

Church Discipline – Overview of and Rationale for Changes

Gregory A. Goodwiller – August 15, 2023

The 222nd General Assembly (2016) authorized the creation of a task force to revise the Rules of Discipline (RoD) with the following mandate:

to make the Rules of Discipline more accessible to the church, to preserve and enhance the accountability of councils and individuals to the church, to expand the role of mediation and alternate dispute resolution, and to provide flexibility in crafting censures and remedies, particularly in light of recent learnings in ethical and social development and experiments by the secular legal system with alternative sentencing.

Every effort was made to keep the mandate before the task force throughout its work in developing the document it submitted to the 225th General Assembly (2022), which was then amended both in committee and on the floor in plenary session and subsequently adopted as Church Discipline (ChD) that went into effect on July 9, 2023. This document highlights the most significant changes included in the revision.

1. To respond to the mandate to make the process **accessible to the whole church** and to **expand the role of mediation and alternate sentencing** the following new provisions were included:
 - a. A new statement on “Standards and Process” (D-2.04) was added stating explicitly that the standards and process followed are exclusively those contained in the constitution (as opposed to those used in secular courts, such as “rules of civil procedure”).
 - b. D-3.0101 includes a requirement for PJsCs at every level above the session to be elected “in conformity to the church’s commitment to unity in diversity (F-1.0403).”
 - c. Three forms of Alternative Resolution are defined in detail: restorative justice (D-7.1603), mediation (D-7.1604), and other negotiated agreements (D-7.1605).
2. In terms of **accessibility to the whole church**
 - a. Every effort was made to fully separate and distinguish remedial and disciplinary processes, which often become intertwined in case filings. As one example, the chapter in RoD on evidence that applied to both kinds of processes was removed, and its elements were incorporated separately into each process. This resulted in some duplication, but also allowed each process to be customized. The idea is that once you pick a starting point (either remediation or discipline), the whole process is laid out and flows smoothly from each step to the next, with sections organized so that the provisions related to each process are spelled in the order in which they actually occur in practice.
 - b. The one notable exception to this is that the process for a stay of enforcement in remedial cases only exists at the first level of the process (beginning at D-4.04), and when a stay is requested as part of an appeal, (D-6.0402), the appellant is

referred back to that section – where the references are clearly marked. D-4.0501, on Examination of Papers, for example, states: “The complaint (or appeal for purposes of processing a request for a stay of enforcement on appeal) shall . . .”

3. Also for the sake of accessibility to the whole church, wording from a number of often quoted and relied upon **Authoritative Interpretations** have been incorporated into the text, making reliance on the Annotated *Book of Order* less critical for understanding basic processes. Among these are:
 - a. Yun, et al v. Session of Korean United Presbyterian Church of New Jersey (GAPJC 218-08) re: counting days uniformly for deadlines – (D-4.0103a for remedial cases and D-7.0104a for disciplinary).
 - b. Fair-Booth v. Presbytery of National Capital (GAPJC 218-02) re: standing to file in remedial cases (D-4.0206).
 - c. GA 2006, 38, 40, 05-27 stating that decisions of pjc's except those of the GAPJC are binding only on the parties in the case (D-5.0903, D-6.1203 for remedial and D-10.1203a for disciplinary)
 - d. Raines v. Session of Miami Shores PC (GAPJC 217-6) that only final orders of a pjc may be appealed (D-6.0102).
 - e. Hardwick v. Synod of North Carolina (PCUS GAPJC, 1983, p. 44, No. 2-1983), Session of Chesterbook Taiwanese PC v. Presbytery of National Capital (GAPJC 217-12), and others regarding the standard of review in appeals – (D-6.1201 for remedial, and D-10.1201 for disciplinary).
 - f. GA 1994, 197, 21.091,2 spelling out effects of temporary exclusion from office or membership (D-9.0105d,e).

At the same time, a couple of AIs are clarified or overturned:

- a. Laney v. Presbytery of North Alabama (GAPJC 223-02) re: declaratory relief (which pjc's now may, but are not required to offer) (D-4.0501a(5)), and
 - b. GA 1995, 279, 21.103 re: presbytery policies on mandatory administrative leave (granting permission for presbyteries to adopt administrative leave policies) (D-7.0905).
4. A significant change in response to the mandate to **preserve and enhance . . . accountability** is in records retention. RoD required just 2 year retention of investigating committee records and records of cases (both remedial and disciplinary). In ChD, retention is 5 years for records in remedial cases (D-5.1001e) and 10 years for records in disciplinary cases (D-7.1402f for IC records and D-8.1201 for trials).
5. The task force also concluded that accessibility to the church in the current life of our denomination meant focusing on **efficiency and cost effectiveness**, recognizing the resource challenges of shrinking mid councils, both financial and in the availability of

qualified people to serve in various roles. Every effort was made to make judicial processes flexible, affordable, and fair to all participants. In addition to settlement and alternative resolutions and timeline changes addressed below, these include:

- a. New requirement that pjc classes be “as equal as possible” in size (vs. “no more than half” in one class in RoD) (D-3.0201).
- b. Makes the Robert’s Rules of Order (RONR) standard for eligibility explicit (more than half a term served = a full term served) (D-3.0203a).
- c. Reduction of the minimum time between terms on a pjc from 4 years to 2 years (D-3.0203b).
- d. D-3.0602a expands the definition of which pjc members shall not participate in cases to include those in pastoral relationships in churches that are a party to the case (for example, the pastor of a church one of whose members has filed a remedial case against the session with the presbytery).
- e. In recognition that council staffing patterns are changing, “executive of the council” is changed to “employees of the council” in stating who may not serve on a committee of counsel (D-4.0204c).
- f. At the presbytery pjc level, establishing a minimum quorum of 5, without increasing the minimum number of pjc members – which remains 7 (D-3.0602). In RoD, a seven member pjc minus the two members assigned as reviewers would have a quorum of just 3, just 2 of whom would constitute a two-thirds vote with authority to impose censures. A 5 member quorum doubles that number.
- g. Councils may now develop their own rule for how former pjc members are selected to allow better representation and increase flexibility (D-3.0602c). This will be particularly helpful at the presbytery level, where these members are more likely to be utilized both to ensure quorums and also to accomplish the review tasks, which is now allowed - reviews are now conducted by special committees of three, who are chosen at the beginning of a disciplinary process, with only one required to be a current member of the pjc (D-3.0102).
- h. To give pjcs more flexibility in how they function, they may now provide by rule for additional officers (such as a vice moderator or assistant clerk) (D-3.04).
- i. Authorization of electronic meetings, filings, and even trials (although a preference for in person trials is also stated) (Remedial: D-4.0103b, D-4.0302, D-5.02, D-6.0201, and disciplinary: D-8.0103, D-8.0201b, D-10.0201, D-10.0703).
- j. In remedial cases, a new preliminary question is inserted that parallels the first task of an investigating committee in a disciplinary process – a determination that if proved true, the facts alleged constitute an irregularity or delinquency. This question was often addressed under the consideration of the final question (about stating a claim upon which relief can be granted) (D-4.0501a(4)).

- k. A new step is added in remedial cases requiring the pjc officers to either “affirm” or “modify” their preliminary ruling in light of the respondent’s Answer once it is received (D-4.0701).
 - l. Authorization to examine financial records of an accused before being required to pay for their counsel (D-8.0103d).
 - m. Authorization to use digital voice recordings instead of “qualified reporters” (D-5.0704e for remedial and D-8.0705e for disciplinary).
 - n. In remedial (but not disciplinary) cases, pjc may adjourn from deliberations following a trial with just an agreed upon outline of its decision, and adopt a final decision at a meeting (which may be also electronic) within 10 days (D-5.0902b); however, this procedure may be followed in both remedial and disciplinary appeals (D-6.1303 for remedial and D-10.1203d for disciplinary).
 - o. Expanded definition of which pjc members shall not participate in cases to include those in pastoral relationships in churches that are a party to the case (for example, the pastor of a church one of whose members has filed a remedial case against the session with the presbytery) (D-3.0602a).
6. To **expand the role of mediation and alternate dispute resolution** as well as provide flexibility **in crafting censures and remedies**, the following significant changes are included:
- a. In multiple places, ChD reiterates that settlements and alternative resolutions are always an option, even in the midst of ongoing remedial or disciplinary processes (see D-1.04, D-5.0104, D-6.11, and D-8.0104c).
 - b. And those options are more fully and clearly described – especially alternative resolutions, with three specific forms of alternative resolution named and described in detail: restorative justice, mediation, and other negotiated agreement – all of which require a willingness on the part of the accused to plead guilty to one or more charges (see D-7.16).
 - c. Use of voluntary acts of repentance is no longer limited to acts of sexual abuse (D-9.0104c and D-9.0105c).
 - d. A new statement is added in D-9.0101, and as a new sentence in all censures (D-9.0103ff) reiterating the purpose of censure.
 - e. A procedure is included for when a presbytery censures a church member, which could be either on referral or because the person found guilty is/was a commissioned pastor (D-9.0102c).
 - f. What is reported to congregations and councils when censures are pronounced may be only “a summary of the decision and censure” rather than reading the full decision (D-9.0102a-c), which many experienced as shaming and traumatizing.

- g. The role of mediators is described along with other “participants” in disciplinary process (see section on changes to disciplinary process below).
 - h. Mediators are no longer required to be certified (as was required in RoD D-2.0103) since certified mediators are not available everywhere.
 - i. Withdrawals of appeals are simplified by making them automatic if agreed upon by the parties, subject to appeal in remedial cases (D-6.05 for remedial and D-10.04 for disciplinary).
7. **Timelines:** Numerous adjustments are made to deadlines for filings, hearings, and trials based on input from those who have participated in judicial processes, recognition of limited resources, as well as efficiency of the processes. In most cases, these are either extensions or reductions of deadlines in the range of 15 to 30 days, but in some cases deadlines are introduced to ensure that processes occur in a timely fashion. Specific changes include the following:

Remediation:

- a. D-4.0206j – next higher council may now assume jurisdiction or take other action after 60 days of inaction or 30 days if a stay of enforcement is requested (RoD was 90 days).
- b. D-4.0703 – Answers to complaints are now due 30 days after notification of either initial acceptance or challenge to dismissal on preliminary questions (RoD was 45 days after receiving complaint, which often meant that sessions and presbyteries wasted time and money preparing answers that were never utilized).
- c. D-5.0101b – Complainant has 30 days to request additional papers be added to list for record (RoD was 15 days).
- d. D-6.0703 – Challenges to the record of the case on appeal must be heard at least 45 days prior to hearing of appeal. RoD had no such requirement, meaning representation had to come to the hearing fully prepared for the hearing not knowing whether or not the contested item(s) would be admitted.

Discipline:

- e. D-7.0302d – next higher council may assume jurisdiction or take other action if the council of jurisdiction takes no action is now 60 days after filing of charges (RoD was 90 days).
- f. D-7.1101 – An investigating committees now has deadline of 60 days from its appointment in which to hold its 1st meeting and make its preliminary determination that the written statement actually alleges facts constituting an offense (RoD D-10.0202a), and this first meeting and determination begin the 1 year deadline for the filing of charges, as stated in D-7.1102a(1).

- g. D-7.1402c – In review of decisions not to file charges, an investigating committee now has a 30 day deadline to submit its written response to the facts alleged in the petition for review.
- h. D-7.1402e – Creates a minimum timeline of 6 months to file charges from its creation when a new investigating committee is formed following a review of the first committee’s proceedings, if fewer than six months remained on the original timeline.
- i. D-7.1503c – Names and addresses of witness for the prosecution are no longer filed with charges as in RoD, but names must be produced at least 45 days prior to trial (see D-8.0104b below).
- j. D-8.0103a – Deadline for pretrial conference is increased from 30 days in RoD to 45 days after receipt of charges.
- k. D-8.0104a – Trial may be scheduled no fewer than 60 days after pretrial conference (RoD was 30 days). This is to ensure that counsel for both parties have time to adequately prepare for the trial.
- l. D-8.0104b – Witnesses for the prosecution must be produced at least 45 days prior to the trial, along with “outline of the evidence,” and the accused provides a “preliminary list of witnesses.” (RoD was witnesses for prosecution with charges when filed, and 20 days prior to trial for accused. Provision was also included for updates to those lists no fewer than 10 days prior to trial).
- m. D-8.0903 – Separate censure hearings are now *required* (RoD D-11.0403a used “should”), with a deadline of 30 days after the completion of the trial.
- n. D-10.0703 – As in remedial appeals, challenges to the record of the case on appeal must be heard at least 45 days prior to hearing of appeal. RoD had no such requirement, meaning representation had to come to the hearing fully prepared for the hearing not knowing whether or not the contested item(s) would be admitted..
- o. D-10.0705 – Appellant may now file a limited “reply brief” within 15 days of receiving the appellee’s brief.

8. The sections on **witnesses** include several significant changes:

- a. Details related to “fact” and “expert” witnesses are expanded in both remedial (D-5.0703) and disciplinary (D-8.0704,5) processes, to reflect current practice of recognizing this common and helpful distinction from secular courts, and including details such as qualifying and challenging witnesses.
- b. D-8.0704g grants trial courts permission to recognize and honor “privileges” such as pastor-penitent, doctor-patient, etc.

- c. Citations – Second citations are no longer issued, as this process was not demonstrated to produce positive results, and when employed resulted in delayed trials (D-5.03 for remedial and D-8.0305 for disciplinary).
- d. Electronic testimony replaces depositions. Depositions in secular litigation are part of “discovery,” and never fit well in our judicial process, where their use was limited to testimony for admission in trials. Advances in technology now allow that to occur electronically (D-5.04 and D-5.0704f for remedial, D-8.04 and D-8.0705f for disciplinary).

9. Additional significant changes to remediation keeping in mind the mandate to **preserve and enhance accountability** include:

- D-4.0206g References newly adopted amendment to G-3.0401 and adds eligibility of synod commissioners enrolled for terms of elected service to those who may file a remedial case against the synod whether or not they were present at the meeting.

Also, removes “employees” from the section on those eligible to file against their employing council as was the case in RoD D-6.0202a(6).
- D-4.0704 Regarding hearings on challenges to preliminary determinations, RoD D-6.0306b just said “if a hearing is necessary.” ChD places that determination in the hands of the parties and assumes it happens unless the parties agree otherwise.
- D-5.0104 Moderator and clerk or their designees now conduct pre-trial conference on behalf of the full pjc, which was often the case in practice.
- D-5.0503 RONR language is inserted to describe the moderator’s authority when presiding, as well as who may challenge or appeal those rulings and how to do so.
- D-5.0602a Changed standards for disqualification of pjc members from “personally interested in the case” to “a material interest in the outcome,” and from “related by blood or marriage” to “related by family relationship.”
- D-5.0603 Expands on details of recording preliminary determinations and processing and recording preliminary objections to ensure complete records are available for any appeals.
- D-5.0904 If new evidence is submitted in an appeal, and the pjc determines that it should be allowed, the only option is to remand the case for a new trial (RoD allowed it to be received and for the appeal to continue).
- D-6.0201 Several changes are made to the filing of a notice of appeal. First, it may be filed electronically. Second, it is filed with the stated clerk of the council that will *hear* the appeal, with a copy to the stated clerk of the

council that issued the ruling (RoD was the other way around), and then it is the responsibility of the stated clerk of the council that will hear the appeal to distribute it to the other party or parties (this was a responsibility of the appellant(s) in RoD).

- D-6.0601d Inserts “and describes” after “states” when listing grounds for appeal as a requirement for the notice of appeal.
- D-6.0603 As in D-4.0704, the assumption is that there will be a hearing on a challenge to a preliminary ruling unless the parties agree to forego a hearing.
- D-6.0801 The stated clerk has the responsibility of distributing briefs to the pjc and to the parties (RoD required briefs to include a certification that it had been furnished to the other party or parties).
- D-6.0803b Appellee may now “raise additional issues” as part of their brief. This is to remove the need to file a “counter appeal” to get any issues or concerns about the ruling appealed from on the table for consideration.
- D-6.08005 Should the appellee raise any issues as stated above, appellant has 30 days to file a supplemental brief in response to those issues.
- D-6.1202 States explicitly that a majority vote is required to sustain a specification of error.
- D-6.1203 Changes “may” to “should” in stating that that decisions “should include an explanation of its determinations.”

10. Additional significant changes to disciplinary processes, being especially mindful of those alleging sexual abuse, to ensure fair and just outcomes for all and keeping in mind the mandate to **preserve and enhance accountability**, include:

various Increased details are given for required filings, determinations, and reporting. These include: the contents of written allegations (D-7.0201c), the requirement that charges must state the specific Scriptures or constitutional provisions that have been violated (D-7.1503b), censures against church members must additionally be reported at a meeting of the congregation of membership (G-1.0503 and D-9.0102a), and reporting of renunciations when allegations have been made but no charges have been filed are required and must include “the nature of the alleged offense” (D-7.0302e). These changes, collectively, will both ensure better records of cases for appeals, and the accessibility of information about these matters to the larger church when it might be needed or relevant (such as when a person seeks to return to ordered ministry or church employment after leaving or being removed from office).

- D-7.0102 Specifies that only “active members” of congregations, in addition to ministers of the Word and Sacrament, are subject to disciplinary process (RoD said “members”).
- D-7.0201a Statute of limitations increased from *filing charges* no later than 5 years after the alleged offense was *committed*, to making an *accusation* 5 years after the alleged offense was *discovered*. Also, those who “knew or should have known of the reasonable risk” of sexual abuse are added to those for whom no time limit exists for filing an allegation.
- D-7.0201d Clarification of the accountability of commissioned pastors by placing them under the jurisdiction of their presbytery if the alleged offense occurred while they were commissioned to pastoral service (rather than when the judicial process occurs).
- D-7.0201e Adds “should” language regarding PC(USA) members and clerks of sessions/stated clerks filing allegations on behalf of non-PC(USA) members (RoD used “may”).
- D-7.0202 Returns requests for vindication to the rules for disciplinary procedure (where it was located in RoD until it was given a separate chapter in 1995), and clarifies when it is appropriate.
- D-7.0202c(3) Adds a procedure for when an investigating committee determines that one or more PC(USA) members *other than* the person who requested vindication may have committed offenses.
- D-7.0302b,c Jurisdiction for ministers is always to their presbytery of membership, regardless of where they are serving when the alleged offense was committed and involvement of other councils in the disciplinary process is at the request of the presbytery of jurisdiction.
- D-7.0302e Details of pastoral inquiries (G-3.0109) when they are requested, and their outcomes are outlined – including retention of records related to those processes.
- D-7.0401a New option for reference – it can now be to conduct both the investigation and trial rather than just the trial (under RoD, it was only after charges had been filed, and the only way the higher council could conduct the investigation was by assuming jurisdiction of the lower council for purposes of disciplinary process).
- D-7.0404a Updates process if reference is accepted to include the change in D-7.0401a.
- D-7.0501a Sessions may and councils above the session *shall* provide by rule for the appointment of investigating committees.

- D-7.06 The rule that members of an investigating committee may be from other councils is no longer tied to situations involving multiple sessions or presbyteries (D-7.0302c).
- D-7.08 “Assisting roles” of counsel, advocate, and mediator are defined.
- D-7.0902b Clarifies that administrative leave considerations in the case of alleged sexual abuse are not dependent on the employment status of a minister, as the leave may involve “other restrictions upon the minister’s service.”
- D-7.0903 Details the effects of administrative leave.
- D-7.10 Rights and Responsibilities of all participants in a disciplinary process are clearly stated.
- D-7.1102 Greatly expanded requirement for notifications to the accused and the person making an allegation (which may result in expanded instances of alleged errors in appeals).
- D-7.1103 Incorporates long-standing advice from Constitutional Services regarding confidentiality during an investigation and sharing information on a “need to know” basis with others.
- D-7.1104 Adds an additional opportunity for requesting a reference by the investigating committee if it determines that it is unable to conduct an investigation.
- D-7.1202 Changes process for “petition for review” of investigating process by the person against whom an allegation has been made. RoD process began with mandatory hearing to determine whether or not to conduct a review. New process requires that the review be conducted, during which a hearing *may* be included at the discretion of the review committee members.
- D-8.0103d(1) Adds reading of the preamble at pretrial conference.
- D-8.0104b Witnesses may not be contacted at any time by the other party to the case, to protect the safety and respect the privacy of victims and other vulnerable persons.
- D-8.0602a Unlike remedial process (D-5.0602a), retains RoD language of “personally interested” for disqualification of session/pjc members, but does change “related by blood or marriage” to “family relationship.”
- D-8.0603 Expands on details of recording preliminary determinations and processing and recording preliminary objections to ensure complete records are available for any appeals.

- D-8.0701 Adds definitions of “relevance,” “laying a foundation,” and “evidence of authenticity” to the section on evidence.
- D-8.0703 Adds statement/rationale on the acceptability of hearsay evidence.
- D-8.0902a Language of “beyond a reasonable doubt” (RoD D-11.0403a) removed; however, the definition of that standard remains unchanged.
- D-8.1102 As in remedial cases (D-5.0904), if new evidence is submitted in an appeal, and the pjc determines that it should be allowed, the only option is to remand the case for a new trial (RoD allowed it to be received and for the appeal to continue).
- D-9.0105 Censures remain mostly as in RoD, with the exception of Temporary Exclusion which can no longer be for an unqualified “definite period of time,” as in RoD, but may include a minimum time, as well as a maximum time for the completion of a required supervised rehabilitation, which must include “a clear statement of how progress will be evaluation and how it will be determined when and if the supervised rehabilitation has been satisfactorily completed.” And if the rehabilitation has not been successfully completed to the satisfaction of the council that imposed the censure, it may either grant an extension or make the temporary exclusion permanent.
- D-10.0201 Notice of appeal may be filed electronically, and it is now filed with the stated clerk of the council that will *hear* the appeal, with a copy to the clerk of session or stated clerk of the council that issued the ruling (RoD was the other way around). Also, it is responsibility of the stated clerk of the council that will hear the appeal to send a copy of the notice to the other party or parties.
- D-10.03 The stated clerk of the council that will hear the appeal is responsible for distribution of the Notice to the other party or parties (as well as to the pjc).
- D-10.0501d Inserts “and describes” after “states” when listing grounds for appeal as a requirement for the notice of appeal.
- D-10.1203 As in D-6.1303 in remedial appeals, decisions should include an explanation of its determinations.