

SYNOD OF LIVING WATERS

Introduction to the new “Church Discipline”
section of the *Book of Order*

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CHURCH DISCIPLINE (ChD)

Introduction and Overview

Focusing on changes in ChD from RoD

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Introduction and Overview

The Charge to the Rules of Discipline Task Force

- Make the rules of discipline more accessible to the church
- Preserve and enhance the accountability of councils and individuals to the church
- Expand the role of mediation and alternate dispute resolution
- 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.

Rules of Discipline:

Chapter 1 – Preamble

Chapter 2 – Judicial Process Defined

Chapter 3 – Jurisdiction in Judicial Process

Chapter 4 – Reference

Chapter 5 – Permanent Judicial Commissions

Chapters 6 – 8 Remedial Process (Preliminary, Trials, Appeals)

Chapter 9 – Requests for Vindication

*Chapters 10 – 13 Disciplinary Process (Preliminary, Trials,
Censure/Restoration, Appeals)*

Chapter 14 – Evidence (including witnesses)

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Introduction and Overview

Some changes in ChD resulting from our charge:

- Incorporation of language from a number of authoritative interpretations

Introduction and Overview

Authoritative Interpretations (AIs):

G-6.02

“The General Assembly may provide authoritative interpretation of the *Book of Order*, which shall be binding on the councils of the church when rendered in the manner described in this section or through a decision of the General Assembly Permanent Judicial Commission.”

AIs can be found in the Annotated Book of Order

Introduction and Overview

Accessing the Annotated Book of Order:

- *pcusa.org*
- *At bottom of screen, choose: Office of the General Assembly*
- *On Right of next screen, choose Annotated Book of Order*
- *Toward top of next screen, choose Annotated Book of Order*
- *Bookmark this page on your browser!*

Introduction and Overview

Some changes in ChD resulting from our charge:

- Incorporation of language from a number of authoritative interpretations
- Duplication of certain rules/processes in order to create fully separate and distinct processes for remedial and disciplinary processes that flow from start to finish
- Added flexibility to accommodate smaller councils with limited resources
- Significantly expanded section on Alternative Resolution and added statements indicating that alternate resolutions and settlements are available options at any point in judicial processes

Introduction and Overview

Some changes in ChD resulting from our charge

- Simplified process for withdrawals of appeals when agreed upon by the parties
- Removal of as much “legalese” as possible
- Some new deadlines added to ensure that cases move along, and others adjusted to ensure adequate time to prepare for hearings and trials
- Many clarifications of wording to remove ambiguity
- The document “ChD Overview and Rationale” – a listing of all significant changes (in my opinion) – is available for download.

PREAMBLE AND JUDICIAL PROCESS

Chapter 1 – Preamble

Chapter 2 – Judicial Process Defined

Chapter 3 – Permanent Judicial Commissions

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Chapter 1 – Preamble

- Changes in ChD:
 - Statement on limits of church discipline (D-1.0202) added from an AI
 - Purpose of church discipline is highlighted by being given its own section and placed in bullet points

Chapters 2&3: Judicial Process and PJC's

- Accountability of **councils** is through **remedial process**.
- Accountability of **individuals** is through **disciplinary process**.

Notes:

- Congregations are not “councils.”
- A judicial process has only **one** respondent (remedial) or accused (disciplinary). **Accountability of multiple councils or individuals requires multiple judicial processes.**

Chapters 2&3: Judicial Process and PJC's

- Changes in ChD:
 - New statement that: “Standards and procedures used in judicial processes are those contained in the Constitution of the Presbyterian Church (U.S.A.)” (D-2.04).
 - That said, the constitution at G-3.0105 names *Robert's Rules of Order* as our parliamentary authority, and it guides deliberative processes. ChD incorporates its language and principles in a number of places.

Chapters 2&3: Judicial Process and PJC's

Changes in ChD

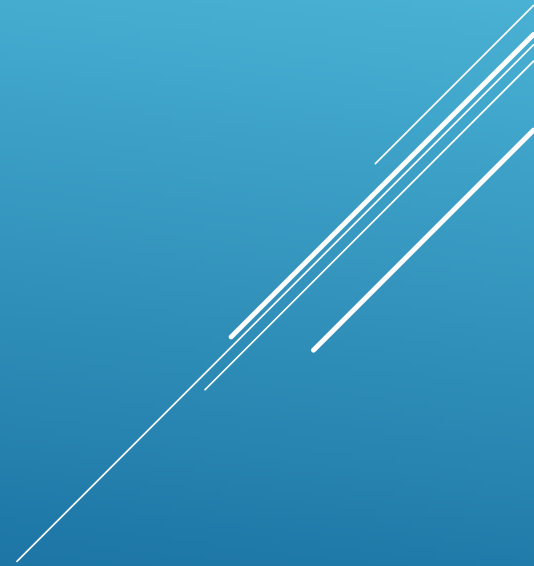
- D-3.0102 – Reviewers appointed
- D-3.0201 – Standardized language re: pjc classes and terms
- D-3.0602 – Minimum quorum of five added. This is especially important in disciplinary cases, where some pjc members are serving as reviewers.
- D-3.0602a – Expanded list of who shall not serve to include those serving in pastoral relationship at church whose session is a party

REMEDIAL PROCESS

Chapter 4 – Remediation

Chapter 5 – Trial in a Remedial Case

Chapter 6 – Remedial Appeals



Chapter 4: Remediation

Changes in ChD

- New opening section stating purpose of remediation, defining its limits, and explaining filing requirements and deadlines.

Counting Time: D-4.0103 (and D-7.0104 in Disciplinary)

In determining whether or not a document is timely filed, the day following the event giving rise to the time limit begins the count as day one (for example, the day following the date on which a council action is taken, or on which a party receives a decision). All seven days of every week are included in the count, including holidays, and the document shall be deemed timely filed if it is received by the person or persons to whom it is required to be sent on or before the final day of the count. When the final date of the count falls on a weekend or holiday, the document shall be deemed timely filed if it is received on the next business day after the final day of the count.

Counting Time: D-4.0103 (and D-7.0104)

September 2023

Washington, D.C.

Today
69° F / 59° F

Tomorrow
64° F / 57° F

Wednesday
67° F / 56° F

Search Calendar (Ctrl+E)

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Aug 27	28 Complaint received	29 1	30 2	31 3	Sep 1 4	2 5
3 6	4 7	5 8	6 9	7 Preliminary Ruling due	8	9
10	11	12	13	14 Complaint received	15 1	16 2
17 3	18 4	19 5	20 6	21 7	22 8	23 9
24 10	25 Preliminary Ruling due	26	27	28	29	30

File Explorer

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Chapter 4: Remediation

Changes in ChD

- New opening section stating purpose of remediation, defining its limits, and explaining filing requirements and deadlines.
- Stays of enforcement are placed into context within a single process of filing complaints
- Stated Clerks, rather than Complainants, are responsible for delivering complaints to respondents

Chapter 4: Remediation

Changes in ChD

- Complaints must be filed by mail as before, but if parties agree, *all* future filings may be electronic.
- All pjc members receive complaints along with officers, regardless of whether or not a stay is requested
- A fifth “preliminary question” (PQ) has been added (as #4), and the final PQ includes examples of relief that cannot be granted.
- Officers issue a “preliminary ruling” on PQ’s within 10 days of receiving complaint.

Chapter 4: Remediation

Changes in ChD

- Answer is only required if case is accepted, or its dismissal is challenged, within 30 days after notification of that fact.
- Officers then affirm or modify preliminary ruling, which may also be challenged.

Chapter 5: Trial in a Remedial Case

Changes in ChD

- Complainants have more time to review list of papers the stated clerk will submit and request additional papers (from 15 to 30 days).
- Pretrial conferences are conducted by the pjc moderator and clerk or their designees.
- Trials *should* be in person, but *may* be electronic (in both remedial and disciplinary processes).
- No “2nd citation” when a witness fails to appear (in both remedial and disciplinary processes).

Chapter 5: Trial in a Remedial Case

Changes in ChD

- Depositions are replaced with the possibility of electronic testimony of witnesses unable to be present in person (for both remedial and disciplinary processes).
- Clarification of moderator's role and processes for challenges to moderator's rulings following RONR (for both remedial and disciplinary processes).
- Expanded sections on evidence and witnesses, including "fact" vs "expert" witness criteria and processes (for both remedial and disciplinary processes).
- Statement that witnesses "should" have firsthand knowledge

Chapter 5: Trial in a Remedial Case

Changes in ChD

- “Digital voice recording” may be used in place of court reporter.
- PJC can adjourn once it has reached its determinations and completed an outline of its decision, then finalized at a meeting within 10 days (which may be electronic). This is also true in appeals.
- An appellate court cannot receive new evidence and continue the appeal. It must remand it for a new trial (for both remedial and disciplinary processes).
- Records are retained for 5 years (was 2 years).

Chapter 6: Remedial Appeals

Changes in ChD

- Withdrawals requested by both parties are automatic unless objected to by a pjc member.
- Appellees may now raise additional issues as part of their briefs to remove the need for “counter appeals.”
- Adds the possibility of “settlement agreements” resulting in requests for withdrawal to the list of pre-hearing conference topics.

DISCIPLINARY PROCESS

Chapter 7 – Disciplinary Process

Chapter 8 – Trial in a Disciplinary Case

*Chapter 9 – Censure and Restoration in a
Disciplinary Case*

Chapter 10 – Disciplinary Appeals

Chapter 7: Disciplinary Process

Changes in ChD

- Time limit changes from *charges filed* no more than 5 years from the time the offense was committed to *allegation received* no more than five years from when the offense was *discovered*.
- If commissioned at the time of the alleged offense, commissioned pastors are under the jurisdiction of the presbytery.

Chapter 7: Disciplinary Process

Changes in ChD

- Clarification of stated clerk's possible responses (and their effect) when receiving an allegation from a non-PC(USA) member.
- Returns "request to vindication" to disciplinary process (rather than its own chapter in between remedial and disciplinary sections) and expands its possible results.
- Presbytery of membership always has primary jurisdiction of its members no matter where an offense is committed.

Chapter 7: Disciplinary Process

Changes in ChD

- Adds inclusion of “the nature of the offense” to a clerk’s report when a renunciation occurs after an allegation has been received but charges have not been filed.
- Details are added regarding a G-3.0109b(6) “pastoral inquiry” following the death or renunciation of an accused.
- “Reference” may be requested prior to the investigation, as well as after charges are filed.

Chapter 7: Disciplinary Process

Changes in ChD

- Sessions may and higher councils shall provide by rule for the appointment of investigating committees (ICs).
- Administrative leave section is expanded.
- Rights and responsibilities of all participants in disciplinary process are listed.
- ICs have 60 days to hold first meeting and make preliminary determination (RoD D-10.0202a) – and this starts the one year clock for filing charges.

Chapter 7: Disciplinary Process

Changes in ChD

- New statement on confidentiality is added that allows for dissemination of information on “need to know basis.”
- Petitions for review are clarified – and are conducted by individuals appointed for that process at the beginning of an investigation by PJC moderator (see D-3.0102).
- IC records retained for minimum of 10 years.
- Contents of charges clarified
- Alternative Resolution options expanded, and include restorative justice, mediation, and other negotiated agreements.

Chapter 8: Trial in a Disciplinary Case

Changes in ChD

- Sessions/pjcs “shall review the financial records of the accused” to determine their need for counsel to be provided
- Preamble is now read at pretrial conferences in addition to trials
- Process changes for time between pretrial conference and trial, when witness lists are required, and a new requirement that witnesses may not be contacted by the other party.

Chapter 8: Trial in a Disciplinary Case

Changes in ChD

- Statement on “hearsay evidence” is included.
- Unlike in remedial trials, disciplinary trials must be completed while in session, and verdicts rendered in open meeting.
- Following guilty verdicts, censure hearings are now required (RoD said “should”).
- Preservation of case records is now 10 years (RoD was 2)

Chapter 9: Censure and Restoration in a Disciplinary Case

Changes in ChD

- *New provisions are added in ChD reiterating in all censure statements that the that censures are given "without malice or vindictiveness," and rules for what is reported to councils now may include just a "summary" rather than the entire content of the censure.*
- *Rules added for reporting censures of commissioned pastors by a presbytery to their sessions of membership.*

Chapter 9: Censure and Restoration in a Disciplinary Case

Changes in ChD

- *New statement that in reporting censures, “a summary of the decision and censure” is acceptable (rather than reading the entire censure).*
- *Procedure is outlined for new requirement in G-1.0503 that censures of church members be reported at a congregational meeting.*
- *Voluntary acts of repentance are no longer limited to acts of sexual abuse.*

Chapter 9: Censure and Restoration in a Disciplinary Case

Changes in ChD

- *The most significant change in censures is to temporary exclusion. In RoD, temporary exclusions could be for a specific period time (after which the full council had to vote to restore the member). In ChD, there can be both minimum and maximum times, and if the council fails to restore the member, the time can either be extended or the exclusion can be made permanent.*
- *The effects of temporary exclusion are also spelled out in greater detail than in RoD.*

Chapter 10: Disciplinary Appeals

Changes in ChD

- As in remedial processes, stated clerks are now generally responsible for distribution of filings to parties and pjcs.
- Appellants may file reply briefs within 15 days of receipt of appellee brief.
- As in remedial appeals, following decisions and preparation of an outline, final decision can be approved at a meeting within 10 days after adjournment.

CHURCH DISCIPLINE (ChD)

Introduction and Overview

Various pdfs are available for download on the synod's website:

www.synodlw.org/resources

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