall be delivered to each party requesting the same upon satisfactory arrangement for payment, and one additional copy shall be made for inclusion in the record to be sent forward upon any appeal pursuant to D-8.0000.

D-7.0602 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 lower council, 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 days to respond in writing.

D-7.0700 7. Duty of Stated Clerk

D-7.0701 Reporting the Decision 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 thereafter, or at a meeting called for that purpose, and enter the full decision upon the minutes of the council.

CHAPTER VIII

APPEAL IN A REMEDIAL CASE

D-8.0000**D-8.0100****1. Initiation of an Appeal**

D-8.0101
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 decision to correct, modify, set aside, or reverse the decision.

D-8.0102
Initiation
of Appeal

An appeal may be initiated only by one or more of the original parties in the case, and is accomplished by the filing of a written notice of appeal.

D-8.0103
Effect of
Appeal

The notice of appeal shall not suspend any further action implementing the decision being appealed unless a stay of enforcement has been obtained in accordance with the provisions of D-6.0103.

D-8.0104
Withdrawal
of Appeal

On application, the permanent judicial commission of the higher council may grant a petition for withdrawal of an appeal. The permanent judicial commission shall deny a petition if its approval would defeat the ends of justice.

D-8.0105
Grounds for
Appeal

The grounds for appeal are

- a. irregularity in the proceedings;
- b. refusing a party reasonable opportunity to be heard or to obtain or present evidence;
- c. receiving improper, or declining to receive proper, evidence or testimony;
- d. hastening to a decision before the evidence or testimony is fully received;
- e. manifestation of prejudice in the conduct of the case;
- f. injustice in the process or decision; and
- g. error in constitutional interpretation.

D-8.0200**2. Filings in Appeal Process**

D-8.0201
Time for Filing
Written Notice
of Appeal

A written notice of appeal shall be filed within forty-five days after a copy of the judgment has been delivered by certified delivery or personal service to the party appealing.

a. The written notice of appeal shall be filed with the stated clerk of the lower council which elected the permanent judicial commission from whose judgment the appeal is taken.

b. The party appealing shall provide a copy of the notice of appeal to each of the other parties and to the stated clerk of the council which will hear the appeal.

D-8.0202
Content of
Written Notice
of Appeal

The written notice of appeal shall state and include

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

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

c. the council from whose judgment the appeal is taken;

d. the judgment or decision, and date and place thereof, from which the appeal is taken (enclose a copy of the judgment or decision with the notice of appeal);

e. a statement of the errors of the permanent judicial commission which conducted the trial or hearing on appeal that are the grounds for the appeal (D-8.0105); and

f. a certification that a copy of the notice of appeal was provided by certified delivery or by personal service to each of the other parties and to the stated clerk of the council that will hear the appeal.

D-8.0203
Transmittal of
Notice of Appeal
to Officers

Upon receipt of the notice of appeal and the decision being appealed, the stated clerk of the higher council shall transmit them to the officers of the permanent judicial commission.

D-8.0300
D-8.0301
Examination
of Papers

3. Prehearing Proceedings

Upon receiving the papers specified in D-8.0203, the moderator and the clerk of the permanent judicial commission of the council that will hear the case shall promptly examine the papers to determine whether

a. the council has jurisdiction;

b. the appellant has standing to file the appeal;

c. the appeal papers were properly and timely filed; and

d. the appeal states one or more of the grounds for appeal set forth in D-8.0105.

D-8.0302
Preliminary
Questions
Determined

The moderator and clerk shall report their findings to the parties and to the permanent judicial commission.

a. If a challenge is made to the findings of the moderator and clerk within thirty days after receipt of those findings, either by a party to the case or by a member of the permanent judicial commission, opportunity shall be provided to present evidence and argument on the finding in question.

b. If a hearing is necessary to decide the item in question, that hearing shall be scheduled at least thirty days prior to the hearing on the appeal unless the circumstances, including monetary considerations, render advisable the disposition of the preliminary questions immediately before the hearing on the appeal.

c. If the permanent judicial commission determines that any point listed in D-8.0301 has been answered in the negative, the permanent judicial commission shall dismiss the appeal.

d. If no challenge is made to a finding of the moderator and clerk that one or more points listed in D-6.0305 (or D-8.0301, or D-13.0106, as applicable) has been answered in the negative, the case shall be dismissed without further action or order of the permanent judicial commission.

D-8.0303
Record on Appeal

The record on appeal shall be formed as follows:

List of Record

a. Within forty-five days after the receipt of a written 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 constitute the record of the case. (D-7.0601d)

Additional
Records

b. Within fifteen days thereafter, any party may file with the stated clerk of the lower council a written statement challenging the accuracy or completeness of the record of the case as listed by the stated clerk. The written challenge shall state specifically the item or items listed in D-7.0601d which are claimed to be omitted from the record of the case.

Filing of Record
on Appeal

c. Upon notification by the stated clerk of the higher council of jurisdiction that the case has been accepted, the stated clerk of the lower council shall certify and file the record of the case, which may include authenticated copies of parts of the record, and shall include any written challenges disputing the completeness or accuracy of the record, with the stated clerk of the higher council.

Correction of the Record	d. 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 session or permanent judicial commission 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.
Notice of Date of Reception	e. The stated clerk of the higher council shall notify the parties of the date the record on appeal was received.
Copy Furnished at Cost	f. Upon written request, the stated clerk of the higher council shall furnish any party to the appeal, at cost to that party, a copy of the record on appeal.
Extension	g. For good cause shown, the stated clerk of the higher council may extend the time limits in D-8.0303 for a reasonable period.
D-8.0304 Filing of Appellant's Brief	Within thirty days after the date of the filing of 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 as to the alleged errors specified.
Copy to Other Party	a. The brief shall be accompanied by a certification that a copy has been furnished to the other party or parties.
Extension	b. For good cause shown, the stated clerk of the higher council may extend this time limit for a reasonable period.
Failure to File Brief	c. Failure of appellant to file a brief within the time allowed, without good cause, shall be deemed by the permanent judicial commission an abandonment of the appeal.
D-8.0305 Filing of Appellee's Brief	Within thirty days after the filing of appellant's brief, the appellee shall file with the stated clerk of the higher council a written brief responding thereto.
Copy to Other Party	a. The brief shall be accompanied by a certification that a copy has been furnished to the other party or parties.
Extension	b. For good cause shown, the stated clerk of the higher council may extend this time limit for a reasonable period.
Failure to File Brief	c. Failure of 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-8.0306
Transmittal of
Record and Briefs

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

D-8.0307
Prehearing
Conference

At any time after an appeal is received by a permanent judicial commission, the commission 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.

D-8.0400 **4. Hearing of Appeal**

D-8.0401
Notice of
Hearing

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.

D-8.0402
Failure to
Appear

Failure of a party to appear in person or by counsel shall constitute a waiver of participation in the hearing on appeal.

D-8.0403
Hearing

At the hearing the permanent judicial commission shall

New Evidence

a. determine whether to receive newly discovered evidence, under the provisions of D-14.0502, providing for the verbatim recording of such new evidence; and

Hearing

b. give opportunity to be heard on the grounds of the appeal to those parties who have not waived that right, the appellant having the right of opening and closing argument.

D-8.0404
Decision of
Permanent
Judicial
Commission

After the hearing and after deliberation, the permanent judicial commission shall vote separately on each specification of error alleged. The vote shall be on the question, "Shall the specification of error be sustained?" The minutes shall record the numerical vote on each specification of error.

If No Errors
Are Found

a. If not one of the specifications of error is sustained, and no other error is found, the decision of the lower council shall be affirmed.

If Errors
Are Found

b. 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.

- Written Decision c. A written decision shall be prepared while in session, and 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 or by certified delivery.
- Determination of Each Error d. The decision shall include the determination of errors specified, and state the remedy as provided in D-8.0101. The permanent judicial commission may prepare its decision in a manner that will dispose of all substantive questions without redundancy. It may include an explanation of its determination.
- Filed Promptly e. Within thirty days of the conclusion of the hearing, the decision shall be filed with the stated clerk of the council that appointed the permanent judicial commission.
- Further Publicity f. The moderator or clerk of the permanent judicial commission shall disseminate the decision as the permanent judicial commission may direct.

CHAPTER IX

REQUEST FOR VINDICATION

D-9.0000

D-9.0101
Request for
Vindication

A member of the Presbyterian Church (U.S.A.) who feels injured by rumor or gossip may request an inquiry for vindication by submitting to the clerk of session or stated clerk of the presbytery a clear narrative and statement of alleged facts.

Review by
Council

a. If a council, through its appropriate committee, finds it proper to grant the request, it shall proceed with an investigating committee as provided in D-10.0201.

Investigating
Committee

b. The investigating committee shall conduct an inquiry to ascertain the facts and circumstances and report in writing to the council.

D-9.0102
Concludes Matter
Unless Charges
Filed

The report shall conclude the matter, unless the investigating committee reports that charges are being filed against the person requesting vindication. If charges are to be filed, the matter shall proceed with appropriate judicial process beginning with D-10.0402.

CHAPTER X

DISCIPLINARY CASES

D-10.0000

D-10.0100

1. Procedure Preliminary to a Disciplinary Case

D-10.0101
Initiation of
Preliminary
Procedures

Procedure preliminary to a disciplinary case is initiated by submitting to the clerk of session or the stated clerk of the presbytery having jurisdiction over the member (D-3.0101) a written statement of an alleged offense, together with any supporting information. The statement shall give a clear narrative and allege facts that, if proven true, would likely result in disciplinary action. Such allegations shall be referred to an investigating committee. (D-10.0201)

D-10.0102
Statement of
Offense

The written statement may be submitted by

Accusation

a. a person under jurisdiction of a council of the Presbyterian Church (U.S.A.) making an accusation against another;

Council

b. a member of a council receiving information from any source that an offense may have occurred which should be investigated for the purpose of discipline; or

Self-Accusation

c. a person under jurisdiction of a council of the Presbyterian Church (U.S.A.) coming forward in self-accusation.

D-10.0103
Referral to
Investigating
Committee

Upon receipt of a written statement of an alleged offense, the clerk of session or the stated clerk of presbytery, without undertaking further inquiry, 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.

D-10.0104
Accusation from
Other Council

When a member is accused of an offense by a written statement presented to a council other than the one 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-10.0105
Transfer
Prohibited

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

D-10.0106
Administrative
Leave

When a written statement of an alleged offense of sexual abuse 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 permanent judicial commission. The moderator of the permanent judicial commission shall within three days designate two members, who may be from the roster of former members of the permanent judicial commission, to determine whether the accused shall be placed on a paid administrative leave during the resolution of the matter. The cost of such shall be borne by the employing entity whenever possible or be shared by the presbytery as necessary. While administrative leave is in effect, a minister of the Word and Sacrament may not perform any pastoral, administrative, educational, or supervisory duties, and may not officiate at any functions such as Baptism, funerals, or weddings.

a. The designated members of the permanent judicial commission, after giving the accused the opportunity to be heard, shall determine whether the risk to the congregation and to potential victims of abuse, when considered in light of the nature and probable truth of the allegations, requires administrative leave or other restrictions upon the minister of the Word and Sacrament's service. Such administrative leave or restrictions will continue until resolution of the matter in one of the ways prescribed in the Rules of Discipline or the leave or restrictions are altered or removed by the designated members of the commission.

b. 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-10.0200

2. Investigation

D-10.0201
Investigating
Committee

An inquiry shall be made by an investigating committee designated by the council having jurisdiction over the member to determine whether charges should be filed.

Membership

a. An investigating committee shall have no more than five but no less than three members, and may include members from another council, if appropriate, in accordance with D-10.0104. A session shall not appoint members of the session as members of the investigating committee.

Appointment
by Rule

b. A presbytery may provide by rule for appointment of an investigating committee.

Expenses

c. The expenses of an investigating committee shall normally be paid by the council having designated it. If, however, the written statement results from information presented to a council other than the one having jurisdiction over a member, the council within whose bounds the alleged offense occurred shall pay for the expenses of investigating within its bounds.

D-10.0202
Investigating
Committee
Responsibilities

The investigating committee shall

a. review the statement of alleged offense to determine whether it alleges any facts that, if true, constitute an offense as defined in D-2.0203b. If no offense as defined in D-2.0203b is alleged, the investigating committee shall end its inquiry and report that to the clerk of the body. If an offense as defined in D-2.0203 is alleged, it shall proceed to the steps below.

b. provide the accused with a copy of the statement of alleged offense described in D-10.0101;

c. provide the person making the accusation with a statement of the investigating committee's procedures;

d. determine whether the accusation repeats allegations previously made against the accused, and if so, report to the council having jurisdiction over the accused that it will not file charges (D-10.0202k) unless the accusation contains new information warranting investigation or is the subject of an investigation that has not been concluded.

e. make a thorough inquiry into the facts and circumstances of the alleged offense;

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

g. ascertain all available witnesses and inquire of them;

h. determine, in accordance with G-3.0102 and D-2.0203b, whether there are probable grounds or cause to believe that an offense was committed by the accused;

i. decide whether the charge(s) filed—on the basis of the papers, documents, records, testimony, or other evidence—can reasonably be proved, having due regard for the character, availability, and credibility of the witnesses and evidence available;

j. initiate, if it deems appropriate, alternative forms of resolution, ordinarily after the investigation has been completed, probable cause has been determined, but before the charges have been filed.

The purpose of alternative forms of resolution will be to determine if agreement can be reached between the investigating committee and the accused concerning any charges which may be filed.

(1) Any mediation shall be completed within 120 days unless a continuance is allowed by the session or permanent judicial commission.

(2) The investigating committee shall report any settlement agreement to the session or permanent judicial commission for its approval.

(3) The session or permanent judicial commission shall convene to receive the settlement agreement; vote to approve it by at least two-thirds of the members eligible to vote; make a record of its proceedings according to the provisions of D-11.0601d, including the name of the accused, the substance of the charge(s), and censure; and transmit its decision to the clerk of session or the stated clerk, who shall report it according to the provisions of D-11.0701.

(4) The investigating committee shall provide an advocate for the accused throughout settlement negotiations, and may provide an advocate for other interested persons at its own discretion.

(5) If a settlement satisfactory to both the investigating committee and the accused in the alternative form of resolution is not reached, the investigating committee shall designate a prosecuting committee per D-10.0202l, and the case shall proceed on the charges filed.

k. report to the council having jurisdiction over the accused only whether or not it will file charges; and

Designate
Prosecuting
Committee

l. if charges are to be filed, prepare and file them in accordance with the provisions of D-10.0401-.0404, and designate one or more persons (to be known as the prosecuting committee) from among its membership to prosecute the case.

D-10.0203
Rights of
the Accusor

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

Rights of
the Person
Alleging Harm

b. If the statement of accusation is submitted on behalf of another person who is alleged to have been harmed by the offense, the investigating committee shall notify that person of the right to be accompanied by an advocate at each and every conference with the investigating committee, the prosecuting committee, and the session or permanent judicial commission.

Rights of the
Person Alleged
Against

c. 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 or its members of the right to remain silent, to be represented by counsel, and, if charges are later filed, to have counsel appointed if unable to secure counsel. (D-11.0301-.0302)

D-10.0204
Petition
Commission
to Review
Procedures

During the course of the investigation, the person against whom an allegation has been made may petition the commission to review procedures of the investigating committee. Proper subjects for 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.

a. The review of the petition shall be done in a hearing conducted by the two members of the commission designated according to D-5.0101, at which both parties may be present and represented by counsel. The hearing shall be conducted within thirty days of receipt of the petition. Decisions shall be communicated to both parties within fifteen days of the hearing.

b. The results of the review shall be communicated to the moderator of the commission and will inform the review of charges in D-10.0405.

D-10.0300**3. Communicate Determination**D-10.0301
Communicate
Determination

If the investigating committee initiates an alternative form of resolution, it shall notify the council through its clerk of session or stated clerk.

D-10.0302
If Charges Are
to Be Filed

If the investigating committee has decided to file charges, it shall promptly inform the accused in writing of the charges it will make, including a summary of the facts it expects to prove at trial to support those charges. It shall ask the accused if that person wishes to plead guilty to the charges to avoid full trial and indicate the censure it will recommend to the session or permanent judicial commission.

D-10.0303
Petition for
Review

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, and notify the person who submitted the written statement.

a. Within 30 days of receipt of the report, that person may petition the session or the permanent judicial commission to review the decision of the investigating committee not to file charges. The petition shall allege those instances in which the investigating committee has not fulfilled the duties specified in D-10.0202.

b. The investigating committee shall submit a written response to the facts alleged in the petition.

c. The designated members of the permanent judicial commission shall consider the petition and the response, giving attention to the duties specified in D-10.0202 and to the question of whether the principles of church discipline 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 days.

d. If they sustain the petition, a new investigating committee shall be appointed by the session or presbytery.

e. If once again no charges are filed, the matter is concluded.

f. If charges are filed, consideration shall be given to the possibility of reference. (D-4.0000)

D-10.0304
Disposition of Records

If no charges are filed, the disposition of the investigating committee's records shall be in accordance with session or presbytery policy.

D-10.0400

4. Charges

D-10.0401
Time Limit

No charges shall be filed later than five years from the time of the commission of the alleged offense, nor later than one year from the date the investigating committee was formed, whichever occurs first, except as noted below.

a. In those situations where civil proceedings have commenced, the investigating committee may request of its permanent judicial commission or session and receive an extension of its time for filing charges of up to six months from the conclusion of any investigation or resulting trial undertaken by the civil authorities. The investigating committee shall maintain contact with civil authorities to determine when such civil proceedings have concluded.

b. For instances of sexual abuse of another person, the five-year time limit shall not apply. **There is also no time limit for charging that a person who knew or reasonably should have known of the reasonable risk of sexual abuse of another as defined in D-10.0401c(1) or (2) failed to take reasonable steps to minimize the risk. Both** charges may be brought regardless of the date on which an offense is alleged to have occurred.

c. Sexual abuse of another person is any offense involving sexual conduct in relation to

(1) any person under the age of eighteen years or anyone without the capacity to consent; or

(2) any person when the conduct includes force, threat, coercion, intimidation, or misuse of ordered ministry or position.

[*Historical Note:* The original text of D-10.0401c was stricken by action of the 214th General Assembly (2002).]

- d. For instances where a former minister of the Word and Sacrament **who renounced jurisdiction while being accused in a disciplinary case rejoins the church**, no time limit from the time of the commission of the alleged offense to the filing of charges shall apply. Charges based on all accusations that had been made by the time that the former minister of the Word and Sacrament had renounced jurisdiction may be brought regardless of the date on which any such offense is alleged to have occurred.
- D-10.0402
Prosecution
of Case
Parties
- If charges are filed, the prosecuting committee shall prosecute the case and represent the church during any appeals. (D-10.02021)
- a. All disciplinary cases shall be filed and prosecuted by a council through an investigating committee and 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.
- Only Two Parties
- b. The only parties in a disciplinary case are the prosecuting council and the accused.
- D-10.0403
Form of Charge
Several Together
- Each charge shall allege only one offense. (D-2.0203b)
- a. Several charges against the same person may be filed with the council at the same time.
- Details of
the Charge
- b. Each charge shall be numbered and set forth the conduct that constituted the offense. Each charge shall state (as far as possible) the time, place, and circumstances of the commission of the alleged conduct. Each charge shall also be accompanied by a list of the names and addresses of the witnesses for the prosecution and a description of the records and documents to be cited for its support.
- Tried Together
- c. Several charges against the same person may, in the discretion of the session or permanent judicial commission, be tried together.
- D-10.0404
Filing of Charge
Session
Presbytery
- Every charge shall be prepared in writing and filed with the clerk of session or stated clerk of the presbytery.
- a. Upon receipt of a charge, the clerk of a session shall present the charge to the session at its next meeting. The session shall determine whether it will try the case or refer it to the presbytery. (D-4.0000)
- b. Upon receipt of a charge, the stated clerk of the presbytery shall immediately forward it to the moderator or clerk of the permanent judicial commission of that presbytery.

D-10.0405 Pretrial Conference	The session or permanent judicial commission, which is to try the case, shall hold a pretrial conference not later than thirty days after receipt of the charge(s).
Time and Place	<p>a. The moderator and clerk of the session or of the permanent judicial commission shall notify the accused, the counsel for the accused, if any, and the prosecuting committee of the time and place of the pretrial conference, and shall furnish the accused with a copy of the charge(s).</p>
Those Present	<p>b. At the time set for the pretrial conference, the moderator and clerk of session or of the permanent judicial commission, the prosecuting committee, the accused, counsel for the accused, if any, and other appropriate persons at the discretion of the moderator and clerk shall ordinarily be present. The moderator shall</p> <ol style="list-style-type: none"> (1) read the charges to the accused; (2) inform the accused of the right to counsel (D-11.0301); (3) furnish the accused with the names and addresses of all the witnesses then known, and a description of the records and documents that may be offered to support each charge; (4) determine with the accused and the prosecuting committee those charges that are not in dispute and discuss alternatives to a full trial; (5) review any reports of petitions for review of the work of the investigating committee, hear any additional challenges to the appropriateness of charges, taking preliminary actions to dismiss some or all of the charges, dismiss the case, or permit amendments to the charges. Such preliminary determinations shall be reviewed by the session or permanent judicial commission in accord with D-11.0402c. (6) schedule a trial to be held no sooner than thirty days following the pretrial conference, or, if all parties agree on those facts contained in the charges that are true and on a recommended degree of censure, schedule a censure hearing; (7) order all parties to appear.
Nothing More	c. Nothing more shall be done at that meeting.
D-10.0406 Witnesses Disclosed	The accused shall provide a list of anticipated witnesses, including addresses, to the clerk of session or permanent judicial commission and the prosecuting committee at least twenty days prior to the trial date. The prosecuting committee and the accused shall each provide the session or permanent judicial commission and the other party with an updated list of witnesses no less than ten days prior to the trial date.

CHAPTER XI

D-11.0000 TRIAL IN A DISCIPLINARY CASE**D-11.0100 1. Conduct of Trial**

D-11.0101 Trial—Disciplinary The trial of a disciplinary case shall be conducted by a session or by a permanent judicial commission.

D-11.0102 Conducted Formally The trial shall be conducted formally with full decorum in a neutral place suitable to the occasion.

D-11.0200 2. Citations and Testimony

D-11.0201 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 session or permanent judicial commission.

Members Cited a. Only members of the Presbyterian Church (U.S.A.) may be cited to appear.

Others Requested b. Other persons can only be requested to attend.

Witnesses from Another Council c. 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, issue a citation to the witnesses to appear at the place of trial and give evidence as may be required.

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

D-11.0202 Service of Citation A citation shall be delivered by personal service or by certified delivery. The moderator or clerk of the session or permanent judicial commission trying the case shall certify the fact and date of service or delivery.

Second Citation a. If a party or a witness who is a member of the Presbyterian Church (U.S.A.) fails to obey a citation, a second citation shall be issued accompanied by a notice that if the party or witness does not appear at the time appointed, unless excused for good cause shown, the party or witness shall be considered guilty of disobedience and contempt, and for such offense may be subject to disciplinary action.

Accused Does Not Appear b. If an accused in a disciplinary case does not appear after a second citation, the session or permanent judicial commission, after

having appointed some person or persons to represent the accused as counsel, may proceed to trial and judgment in the absence of the accused.

D-11.0203
Refusal of Witness
to Testify

A member of the Presbyterian Church (U.S.A.) who, having been summoned as a witness and having appeared, refuses without good cause to testify, and, after warning, continues to refuse may be subject to disciplinary action.

D-11.0204
Deposition

Testimony by deposition may be taken and received in accordance with the provisions of D-14.0304.

D-11.0300

3. Procedures in Trial

D-11.0301
Counsel

Each of the parties in a disciplinary case shall be entitled to appear and may be represented by counsel, provided, however, that no person shall act as counsel who is not 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. Counsel need not be a paid representative or attorney-at-law.

D-11.0302
Unable to
Secure Counsel

If the accused in a disciplinary case is unable to secure counsel, the session or permanent judicial commission shall appoint counsel for the accused. Reasonable expenses for defense shall be authorized and reimbursed by the council in which the case originated.

D-11.0303
Circulation
of Materials

No party to a disciplinary case or any other person shall circulate or cause to be circulated among the members of the session or permanent judicial commission any written, printed, or visual materials of any kind upon any matter pertaining to the case before the final disposition thereof. Notwithstanding this prohibition, the session or permanent judicial commission may request, or grant leave to file, additional materials.

D-11.0304
Control Conduct
of Trial

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.

Questions as
to Procedure

a. 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 session or commission, which shall decide the question by majority vote.

while in session. It shall become the final decision when signed by the moderator and clerk of the session or of the permanent judicial commission.

Announcement in Open Meeting

d. 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.

Degree of Censure

e. If the accused is found guilty or after the guilty plea, the session or permanent judicial commission should hear evidence 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. The person who was directly harmed by the offense may submit a victim impact statement. The statement shall not be subject to cross-examination. The session or permanent judicial commission shall then meet privately to determine the degree of censure to be imposed. (D-12.0000) Following such determination and in an open meeting, the moderator of the session or permanent judicial commission shall then pronounce the censure.

Filed Promptly

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

Notification of Parties

g. 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.

Further Publicity

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

D-11.0500

5. Provisions for Appeal

D-11.0501
Appeal Time

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

D-11.0502
Appeals

Only the person found guilty may initiate the first level of appeal. Either party may initiate an appeal of the appellate decision. Rules of appeal are found in D-13.0000.

D-11.0600

6. Record of Proceedings

D-11.0601
Record of Proceedings

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

Verbatim Recording

a. Arrange in advance for the accurate verbatim recording of all testimony and oral proceedings.

- Exhibits 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.
- Minutes 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.
- Record d. Prepare the record of the case, which shall consist of
- (1) the charges;
 - (2) a record of the plea entered by the accused on each charge;
 - (3) a certified transcript, if requested;
 - (4) all properly marked exhibits, records, documents, and other papers;
 - (5) the written decision, including the verdict for each charge and the degree of censure, if any, to be imposed by the council; and
 - (6) any actions or orders of the session or permanent judicial commission relating to the case, with the vote thereon.
- Preservation of
the Record e. Preserve the original of all records in the following manner:
- (1) The clerk of session shall, after the decision becomes final, retain the record of the case for at least two years.
 - (2) The clerk of the permanent judicial commission shall, within fourteen days after the decision becomes final, certify and transmit the record of the case to the stated clerk of the electing council, who shall preserve it for at least two years.
- Transcript f. Upon the request, and at the expense of any requesting party, cause to be prepared, as promptly as circumstances permit, a true and complete transcript of all the testimony and oral proceedings during the course of the trial. A copy of this transcript, when certified by the person making the same to be true and complete, shall be delivered to each party requesting the same upon satisfactory arrangement for payment, and one additional copy shall be made for inclusion in the record to be sent forward upon any appeal pursuant to D-13.0000.
- D-11.0602
Additions to
the Record No person may supplement or add to the record in a case except for good cause as determined by the moderator and clerk of the session or of the permanent judicial commission responsible for conducting the trial. No request to supplement the record shall be considered until received in writing by the clerk of session or the stated

clerk of the lower council who shall transmit it to the moderator of the session or moderator and clerk of the permanent judicial commission. A copy of the request shall be delivered to all parties and every party shall have ten days to respond in writing.

D-11.0700**7. Duty of Stated Clerk**

D-11.0701
Reporting the
Decision

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

D-11.0800**8. Enforcement**

D-11.0801
Enforcement by
Council

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

CHAPTER XII

D-12.0000

CENSURE AND RESTORATION
IN A DISCIPLINARY CASE

D-12.0100

1. Censures

D-12.0101
Degrees of
Church 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.

D-12.0102
Rebuke

Rebuke is the lowest degree of censure for an offense and is completed when pronounced. (D-11.0403e) 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 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 Presbytery (or Session) of _____, in the name and authority of the Presbyterian Church (U.S.A.), expresses its condemnation of this offense, and rebukes you. 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.

Prayer

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

D-12.0103
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 the permanent judicial commission (D-11.0403e). This censure shall be pronounced in the following or like form.

Whereas, you (Name) _____ have been found guilty in 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 Permanent Judicial Commission (or Session) 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:
_____.

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 so that you may be more obedient to our Lord Jesus Christ.

- a. The rebuke shall be followed by intercessory prayer to Almighty God.
- b. 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).
- c. The description 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.
- d. In a case in which the offense is sexual abuse of another person, the rehabilitation program may include the advice that the person found guilty complete a voluntary act or acts of repentance. Such acts may include: public acknowledgement of guilt, community service, symbolic restoration of what was lost by the person who was harmed, and/or contributions toward documented medical/psychological expenses incurred by the person who was harmed.

D-12.0104
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 definite period of time, or for a period defined by completion of supervised rehabilitation imposed by the session or the permanent judicial commission. (D-11.0403e) 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 Presbytery (or Session) 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 _____, or until completion of the following rehabilitation program supervised by _____, as described below:

_____.

- Prayer a. This formal declaration shall be followed by intercessory prayer to Almighty God.
- Supervised Rehabilitation b. If the period of temporary exclusion is defined by completion of 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.
- Voluntary Act or Acts of Repentance c. In a case in which the offense is sexual abuse of another person, the rehabilitation program may include the advice that the person found guilty complete a voluntary act or acts of repentance. Such acts may include: public acknowledgement of guilt, community service, symbolic restoration of what was lost by the person harmed, and/or contributions toward documented medical/psychological expenses incurred by the person who was harmed.
- Refrain from Exercise of Ordered Ministry d. During the period of temporary exclusion from ordered ministry, the person found guilty shall refrain from the exercise of any function of ordered ministry.
- Cannot Vote or Hold Office e. During the period of temporary exclusion from membership, the person found guilty shall refrain from participating and voting in meetings and from holding or exercising any office.
- Effect of Temporary Exclusion of a Pastor f. 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.
- Notice of Temporary Exclusion g. When the censure of temporary exclusion has been pronounced with respect to a minister of the Word and Sacrament, 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.
- Termination of Censure of Temporary Exclusion h. 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 expiration of the time of exclusion or completion of the supervised rehabilitation pronounced. The council that imposed the censure shall approve the restoration when the time of exclusion has expired or when the council is fully satisfied that the supervised rehabilitation pronounced has been completed.
- Early Restoration i. 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 the expiration of the time of exclusion or the comple-

tion of the supervised rehabilitation fixed in the censure. The council may approve such a restoration when it is fully satisfied that the action is justified.

D-12.0105
Removal from
Ordered Ministry
or Membership

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

Removal from
Ordered Ministry

a. 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

b. 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.

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 Presbytery (or Session) 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, which includes removal from all ordered ministries).

Prayer

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

Consequences
of Removal
from Ordered
Ministry

d. If a minister of the Word and Sacrament is removed from ordered ministry without removal from membership, the presbytery shall give the minister of the Word and Sacrament a certificate of membership to a Christian church of the minister of the Word and Sacrament's choice. If the minister of the Word and Sacrament is a pastor, the pastoral relationship is automatically dissolved by the censure.

Notice of
Removal

e. When the censure of removal has been pronounced with respect to a minister of the Word and Sacrament, 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.

D-12.0200**2. Restoration**

D-12.0201
Decision of
Council

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 and the person makes a reaffirmation of faith for membership restoration or is reordained for restoration to ordered ministry. The forms of the restoration are described in D-12.0202 and D-12.0203.

D-12.0202
Form of
Restoration
to Ordered
Ministry After
Removal

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

Form

a. 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.

Restored to Roll

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

D-12.0203
Form of
Restoration to
Membership after
Removal

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

Form

a. 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.

Restored to Roll

b. 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.

Restored to
Ordered Ministry

c. If the member is also to be restored to an ordered ministry, the procedure prescribed in D-12.0202 shall be followed.

CHAPTER XIII

APPEAL IN A DISCIPLINARY CASE

D-13.0000

D-13.0100

1. Initiation of AppealD-13.0101
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, or reverse the decision.

D-13.0102
Initiation
of Appeal

Only the person found guilty may initiate the first level of appeal by the filing of a written notice of appeal.

D-13.0103
Appeal of
Appellate
Decision

Either party may initiate an appeal of the appellate decision by the filing of a written notice of appeal.

D-13.0104
Effect of
Appeal

The notice of appeal, if properly and timely filed, shall suspend further proceedings by lower councils, except that, in the instance of temporary exclusion from exercise of ordered ministry or membership or removal from ordered ministry or membership, the person against whom the judgment has been pronounced shall refrain from the exercise of ordered ministry or from participating and voting in meetings until the appeal is finally decided.

D-13.0105
Withdrawal
of Appeal

On application, the permanent judicial commission of the higher council may grant a petition for withdrawal of an appeal. The permanent judicial commission shall deny a petition if its approval would defeat the ends of justice.

D-13.0106
Grounds for
Appeal

- The grounds for appeal are
- a. irregularity in the proceedings;
 - b. refusing a party reasonable opportunity to be heard or to obtain or present evidence;
 - c. receiving improper, or declining to receive proper, evidence or testimony;
 - d. hastening to a decision before the evidence or testimony is fully received;
 - e. manifestation of prejudice in the conduct of the case;
 - f. injustice in the process or decision;

- g. error in constitutional interpretation; and
- h. undue severity of censure.

D-13.0200**2. Filings in Appeal Process**

D-13.0201
Time for Filing
Written Notice
of Appeal

A written notice of appeal shall be filed within forty-five days after a copy of the judgment has been delivered by certified delivery or personal service to the party appealing.

- a. The written notice of appeal shall be filed with the clerk of session or stated clerk of the lower council that elected the permanent judicial commission from whose judgment the appeal is taken.
- b. The party appealing shall provide a copy of the notice of appeal to each of the other parties and to the stated clerk of the council that will hear the appeal.

D-13.0202
Content of Written
Notice of Appeal

The written notice of appeal shall state and include

- a. the name of the party or parties filing the appeal, called the appellant or appellants, and their counsel if any;
- b. the name of the other party or parties, called the appellee or appellees, and their counsel if any;
- c. the council from whose judgment the appeal is taken;
- d. the judgment or decision, and date and place thereof, from which the appeal is taken (enclose a copy of the judgment or decision with the notice of appeal);
- e. a statement of the errors of session or permanent judicial commission which conducted the trial or hearing on appeal that are the grounds for the appeal (D-13.0106); and
- f. a certification that a copy of the notice of appeal was provided by certified delivery or by personal service to each of the other parties and to the stated clerk of the council that will hear the appeal.

D-13.0203
Transmittal of
Notice of Appeal
to Officers

Upon receipt of the notice of appeal and the decision being appealed, the stated clerk of the higher council shall transmit them to the officers of the permanent judicial commission.

D-13.0300

D-13.0301
Examination
of Papers

3. Prehearing Proceedings

Upon receiving the papers specified in D-13.0203, the moderator and the clerk of the permanent judicial commission of the council that will hear the case shall promptly examine the papers to determine whether

- a. the council has jurisdiction;
- b. the appellant has standing to file the appeal;
- c. the appeal papers were properly and timely filed; and
- d. the appeal states one or more of the grounds for appeal set forth in D-13.0106.

D-13.0302
Preliminary
Questions
Determined

The moderator and clerk shall report their findings to the parties and to the permanent judicial commission.

a. If a challenge is made to the findings of the moderator and clerk within thirty days after receipt of those findings, either by a party to the case or by a member of the permanent judicial commission, opportunity shall be provided to present evidence and argument on the finding in question.

b. If a hearing is necessary to decide the item in question, that hearing shall be scheduled at least thirty days prior to the hearing on the appeal, unless the circumstances, including monetary considerations, render advisable the disposition of the preliminary questions immediately before the hearing on the appeal.

c. If the permanent judicial commission determines that any point listed in D-13.0301 has been answered in the negative, the permanent judicial commission shall dismiss the appeal.

d. If no challenge is made to a finding of the moderator and clerk that one or more points listed in D-6.0305 (or D-8.0301, or D-13.0106, as applicable) has been answered in the negative, the case shall be dismissed without further action or order of the permanent judicial commission.

D-13.0303
Record on Appeal
List of Record

The record on appeal shall be formed as follows:

a. Within forty-five days after the receipt of a written notice of appeal, the clerk of session or stated clerk of the lower council shall list in writing to the parties all of the papers and other materials that constitute the record of the case. (D-11.0601d)

- Additional Records b. Within fifteen days thereafter, any party may file with the stated clerk of the lower council a written statement challenging the accuracy or completeness of the record of the case as listed by the stated clerk. The written challenge shall state specifically the item or items listed in D-11.0601d which are claimed to be omitted from the record of the case.
- Filing of Record on Appeal c. Upon notification by the stated clerk of the higher council of jurisdiction that the case has been accepted, the stated clerk of the lower council shall certify and file the record of the case, which may include authenticated copies of parts of the record, and shall include any written challenges disputing the completeness or accuracy of the record, with the stated clerk of the higher council.
- Correction of the Record d. 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 session or permanent judicial commission 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.
- Notice of Date of Reception e. The stated clerk of the higher council shall notify the parties of the date the record on appeal was received.
- Copy Furnished at Cost f. Upon written request, the stated clerk of the higher council shall furnish any party to the appeal, at cost to that party, a copy of the record on appeal.
- Extension g. For good cause shown, the stated clerk of the higher council may extend the time limits in D-13.0303 for a reasonable period.
- D-13.0304 Filing of Appellant's Brief Within thirty days after the date of the filing of 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 as to the alleged errors specified.
- Copy to Other Party a. The brief shall be accompanied by a certification that a copy has been furnished to the other party or parties.
- Extension b. For good cause shown, the stated clerk of the higher council may extend this time limit for a reasonable period.

Failure to File Brief	c. Failure of appellant to file a brief within the time allowed, without good cause, shall be deemed by the permanent judicial commission an abandonment of the appeal.
D-13.0305 Filing of Appellee's Brief	Within thirty days after the filing of appellant's brief, the appellee shall file with the stated clerk of the higher council a written brief responding thereto.
Copy to Other Party	a. The brief shall be accompanied by a certification that a copy has been furnished to the other party or parties.
Extension	b. For good cause shown, the stated clerk of the higher council may extend this time limit for a reasonable period.
Failure to File Brief	c. Failure by 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-13.0306 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-13.0307 Prehearing Conference	At any time after an appeal is received by a permanent judicial commission, the commission 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.
D-13.0400	4. Hearing of Appeal
D-13.0401 Notice of Hearing	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.
D-13.0402 Failure to Appear	Failure of a party to appear in person or by counsel shall constitute a waiver of participation in the hearing on appeal.
D-13.0403 Hearing	At the hearing, the permanent judicial commission shall
New Evidence	a. determine whether to receive newly discovered evidence, under the provisions of D-14.0502, providing for the verbatim recording of such new evidence; and
Hearing	b. give opportunity to be heard on the grounds of the appeal to those parties who have not waived that right, the appellant having the right of opening and closing the argument.

D-13.0404 Decision of Permanent Judicial Commission	After the hearing and after deliberation, the permanent judicial commission shall vote separately on each specification of error alleged. The vote shall be on the question, "Shall the specification of error be sustained?" The minutes shall record the numerical vote on each specification of error. If the appeal was initiated by a prosecuting committee appealing a verdict of not guilty and the permanent judicial commission sustains that portion of the appeal, the permanent judicial commission shall remand the case for a new trial.
If No Errors Found	a. If none of the specifications of error is sustained, and no other error is found, the decision of the lower council shall be affirmed.
If Errors Are Found	b. If one or more errors are found, the permanent judicial commission shall determine whether the decision of the lower council shall be affirmed, set aside, reversed, modified, or the case remanded for a new trial.
Written Decision	c. A written decision shall be prepared while in session, and shall become the final decision when a copy of the written decision is signed by the clerk and moderator of the commission.
Determination of Each Error	d. The decision shall include the determination of errors specified, and state the remedy as provided in D-13.0101. The permanent judicial commission may prepare its decision in a manner that will dispose of all substantive questions without redundancy. It may include an explanation of its determination.
Filed Promptly	e. The decision shall be filed promptly with the stated clerk of the council that appointed the permanent judicial commission and the parties to the case by personal service or by certified delivery.
Further Publicity	f. The moderator or clerk shall disseminate the decision as the commission may direct.
D-13.0405 Effect of Reversal on Appeal in Disciplinary Case	When a permanent judicial commission in an appeal in a disciplinary case reverses all findings of guilt, it is in effect an acquittal, and the person is automatically restored to ordered ministry or membership in the church. Declaration to this effect shall be made in the lower council.

CHAPTER XIV

D-14.0000 EVIDENCE IN REMEDIAL OR DISCIPLINARY CASES**D-14.0100 1. Evidence**

D-14.0101 Evidence Defined
Evidence, in addition to oral testimony of witnesses, may include records, writings, material objects, or other things 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-14.0200 2. Witnesses

D-14.0201 Challenge
Any party may challenge the ability of a witness to testify, and the session or permanent judicial commission shall determine the competence of the witness so challenged.

D-14.0202 Spouse
A husband or wife, otherwise competent to testify, may be a witness for or against the other, but neither shall be compelled to testify against the other.

D-14.0203 Counselor
A person duly appointed by a council to provide counseling services for persons within the jurisdiction of the council shall not testify before a session or permanent judicial commission, except that the restriction may be waived by the person about whom the testimony is sought.

D-14.0204 Counsel for Parties
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-14.0205 Credibility of Witnesses
Credibility means the degree of belief that may be given to the testimony of a witness. The session or permanent judicial commission may consider, in determining the credibility of a witness, any matter that bears upon the accuracy or truthfulness of the testimony of the witness.

D-14.0300 3. Testimony

D-14.0301 Separate Examination
At the request of either party, no witness shall be present during the examination of another witness. This shall not limit the right of the accused or the committee of counsel of the respondent to be present and to have expert witnesses present.

D-14.0302 Examination of Witnesses
Witnesses in either disciplinary or remedial cases shall be examined first by the party producing them, and then they may be cross-examined by the opposing party. Thereafter, any member of the session or permanent judicial commission may ask additional questions.

- Oath
- a. 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?”
- Affirmation
- b. 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?”
- D-14.0303
Record of
Testimony
- The testimony of each witness shall be accurately and fully recorded by a qualified reporter or other means.
- D-14.0304
Testimony Taken
on Deposition
- Any session or permanent judicial commission before which a case may be pending shall have power to appoint, on the application of any party, one or more persons to take and record testimony in the form of a deposition.
- Person from
Another
Council
- a. When necessary, the person or persons so appointed may be from within the geographical bounds of another council.
- Taking of
Testimony
- b. Any person so appointed shall take the testimony offered by either party after notice has been given to all parties of the time and place where the witnesses are to be examined. All parties shall be entitled to be present and be permitted to cross-examine.
- Offered as
Evidence
- c. This testimony, properly authenticated by the signature or signatures of the person or persons so appointed, shall be transmitted promptly to the clerk of the session or permanent judicial commission before which the case is pending and may be offered as evidence by any party.
- Questions of
Admissibility
- d. All questions concerning the admissibility of statements made in deposition testimony shall be determined by the session or permanent judicial commission when the record of such testimony is offered as evidence.
- D-14.0305
Member as
Witness
- A member of the session or permanent judicial commission before which the case is pending may testify, but thereafter shall not otherwise participate in the case.

D-14.0400**4. Records as Evidence**

D-14.0401
Admissibility
of Records

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

D-14.0402
Admissibility
of Testimony

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

D-14.0500**5. New Evidence**

D-14.0501
Application for
New Trial

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

D-14.0502
Consideration
in Appeal

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, in its discretion, receive the newly discovered evidence and proceed to hear and determine the case. However, no newly discovered evidence may be admitted unless the party seeking to introduce it shall have made application, with copies to the adverse party, at least thirty days prior to the hearing. That application shall be accompanied by a summary of the evidence.