

## PART TWO

# BOOK OF DISCIPLINE

*Ratified by the 36<sup>th</sup> General Assembly (2016)<sup>192</sup>*

— 1 —

## DISCIPLINE: ITS NATURE, SUBJECTS, AND PURPOSE

### 1-1 Definition of Church Discipline

There are two kinds of authority vested in the church: the responsibility of order and the authority of jurisdiction.<sup>193</sup> Both kinds of authority are given to the church by the Lord Jesus Christ to instruct and guide her members and to promote her purity and welfare. Discipline is the exercise of the responsibility of order, particularly in regard to the reproof of the erring.<sup>194</sup> As the exercise of such authority may adversely affect the membership rights of an individual who has been accused of an offense, the authority requires the use of ecclesiastical judicial procedures.

The word “discipline,” when used in the *Book of Discipline*, chapters 1-11, shall therefore refer to the use of ecclesiastical judicial procedures.

Church discipline does not supersede or negate the legal responsibility to report cases of suspected abuse to civil authorities according to local and state requirements.

### 1-2 Grounds for Discipline

Not everything displeasing to God is a ground for discipline. The offenses that require discipline and are subject to ecclesiastical judicial procedures are as follows:

- A. Heresy.
- B. Immorality.
- C. Contempt.

### 1-3 Church Members Who Are Also Employees

The employer/employee relationship is not within the scope of the *Book of Discipline*. Church members who are also employees of the church shall be subject to discipline as an employee under whatever procedures may be established by the church for employees. They may also be subject to discipline as a member under the *Book of Discipline*.

### 1-4 Persons Subject to Discipline

All active and inactive members of the church,<sup>195</sup> confirmed, baptized, and affiliate, are entitled and subject to the benefits of discipline.

All Teaching Elders are subject to discipline. Accordingly, no Teaching Elder should be shielded from discipline or lightly sanctioned on account of his office. Neither should serious charges be received against him<sup>196</sup> on slight grounds.

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<sup>192</sup> The 36<sup>th</sup> General Assembly ratified extensive revisions of the 1997 *Book of Discipline*.

<sup>193</sup> See G.3-2 and 3-3.

<sup>194</sup> See G.3-2.

<sup>195</sup> This includes Commissioned Pastors (G.9-11), who are under the original jurisdiction of the Session of the local church of which they are members.

<sup>196</sup> When used herein, the masculine gender shall include the feminine and the singular number shall include the

**1-5 Purpose of Discipline**

The purpose of discipline is to maintain the honor of God, to restore the sinner, and to remove offense from the church. Teaching Elders must instruct the officers and congregation in the use of discipline and jointly practice it in the context of the congregation and courts of the church.

**1-6 Basis of Discipline**

As the revelation of God's holy will, Scriptural law is the basis of all discipline. Therefore, proper disciplinary principles as set forth in the Scriptures must be followed before any charge alleging a personal offense can be brought before a court of the church.

When a charge of personal offense is brought before any court of the church, the party bringing the charge must include a certified statement detailing how the principles outlined in Matthew 18:15 and Galatians 6:1 have been met.<sup>197</sup>

If anyone has evidence to suggest that a Teaching Elder may be guilty of a private offense, he should warn him in private. But if the offense persists or becomes public, he should bring the case to the attention of some other Teaching Elder of the Presbytery.

**1-7 Definition of "Church"**

As used in this *Book of Discipline*, the word "church" shall refer to the Evangelical Presbyterian Church, including her General Assembly, Presbyteries (including mission churches), and local churches.

**1-8 Definition of "Contempt"**

Contempt is willful conduct done in deliberate disrespect of a court of the church, the constitutional documents of the church, or the officers of the church acting in their official capacities.

**1-9 Definition of "Heresy"**

Heresy is the expressed or implied denial, openly taught and obstinately maintained, of one or more of the essential doctrines of Christianity.

**1-10 Definition of "Immorality"**

Immorality is conduct inconsistent with the biblical standards for conduct, including but not limited to bickering, brawling, debauchery, drunkenness, gossiping,<sup>198</sup> hatred, idolatry, impurity, slander, and sexual immorality such as adultery, fornication, homosexual practice, and bestiality.

**1-11 Definition of "Jurisdiction"**

Jurisdiction, as defined herein, is the authority of a court to render a decision in a case requiring discipline. This is the exercise of the responsibility of order. A court must have jurisdiction over both the individual accused and the subject matter of the charge before it can issue an indictment or render a decision. This definition is not to be confused with the authority of jurisdiction. The authority of jurisdiction is the power to rule and is a joint power to be exercised in church courts in regular gradation. The exercise of such power shall always reflect the essential unity of the church.<sup>199</sup> The exercise of the authority of jurisdiction provides the court with the authority to decide issues of government, administration, or law as it pertains to the rule of the church.

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plural unless the context demands otherwise.

<sup>197</sup> Use Form 1 (p. 106).

<sup>198</sup> The terms "bickering" and "gossiping" as used herein are intended to deal with those acts that are disruptive to the peace and unity of the church.

<sup>199</sup> See G.3-2B.

In the case of actions by a church court raising issues, misunderstandings, and disputes—which are not personal offenses requiring discipline but which raise issues that bear upon the authority of jurisdiction— one may seek review / file a complaint (petition, request for review by) in the court having original jurisdiction thereof. Such complaint, however, will not be subject to ecclesiastical judicial procedures unless the court determines that the conduct made the basis of the complaint is willful and done in deliberate disrespect of a court of the church, the constitutional documents of the church, or the officers of the church acting in their official capacities. If such determination is made, the court will then signify the use of ecclesiastical judicial procedures in all further proceedings, and upon judgment, an automatic appeal will be taken to the next higher court.

## — 2 —

**PASTORAL CARE****2-1 The Duty to Evangelize**

In terms of its work, the first duty of the church is to evangelize by extending the gospel both at home and abroad, leading others to a saving knowledge of Jesus Christ as Lord and Savior, and to provide for the nurture of that faith that all might grow in grace and in sanctification (*Book of Government* 4-3).<sup>200</sup>

**2-2 The Spiritual Power of the Church**

The power of the church is moral and spiritual, thus distinguishing the government of the church from civil government (*Book of Government* 3-1). This means that the church does not have civil authority over anyone.

**2-3 Spiritual Nurture of Members**

Among other duties, it is the duty of the church to provide for the nurture of its members (*Book of Government* 4-4A).

**2-4 Retention of Authority over Church Property**

While possessing no civil authority over any person, the church does retain authority over its property and ministries. In providing a secure and nurturing atmosphere for worship and spiritual growth, the church retains the right to exclude anyone from its property, services, or ministries on such terms and conditions as it may desire. Thus, for example, a particular church may require certain standards before permitting adults to teach Sunday School, lead ministries, or otherwise participate in the life and ministry of the church.

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<sup>200</sup> This reference quotes from the *Book of Government* prior to the 2014 revision. The *Book of Government* (adopted June 2014) now reads in G.4-3: “**It is the primary mission of the local church to evangelize**, making disciples by extending the gospel both at home and abroad, leading others to a saving knowledge of Jesus Christ as Lord and Savior, providing for the nurture of that faith that all might worship the true God and grow in grace and in sanctification. It is to be remembered that good deeds in ministry and service to others, offering relief to those in need, are the fruit of the gospel. Without the clear evidence of such fruit, all else is brought into question. However, the Church must never confuse its primary mission of evangelism (the gospel) with the fruit of faith (good works).”

## — 3 —

**PROCESSES APPLICABLE TO ALL  
ECCLESIASTICAL JUDICIAL PROCEDURES****3-1 Ex parte Communications**

- A.** Once any ecclesiastical judicial procedure under this *Book of Discipline* is commenced, ex parte communications are prohibited.
- B.** An ex parte communication is any form of communication to the presiding court or commission (Session, Presbytery, Judicial Commission, or Permanent Judicial Commission, including the Office of the Stated Clerk of the General Assembly) by one party to a proceeding in the absence of the other parties to that proceeding that relates to the merits of the proceeding. It includes but is not limited to verbal, written, electronic, or any other form of communication.
- C.** This prohibition against ex parte communication does not include questions on procedural matters that may be addressed to the Clerk of the court or commission. But otherwise, the prohibition against ex parte communication on the merits of the proceeding applies to the Clerk of the court or commission.
- D.** Therefore, the church courts, its officers, and judicial commissions shall act in accordance with the following:
  - 1. Any attempt at ex parte verbal communication shall be immediately interrupted by the member of the court to whom the communication is directed. The member of the court shall make a record of the attempted communication, place it in a separate file, and communicate to the other side the attempted ex parte communication. The record of the attempted communication shall include the name of the person(s) attempting to so communicate and the date of the attempted communication; under no circumstances shall the content of any ex parte communication be added to the case file of the subject ecclesiastical judicial proceeding;
  - 2. Any form of ex parte communication, including notes from verbal communication, shall be placed in a separate file and communicated to the other parties and members of the presiding court or commission.
  - 3. If a party desires communication with a court or a judicial commission, that party shall request a conference call with the court or commission. The court or commission, or its designee, shall determine if the conference call is in order and, if so, shall schedule the conference call. The party desiring communication shall be responsible for arranging the call and will bear the cost thereof.

**3-2 Mediation**

- A.** At the sole discretion of a court or commission (Session, Presbytery, or General Assembly), an ecclesiastical judicial procedure brought under this *Book of Discipline* may be assigned to a mediator(s). A matter so assigned for mediation may only proceed with the written consent of all necessary individuals as determined by the court or commission referring the matter to mediation.
- B.** Upon the court's assignment of a church member(s) to serve as a mediator, he will not be eligible to serve as a member of the court should it prove necessary for the matter to be brought before the court or judicial commission.

- C. Prior to the commencement of mediation, the mediator(s) shall obtain the written agreement of all participants in the mediation to be bound by the following:
1. All discussions are to be considered confidential unless all parties and the mediator(s) agree otherwise.
  2. Any admissions made and settlement offers made will not be cited in any further proceeding concerning any other matter before the court should the matter not be resolved in mediation. No participant in the mediation will call a mediator(s) as a witness to the mediation in any subsequent hearing and/or in any other forum.  
Any person who violates the terms of this agreement may be subject to sanction for rebellion under *Book of Discipline* 1-8.
  3. A mediator(s) may only report to the court or commission whether the matter has been settled, or not settled, or partially settled. If settled, the terms of any settlement will be disclosed to the court or judicial commission. However, no settlement can be entered into which conflicts shall conflict with any provision of the Constitution of the EPC. Any such settlement will be considered null and void ab initio (from the beginning). Written settlements are to be sealed and kept by the Clerk of the court separate from the court's or commission's regular minutes.
  4. No formal record of any settlement discussions will be made. This prohibition includes the use of any recording device or a stenographer.
  5. If any party to mediation desires to have legal counsel, the other party shall be afforded the same opportunity. The provisions of **D.10-3** shall apply to all counsel.

## — 4 —

**JURISDICTION****4-1 The Right of Private Judgment**

Since “God alone is Lord of the conscience,” we consider the right of private judgment in religious matters to be universal and unalienable. Therefore, the church, in disciplinary cases, has jurisdiction only over her members (**D.1-4**).

**4-2 Original Jurisdiction**

In cases of original jurisdiction, the following rules apply:

**A. The Session**

The Session has original jurisdiction in every disciplinary case involving members of that local church.

**B. The Presbytery**

The Presbytery has original jurisdiction in every disciplinary case involving Teaching Elders of the Presbytery and jurisdiction over Chapter 14 complaints regarding actions or decisions of sessions within its designated area (**G.19-1**).

**C. The General Assembly**

The General Assembly has original jurisdiction over Chapter 14 complaints regarding actions or decisions of Presbyteries and judicial cases referred to it by a lower court (**G.22-3**).

**D. Dissolved Churches**

If a particular church is dissolved, the Presbytery shall assume jurisdiction with regard to any case of discipline begun by the Session but not concluded.

**E. Transfer of Membership**

A member of a local church or a Presbytery whose membership is being transferred shall remain under the jurisdiction of the first until received by the second.

**4-3 Assumption of Jurisdiction**

In the event a court shall be unable or unwilling to try a person or persons accused, the next higher court may assume jurisdiction after giving thirty days’ written notice to the lower court of its intention to assume jurisdiction.<sup>201</sup>

**4-4 Failure to Act**

When a court of original jurisdiction fails to act in a disciplinary case before it for a period of ninety days after initiation of the case, the next higher court may, on motion by any member of the church, assume jurisdiction. It may issue instructions to the lower court, or it may conclude the case itself.<sup>202</sup>

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<sup>201</sup> Use Form 13 (p. 121).

<sup>202</sup> Use Form 13 (p. 121).

**4-5 Termination of Jurisdiction<sup>203</sup>**

Jurisdiction in judicial cases ends upon receipt of written notice of renunciation by the Clerk or Stated Clerk of the court of original jurisdiction. In the event an individual orally renounces jurisdiction, this fact shall be confirmed by letter from the court acknowledging that renunciation. The letter shall be delivered in person or by form of mail requiring a written receipt. If the court receives no written response within ten days,<sup>204</sup> the acknowledgment of renunciation of jurisdiction shall be deemed final. In such instances, a case already begun may be concluded only with the permission of the accused.

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<sup>203</sup> Revised 06/2008, 06/2010, 06/2013.

<sup>204</sup> If the end of the timeline falls on a weekend or holiday, the timeline shall be extended to midnight of the next business day following that weekend or holiday (see *Act of Assembly* 14-04, p. 175).

## — 5 —

**OFFENSES****5-1 Offenses**

As defined in **D.1-2**,<sup>205</sup> offenses that require discipline are three kinds: Heresy, Immorality, and Contempt for the established order of the church. Nothing ought to be considered by any court as an offense or admitted as a matter of accusation that cannot be proved to be such from Scripture. The **Westminster Confession of Faith**, with the **Larger and Shorter Catechisms** and the **Book of Order** consisting of the *Book of Government*, the *Book of Discipline*, and the *Book of Worship*, are the standards adopted by the church as expositions of the teachings of Scripture in relation to faith and practice.

**5-2 Personal and General Offenses**

A personal offense is an offense as defined in **D.5-1** in a way of wrong done to some particular person or persons, including one's own self. A general offense is an offense as defined in **D.5-1** but not directed against any particular person.

**5-3 Private and Public Offenses**

Private offenses are those known only to an individual or, at most, only to a few persons. Public offenses are those that are known to more than a few persons.

**5-4 Preliminary Sanctions**

When it is impracticable to commence an action against an accused church member, the Session may, if it thinks the edification of the church requires it, exclude the accused from the sacraments until the charges against him can be examined.

**5-5 Out-of-Bounds Offenses**

When an offense, alleged to have been committed at a distance, is not likely to otherwise become known to the court having jurisdiction, it shall be the duty of the court within whose bounds the facts occurred, after satisfying itself there is a strong presumption of guilt, to send notice to the court having jurisdiction, which shall at once proceed against the accused; or the whole case may be transferred for trial and imposition of sanctions, if any, to the coordinate court within whose bounds the offense is alleged to have been committed.

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<sup>205</sup> See also **D.1-8**, 1-9, and 1-10.

## — 6 —

**COMMENCING AN ECCLESIASTICAL  
JUDICIAL PROCEDURE INVOLVING  
DISCIPLINE****6-1 Commencement of Actions for Discipline**

An action for discipline shall commence:

**A. By a Person or Persons**

When a person files a written charge with the Clerk of the court of appropriate jurisdiction.<sup>206</sup>

**B. By the Court**

When the court having jurisdiction determines that a charge is in order and there is a strong presumption of the guilt of the accused.

**6-2 Limitation on Actions**

An action for discipline must be commenced within three years<sup>207</sup> after the acts constituting the offense were committed unless the acts were unknown and were not reasonably knowable by the offended person or court.

In the event that the offended person is under the age of 18, the action for discipline must be commenced before that person's twenty-first birthday.

**6-3 Preliminary Investigation of a Charge by a Person or Persons**

After an action is commenced by a person:

**A. The court or commission shall commence a preliminary investigation in accordance with D.7-1.****B. After the preliminary investigation is concluded, the court or commission shall make a determination whether or not there is a strong presumption of the guilt of the accused.****6-4 Proceedings upon a Determination of a Strong Presumption of Guilt**

In the event of a determination of a strong presumption of the guilt of the accused, the court or commission shall appoint a prosecutor, who shall prepare an indictment and proceed to trial in accordance with Chapters 7 through 10.

**6-5 Trial**

The court or commission shall conduct a trial in accordance with Chapters 9 and 10.

**6-6 Decision**

The court or commission shall render its decision in accordance with Chapter 11.

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<sup>206</sup> Use Form 1 (p. 106).

<sup>207</sup> If the end of the timeline falls on a weekend or holiday, the timeline shall be extended to midnight of the next business day following that weekend or holiday (see *Act of Assembly* 14-04, p. 175).

## — 7 —

## PRE-HEARING PROCESS IN ECCLESIASTICAL JUDICIAL PROCEDURES INVOLVING DISCIPLINE

### 7-1 Investigation of a Charge

#### A. Care over the Church

It is the duty of all church courts to exercise care over those subject to their authority. They shall, with care and discretion, investigate reports concerning alleged offenses that require discipline. This duty is imperative when a person claiming to be aggrieved by an offense shall request an investigation in writing.

#### B. Written Charges

No investigation against an accused offender shall be commenced unless some person files a written charge with the Clerk of the court or unless the court finds it necessary under *Book of Discipline* 1-5 and 1-6 for itself to undertake an investigation.

#### C. Judicial Investigative Committee<sup>208</sup>

The court may appoint a judicial investigative committee to serve as a finder of fact, which shall report its findings to the court with its recommendations. The judicial investigative committee shall have no authority to act for the court other than as an investigative body.<sup>209, 210</sup>

### 7-2 Appointment of a Prosecutor

If an investigation should result in raising a strong presumption of guilt of the party accused, the court shall institute an ecclesiastical judicial procedure and shall appoint a prosecutor to prepare an indictment and to prosecute the case. The prosecutor shall be a member of the court. In cases before the Session, however, he need not be a member of that court but needs only to be a communing member of the church (as defined in **D.1-7**).

### 7-3 Selection of Prosecutor

Ordinarily, no offended person (or person knowing of an offense) shall become a prosecutor of personal offenses. A church court, however, may investigate personal offenses requiring discipline under **D.6-1** when they become known to members of the court.<sup>211</sup>

### 7-4 Parties in a Case

The original and only parties in a case of ecclesiastical judicial procedure are the accuser and the accused. The accuser is always the Evangelical Presbyterian Church, whose honor and purity are to be maintained. The prosecutor is always the representative of the church. On appeal, the parties are known as appellant and appellee.

<sup>208</sup> Revised 6/2004, changing “Judicial Committee” to “Judicial Investigative Committee.”

<sup>209</sup> Use Form 2 (p. 118).

<sup>210</sup> Use Form 8 (p. 116).

<sup>211</sup> Use Form 3 (p. 109).

**7-5 Private Reconciliation**

When the prosecution is instituted by the court or commission, the steps required by **D.1-6** in the case of personal offenses are not necessary. There are many cases, however, in which it will be advisable to send a committee to converse in a private manner with the accused and endeavor to bring him to a sense of repentance before instituting actual ecclesiastical judicial procedures. The committee may then make recommendations to the court or commission concerning further prosecution of the case.

**7-6 Biased Accusations and Testimony**

Great caution should be exercised by the court or commission in receiving accusations and testimony from any person:

- A.** Who is known to hold a malignant spirit against the accused;
- B.** Who is not of good character;
- C.** Who is under sanction, or who is the subject of an action for ecclesiastical judicial procedures;
- D.** Who is deeply interested in any respect in the conviction of the accused, or
- E.** Who is known to be litigious, contentious, rash, or highly imprudent.

**7-7 Suspension of Official Functions**

When an action for discipline has been commenced against a member of a court, any or all of his official functions may be suspended at the court's or commission's discretion, but this shall never be done in the way of sanction.<sup>212</sup>

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<sup>212</sup> Use Form 7 (p. 115).

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**HEARINGS IN ECCLESIASTICAL JUDICIAL  
PROCEDURES INVOLVING DISCIPLINE****8-1 Warning to All**

Every member of a court or commission engaged in an ecclesiastical judicial procedure shall bear in mind the command of Scripture: “Brothers, if someone is caught in a sin, you who are spiritual should restore him gently. But watch yourself, or you also may be tempted.” Galatians 6:1 (NIV).

**8-2 Processing a Charge****A. Commencement**

When ecclesiastical judicial procedures are commenced in accordance with **D.6-1**, nothing shall be done at the first meeting of the court thereafter, unless by consent of the parties, except:

1. To appoint a prosecutor in accordance with **D.7-1** and **D.7-3**.
2. To order the indictment drawn and a copy, including names of witnesses then known to support it, served on the accused, in person or by means requiring a written receipt.
3. To set a date for trial.

**B. Commissions**

Ordinarily, the court shall decide at this time whether it shall try the case or refer the case for trial and decision to a judicial commission in accordance with **D.10-5** and **G.21-1B**. Commissioners shall be ordained Elders within the jurisdiction of the court involved.

**C. Moderator Pro-Tempore**

With the consent of the Moderator, and if the court so desires, it may elect one of its members to serve as Moderator Pro-Tempore for a particular case. The Moderator Pro-Tempore shall exercise the duties of a Moderator as described in **G.18-2** or **G.19-3** with respect to the particular judicial case only.

**8-3 Indictment****A. Heading of the Indictment<sup>213</sup>**

Every indictment shall begin: “In the name of the Evangelical Presbyterian Church” and shall conclude, “against the peace, unity, and purity of the church, and the honor and majesty of the Lord Jesus Christ, as the King and Head thereof.”

**B. Contents of the Indictment**

The indictment shall clearly state the times, places, and circumstances as to the actions alleged to require disciplinary sanctions so that the accused may have adequate notice of the charges and the opportunity to make his defense.

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<sup>213</sup> Use Form 4 (p. 110).

**8-4 Formal Summons****A. Issuance of Formal Summons<sup>214</sup>**

The Moderator or Clerk shall issue formal summons in the name of the court or to the accused and to such witnesses as either party shall nominate to appear on his behalf.

**B. Contents**

The formal summons shall identify the parties to the trial, shall state the time and place of the trial, and shall warn the parties and witnesses of the sanctions for refusal to obey a formal summons.

**C. Service of Summons and Indictment**

The Clerk of the court or commission shall deliver a copy of the summons and the indictment to the defendant in person or by form of delivery requiring a signed receipt. The Clerk shall further deliver a summons to necessary witnesses in person or by form of delivery requiring a signed receipt.

**D. Witness and Exhibits List**

Each of the parties shall provide the other with a list of expected witnesses and copies of all exhibits not later than five days before trial (excluding Saturdays, Sundays, and legal holidays) by personal delivery or by means requiring a written receipt.<sup>215</sup>

**8-5 Refusal to Obey a Formal Summons****A. Accused Person**

When an accused person shall refuse to obey a formal summons, he shall be served with a second formal summons.

**B. Second Summons<sup>216</sup>**

A second formal summons shall be accompanied by a notice that if he does not appear at the time appointed (unless providentially hindered, which fact he must make known to the court) or that if he appears and refuses to plead, he shall be dealt with for his rebellion.

**C. Sanctions for Failure to Appear**

When an accused person, having been twice formally summoned in accord with **D.8-5B** shall fail to appear, the court or commission shall enter this fact upon its records, together with a copy of the indictment, and shall suspend the accused person from the sacraments for his rebellion in failing to appear.

In the event the accused person shall be an officer, the court or commission shall remove him from office and suspend or excommunicate him from the church.

In the event the accused person shall be a member but not an officer and the charge be one of a serious nature as described in **D.1-2**, the court may proceed to removal of the accused person from the membership and fellowship of the church.

<sup>214</sup> Use Form 5 (p. 111).

<sup>215</sup> Use Form 9 (p. 117).

<sup>216</sup> Use Form 6 (p. 113).

**D.** Failure of a Witness to Appear

In the event a duly summoned officer or member of the church willfully fails to appear or refuses to testify, the court may treat the refusal of the witness to appear as rebellion and may proceed to admonish, suspend, remove from office, and/or expel him from the membership and fellowship of the church without need for further action.

**8-6 Time Periods**

The time which must elapse between the serving of the first formal summons on the accused person and the meeting of the court at which he is to appear shall be at least ten days.<sup>217</sup> The time allotted for his appearance on the subsequent summons shall be left to the discretion of the court, provided that it is quite sufficient for a reasonable and convenient compliance with the summons.

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<sup>217</sup> If the end of the timeline falls on a weekend or holiday, the timeline shall be extended to midnight of the next business day following that weekend or holiday (see *Act of Assembly* 14-04, p. 175).

— 9 —

## EVIDENCE

### 9-1 Competency of Witnesses

Competency means the ability to testify. All persons, including the parties, who have sufficient intelligence to understand the obligation of an oath or affirmation are competent witnesses.

### 9-2 Testimony of the Accused

The accused party may be allowed but not compelled to testify. No inference of guilt may be drawn from his failure to testify. The person or persons who filed the charges under **D.6-1A** shall be required to testify on the demand of the accused.

### 9-3 Families

Husbands and wives, parents and children, shall not be required to testify against each other.

### 9-4 Exclusion of Witnesses

Any witness to be examined, other than the accused or a member of the court, may be excluded from the examination of any other witness in the same case if any party objects.

### 9-5 Disqualification of Witnesses

A member of the court who has given testimony in a case becomes disqualified for sitting as a judge if either party objects.

### 9-6 Oath or Affirmation

The oath or affirmation to a witness shall be administered by the Moderator in the following or like terms: “Do you solemnly promise, in the presence of God, that you will declare the truth, the whole truth, and nothing but the truth, according to the best of your knowledge in the matter in which you are called to witness, as you shall answer it to the great Judge of the living and the dead?” If, however, at any time a witness should present himself before a court and, for conscientious reasons, prefers to swear or affirm in any other manner, he should be allowed to do so.

### 9-7 Examination of Witnesses<sup>218</sup>

#### A. Examination and Cross-Examination

Witnesses shall be examined first by the party introducing them and then cross-examined by the opposite party, after which any party or member of the court may ask additional questions. No question shall be asked or answered except by permission of the Moderator subject to an appeal to the court or commission. The court or commission shall not permit cumulative or repetitive questions or questions that are frivolous or irrelevant to the charge at issue.

#### B. Witness Inconvenience<sup>219</sup>

When the alleged offense took place at a distance, and it is inconvenient for the witnesses to appear before the court having jurisdiction, that court may either appoint a judicial investigative committee or request the coordinate court contiguous to the place where the facts occurred to take the testimony for it.

<sup>218</sup> Use Form 9 (p. 117).

<sup>219</sup> Revised 6/2004.

Due notice of the time and place of the taking of testimony by the judicial investigative committee or the coordinate court shall be given to the opposite party. Testimony may be taken by questions asked to the witness with answers recorded in writing or recorded by electronic or other means. All parties shall have the right to examine the witness.

**9-8 Credibility**

Credibility means the degree of credit which may be given to the testimony of a witness. In assessing the credibility of a witness, the court may consider any matter that bears on the credibility of the witness, including, but not limited to, the witness's relationship to the parties or other witnesses, his interest in the result, his weakness of understanding, his demeanor while testifying, his character for honesty or truthfulness, and his belief in the existence of God and a future state of rewards and punishments.

**9-9 The Record**

**A. Authentication**

The records of a court or commission, or any part of them, whether original or transcribed, if regularly authenticated by the Moderator and Clerk, or by either of them, shall be deemed good and sufficient evidence in any other court. Authentication shall be in writing in the following or similar form:

I, \_\_\_\_\_, Clerk [or Moderator] of the \_\_\_\_\_  
[name of court] do hereby certify that the foregoing are true, correct, and complete copies of the Record in the Case of \_\_\_\_\_.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**B. Testimony**

The testimony taken by one court or commission and regularly authenticated shall be received by every other court as no less valid than if it had been taken by itself.

**9-10 Burden of Proof**

The testimony of more than one witness shall be necessary in order to prove an allegation of the indictment. However, if, in addition to the testimony of one witness, other supporting evidence is proved, the allegation may be considered to be proved.

— 10 —  
**THE TRIAL**

**10-1 Trial Proceedings**

When a court or commission proceeds to trial of a case, the following order shall be observed:

**A. The Charge to the Court or Commission**

The Moderator (or Moderator Pro-Tempore) shall exhort the members to remember and consider their high character as judges of a court of Jesus Christ and the solemn duty in which they are about to participate.

**B. Indictment**

The Moderator (or Moderator Pro-Tempore) shall read the indictment,<sup>220</sup> and the accused shall be called upon to declare whether he is guilty or not. If the accused pleads guilty, the court or commission may deal with him according to its discretion. If he pleads not guilty, the trial shall proceed. Accused parties may plead in writing when they cannot be personally present. Accused parties necessarily absent shall have counsel assigned to them.

**C. Service of Summons**

Before proceeding to trial, the court or commission shall ascertain that its summons has been duly served.<sup>221</sup>

**D. Opening Statements**

Each party shall be permitted to make a brief opening statement not longer than 15 minutes unless a longer time shall be granted by the court or commission. The prosecutor shall proceed, followed by the accused party or parties.

**E. Testimony**

The witnesses for the prosecution and then those for the accused shall be examined in accordance with Chapter 9.<sup>222</sup>

**F. Exclusion of Prosecutor and the Accused Person**

On all questions arising in the progress of a trial, the discussion shall first be between the prosecutor and the accused persons. When they have been heard, they may be required to withdraw from the court until the members deliberate upon and decide the question. The Moderator shall announce the court's or commission's decision upon the return of the prosecutor and accused parties to the courtroom.

**G. Closing Argument**

Each party shall be permitted to make a brief closing argument not longer than 15 minutes unless a longer time shall be granted by the court. The prosecutor shall proceed, followed by the accused party or parties. The prosecutor shall be permitted to close, but the total amount of time allocated to each party shall be equal.

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<sup>220</sup> D.8-3.

<sup>221</sup> D.8-4.

<sup>222</sup> Use Form 9 (p. 117).

**H. Deliberations**

The roll shall be called, and the members may express their opinions in the case. The prosecutor and the accused persons may be required to withdraw from the court until the members deliberate upon and decide the question.

**I. The Vote**

The vote shall be by secret ballot, and all members of the court or commission shall vote “Guilty” or “Not Guilty” on each charge of the indictment. A verdict of guilty shall be rendered only upon a two-thirds majority of the votes cast. The Moderator (or Moderator Pro-Tempore) shall announce the court’s decision upon the return of the prosecutor and accused parties to the courtroom.<sup>223</sup>

**J. Imposition of Sanctions**

Before sanctions are determined, the prosecutor and accused person found guilty shall be given the opportunity to present evidence or argument bearing on the administration of sanctions only.

Thereupon, the court or commission shall proceed to a determination of sanctions pursuant to Chapter 11. The prosecutor and the accused persons may be required to withdraw from the court until the members deliberate upon and determine sanctions. Sanctions may be rendered upon a simple majority of the votes cast. The Moderator shall announce the court’s determination of sanctions, which shall be entered into the records upon return of the prosecutor and accused parties to the courtroom.

**K. Motion for New Trial**

If, after trial before any court, new testimony is discovered which the accused believes is important, he shall have the right to ask for a new trial. The court shall have the power to grant his request.

**10-2 Challenges to the Court**

Any party may, for cause hereinafter described, challenge the right of any member to sit in the trial of the case. The question shall be decided by other members of the court. A challenge for cause against a member of the court shall be granted when:

- A. Disclosure of Opinion:** The member of the court expresses his opinion of the guilt of any party to any person not a member of the court before the conclusion of the trial.
- B. Absence:** The member of the court shall absent himself from any sitting of the trial without the permission of the court or satisfactory reasons rendered.
- C. Conflict of Interest:** The member of the court appears to the court to be related to the parties or other witnesses, to have an interest in the result, or to have a similar impediment or conflict of interest.

**10-3 Professional or Learned Counsel****A. No Paid Counsel**

No person serving as counsel shall be permitted to receive compensation for services rendered to any party. However, parties may reimburse counsel for their reasonable expenses.<sup>224</sup>

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<sup>223</sup> Use Form 11 (p. 119).

<sup>224</sup> Use Form 10 (p. 118).

**B. Professional or Learned Counsel**

In the event any party shall be represented by a person who is a graduate of an accredited school of law, the other parties shall be likewise permitted to be represented by learned or professional counsel. However, learned or professional counsel must be a member of the church as church as defined in **D.1-7**. A member of the court serving as counsel in the case shall not be allowed to sit in judgment on the case.

**10-4 The Record****A. The Record**

The Clerk or other person designated by the court or commission shall, within thirty days after the trial, make and maintain as part of the permanent records of the court or commission a complete record of the proceedings, including the charges, the indictment, the answer (if any), all the testimony, whether transcribed or prepared in summary form, and all such acts, orders, and decisions of the court or commission relating to the case including the written ballots evidencing the decision and the determination of sanctions. These documents shall constitute the Record of the Case and should ordinarily be maintained separately from the Minutes of the court or commission.

**B. Expenses of the Record:**

The court or commission shall make and maintain a transcript or record of the proceedings by written or electronic means. The parties shall be permitted to make copies (by transcript or electronic recording) of the whole proceedings at their own expense.

**C. Appeals**

When a case is appealed or removed to a higher court by complaint, the lower court shall transmit the Record of the Case to the higher court with the addition of the notice of appeal or complaint. The higher court shall render its decision based only on that which is contained in the Record. On the final decision of a case by a higher court, the decision shall be communicated to all lower courts.

**10-5 Judicial Commissions<sup>225</sup>****A. Rights and Duties**

A judicial commission created in accordance with **D.8-2 B** shall have all the rights, privileges, duties, and obligations of the court in the matter assigned to it.

**B. Composition**

Judicial commissions shall be composed of no less than three or more than seven members elected by the court.

**C. Membership**

Judicial commissions of Presbytery shall be composed of Teaching Elders and Ruling Elders in proportion as near to two Ruling Elders to one Minister as possible in accordance with *Book of Government* **G.21-1C**.<sup>226</sup>

<sup>225</sup> See also **G.21-1C**.

<sup>226</sup> Use Form 8 (p. 116).

## — 11 —

**DISCIPLINARY SANCTIONS****11-1 Exhortation to Meekness**

When any person shall be found guilty of an offense, the court shall proceed with all tenderness and shall deal with its offending brother or sister in the spirit of meekness. The members are exhorted to watch themselves so that they may avoid temptation.

**11-2 Disciplinary Sanctions**

Disciplinary sanctions that may be administered by church courts or commissions are admonition, suspension, removal from church office, and excommunication. When a milder sanction fails to reclaim the offender, it may become the duty of the court to proceed to the administration of a more severe sanction.

If the court finds on trial that the matter complained of amounts to no more than such acts of infirmity as may be amended so that little or nothing remains to hinder the person's ministry, it shall take all prudent measures to see that the infirmity is amended.

**11-3 Definition of Admonition**

Admonition is the formal reproof of an offender by a church court, warning of his guilt and danger, and encouraging him to be more careful and watchful in the future.

**11-4 Definition of Suspension**

Suspension is the temporary exclusion of church members from the sacraments and/or from other church ministries or activities.

With respect to church officers, suspension may include the exclusion of the officer from office and the sacraments. It may be either definite or indefinite as to its duration.

Suspension should generally be indefinite in its duration, continuing until the person suspended gives such evidence of repentance as may warrant its repeal. The good of the offender and/or the church may require that the offender be suspended for a definite length of time, even though he confesses his sin and gives evidence of repentance.

**11-5 Definition of Removal from Office**

Removal from office is the sanction by which the offender's ordination and election are set aside, and the offender is removed from all church offices without excommunication. Removal from office may or may not be accompanied by the administration of other sanctions.

**11-6 Definition of Excommunication**

Excommunication is the removal of an offender from the membership and fellowship of the church. Excommunication shall be administered only in cases of offenses aggravated by a continuing refusal to repent.

The purpose of this sanction is to reclaim the offender, to deliver the church from the disgrace and injury of his offense, and to motivate the church with fear by the example of his discipline.

**11-7 Principles for the Administration of Sanctions**<sup>227, 228</sup>

The administration of church sanctions shall be suited to the nature of the offense. For private

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<sup>227</sup> Revised 06/10.

<sup>228</sup> Use Form 12 (p. 120).

offenses, sanctions should be administered in the presence of the court or commission alone or in private by one or more members of the court or commission. In the case of public offenses, the degree of sanction and mode of administering it shall be within the discretion of the court or commission, acting in accordance with the paragraphs below, which deal with particular sanctions.

If the charge is one of serious immorality or heresy and the accused person persists in his rebellion, the court or commission may proceed to inflict the highest sanction.

When a Teaching Elder is removed from office, his pastoral relationship shall be dissolved; but when he is suspended, it shall be left to the discretion of the Presbytery whether the sanction shall include the dissolution of the pastoral relationship.

When a Presbytery shall remove a Teaching Elder from his office without excommunication, it shall assign him to membership at some local church subject to the approval of the Session of that local church.

### **11-8 The Sanction of Admonition**

The sanction of admonition may be administered in private by one or more members of the court if the offense is known only to a few and is not aggravated in character. If the offense is public, the admonition shall be administered by the Moderator or Chair in the presence of the court and may also be announced in public should the court deem it appropriate.

### **11-9 Confession and Restoration**

#### **A. Confession**

When any person shall come forward and make his offense known to the court or commission, a full statement of the facts shall be recorded, and judgment rendered without judicial procedures.

When an officer, before judgment is entered, shall make a confession of a matter that is marked by outrageous or scandalous crime or vice, such as substance abuse, marital infidelity, embezzlement, or the like, however penitent he may appear to the satisfaction of all, the court or commission shall without delay suspend<sup>229</sup> or remove him from his office.

#### **B. Restoration**

An officer suspended or removed from office for scandalous conduct shall not be restored, even on the deepest sorrow for his sin, until he has demonstrated an exemplary, humble, and edifying lifestyle for a considerable amount of time, which, in the case of removal from office, shall be for not less than one year. Any officer must present evidence that it is virtually certain that the conduct causing his suspension or removal from office will not occur again.

#### **C. Restoration of a Teaching Elder**

A Teaching Elder removed from office shall not be restored until it appears that the general sentiment of the church is strongly in his favor and demands his restoration. In that event, restoration shall be pronounced only by the court imposing the sanction or with its consent.

When an application for restoration and a statement of support from the Session of the church to which the former Teaching Elder has been assigned is filed with the clerk of the Presbytery, the application will be forwarded to the Ministerial Committee for its review and recommendation. Consideration of the application will proceed as follows:

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<sup>229</sup> Use Form 7 (p. 115).

1. Should the Ministerial Committee choose to recommend restoration to the Presbytery, the Presbytery shall consider the recommendation for restoration in executive session.
2. The Teaching Elder seeking restoration and the Ministerial Committee will be provided the opportunity to address the Presbytery.
3. Upon hearing from the Teaching Elder seeking restoration, he shall be excused.
4. A motion to restore or not restore may be brought before the Presbytery only by its Ministerial Committee.
5. All votes concerning Teaching Elder restoration are to be by secret ballot.
6. A 4/5 affirmative vote shall be required for restoration to office.
7. Restoration may be pronounced only by the court imposing the sanction or with its consent.

#### **11-10 The Sanction of Suspension may be for a definite or indefinite period of time.**

The goal of suspension is to impress the offender of the evil of his sin and, under God's blessing, to lead him to repentance.

Definite suspension shall be administered in the presence of the court or commission alone or in open session of the court, as it may deem best, and public announcement thereof shall be at the court's or commission's discretion.<sup>230</sup>

#### **11-11 Indefinite suspension**

Indefinite suspension shall be administered in the presence of the court or commission alone or in open session of the court, as it may deem best, and public announcement thereof shall be at the court's or commission's discretion.<sup>231</sup>

When the court or commission has resolved to pass the sentence, the Moderator shall address the offending brother to the following purpose:

“Whereas you, \_\_\_\_\_ [here describe the person as a Teaching Elder, Ruling Elder, Deacon, or member of the Church] are convicted by sufficient proof (or are guilty by your own confession) of the sin \_\_\_\_\_ [here insert the offense], we, the Presbytery (or Church Session) of \_\_\_\_\_, in the name and by the authority of the Lord Jesus Christ, do now declare you suspended from the Sacraments of the Church (and from the exercise of your office) until you give satisfactory evidence of repentance.”

To this shall be added such advice or admonition as may be judged necessary, and the whole shall be concluded with prayer to almighty God that He would follow this act of discipline with His blessing.

#### **11-12 Removal from Office**

The sanction of removal from office shall be administered by the Moderator or Chair in the following words:

“Whereas \_\_\_\_\_, a Teaching Elder of this Presbytery (or a Ruling Elder or Deacon of this Church), has been proved by sufficient evidence to be guilty of the sin of \_\_\_\_\_, we, the Presbytery (or Church Session) of \_\_\_\_\_, do adjudge him disqualified for the office of Minister (or Ruling Elder or Deacon), and therefore, we do hereby, in the name and by the

<sup>230</sup> Use Form 7 (p. 115).

<sup>231</sup> Ibid.

authority of the Lord Jesus Christ, remove him from the office of Teaching Elder (or Ruling Elder or Deacon) of the said \_\_\_\_\_ and do prohibit him from exercising any of the functions thereof.” If the sanction includes suspension or excommunication, the Moderator or Chair shall proceed to say: “We do, moreover, by the same authority, suspend the said \_\_\_\_\_ from the Sacraments, and cut him off from the membership and fellowship of the Church.”

The sentence of removal from office ought to be accompanied by solemnities similar to those already prescribed in the case of excommunication.

### **11-13 Excommunication**

Excommunication may be administered according to one or other of the two modes laid down for indefinite suspension, or it may be inflicted in public as the court may decide. In administering this sanction, the Moderator of the court or Chair of the commission shall make a statement of the several steps that have been taken with respect to the offending person and of the decision to cut him off from the membership and fellowship of the church. He shall then show from Matthew 18:15-18 and 1 Corinthians 5:1-5 the authority of the church to cast out unworthy members and shall explain the nature, use, and consequences of this sanction. He shall then administer the sanction in the following words:

“Whereas \_\_\_\_\_, a member of this Church, has been by sufficient proof convicted of the sin of \_\_\_\_\_ and, after much admonition and prayer, obstinately refuses to hear the Church and has manifested no evidence of repentance: Therefore, in the name and by the authority of the Lord Jesus Christ, we, the Session of the Church of \_\_\_\_\_, do pronounce him to be excluded from the Sacraments and cut off from the fellowship of the Church.”

## — 12 —

**REMOVAL OF SANCTIONS****12-1 Court Should Pray for the Offender**

After any person has been suspended from the sacraments, it is proper that the Elders of the church should frequently converse with him as well as pray with him and for him, that it would please God to give him repentance.

**12-2 Restoration to the Sacraments**

When the court shall be satisfied as to the reality of the repentance of a suspended offender, he shall be admitted to profess his repentance either in the presence of the court or commission alone or publicly and be restored to the sacraments of the church and to his office, if such be the judgment of the court or commission, which restoration shall be declared to the penitent in words of the following import:

“Whereas you, \_\_\_\_\_, have been suspended from the Sacraments of the Church (and from the office of Teaching Elder, or Ruling Elder, or Deacon) but have now demonstrated such repentance as satisfies the church, we, the Session (or Presbytery) of \_\_\_\_\_ do hereby, in the name and by the authority of the Lord Jesus Christ, restore you from the said sentence of suspension and restore you to the full communion of the Church (and the exercise of your said office, and all the functions thereof).”

After which, there shall be prayer and thanksgiving.

**12-3 Restoration of an Excommunicated Person**

Subject to the provisions of D.12-7, when an excommunicated person shall be so moved with his excommunication that he is brought to repentance and he desires to be readmitted to the membership and fellowship of the church, he may request that the Session restore him.

The Session shall proceed to restore him if it finds sufficient evidence of his sincere repentance. This may be done in the presence of the court or commission or of the congregation as seems best to the Session.

On the day appointed for his restoration, the Moderator of the court or Chair of the commission shall call upon the excommunicated person and propose to him the following questions:

“Do you, from a deep sense of your great wickedness, freely confess your sins in thus rebelling against God and in refusing to hear His Church?” Answer, “I do.”

“Do you acknowledge that you have been in justice and mercy cut off from the communion of the church?” Answer, “I do.”

“Do you now voluntarily profess your sincere repentance and sorrow for your sin and rebellion, and do you humbly ask the forgiveness of God and His Church?” Answer, “I do.”

“Do you sincerely promise, through divine grace, to live in all humility of mind and carefulness to avoid sin and to attempt to live a lifestyle that will glorify God our Savior?” Answer, “I do.”

Here, the Moderator or Chair shall give the person being restored a suitable exhortation, encouraging and comforting him. Then, he shall pronounce the sentence of restoration in the following words:

“Whereas you, \_\_\_\_\_, have been shut out from the membership and fellowship of the Church but now have demonstrated such repentance as satisfies the Church; in the name and by the authority of the Lord Jesus Christ we, the Session of

this Church, do declare you restored from the sentence of excommunication formerly pronounced against you, and we do restore you to the membership and fellowship of the Church, that you may be a partaker of all the benefits of the Lord Jesus to your eternal salvation.”

After which, there shall be prayer and thanksgiving.

#### **12-4 Restoration to Office**

When an officer who has been removed from office makes a public confession in a manner similar to that prescribed in the case of the restoration of an excommunicated person, he may be restored to office. His restoration to office shall be announced to him by the Moderator or Chair as follows:

“Whereas you, \_\_\_\_\_, formerly a Teaching of this Presbytery (or a Ruling Elder or Deacon of this Church), have been removed from your office but have now demonstrated such repentance as satisfies the Church; in the name of the Lord Jesus Christ, and by His authority, we, the Presbytery of \_\_\_\_\_ (or the Session of this Church), do declare you restored from the said sentence of removal from office formerly pronounced against you, and we do furthermore restore you to your office and to the exercise of all the functions thereof, whenever you may be duly called.”

After this, there shall be prayer and thanksgiving, and the members of the court or commission shall extend to him the right hand of fellowship.

#### **12-5 Reelection Required for Exercise of Office**

When a Ruling Elder or Deacon has been pardoned from the sanction of removal from office, he cannot be allowed to resume the exercise of his office in the church without reelection by the people.

#### **12-6 Special Provisions for the Restoration of a Minister**

In the restoration of a Teaching Elder who has been suspended or removed from office, it is the duty of the Presbytery to proceed with great caution. In conjunction with the Presbytery and the church to which he has been assigned, pursuant to **D.11-7**, the Presbytery and the Session of that church should first admit him to the sacraments, if he has been suspended from them, and afterward should grant him the privilege of preaching on probation for a time. The court shall oversee his lifestyle so as to test the sincerity of his repentance and the prospect of his usefulness. When the Presbytery is satisfied in these respects, it shall restore him to his office.

The case shall remain under judicial consideration until the sentence of restoration has been pronounced.

#### **12-7 Transfer of Case to More Convenient Forum**

When a person under sanction shall move to a place that is remote from the court by which he was sentenced and shall desire to profess repentance and obtain restoration, the court may, if it deems it appropriate, transmit a certified copy of its proceedings to the Session (or Presbytery) where the person under sanction resides. The court of the person’s residence shall then assume jurisdiction over the case and proceed with it as though it had original jurisdiction.<sup>232</sup>

<sup>232</sup> Use Form 13 (p. 121).

— 13 —  
**APPEALS**

**13-1 Definition**

An appeal is a request made to a higher court to review a judgment made by a lower court by and through the use of ecclesiastical judicial procedures (cases of heresy, immorality, and/or contempt). An appeal cannot be made to any court other than the next higher court unless the higher court directs and authorizes that the appeal be heard in another court or by a commission created for the express purpose of hearing the appeal and rendering a decision thereupon.

**13-2 Standing to Appeal; Parties to Appeal**

- A. Only an accused party, found guilty and sanctioned by a lower court, has standing to appeal the lower court's decision to a higher court.
- B. The party bringing the appeal shall be known as "Appellant." The party against whom the appeal is taken shall be known as "Appellee."

**13-3 Newly Discovered Evidence**

Newly discovered evidence is evidence that a party did not know, nor should have known, existed during the lower court proceedings.

If, in the prosecution of an appeal, newly discovered evidence is sought to be introduced, a party seeking its introduction must file a motion with notice to all other parties demonstrating justification for its introduction. Upon approval of the motion, the appellate court may remand the case to the lower court for a new trial or may receive the evidence and proceed with the case.

**13-4 Grounds for Appeal**

The grounds for appeal are:

- A. Any misapplication of the EPC Constitution;
- B. Any irregularity in the proceedings of the lower court;
- C. Receiving improper evidence or declining to receive proper evidence;
- D. Rendering a decision before all the testimony is reasonably heard;
- E. Manifestation of prejudice in the case; and
- F. Mistake or injustice in the judgment or sanction.

**13-5 Notice of Appeal**

Written notice of appeal shall be filed no later than thirty (30) days<sup>233</sup> after the entry of judgment of the lower court. The filing of the Notice of Appeal with the Clerk of the appellate court places the appeal before that court. A copy of the Notice of Appeal also shall be filed with the lower court from which the appeal is taken.<sup>234</sup>

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<sup>233</sup> If the end of the timeline falls on a weekend or holiday, the timeline shall be extended to midnight of the next business day following that weekend or holiday (see *Act of Assembly* 14-04, p. 175).

<sup>234</sup> Use Form 14 (p. 122).

**13-6 Statement of Grounds for Appeal**

Written statement of grounds for appeal shall be filed no later than fifteen (15) days<sup>235</sup> after the Notice of Appeal is filed. The statement must state the factual or constitutional bases forming the issues on appeal.

**13-7 Filing the Record**

Within thirty (30) days<sup>236</sup> after receipt of a Notice of Appeal, it shall be the duty of the Clerk of the lower court to prepare and file with the Clerk of the higher court the Record of the Case as defined in D.10-4.

**13-8 Stay Pending Appeal**

The filing of a Notice of Appeal does not stay the judgment of the lower court. If, however, the sanction is suspension, excommunication, or removal from office, the sanctioned party may, for sufficient reasons provided in writing, petition the higher court to stay the sanction until the case is finally decided. The higher court, in its discretion, may stay the sanction or later modify the stay. In the case that a stay is imposed or later modified, the higher court will notify the lower court. The lower court will confirm receipt of the stay and its compliance with it.

**13-9 Procedures on Appeal**

After a higher court has decided that an appeal is in order and should be considered, the following procedures shall be followed:

- A. The court shall read the complete Record of the Case as submitted by the lower court. The higher court shall provide the Record to the Appellant. Before sending the Record to the Appellant, the higher court may, at its discretion, redact the Record in order to protect confidential or sensitive information that is not relevant to the appeal.
- B. The Appellant shall file a written statement which sets forth the issues on appeal and the arguments in support thereof within thirty (30) days<sup>237</sup> of the receipt of the Record of the Case by the higher court. In addition, a copy of the written statement shall be delivered to the appellee. Appellant shall also provide to the higher court a certificate of delivery of its written statement to the appellee.
- C. The Appellee may file a written response within fifteen (15) days<sup>238</sup> of the receipt by the higher court of the appellant's written statement. In addition, a copy of the written response shall be delivered to the Appellant. Appellee shall also provide to the higher court a certificate of delivery of its written response to the appellant.
- D. The Appellant may file a written reply to the Appellee's written response within fifteen (15) days<sup>239</sup> of the receipt by the higher court of Appellee's written response, if any. In addition, a copy of the written reply shall be delivered to the appellee. Appellant shall also provide to the higher court a certificate of delivery of its written reply to the appellee.
- E. The Appellant or Appellee may file a written request for oral argument, explaining why it is necessary and should be permitted. In response to such a request, or at its own discretion, the higher court may allow oral argument. If oral argument is allowed, the

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<sup>235</sup> If the end of the timeline falls on a weekend or holiday, the timeline shall be extended to midnight of the next business day following that weekend or holiday (see *Act of Assembly* 14-04, p. 175).

<sup>236</sup> Ibid.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

court will advise all parties of the date, time, and place of oral argument and the time allotted to each party.

In the alternative, the higher court may determine the issues on the appeal based solely on the Record of the Case, the written statements, responses, and replies.

- F.** In every case in which an oral argument is heard, a record of the oral argument shall be kept. The recording of the oral argument may be transcribed, and the recording or copy of the transcription maintained by the Stated Clerk of the higher court. In the case of an appeal to the next higher court, a party may request a copy of the transcript. The cost of transcription shall be borne by the requesting party.
- G.** The members of the higher court, in their deliberations, shall express their opinions, deliberate upon, and vote on the issues raised.
- H.** The vote shall be taken on each ground for appeal set forth in the statement filed pursuant to **D.13-6** above in this form: “Shall this ground for appeal be sustained?”

### **13-10 Decision on Appeal**

- A.** The higher court may:<sup>240</sup>
  1. Confirm or reverse, in whole or in part, the judgment of the lower court; or
  2. Remand the case to the lower court for the purpose of amending the Record of the Case, should it appear incorrect or defective or
  3. Remand the case to the lower court with instructions.
- B.** If the higher court or commission deems it wise, it may also render a written opinion, which shall become a part of the Record of the Case.
- C.** Any and all persons, including members of the higher court who were involved with, have intimate knowledge of or otherwise participated in the underlying judgment of the lower court, are precluded from involvement with the higher court in its determination of the issues on appeal.

### **13-11 Counsel**

All parties shall have the right of counsel consistent with **D.10-3**.

### **13-12 Abandonment of Appeal**

Absent extenuating circumstances made known to the higher court beforehand, the appellant shall be deemed to have abandoned his appeal if he does not comply with the procedures set forth above. In such cases, the judgment of the lower court will stand unless the higher court determines that the subject matter of the appeal is so serious that the peace and purity of the church is at stake. In such a case, the higher court, in its discretion, may nonetheless decide the appeal.<sup>241, 242</sup>

### **13-13 Conduct of the Parties**

If any party willfully fails to comply with these rules or demonstrates a litigious or otherwise unchristian attitude in the appeal process, he may be subject to appropriate discipline by the higher court.

<sup>240</sup> Use Form 16 (p. 124).

<sup>241</sup> See **D.4-5** for stipulations regarding renunciation of jurisdiction.

<sup>242</sup> Use Form 15 (p. 123).

**13-14 Failure to File the Record**

If the Clerk of a lower court neglects or willfully fails to file the Record of the Case or any part of it, the Clerk may be subject to appropriate discipline by the higher court. Until the complete

Record of the Case is filed with the higher court, the judgment of the lower court may be stayed at the discretion of the higher court.

If the lower court shall file a portion of the record by electronic means, the appellant shall have the right to prepare a written transcript of it at his own expense.

## — 14 —

**COMPLAINTS****14-1 Complaint Defined**

A complaint is a written contention made to a higher court challenging some act or decision of a lower court that seeks a remedy.

**14-2 Standing to File a Complaint**

- A.** It is the right of any member of the church in good standing to make a complaint against any action of a lower court to whose jurisdiction he is subject. A complaint shall not be made to any court other than the next higher court except with the consent of the next higher court.
- B.** Notwithstanding the above, a member of the church shall not have standing to file a complaint under this chapter in the following circumstances:
1. When an ecclesiastical judicial proceeding has been appealed pursuant to Chapter 13 of this *Book of Discipline* and the member is a party to that ecclesiastical judicial proceeding, or
  2. When the member is a Teaching or Ruling Elder who was present at the meeting at which the challenged action was taken unless a prompt written dissent or protest to the decision by the lower court or commission made the basis of the complaint has been submitted.<sup>243</sup>

**14-3 Initiation of Chapter 14 Case**

A complaint initiates a case under this Chapter 14 against a court in the following manner:

- A.** A complaint shall only be made when the action or decision of the court is alleged to be procedurally irregular and/or in clear violation of the EPC Constitution.
- B.** A complaint shall set forth with particularity all of the facts and reasons why the action or decision of the court is being challenged. This includes reference to the specific provisions of the EPC Constitution or any applicable bylaws or rules alleged to have been violated.

**14-4 Designation of the Parties**

The party filing the complaint shall be designated as the “Complainant.”<sup>244</sup> The court shall be designated as the “Respondent,” even if the action or decision being challenged is the action or decision of a commission appointed by the court.

**14-5 Filing a Complaint**

- A.** A complaint challenging an action or decision of a court or a commission appointed by the court shall be filed with the Clerk of the next higher court.<sup>245</sup>
1. A complaint challenging an action or decision taken by a Session or by its duly appointed commission shall be commenced by filing a complaint with the Presbytery in which the church is located or is otherwise aligned.

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<sup>243</sup> See D.13.

<sup>244</sup> If multiple parties join together to file a complaint, the plural form, “Complainants,” is allowed.

<sup>245</sup> Use Form 17 (p. 125).

2. A complaint challenging an action or decision of the Presbytery, or by its duly appointed commission, shall be commenced by filing a complaint with the General Assembly.
- B.** A copy of the complaint shall be served upon the lower court by providing its Clerk with a copy thereof at the same time that the complaint is filed with the Clerk of the next higher court.<sup>246</sup>

#### 14-6 Time Period for Filing a Complaint

A complaint shall be filed with the next higher court no later than thirty (30) days<sup>247</sup> after the date of the lower court action or decision made on the basis of the complaint. Exceptions to this time period may be allowed in cases when:

- A.** The Complainant legitimately had no knowledge of the lower court action or decision within the thirty (30) day period.<sup>248, 249</sup>
- B.** The Complainant may otherwise petition the higher court to file an untimely complaint to avoid manifest injustice. The decision on such a petition is solely within the discretion of the higher court.

#### 14-7 Stay Pending Hearing on the Complaint

- A.** When a complaint is properly filed regarding a judgment made in a disciplinary action, rather than an appeal under **D.13**, notice of filing of the complaint shall have the effect of suspending the judgment of the lower court until the case has been finally decided in the higher court. If, however, the matter concerns the purity or peace of the church, the court may, either on its own motion or in response to an application filed by a party to the action and for sufficient reasons duly recorded, stay the action of the lower court until the case is finally decided.
- B.** When a complaint is properly filed challenging the action or decision of a lower court in a non-disciplinary proceeding, notice of filing the complaint shall not automatically stay the action or decision of the lower court. However, the higher court, in which the complaint is filed, may, either on its own motion or in response to an application filed by a party to the action and for sufficient reasons duly recorded, stay the action of the lower court until the case is finally decided.

#### 14-8 Court Procedures upon the Filing of a Complaint

- A.** When a complaint is filed with the higher court, the court shall determine whether the complaint states grounds on which relief may be granted. If the court determines the complaint does not state grounds on which relief may be granted, it may either:
  1. Dismiss the complaint in its entirety,
  2. Strike portions thereof and proceed forward, or
  3. Order the Complainant to provide a more definite statement of the grounds on which relief may be granted.
- B.** When a complaint is filed with the next higher court and it is determined by the court that

<sup>246</sup> See Form 17 (p. 125).

<sup>247</sup> If the end of the timeline falls on a weekend or holiday, the timeline shall be extended to midnight of the next business day following that weekend or holiday (see *Act of Assembly* 14-04, p. 175).

<sup>248</sup> Ibid.

<sup>249</sup> This scenario could take place in actions or decisions of an administrative commission that does not routinely announce its actions to a congregation.

the complaint states grounds on which relief may be granted, the higher court has the authority:

1. Where circumstances warrant, to void the whole or any part of the lower court action against which the complaint has been made or send the matter back to the lower court with instructions for further consideration or action.
2. To direct the lower court to appoint one or more representatives to defend the complaint against it and further direct the appointed representative to file an answer to the complaint no later than thirty (30) days<sup>250</sup> from the order of the higher court. The lower court may request a one-time extension of fifteen (15) days<sup>251</sup> to file its answer. The answer shall respond to each allegation in the complaint and shall set forth with specificity all defenses on which the lower court relies.

**C. The Record of the Case**

The lower court shall file the record of the case concurrently with its answer to the complaint pursuant to B.2 above. The Record of the Case shall consist of any and all documents in the lower court's possession relating to the complaint made against it. In every case, a full record shall be made, and a copy of it shall be sent to the Complainant. If the Complainant, on motion duly filed, contends that the record is incomplete or incorrect, the Complainant may file a proposed supplement to the Record of the Case within fifteen (15) days<sup>252</sup> of the filing of the Record of the Case.

**D. Reviewing the Record**

Upon receipt of the full and complete record of the case, as determined by the higher court, the higher court shall then review the record in its entirety, except any part of it that may be omitted with the mutual consent of the parties and the higher court.

**E. The higher court may seek clarification of matters or direct questions to the Complainant and/or Respondent in writing.**

**F. Oral Argument and Notice of Hearing**

The higher court may permit oral argument. If the higher court determines oral argument will be allowed, it shall provide all parties with reasonable notice of the time and place of the hearing on the complaint. This notice may be provided in person or by other means establishing proof of service.

**G. If oral argument is allowed, either party may file a written summary of their argument with the higher court no later than fifteen (15) days<sup>253</sup> before the date of the hearing. The Complainant shall have the right of opening and closing the argument.**

**H. Deliberations of the Court: Upon conclusion of the arguments, the members of the higher court shall convene in private, and each member shall be given an opportunity to express his opinions, deliberate upon, and vote on the question.**

**14-9 Voting upon a Complaint**

**A. Specification of the vote**

In voting upon a complaint, the vote shall be either to sustain, to sustain in part, or not to sustain.

<sup>250</sup> If the end of the timeline falls on a weekend or holiday, the timeline shall be extended to midnight of the next business day following that weekend or holiday (see *Act of Assembly* 14-04, p. 175).

<sup>251</sup> Ibid.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

**B.** Effect of a vote to sustain or not to sustain

A vote to sustain shall be to sustain each and all of the items or counts of the complaint. A vote not to sustain shall be to deny the relief sought by each count of the complaint. A vote to sustain in part shall be to sustain one or more specific items or counts of the complaint.

**C.** A majority vote of those members of the court present is required to sustain, not to sustain, or to sustain in part the counts of the complaint.**D.** Written opinion.

The court may issue a written opinion explaining its decision, which shall become part of the Record of the Case.

**E.** Right to Vote

No member of the lower court who participated in the action or decision made on the basis of the complaint shall hear, deliberate upon, or vote on the allegations of the complaint being heard by the next higher court.

**14-10 Counsel**

All parties shall have the right of counsel as described in **D.10-3**.

**14-11 Abandonment of Complaint**

A Complainant shall be considered to have abandoned his complaint if he does not appear before the higher court in person or by counsel at the time set for the hearing. In such cases, the act or decision of the lower court will stand unless the complainant can provide the court with a satisfactory explanation for his failure to appear or the higher court, in its discretion, chooses to act upon the complaint in the interests of the Church.

**14-12 Unchristian Attitude**

If any party willfully fails to comply with these rules or demonstrates a litigious or otherwise unchristian attitude, he may be subject to appropriate discipline by the higher court.

**14-13 Failure to File the Record**

If a lower court shall neglect to file the Record of the Case or any part of it to the harm of the complainant, it may receive a proper rebuke from the higher court. Thereupon, the act or decision upon which the complaint is based shall be suspended until the record is produced upon which the issue can be fairly heard.

If the lower court shall file a portion of the record by electronic means, the complainant shall have the right to prepare a written transcript of it at his own expense.

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## DISSENT AND PROTEST

### 15-1 Dissent

A dissent is a statement on the record by members of a minority objecting to what they believe to be an ill-advised or erroneous judgment. Any expression of dissent shall be accompanied by a statement of the reasons for dissent.<sup>254</sup>

### 15-2 Protest

A protest is a more solemn and formal statement on the record by members of a minority, strenuously objecting to what they believe to be an ill-advised or erroneous judgment. Any protest shall be accompanied by a statement of the reasons for protest.<sup>255</sup>

### 15-3 Record of Protest or Dissent

If a protest or dissent contains temperate language and is respectful to the court, it shall be placed in the Record of the Case. The court may, if it believes it is necessary, respond to the protest or dissent. The matter shall be ended unless the persons protesting obtain permission to withdraw or amend their protest.

### 15-4 Right to Vote Required

None can join in dissent or protest against a decision of any court except those who had a right to vote in the case.

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<sup>254</sup> Use Form 19 (p. 127).

<sup>255</sup> Use Form 18 (p. 126).