



# ADMINISTRATIVE AND JUDICIAL PROCEDURES HANDBOOK

## DISCLAIMER

This Handbook is intended to serve as a guide to the denomination's administrative and judicial processes. Although it is intended to be generally accurate and, we hope, helpful, it is not binding. Judicial Council Decisions, bishop's rulings, and the *Discipline* take precedence over any conflicting comments or interpretations in this document. **This Handbook should never be cited as an authoritative source to support a particular position or viewpoint on an issue.** While written broadly to cover most situations, there will be unique facts which may dictate actions not contemplated or anticipated by this Handbook. In many instances, the *Discipline* is written to allow flexibility and discretion in application. This Handbook is not intended in any way to restrict that discretion.

**General Council on Finance and Administration  
General Board of Higher Education and Ministry  
JUSTPEACE Center for Mediation and Conflict Transformation**

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# INTRODUCTION

The purpose of this Handbook is to assist those charged with the application and interpretation of the various provisions of *The Book of Discipline of The United Methodist Church – 2008* (the “*Discipline*”) that relate to the administrative and judicial processes. It is primarily directed toward elders and deacons, although portions are relevant to procedures involving bishops, other clergy, and lay members. This Handbook is an update from the previous edition. Revisions include those necessitated by changes to the *Discipline*, input from readers, Judicial Council decisions, and experience.

## I. Distribution and Copying.

An electronic version is available at GCFA’s [website](#). Copies should be made available to counsel for the Church, committees on investigation, counsel for the respondent, and other interested parties directly involved in a Church administrative or judicial process.

This Handbook is copyrighted in order to protect against inaccurate or incomplete photocopying/duplication and against non-United Methodist (and other unauthorized) uses. United Methodist officials and official United Methodist organizations should feel free to make additional copies of this Handbook, in its complete and unedited form.

To the greatest degree possible, we have attempted to organize this Handbook parallel to the organization of the *Discipline*. However, it is always very important to use the *Discipline* itself, as it is the official Church law. In addition, this Handbook does not always reproduce the information contained in the footnotes in the *Discipline*, which reference key Judicial Council Decisions that help explain the meaning of the relevant sections.

## II. History of the Handbook.

In 1988, General Conference formed a task force “to study, evaluate, and rewrite, as necessary, Chapter VIII of *The 1988 Book of Discipline* and such other sections of the *Discipline* as may affect or relate to Chapter VIII.” The task force concluded that, in addition to its legislative recommendations, an administrative and judicial procedures handbook would be a

helpful resource in applying and utilizing the *Discipline's* grievance and judicial procedures. The 1992 General Conference, on the task force's recommendation, authorized GCFA, in consultation with the General Board of Higher Education and Ministry and additional church resources, to develop this Handbook.

In 1994, the Council of Bishops created a task force on fair process and grievance procedures. The task force was charged with the responsibility of reviewing the 1992 legislation on fair process and grievance procedures and preparing additional legislation for the 1996 General Conference, if necessary. The end result of the task force's work was legislation submitted to the 1996 General Conference through GBHEM. The 1996 General Conference overwhelmingly approved the legislation, with improvements recommended by the legislative committee.

The Council of Bishops, in a continuing effort to improve the process for all, formed an interdisciplinary task force in 1997 to make "fine tuning" recommendations based on experience, comments, suggestions, and Judicial Council Decisions. The task force's work product was presented to the 2000 General Conference, through GBHEM.

The Council of Bishops established a Task Force on Fair Process in 2001 to review the *Discipline's* provisions relating to the Church's administrative and judicial processes. This was the third quadrennium in which the Council authorized review and study of the fair process provisions in an attempt to examine and improve the processes. The primary agenda was to establish a restorative justice process in the complaint procedure, which was presented through the Council of Bishops and adopted by the 2004 General Conference.

No Task Force was created in 2005 or 2009.

### **III. Reflections on Restorative Justice and the Complaint Process.**

- Our complaint process is a church process, not a secular one. We should follow a Biblical understanding of justice and process.
- Biblical justice is seen as fulfilling the demands and obligations of the clergy covenant or relationship and, when there is a breach, attempting to make things right, healing the

harm, and finding solutions that would restore the well-being or shalom of the relationship. Biblical justice is about restoring community.

- The movement in the Bible is from the law of Lamech (retribution of seventy-sevenfold, Gen 4:24) to proportional and limited retribution (an eye for an eye, Lev 24:19-20) to the healing power of forgiveness and reconciliation (as Jesus teaches, forgiveness of seventy-seven times, Mt 18:22). The movement is from retributive justice (our trial process of dealing with judicial complaints, as well as the secular system) to restorative justice (which is being practiced more and more in the secular judicial system).
- Restorative justice focuses on the harm to people and relationships with the aim of identifying obligations, meeting needs, and promoting healing. Restorative justice asks: Who has been harmed? What should be done, and by whom, to make things right? How can we restore the offenders and those who have been harmed to community? Restorative justice gives substance to an understanding of real accountability and repentance, of shalom or right relations, of healing and reconciliation.
- Following Matthew 18:15-16, we understand that the primary process which Jesus encourages us to follow is collaboration, involving the parties to the complaint. The church (the trial court) is asked to decide for the parties only if collaboration fails (Mt 18:17).
- Restorative justice encourages engagement of those who have been harmed, the offender, and members of the community. Each party hears the stories of the other parties and helps decide what justice requires. Restorative justice believes that we need each other to accomplish healing, which is a communal act. Those who have been harmed and the offender are bound together by the event. They need each other to experience liberation and healing. Offenders need those who have been harmed to help them understand the depth of the harm created, to give them the opportunity to address that harm, to make things right, including reparation and restitution, and to affirm the human capacity to live responsibly in community. Those who have been harmed need the offender to hear their pain, answer their questions, assure their safety, be accountable for what was done, and provide an opportunity to let go of the power of the offense through forgiveness. Each

can be uniquely helpful to the other's liberation. Members of the community, including those responsible for the covenant of ordination and membership in an annual conference, are significant participants in determining accountability and what is needed for the healing and restoration of community. This is not an adversarial process, where one side wins and the other loses.

- Restorative justice gives substance and guidance in realizing that the “primary purpose” of the review of membership in the ministerial office, and of the judicial process as expressed in the Discipline (§§ 361, 2701), is a “just resolution . . . in the hope that God’s work of justice, reconciliation and healing may be realized in the body of Christ.” Moreover, restorative justice give us practices and processes that enable us to experience such justice, reconciliation, and healing.

#### **IV. Reference Citations.**

All references to paragraph (§) numbers are to *The Book of Discipline of The United Methodist Church – 2008*, unless otherwise specified.

All references to “Decisions,” “Judicial Decisions,” or “Judicial Council Decisions” are to the Decisions and Memoranda of the Judicial Council of The United Methodist Church, as published at [www.umc.org](http://www.umc.org), unless otherwise specified. In this Handbook they are generally referenced as “*Decision \_\_\_\_\_*.”

All websites were verified accurate as of August 1, 2009.

#### **V. Revisions.**

Revisions to this Handbook will be made on an as needed basis, throughout the quadrennium. Before using this Handbook, the user should check the GCFA website to see if any updates have been posted. The most current version of the Handbook will always be available online.

## **VI. Acknowledgements and Request for Comments.**

GCFA would like to acknowledge the thoughtful input on the revision of this Handbook contributed by Bishop Joseph Yeakel, Bishop Bruce Blake, Jim Allen, Tom Porter, Stephanie Hixon, Joy Melton, Sharon Rubey, and Jerry Eckert.

GCFA welcomes comments, questions, and suggestions from others regarding the content of this Handbook. Please send any such input to [legal@gcfa.org](mailto:legal@gcfa.org).

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# Chapter 1

## PROCESS OVERVIEW

The *Discipline* contains two separate sets of complaint procedures – one for administrative complaints (§§ 361-63) and one for judicial complaints (§§ 2701-17). These two processes, and other related matters, are discussed in great detail in the chapters that follow and, while detailed examinations are useful, so too are general overviews. Such overviews are provided in this Chapter, via written summaries and flow charts.

When using the remaining chapters of this Handbook, please also make use of the verbatim language of the various *Discipline* paragraphs that are substantively cited and discussed in this Handbook. These paragraphs are included in the [Appendix](#) not only as a convenience, but also as an invaluable and indispensable tool. While this Handbook is intended to provide insight into the Church's administrative and judicial procedures, any examination of the issues contained herein should start with the language of the *Discipline*. The paragraphs are presented exactly as they appear in the 2008 *Discipline*, with the exception that every effort will be made to keep the included passages up to date with all Errata changes. Please note that § 2703 is reproduced as printed, even though portions of it have been held unconstitutional by the Judicial Council and are therefore not effective (this issue is more fully discussed in [Chapter 12](#)).

### **I. Administrative Complaints.**

Administrative complaints involve allegations against clergy in relation to the performance, or lack thereof, of their ministerial duties. Should a bishop receive such a complaint, the bishop must either dismiss the complaint or begin the supervisory response process. Should that process produce a resolution, the matter is concluded. If not, the complaint must be dismissed, referred to a third party mediator, or referred to the Board of Ordained Ministry. Once the complaint reaches the Board, a hearing is conducted. During this hearing process, the clergyperson has several fair process rights that must be honored. After the hearing, the Board has numerous actions it can take, including dismissing the complaint, referring the

matter back to the bishop, or imposing some form of remedial action (ranging from a private reprimand to the surrender of ministerial office).

## **II. Judicial Complaints.**

In contrast to administrative complaints, judicial complaints concern allegations that a clergyperson or a professing member has committed one or more of the chargeable offenses listed in ¶ 2702. It is similar to the process of conducting a secular, criminal court trial and is, therefore, much more involved. When a judicial complaint is brought, counsel for the Church submits it, along with any documentary evidence, to the committee on investigation. The committee's role is to investigate the complaint's allegations and to determine whether reasonable grounds exist to support a bill of charges and specifications. If those grounds do exist, the committee prepares and certifies the bill of charges, at which time its role is completed. The next step is the conducting of a trial. A trial court – the equivalent of a secular court jury – is selected and convened. At the conclusion of the trial, the trial court must determine whether or not, based on clear and convincing evidence, that a chargeable offense has been committed. A minimum of nine votes are required for conviction.

If the clergyperson is convicted by the trial court, the *Discipline* provides the right to appeal – the Church does not have the right to appeal an acquittal – which is heard by a committee on appeals. The committee on appeals' examination is limited to determining whether or not the weight of the evidence sustains the conviction and whether or not errors were committed that effectively vitiate the conviction. The decision made here is essentially final, aside from a narrow right to appeal to the Judicial Council on the basis of procedural errors.

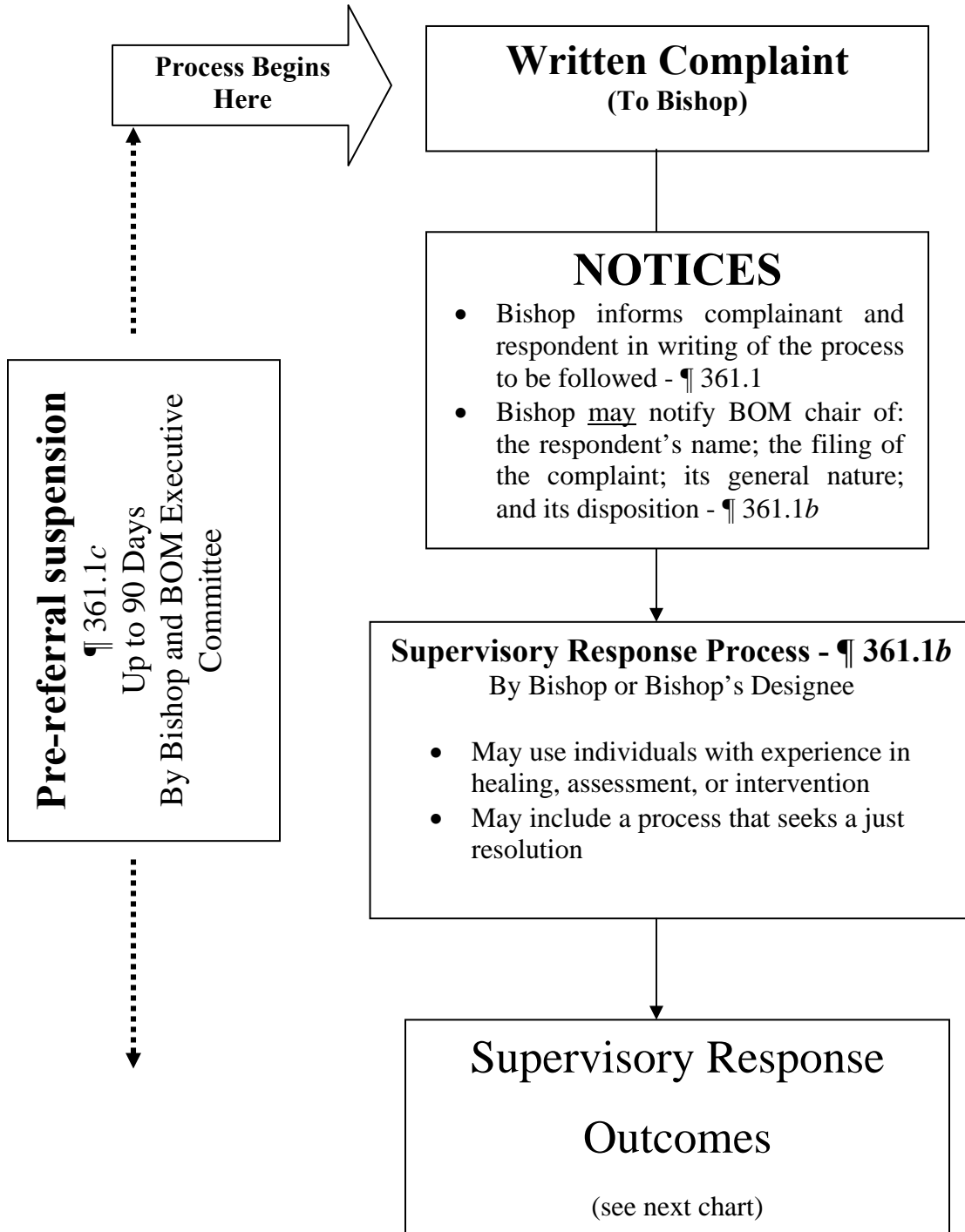
## **III. Complaint Process Charts.**

Over the next several pages are complaint process flow charts. The charts graphically represent the complaint processes summarized above and discussed in detail in subsequent Chapters.

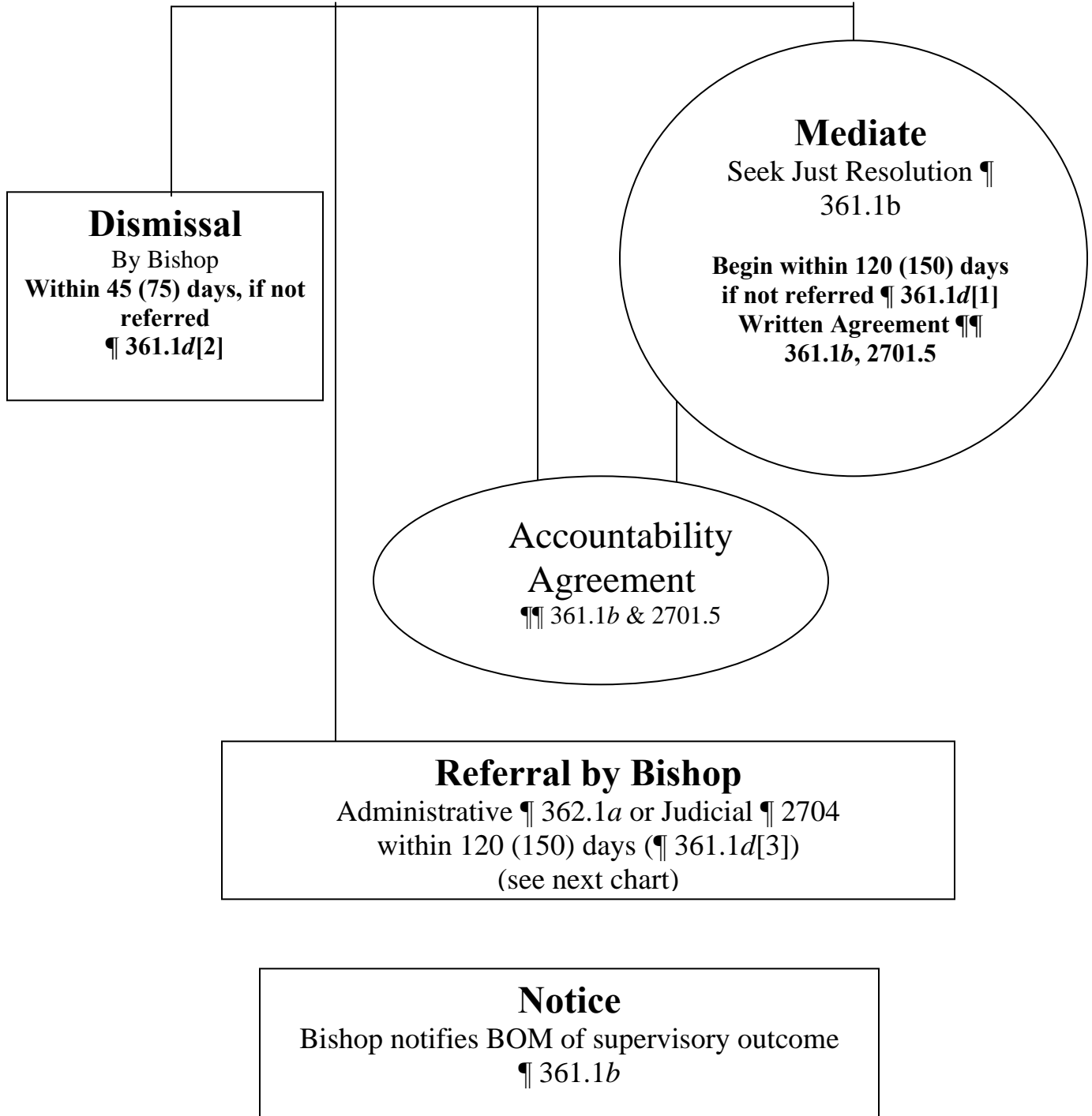
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# SUPERVISORY RESPONSE PROCESS (Clergy)

¶ 361.1

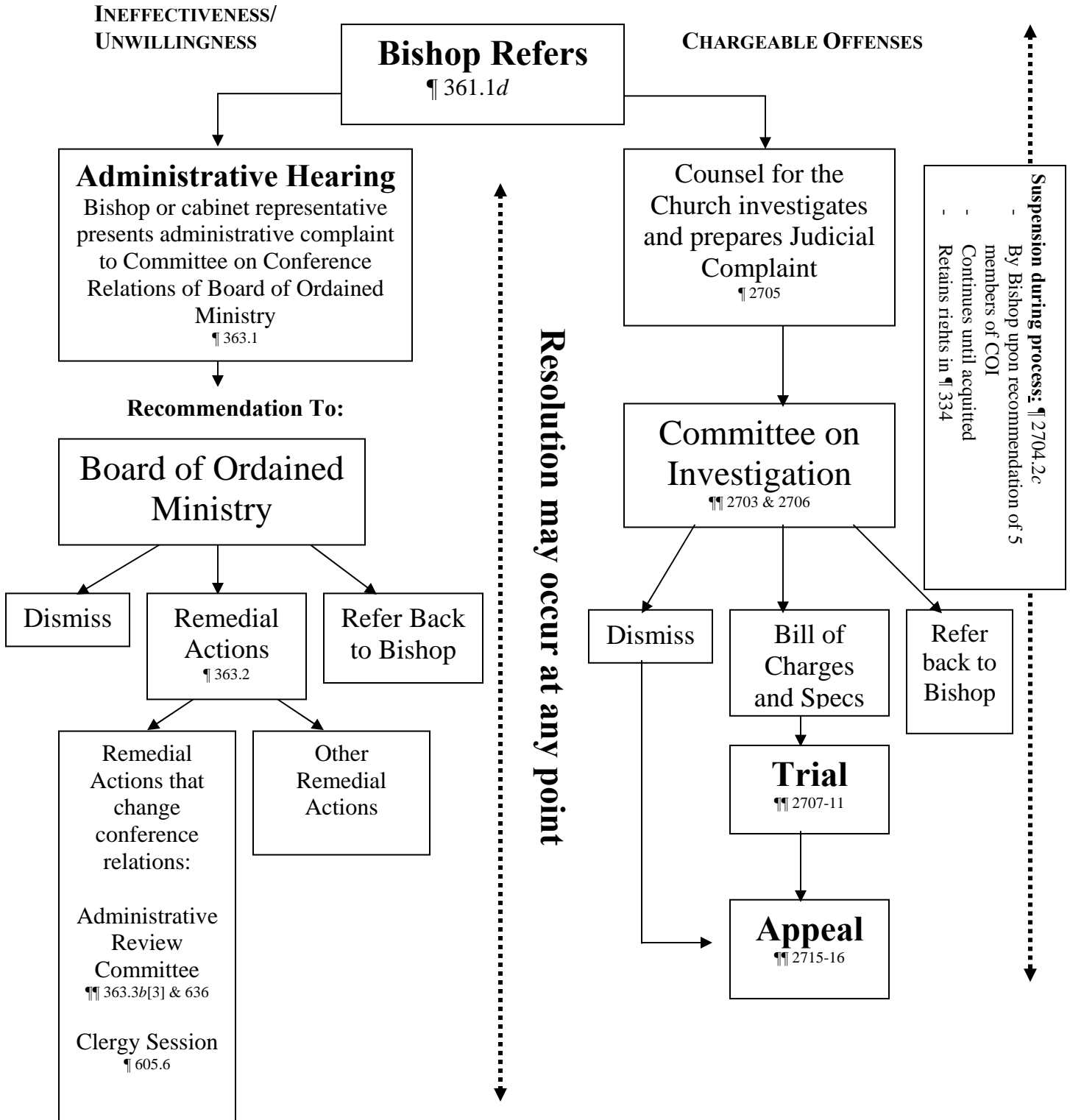


# SUPERVISORY RESPONSE OUTCOMES (Clergy)



**REFERRAL**

<b>ADMINISTRATIVE PROCESS</b>	<b>JUDICIAL PROCESS</b>
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# POTENTIAL OUTCOMES

(other than Dismissal, Acquittal, or Just Resolution)

## ADMINISTRATIVE PROCESS

Remedial Actions; Changes in Conference Relationship ¶ 363.2

<u>Other resolutions (not paid):</u>	<u>C</u>	<u>A</u>	<u>M</u>	<u>X</u>
Voluntary Leave of Absence	x	x	5	2/3
Voluntary Early Retirement	x			
Voluntary Honorable Location - (Not Itinerate)	x			
Voluntary Surrender of Office	x			
Involuntary Leave of Absence	x	x	3	
Involuntary Early Retirement (Involuntary)	x			
Administrative Location (Still Ordained, Not Itinerate)	x			

**KEY:**

C = Continuation Coverage– up to 18 months  
 A = Approved Annually  
 M = Maximum Years  
 X = Except

## JUDICIAL PROCESS

¶ 2711.3

Possible penalties:

- Remove from role of professing members
- Revoke ministerial credentials
- Terminate conference membership
- Lesser penalties (e.g., remedial actions listed in ¶ 363.2)

## Chapter 2

# CONFIDENTIALITY

There has been much discussion and speculation about what is and what is not required by ¶¶ 361 and 2713 as to confidentiality. Paragraph 361.1*b* previously required that the supervisory response of the bishop to be carried out in a “confidential and timely manner.” The 2008 General Conference removed the term “confidential” from that provision. Paragraph 2713.5 provides that trial records are to be maintained in a confidential manner.

The underlying purposes of these paragraphs are to protect the privacy interests of the respondent and the complainant and to maintain the integrity of the Church’s internal disciplinary process without jeopardizing the outcome of that process. The purpose is not, however, to require absolute silence.

There are other fair process paragraphs in the *Discipline* that reflect the importance of balancing the privacy interests of the parties against the disclosure of information to protect the safety or well-being of the Church and its entities, representatives, and members. Paragraph 361.1*e* states that the bishop and the cabinet shall provide for a process for healing within the congregation, if there has been significant disruption to congregational life by the complaint. That process includes the disclosure of information about the nature of the matter, as long as that disclosure does not harm the integrity of the process. Paragraph 2701.4*c* contains a similar provision. In other words, in each instance, an important role for the bishop and cabinet is to balance the privacy interests of the parties against the need for disclosure and to decide whether and to what extent the need for disclosure outweighs the privacy interest.

For example, if several complaints have been filed by different local church members against a clergy person for ineffective ministry, it may be important for the district superintendent to have a meeting with the pastor parish relations committee and the pastor to discuss the best way to help the pastor overcome the particular difficulties. This is an important discussion, and the confidentiality provisions in the *Discipline* would not prohibit it.

Likewise, if a complaint is filed against a clergy person alleges child abuse, it is critical that the congregation of the local church be informed that a complaint of this nature has been filed, in order to protect the local church and its members from potential harm and to minimize the risk of liability exposure for the clergy person's alleged wrongdoing. The congregation can be informed that a complaint of child abuse has been filed without revealing who filed the complaint or the specifics of the allegations. This protects the privacy interests of the complainant and the integrity of the Church's internal disciplinary process. The congregation should also be reminded of the fact that the pastor is presumed innocent unless and until proven guilty by a trial court and of the harmfulness of gossip and slander.

On the other hand, if an isolated complaint is filed against a clergy person for making an insensitive remark to a local church member, there is likely no need for disclosure to anyone (other than for the district superintendent and the clergy person to have a discussion about the substance of the complaint).

Additionally, the parties may agree to the extent of the confidentiality, in agreements such as a "Statement of Resolution" or an "Accountability Agreement."<sup>1</sup>

In summary, the *Discipline* calls for the confidentiality of complaints filed against clergy and of trial records.<sup>2</sup> While it is important for all who are involved in a disciplinary process to respect such confidentiality, it does not override the importance of disclosure when, in the discretion of the bishop and cabinet, the local congregation or others have a legitimate need to be informed of the complaint. When disclosure is deemed important in order to protect the interests of the Church or the safety or well-being of the local church members, or to promote healing, then enough information should be disclosed to meet these interests without disclosing details about the facts that would compromise the integrity of the disciplinary process. All of this assumes a high level of attentiveness by the bishop, cabinet, response teams, and local church leaders (and others called in to help) to the many other aspects of safety, well-being, and healing for the complainant, respondent, staff, and congregation.

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<sup>1</sup> See *Decision* 1094.

<sup>2</sup> See also *Decision* 974 (stating that confidentiality "cannot be used as a reason to keep the complaint and supporting documentation from the respondent).



Finally, all decisions regarding confidentiality must take into account the possibility of a mandatory reporting law, especially regarding issues of child abuse. Over half of the states have mandatory reporting requirements for clergy in this area. The federal government's [Child Welfare Information Gateway](#) provides more in depth information on this subject.

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## Chapter 3

# PROCEDURES FOR DISCONTINUANCE<sup>3</sup>

### I. Discontinuance of Provisional Membership (¶ 327.6).

The discontinuance of a provisional member may be either voluntary or involuntary. When it is done at the request of the provisional member, the board of ordained ministry should conduct an interview to determine the reasons for the request and include a record of those reasons in the provisional member's annual conference personnel file, for future reference.

When the board of ordained ministry recommends that a provisional member be discontinued from the clergy membership of an annual conference, the fair process provisions must be observed.<sup>4</sup> The administrative review committee must review the process for procedural correctness.<sup>5</sup> The provisional member is to be interviewed by a committee of the board of ordained ministry. This committee should not be the executive committee of the board, as it may be called upon to hear an appeal of the board's recommendation.

District superintendents are not to participate in processes involving involuntary discontinuation:

The doctrine of separation of powers and the provisions of fair process in administrative hearings prohibit the district superintendent named by the bishop as a representative of the cabinet from participating in the deliberations of the board of ordained ministry, and its committees, and voting in such bodies, on the administrative processes [involving involuntary discontinuation of provisional membership]. In any such matter, the district superintendent shall not be present for the deliberations and the vote, and shall not discuss with the board of ordained ministry and its committees substantive issues in the absence of the responding clergyperson.<sup>6</sup>

It is important to note that the district superintendent is responsible for the return of provisional membership (license or ordination) credentials which are no longer valid. The

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<sup>3</sup> See also Board of Ordained Ministry Handbook (2009 – 2012), [Chapter 27](#).

<sup>4</sup> See ¶ 362.2.

<sup>5</sup> See *Decision* 921.

<sup>6</sup> *Decision* 917.

district superintendent must make an effort to recover these credentials, must document efforts to obtain them when they have not been returned, and must place these certificates or records in the hands of the secretary of the conference. A notation of the receipt of credentials and their forwarding to the conference secretary must be placed in the provisional member's supervisory file and a copy must be placed in the permanent personnel files of the annual conference. In the event credentials are not voluntarily surrendered after reasonable attempts to gain their return, the district superintendent must place in the supervisory record of the cabinet and permanent personnel records of the annual conference a statement which confirms their absence and outlines the efforts made to obtain them.

The board of ordained ministry may recommend that a person be discontinued as a provisional member and approved as a local pastor. Under these circumstances, such persons may be granted a license for pastoral ministry only after their provisional membership credentials have been surrendered to the district superintendent. These actions should be noted in the personnel file.

When a provisional member is charged with an offense under ¶ 2702 and desires to discontinue membership in the annual conference, the record shall indicate "withdrawn under charges" and that person's status shall be the same as if expelled.<sup>7</sup> The provisional member shall be supplied with relevant documents and advised of the right to a hearing.<sup>8</sup> Provisional members do not have a right to a trial unless the bishop refers a complaint to the committee on investigation under the provisions of ¶ 361.1d.<sup>9</sup> When a complaint is referred to the committee on investigation, the fair process provisions of ¶ 2701 must be followed.

## **II. Discontinuance of Local Pastors (¶¶ 320.1-.2).**

Local pastors do not have a right to an annual appointment. They may withdraw from licensed ministry at their own request or, at the bishop's discretion, be discontinued upon written notice by the bishop. If a local pastor does not receive a recommendation for continuance from

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<sup>7</sup> ¶ 2719.2.

<sup>8</sup> ¶ 327.6.

<sup>9</sup> See *Decision* 852 (affirming that a provisional member has no right to a trial when being involuntarily discontinued).

the district committee on ordained ministry or the approval of the board of ordained ministry, that person shall not be continued as a local pastor.

Discontinued local pastors shall surrender their license to the district superintendent for deposit with the secretary of the annual conference. The only exception to this rule is local pastors licensed prior to the 1968 union of the Methodist and Evangelical United Brethren Churches. Persons licensed prior to this union may retain their license and perform ministerial service within the charge conference where they hold their local church membership. A notation on the receipt of credentials and their forwarding to the conference secretary shall be placed in the local pastor's supervisory file and in the permanent personnel files of the annual conference.

When a local pastor is charged with an offense under ¶ 2702 and desires to discontinue conference membership as a local pastor, the record shall indicate "withdrawn under charges" and that person's status shall be the same as if expelled.<sup>10</sup>

When local pastors are involuntarily discontinued, they do not have a right to a supervisory response, fair process, or a trial unless the discontinuance involves a written and signed complaint.<sup>11</sup> If a complaint is referred, the fair process provisions of ¶¶ 362 and 2701 shall be followed.<sup>12</sup>

When a person is involuntarily discontinued as a local pastor, the district committee on ordained ministry shall report the circumstances of discontinuance to the board of ordained ministry, which in turn shall report them to the bishop.<sup>13</sup> The registrar of the board of ordained ministry shall also place a copy of the report on the circumstances of discontinuance in the permanent personnel files maintained by the conference secretary, treasurer, or other officer designated by the annual conference. This permanent record shall be made available to the cabinet, the district committee on ordained ministry, or the board of ordained ministry, upon request, if and when the local pastor is being considered for reappointment.

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<sup>10</sup> ¶¶ 320.2, 2719.2.

<sup>11</sup> *Decision* 982.

<sup>12</sup> *Id.*

<sup>13</sup> ¶ 320.1.

Once a local pastor has been discontinued from an annual conference, the only action required when the local pastor is being considered for an appointment in another annual conference is “verification” of qualifications and “information” on circumstances relating to termination.<sup>14</sup>

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<sup>14</sup> ¶ 320.4.

## Chapter 4

# PROCEDURES FOR CHANGES OF CONFERENCE RELATIONS FOR CLERGY MEMBERS OF THE ANNUAL CONFERENCE<sup>15</sup>

### I. Voluntary Leave of Absence (§ 354).

When provisional, associate, or clergy (in full connection) members temporarily choose to cease the duties of full-time ministry, they may request a voluntary leave of absence through the board of ordained ministry.<sup>16</sup> Voluntary leave may be the result of personal, familial, or transitional needs.<sup>17</sup>

A request for voluntary leave (other than for transitional leave) must be made in writing at least ninety (90) days prior to the annual conference session and must explain the reason for the request.<sup>18</sup> Upon receiving a request, board of ordained ministry representatives may interview the clergy to determine whether there is sufficient cause. Voluntary leave shall be counted as part of the eight (8) year limit for provisional members.<sup>19</sup> Between annual conference sessions, leaves may be given by the executive committee, with the approval of the bishop and district superintendents.<sup>20</sup>

If there are any pending complaints or charges against the clergy requesting leave, permission shall not be given until those complaints or charges have been resolved.<sup>21</sup>

While on voluntary leave, clergy members:

- Have no claim on conference funds, unless the conference has benefit plans that require continued participation;<sup>22</sup>

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<sup>15</sup> See also Board of Ordained Ministry Handbook (2009 – 2012), [Chapter 27](#).

<sup>16</sup> ¶ 354.1.

<sup>17</sup> ¶ 354.2.

<sup>18</sup> ¶¶ 354.1, .3.

<sup>19</sup> ¶¶ 327, 354.3.

<sup>20</sup> ¶ 354.4. Interim grants of leave are subject to approval by the annual conference.

<sup>21</sup> ¶ 354.5.

<sup>22</sup> ¶ 354.6.

- May participate in the conference's health plan, through their own contributions;<sup>23</sup>
- May, in exceptional circumstances, receive other benefits or compensation;<sup>24</sup>
- Are eligible for membership on annual conference committees, commissions, and boards and for election as delegates to general or jurisdictional conferences (and may vote for such delegates);<sup>25</sup>
- Must designate a charge conference within the annual conference to which they shall relate and submit an annual report;<sup>26</sup>
- Must report all ministerial activities (marriages, baptisms, funerals, etc.) to the charge conference, pastor in charge, and board of ordained ministry;<sup>27</sup>
- May continue to hold an existing reserve commission as an armed forces chaplain, with written permission of the bishop and approval from the United Methodist Endorsing Agency;<sup>28</sup> and
- May not voluntarily serve on extended active duty.<sup>29</sup>

Clergy remain amenable to the annual conference while on voluntary leave and a failure to report to the board of ordained ministry can invoke a complaint procedure.<sup>30</sup>

Requests to end voluntary leave (other than transitional leave) must be in writing and submitted at least six (6) months prior to the annual conference session.<sup>31</sup> The board of ordained ministry shall review these requests. If the board determines that the circumstances necessitating the leave are still unresolved, it may deny the request and inform clergy of the remaining options: continuing the voluntary leave; accepting honorable location; being placed on involuntary leave, administrative location, or involuntary retirement; or other appropriate actions.<sup>32</sup> It is important that the bishop and the cabinet be in close communication at this stage and that the board has a record of any judicial complaint which may have been pending at the time a leave of absence was granted. It is also important to avoid a situation in which the board makes a recommendation to continue or terminate a leave without being aware of the position of the cabinet on the matter. It should be noted that the fair process provisions of ¶ 362.2 must be

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<sup>23</sup> *Id.*

<sup>24</sup> *See id.*

<sup>25</sup> ¶ 354.7.

<sup>26</sup> ¶ 354.8.

<sup>27</sup> *Id.* The activities are to be limited to the charge conference in which membership is held and only with the written permission of the pastor in charge, unless otherwise provided for by the bishop.

<sup>28</sup> ¶ 354.10.

<sup>29</sup> *Id.*

<sup>30</sup> ¶ 354.9.

<sup>31</sup> ¶ 354.11.

<sup>32</sup> *Id.*

followed when a request for involuntary leave of absence is initiated as the option when a clergy person's request to come off of voluntary leave is denied.<sup>33</sup> Failure to follow this procedure may result in restitution of clergy status with retroactive salary and benefits.<sup>34</sup>

Should a clergy member on voluntary leave fail to request an annual extension or fail to indicate a willingness to return to the ministry, the clergy member may be subject to location or the complaint process of ¶ 361.<sup>35</sup>

#### **A. Personal Leave.**

This relationship is granted when clergy determine that, for personal reasons, they are temporarily unable or unwilling to continue in a ministry appointment. This leave shall not be granted for more than five (5) successive years, unless permitted by a two-thirds vote of clergy members in full connection.<sup>36</sup>

#### **B. Family Leave.**

This relationship is granted when clergy are temporarily unable to continue in a ministry appointment because of an immediate family member's need for full-time care. This leave shall not be granted for more than five (5) successive years, unless permitted by a two-thirds vote of clergy members in full connection.<sup>37</sup>

#### **C. Transitional Leave.**

This leave is granted for up to twelve (12) months, after approval of the bishop and the board of ordained ministry's executive committee, to clergy who are temporarily between appointments. Transitional leaves can only be granted for one of two reasons:

- (1) A provisional or full member deacon needs to seek and secure an appointable primary position – compensated or nonsalaried.

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<sup>33</sup> See e.g., *Decision 782*.

<sup>34</sup> *Id.*

<sup>35</sup> ¶ 354.12.

<sup>36</sup> ¶ 354.3.

<sup>37</sup> *Id.*



(2) A provisional member, associate member, or full member elder needs to transition from an extension ministry to another appointment.<sup>38</sup>

While on transitional leave, clergy must provide quarterly reports on their efforts to obtain an appointable position to the bishop and the executive committee.

#### **D. Maternity/Paternity Leave (§ 356).**

Local pastors, provisional members, associate members, and clergy members in full connection have a right to request maternity/paternity leave, for up to three (3) months, in relation to the birth or adoption of a child. These requests should be filed with the committee on pastor-parish relations, after consultation with the district superintendent, at least ninety (90) days prior to the start of the leave. However, it is appropriate that all parties cooperate for the good of the Church and the conference members involved. The protocol for requesting such a leave does not preclude the possibility that in unusual circumstances, approval for a leave can be granted with less than a ninety (90) day notification. The bishop, cabinet, and board of ordained ministry's executive committee are responsible for granting the leave.

Compensation shall be provided for at least the first eight (8) weeks of the leave. The taking of maternity/paternity leave does not change the member's relation with the annual conference. Any leave taken for no more than three (3) months shall be considered as an uninterrupted appointment for pension purposes.

When a bishop, district superintendent, or those under special appointment request maternity/paternity leave, special arrangements shall be made on a case by case basis.<sup>39</sup>

#### **II. Involuntary Leave of Absence (§ 355).**

Involuntary leave of absence differs from voluntary leave in the process by which one enters leave, terminates leave, and reports a leave to the annual conference. Because of the involuntary nature of the action of the annual conference, involuntary leave falls under the

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<sup>38</sup> ¶ 354.2c.

<sup>39</sup> ¶ 356.6.

administrative fair process provisions of ¶ 362.2.<sup>40</sup> The Judicial Council has affirmed the right of the clergy members in full connection in an annual conference to place a person on involuntary leave of absence.<sup>41</sup> The Judicial Council has also stated that careful attention must be given to the details of the process.<sup>42</sup>

Involuntary leave may only be requested for the following reasons:

- a) A written or signed complaint is not resolved through the supervisory response process (¶ 361.1*b*) within 120 days and is referred as an administrative complaint (¶ 361.1*d*).
- b) Remedial action is required to address allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties, which becomes an administrative complaint (¶¶ 362.1*a* and 363.2).
- c) An administrative or judicial complaint requires more than a ninety-day suspension (¶ 361.1*c*).<sup>43</sup>

Only the bishop or the district superintendent can make such a request, which should preferably be made at least ninety (90) days prior to the annual conference session.<sup>44</sup> Clergy and the board of ordained ministry must both receive written explanations of the request.<sup>45</sup> Involuntary leave requests are approved by a two-thirds vote of the clergy session of members in full connection.<sup>46</sup> It shall be approved annually and for not more than three (3) successive years.<sup>47</sup> If there are any pending complaints or charges at the time of the request, they must be placed in the clergy's personnel file.<sup>48</sup>

Between sessions of the annual conference, the executive committee of the board of ordained ministry grants or terminates involuntary leave, with the approval of the bishop and the

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<sup>40</sup> ¶ 355.1.

<sup>41</sup> *Decision 524*.

<sup>42</sup> *See e.g., Decision 721*.

<sup>43</sup> ¶ 355.2.

<sup>44</sup> ¶ 355.1; *see also Decision 973* (stating that a written request to place clergy on involuntary leave does not constitute a complaint). The ninety (90) day notice may be waived by a two-thirds vote of the clergy session of members in full connection, after a recommendation by the bishop, district superintendents, and board of ordained ministry. ¶ 355.3.

<sup>45</sup> *Id.*

<sup>46</sup> ¶ 355.3.

<sup>47</sup> *Id.*

<sup>48</sup> ¶ 355.2.

cabinet.<sup>49</sup> The executive committee's action is subject to ratification at the next clergy session of the annual conference.

The clergy member has a right to a hearing before the bishop, district superintendents, and executive committee of the board of ordained ministry prior to being placed on involuntary leave.<sup>50</sup> The role of the bishop and district superintendent in these hearings is severely limited:

Bishops and district superintendents shall not participate as voting members in a hearing . . . concerning involuntary leave of absence and may not remain in the hearing room either prior to the hearing or after the hearing has been concluded but prior to the issuance of a decision by the executive committee of the board of ordained ministry. To do so would violate fair process . . . .<sup>51</sup>

The purpose of these hearings is to determine whether the board's recommendation is to be reconsidered because of new information concerning the leave or an error in the process. Recommendations resulting from this hearing may either be reported to the board of ordained ministry, the clergy session of the annual conference, or both.

Involuntary leave should be reserved for those cases where all other alternatives have been explored and none have been found to be appropriate. It should not be used to avoid the resolution of complaints or charges. Under certain circumstances, it may assist in the resolution of complaints short of trial, in combination with other remedial measures. It also may be necessary as an interim action prior to a decision of the annual conference.

The *Discipline* considers the action of placing a person on involuntary leave serious enough that it requires the process to be monitored by the administrative review committee:

The administrative review committee (§ 636) shall ensure that the disciplinary procedures for involuntary leave of absence were properly followed. The entire process leading to the recommendation for involuntary leave of absence and its resolution shall be reviewed by the administrative review committee, and it shall report its findings to the clergy session of members in full connection with the annual conference.<sup>52</sup>

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<sup>49</sup> ¶ 355.4.

<sup>50</sup> ¶ 355.1; see [Chapter 5, Section VI](#) for an in depth discussion of the *Discipline*'s fair process procedures.

<sup>51</sup> *Decision* 950.

<sup>52</sup> ¶ 255.10.

Careful attention should be given to the administrative review committee. The committee's role is important, as the person being placed on involuntary leave does not have a right to a trial, but instead only to a hearing before the bishop, district superintendents, and executive committee of the board of ordained ministry.

The annual conference assumes no financial responsibility for salary, pension, or other benefits for clergy on involuntary leave.<sup>53</sup> While on involuntary leave, clergy members:

- Have no claim on conference funds, unless the conference has benefit plans that require continued participation;<sup>54</sup>
- May participate in the conference's health plan, through their own contributions;<sup>55</sup>
- May, in exceptional circumstances, receive other benefits or compensation;<sup>56</sup>
- Are not eligible to participate in the boards or agencies of the annual conference, to be delegates to general and jurisdictional conferences, or to vote on such delegates;<sup>57</sup>
- Must designate a charge conference within the annual conference to which they shall relate;<sup>58</sup> and
- May only perform ministerial services for the designated charge, and then only after receiving approval from the district superintendent, bishop, and the pastor/staff parish relations committee and written consent from the pastor in charge.<sup>59</sup>

A request by the bishop or district superintendents to end an involuntary leave shall be in writing and made at least six (6) months prior to the annual conference session.<sup>60</sup> The board of ordained ministry shall review these requests. If the board determines that the circumstances necessitating the leave are still unresolved, it may deny the request and pursue remedial action provided by ¶ 363.2. If the district superintendents and the bishop do not intend to end the involuntary leave after three (3) years, they must notify the board of ordained ministry and the

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<sup>53</sup> ¶ 355.5.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See id.*

<sup>57</sup> ¶ 355.7.

<sup>58</sup> ¶ 355.6

<sup>59</sup> *Id.*

<sup>60</sup> ¶ 355.8.

clergy person at least six (6) months prior to the annual conference session and recommend an appropriate change in conference relationship.<sup>61</sup>

### III. Incapacity Leave (¶ 357).

Incapacity leave may be granted or required of clergy when they are unable to perform their ministerial work because of health matters or disabling conditions. Incapacity leave may be requested by a clergy member, or it may be initiated by the cabinet without the member's consent. The leave must be recommended by the board of ordained ministry and the conference board of pensions and be approved by a majority vote of the executive session of clergy members in full connection.

Incapacity leave should only be granted or renewed after the matter has been appropriately and reasonably investigated by the annual conference's joint committee on incapacity (or other similar body) and after that committee has reported its findings to the board of ordained ministry and conference board of pensions. The member being considered for incapacity leave has the right to appear before the joint committee or to designate someone to appear on the member's behalf.

Because of the sensitive nature of involuntary changes in conference relationships, a cabinet should be very cautious about recommending or requiring an involuntary incapacity leave. Although not required by the *Discipline*, it is recommended that the process leading up to an involuntary disability leave be examined by the administrative review committee, that a report be made to the clergy members in full connection of the annual conference, and that the fair process provisions of ¶ 362.2 be followed.<sup>62</sup>

Incapacity leave may be granted or required between sessions of the annual conference for the remainder of the conference year, with the approval of a majority of the district superintendents, after consultation with the executive committees of the board of ordained

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<sup>61</sup> ¶ 355.9. In these situations, the clergy person has the right to request a change to a voluntary leave or a termination of the involuntary leave.

<sup>62</sup> See *Memorandum* 1053 (stating that fair process procedures do not attach until a written and signed complaint is submitted to the bishop).

ministry and conference board of pensions. The same reasonable and appropriate investigation must be made.

Incapacity leave may be terminated by the bishop between annual conference sessions, as long as the member provides medical evidence of sufficient recovery or is able to return via reasonable accommodations. Such termination shall be reported to the conference board of pensions and to the General Board of Pensions and Health Benefits and shall be recorded in the next annual conference session's minutes.

#### **IV. Retirement (¶ 358).**

Requests for retirement must be made in writing to the bishop, cabinet, and board of ordained ministry at least 120 days prior to the desired effective date of the retirement.

##### **A. Mandatory Retirement (¶ 358.1).**

Every clergy member of an annual conference that reaches age seventy-two (72) by July 1 of the year in which the conference is held will be automatically retired.

##### **B. Voluntary Retirement (¶ 358.2).**

A clergy member who has served for at least twenty (20) years by the start of the annual conference session may request voluntary retirement, with pension privileges based on the number of years served.

A clergy member who has served for at least thirty (30) years or who reaches age sixty-two (62) by July 1 of the year in which the conference is held may request (with the vote of the members in full connection) voluntary retirement, with an annuity claim for an actuarially reduced pension.<sup>63</sup>

A clergy member who has served for at least forty (40) years or who reaches age sixty-five (65) by July 1 of the year in which the conference is held may request (with the vote of the members in full connection) voluntary retirement, with an annuity claim.

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<sup>63</sup> See ¶ 1506.4i.

The bishop, cabinet, and board of ordained ministry's executive committee may approve these requests in between annual conference sessions, subject to subsequent approval by the members in full connection at the next conference session.

**C. Involuntary Retirement (§ 358.3).**

In rare instances, the board of ordained ministry and the cabinet may recommend the retirement of a conference member without his or her consent. As with other actions of this kind, the district superintendent's role is limited:

The doctrine of separation of powers and the provisions of fair process in administrative hearings prohibit the district superintendent named by the bishop as a representative of the cabinet from participating in the deliberations of the board of ordained ministry, and its committees, and voting in such bodies, on the administrative processes [involving involuntary retirement]. In any such matter, the district superintendent shall not be present for the deliberations and the vote, and shall not discuss with the board of ordained ministry and its committees substantive issues in the absence of the responding clergyperson.<sup>64</sup>

The recommendation must be approved by a two-thirds vote of the members in full connection.

Although constitutionally acceptable and affirmed in *Decision 522*, such action should be taken with extreme caution and only when all other options have been exhausted. The board must give written notice to the clergy member at least 180 days prior to annual conference. The administrative review committee chairperson should also be notified in writing. For all involuntary retirement procedures, the fair process procedures of § 362.2 must be followed. Additionally, the administrative review committee shall review the entire process and report its findings to the annual conference.

**V. Honorable Location (§ 359).**

The board of ordained ministry shall interview clergy requesting honorable location and make a recommendation to the annual conference. Those recommended shall be in good standing, shall not be under judicial complaints, and shall intend to discontinue service in the itinerant ministry. A certificate of location shall be signed by the bishop and given to those

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<sup>64</sup> *Decision 917.*

granted location. The board of ordained ministry shall provide guidance and counsel to conference members entering honorable location. Honorable location is not an acceptable alternative to the forwarding of a judicial complaint to the committee on investigation.

Clergy on honorable location no longer hold membership in the annual conference and must turn in their conference membership certifications. They must designate a local church in which they will hold membership, after receiving written permission from the pastor in charge and approval from the district superintendent and the local church's staff-parish relations committee.<sup>65</sup> They shall be held accountable to the annual conference in which the local church is located for their character and the performance of their ministry.

It is important to remember that both the annual conference and the pastor in charge are responsible for supervising the ministerial service of a clergyperson on honorable location. Only ministers of good moral character and conduct and with a good service record should be allowed to enter, or be permitted to continue on, location.

Located ministers may apply for and be granted the status of "honorable location, retired."<sup>66</sup>

## **VI. Administrative Location (¶ 363.3).**

When the cabinet finds that a clergy member of the annual conference is unable to competently and effectively perform the duties of itinerant ministry, they may refer the matter to the board of ordained ministry for a recommendation concerning administrative location. The cabinet may not participate in this deliberation.<sup>67</sup> When received by the board, the request of the cabinet is referred to the committee of the board which deals with matters of conference relations (other than the executive committee). The fair process provisions of ¶ 362.2 must be followed in any administrative location procedure.<sup>68</sup> The board of ordained ministry shall inform the clergy member, the bishop, the district superintendent, the complainant, and the chairperson of the

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<sup>65</sup> Consent should be documented and then filed with the board of ordained ministry.

<sup>66</sup> See *Decision 717* (discussing benefits and pensions that may be provided to clergy granted the status of honorable location, retired).

<sup>67</sup> *Decisions 689, 917, 950.*

<sup>68</sup> See *Memorandum 695.*



administrative review committee of the recommendation for administrative location at least sixty (60) days before the start of the annual conference.

The administrative review committee shall make a report to the clergy session of members in full connection prior to any action of the annual conference on the entire process leading to a recommendation for administrative location. The administrative review committee does not assess the merits of a recommendation for administrative location, but simply makes sure that the provisions of the *Discipline* have been followed. It may wish to report on additional actions taken by the bishop, board, or cabinet that go beyond those required by the *Discipline*. At any point in the process, it also may wish to voice its concern if the required steps have not been followed and recommend remedial action to the bishop or chairperson of the board of ordained ministry. The committee has the right to retain, in confidence, a complete record of the matters it reviews.

## **VII. Withdrawal (§ 360).**

### **A. To Unite With Another Denomination (§ 360.1).**

Ordained members in good standing may surrender their credentials and withdraw to unite with another denomination. When authorized by the annual conference, the bishop and conference secretary may return these credentials with an inscription documenting that the individual is no longer an ordained clergyperson in The United Methodist Church.

When judicial complaints or charges are pending or are under consideration by the committee on investigation, the conference has the right to retain the credentials of a conference member seeking to unite with another denomination. When judicial action is pending, it is the responsibility of the cabinet and the board to share information on the complaint when requested by the judicatory body receiving the conference member.

### **B. Withdrawal from the Ordained Ministerial Office (§ 360.2).**

Associate members and full conference members in good standing may resign their ministerial office and withdraw from the conference. Credentials are to be given to the district

superintendent and deposited with the conference secretary. Membership may be transferred to a local church after consultation with the pastor.

**C. Withdrawal Under Complaints or Charges (§ 360.3).**

When clergy members are named in a complaint under ¶ 362.1 and desire to withdraw from the membership of the annual conference, it may allow the withdrawal, pursuant to ¶ 2719.2 (making the proper notification on the credentials). Their credentials shall be surrendered to the district superintendent for deposit with the conference secretary. The complaints or charges shall be placed in the permanent personnel files of the annual conference. An ordained minister who withdraws under complaints or charges forfeits the constitutional right to trial.<sup>69</sup>

**D. Between Conference Sessions (§ 360.4).**

When withdrawal or surrender of the office of an ordained minister occurs between sessions of the annual conference under ¶¶ 360.1-.3,<sup>70</sup> credentials are surrendered to the bishop or district superintendent, and a letter of withdrawal, along with any complaints or charges, is to be given to the conference secretary for deposit in the permanent personnel files of the annual conference. This interim action shall be reported by the board of ordained ministry for confirmation at the next session of the annual conference. When a person withdraws between sessions of the annual conference, that withdrawal becomes effective immediately.

**E. Credentials of Ministers Who Have Withdrawn.**

Surrender of the credentials is administrative, and may be indicative but not determinative of whether the clergy has intentionally resigned. The clergy's intent to resign, and the acceptance of that resignation, is the act that is relevant, not the location of the credentials. Similarly, if a clergy should misplace her credentials, she does not automatically forfeit her status as clergy.

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<sup>69</sup> *Decision 691.*

<sup>70</sup> EDITOR'S NOTE: Paragraph 360.4 in the 2008 *Discipline* (and the 2004 *Discipline*) appears to have an inconsistency in its language. The subparagraph mentions the three different kinds of withdrawal in ¶ 360 by name, but then only references ¶¶ 360.1 and 360.3 by number (i.e., not ¶ 360.2). The numerical references were added by the 2004 General Conference. The petition that produced the change provides no insight into the intent behind it.

## Chapter 5

# COMPLAINTS – SUPERVISORY AND ADMINISTRATIVE PROCEDURES<sup>71</sup>

### I. Complaints and Supervision (¶ 361).

Whenever clergy members of an annual conference are accused of violating the sacred trust granted to them in licensing, ordination, commissioning, or conference membership, their credentials and conference membership shall be subject to review. This review shall have as its primary purpose a just resolution of any violations of this sacred trust. A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible, and bringing healing to all the parties. Special attention should be given to ensuring that cultural, racial, ethnic, and gender contexts are valued throughout the process, in terms of their understandings of fairness, justice, and restoration.

The bishop and district superintendent are authorized to initiate or receive written complaints about the performance or character of a conference member.<sup>72</sup> When a complaint is received by the bishop, both the complainant and the respondent will immediately receive a written copy of the process to be followed.<sup>73</sup> It is also at this time that the fair process procedures take effect.<sup>74</sup>

Complaints come in many forms. Frequently, the person filing the initial complaint will want to speak privately about a matter without putting it in writing. The district superintendent or bishop will want to inform the complainant and the clergy person of the complaint process and its purpose. An initial complaint shall be written with specifications containing as many facts as are available, such as the date, place, and time of specific events alleged to have occurred.

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<sup>71</sup> See also Board of Ordained Ministry Handbook (2009 – 2012), [Chapter 27](#).

<sup>72</sup> ¶ 361.1a.

<sup>73</sup> ¶ 361.1; see also *Decision 974* (stating that confidentiality “cannot be used as a reason to keep the complaint and supporting documentation from the respondent).

<sup>74</sup> *Memorandum 1053*.

If letters are sent by the cabinet concerning a complaint or response to a complaint, make sure all such correspondence is marked “CONFIDENTIAL.”

## **II. Supervisory Response (§ 361.1b).**

Bishops and district superintendents are always expected to supervise clergy and their ministry. This general supervisory oversight of the shepherds (§ 142) is different from the civil law understanding of the normal employer-employee relationship. This general supervisory oversight is also different from the “supervisory response” discussed below and which precedes the administrative and judicial processes. Whenever the performance or character of a clergy member of an annual conference is brought into question, it is the responsibility of the district superintendent or the bishop to inquire fully into the nature of the accusation.

When a complaint is brought, the bishop normally should attempt to resolve the issue through an appropriate supervisory response, and may also be guided by conference policies. The supervisory response process must be initiated by the bishop or the bishop’s designee within forty-five (45) days of receiving the complaint, unless the bishop is dismissing the complaint because it has no basis in law or fact.<sup>75</sup> Whenever the process is initiated, the respondent has the right to review the complaint and its supporting documentation.<sup>76</sup>

Complaints may be dismissed when no one is willing to put the complaint in writing, and it is the bishop’s judgment that the complaint is without sufficient evidence. A written complaint may be dismissed if the bishop believes it has no basis in law or fact. Complaints also may be dismissed by the bishop when the supervisory process leads to reconciliation between all parties and, in the bishop’s judgment, no additional action is necessary. However, when the bishop decides not to forward an initial complaint for whatever reason, or if there is reconciliation, a record of the complaint, the decision not to forward, and/or the reconciliation shall be placed in the personnel records of the conference and the supervisory files of the bishop and cabinet. The complainant and respondent must be kept informed of the process and the status of the complaint.

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<sup>75</sup> § 361.1d. The complainant and respondent may consent to extend this time period for up to thirty (30) days.

<sup>76</sup> *Decisions* 974, 1094.

Whenever a supervisory response is initiated, the bishop may notify the board of ordained ministry's chairperson of the complaint's filing, the respondent's name, the complaint's general nature, and the ultimate disposition.<sup>77</sup>

The supervisory response to any serious questions should be weighed carefully by the bishop and cabinet. Options open to the bishop or district superintendent include:

- Assistance from persons experienced in assessment, intervention, or healing;
- Consultation with the pastor-parish relations committee, the district committee on superintendency, or other appropriate personnel committee; and
- A process that seeks a just resolution through a trained, impartial third party mediator or mediation team.

A process seeking a just resolution may be begun at any time in the supervisory or complaint process. This is not an administrative or judicial proceeding, and unless otherwise agreed by the parties in writing, what is shared by the parties shall be kept confidential and shall not be used in any Church proceeding or, to the extent possible by law, in a civil or criminal proceeding.

Mediation is one of the bishop's options during the supervisory response. It can go forward only when all parties voluntarily agree to it. As with reconciliation, even after mediation, the bishop may still believe the matter needs to be referred on as a complaint.

An obvious concern is to avoid intimidation of the complainant by the respondent or friends of the respondent. To have the complaint process function properly, the complainant must feel and be safe from any influence or pressure. Coercion or intimidation of the complainant may very well lead to new chargeable offenses. The bishop and/or district superintendent, as part of the supervisory process, should specifically tell both the respondent and the complainant that they should not attempt to call, meet with, write to, or otherwise try to contact each other. Each should be informed that the other has been given the same instruction and be instructed to report any attempted contact. There may be instances in the supervisory process in which a controlled communication is desirable, but there should be no contact without third parties being present to monitor the interaction. If any supervisory meetings do occur, no

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<sup>77</sup> EDITOR'S NOTE: Previously, the *Discipline* stated that the bishop shall notify the board of this information. Changes to the *Discipline* by the 2008 General Conference made this notification optional.

verbatim record shall be taken and no legal counsel shall be present (although both the respondent and the complainant may have a representative present, with the right to voice).

The *Discipline* emphasizes the importance of efforts to achieve reconciliation and a just resolution of complaints. While the parties to proceedings must abide by these directives, this does not necessarily mean that forgiveness and reconciliation with a complainant will end a complaint process or that no penalty should be imposed on the accused. If the bishop learns that the parties have reconciled their differences relating to one minor incident (e.g., an inappropriate comment) and the bishop believes that the respondent is fully fit and able to continue in ministry, then the bishop may decide not to proceed further. However, if the allegations are serious (sexual misconduct involving inappropriate grabbing, attempted rape, etc.), the bishop probably should forward the matter as a judicial complaint even if the parties say they have “reconciled,” as there are serious questions about whether the respondent is fit to stay in ministry.

If the bishop and/or district superintendent cannot resolve the matter relating to chargeable offenses through the supervisory options chosen, the matter is referred by the bishop to the counsel for the Church, who drafts (revises initial complaint) and forwards a judicial complaint to the committee on investigation. A judicial complaint may be forwarded as charges by the committee to the trial court, and on conviction, may result in termination of clergy membership.

Ministers from other denominations while serving under appointment in an annual conference are amenable to the annual conference for obedience to the same standards of character and conduct as those required of United Methodist clergy. They are included in the procedures in ¶ 361, with the exception of those provisions which apply specifically to termination of conference membership or surrender of United Methodist credentials.<sup>78</sup>

### **III. Suspension (¶ 361.1c).**

A respondent may be suspended from all clergy responsibilities, but not from an appointment, for a period of time not to exceed ninety (90) days. During the suspension, salary,

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<sup>78</sup> See *Decision 676*.

housing, and benefits are continued and the rights of conference membership are retained. Suspension gives the annual conference the means to protect the interests of the Church, respondent, and complainant, for a limited period of time and under urgent circumstances. It also gives the annual conference time to address serious accusations that may require some additional consideration and action. Suspension requires:

- A written complaint;
- A recommendation of suspension by the executive committee of the board of ordained ministry; and
- An action of the bishop based on that recommendation.

The respondent does not have the right to be present at these meetings.

Although the decision to recommend suspension is reserved for the executive committee of the board, this does not mean that the matter must wait until the next meeting of the executive committee or until the submission of a formal complaint. The bishop and the cabinet may request that the executive committee take immediate action through a phone conference when there is a matter of urgency. In requesting immediate action, the bishop should be prepared to promptly refer a written complaint which can then be forwarded to the committee on investigation (judicial complaint) or the board of ordained ministry (administrative complaint).

The suspension may not be extended or renewed, but it may be followed by an administrative remedial action (§ 363.2) or a judicial suspension (§ 2704.2c).

#### **IV. Referral of a Complaint (§ 361.1d).**

If the bishop has not dismissed the complaint for having no basis in law or fact, or if the supervisory response process has not produced a resolution within 120 days (or up to 150 days with the consent of the complainant and respondent), the bishop must do one of three things:

- Refer the matter to a third party mediator, if mediation has not yet been attempted;
- Dismiss the complaint, with the consent of the cabinet and with reasons for the dismissal given in writing (a copy of these reasons should be placed in the respondent's file); or
- Refer the matter as an administrative or judicial complaint.

## **V. Administrative Complaints (§§ 362-63).**

If the bishop determines that the complaint is based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties, the bishop may refer the complaint as an administrative complaint to the board of ordained ministry. Again, the district superintendent's participation in the disposition of an administrative complaint is prohibited:

The doctrine of separation of powers and the provisions of fair process in administrative hearings prohibit the district superintendent named by the bishop as a representative of the cabinet from participating in the deliberations of the board of ordained ministry, and its committees, and voting in such bodies, on the administrative processes [involving administrative complaints]. In any such matter, the district superintendent shall not be present for the deliberations and the vote, and shall not discuss with the board of ordained ministry and its committees substantive issues in the absence of the responding clergyperson.<sup>79</sup>

Administrative complaints are subject to the fair process provisions of § 362.2.

### **A. Immunity from Prosecution (§ 362.3).**

The bishop, cabinet, board of ordained ministry, witnesses, advocates, administrative review committee, clergy in full connection voting in executive session, and all others who participate in the Church's administrative process are immune to any complaints brought against them in relation to their role in the administrative process, unless they have consciously and knowingly committed a chargeable offense in bad faith. The conscious and knowing bad faith must be proven by the complainant by clear and convincing evidence. This immunity is to extend to civil court proceedings to the extent permitted by civil laws.

This provision prohibits persons from bringing complaints against a person with an official responsibility or role in an administrative process about the way that responsibility or role is carried out. The purpose is to ensure that the leaders and other participants in the Church process are allowed to proceed without fear of retribution or unfair complaints by parties unhappy with the events or outcome. It is neither a complete immunity nor a bar to bringing a complaint relating to a person's conduct during the administrative process. Rather, it sets a high

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<sup>79</sup> *Decision 917.*



standard on the complainant to show that the alleged chargeable offense was done in conscious and knowing bad faith.

**B. Dispositions of Administrative Complaints (§ 363.1).**

When it receives a complaint pursuant to § 362.1a, the board of ordained ministry shall respond in a timely manner. A committee of the board, other than the executive committee, shall conduct a hearing, using the fair process provisions of § 362.2 outlined below. At this hearing, the bishop or other cabinet representative will present the complaint. The respondent will be present at the hearing and will be given the opportunity to address the complaint, both in writing and via a clergy person in full connection (with voice). If it chooses, the committee may hear from other individuals as well. After the hearing, the committee shall recommend a disposition to the board. In turn, the board may accept or amend the recommendation, dismiss the complaint, or send the complaint back to the bishop for referral as a judicial complaint or for a process that seeks a just resolution. Referral back to the bishop does not constitute a dismissal.

In instituting a process for just resolution, the bishop may use a third party mediator. All appropriate parties, including a cabinet member and a representative of the board, must agree in writing on the process to be followed and the confidentiality of that process. The parties must be informed that any resolution achieved by the process will be subject to the board's approval. Any resolution must be put into writing, specify what may be disclosed to third parties, and be signed by the parties. Should the process not bring about a resolution, the matter shall be referred back to the board. Any action by the board must be shared with the complainant, respondent, bishop, and cabinet.

**C. Recommendation of Remedial Action (§ 363.2).**

If the board of ordained ministry does not dismiss the complaint or refer it back to the bishop, or if the referral back to the bishop does not result in a just resolution, it may choose from one of several programs of remedial action:

- Continuing education program (§ 351);
- Voluntary (§ 354) or involuntary (§ 355) leave of absence;
- Early (§ 358.2) or involuntary (§ 358.3) retirement;
- Sabbatical leave (§ 352);

- Honorable location (§ 359);
- Surrender of ordained ministerial office (§ 360.2);
- Personal counseling or therapy;
- Career evaluation;
- Peer support and supervision;
- Private reprimand; or
- Administrative location.

All of these programs are subject to regular board oversight and annual review. In this regard, some conference boards of ordained ministry have a clergyperson who has the job of overseeing the discipline of clergy (to make sure counseling takes place, to follow up on supervision, etc.).

Programs of continuing education, personal counseling or therapy, career evaluation, and peer support and supervision require no change in conference relationships, when the board and the respondent agree that this is the means to address an administrative complaint. These programs also may be incorporated into a letter of reprimand as a condition of its withdrawal, or be a condition for return to active ministry from a leave of absence.

All remedial action requiring a voluntary change in conference relationship shall be requested by the respondent. Involuntary changes in conference relationship shall be recommended by the board of ordained ministry and approved by the executive session of clergy members in full connection with the annual conference. A record of the circumstances related to any change in conference relationship shall be placed in the permanent personnel records maintained by the annual conference.

If the remedial action includes a private reprimand, there shall be a letter, sent to the respondent and signed by the chairperson of the board of ordained ministry and the respondent's district superintendent, stating the appropriateness of the complaint, the specific remedial action required, and the conditions under which the letter shall be withdrawn from the file and destroyed. A copy shall also be placed in the permanent file of the board of ordained ministry.<sup>80</sup>

Even if the letter of reprimand's conditions are met and it is withdrawn, a report of the reprimand and the remedial action taken shall permanently remain in the personnel file.

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<sup>80</sup> See § 606.6.

#### **D. Complaints Against Bishops (¶ 413).**

The *Discipline* contains separate provisions for the responsibilities of bishops. These provisions also discuss administrative complaints against bishops. It is important to read these separate paragraphs in concert with the other paragraphs discussed in this Chapter. Much of the provisions of the paragraphs dealing generally with administrative complaints apply to such complaints against bishops.

Like other clergy, whenever bishops are accused of violating the sacred trust granted to them in their consecration as bishops, as well as in their ordination, their credentials as bishop and elder are subject to review. The purpose of this review is the reconciliation and restoration of the bishop and the strengthening of the Church.

Any complaint concerning a bishop's effectiveness or competence is to be submitted to the president of the College of Bishops in that jurisdictional/central conference.<sup>81</sup> When a complaint against a bishop is received by the College, the president and the secretary must, within ten (10) days, consult with the chair of the jurisdictional/central conference committee on episcopacy.<sup>82</sup> Two members of the committee will then be appointed to be involved in administrative process. The stipulations for these two members are as follows:

- One must be a professing member;
- One must be a clergy member;
- One must be male;
- One must be female;
- Neither can be from the same episcopal area as the other; and
- Neither can be from the episcopal area which elected the bishop, or to which the bishop has been assigned.

Complaints may be dismissed by the College when no one is willing to put the complaint in writing and it is the judgment of the College that the complaint is without merit.

When a complaint is filed, the College may, after consultation with the jurisdictional/central conference committee on episcopacy, suspend the bishop for up to sixty (60) days. During the suspension, salary, housing, and benefits are continued. Suspension gives

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<sup>81</sup> If the respondent is the president, the complaint is to be submitted to the secretary of the College.

<sup>82</sup> If the respondent is either the president or the secretary, another member of the College will fill that role.

the college the means to protect the interests of the Church, the complaining party, and the bishop, for a limited period of time and under urgent circumstances. It also gives the College time to address serious accusations that may require some additional consideration and action. This suspension may not be renewed or extended, but it may be supplemented by a judicial suspension upon recommendation of the committee on investigation.<sup>83</sup>

The president of the College may attempt to resolve the initial complaint through an appropriate supervisory response, either on his/her own or with the assistance of other members of the College. The procedure for this supervisory response process is much like the one for other complaints. The process must be completed in 120 days. It may be extended for another 120 days no more than twice. The first extension must be approved by the supervising bishop and the two appointees from the committee on episcopacy. The second extension must be approved by those individuals, plus the complainant and the respondent. The supervisory response will vary depending on the seriousness of the complaint. It may include:

- Discussion of the issues with the bishop;
- Consultation with the jurisdictional committee on episcopacy;
- Assistance from persons experienced in assessment, intervention, or healing;
- Meetings with the complainant(s); and/or
- A process seeking a just resolution, in which the parties are assisted by a trained, impartial third party facilitator or mediator in reaching an agreement.

All relevant parties should agree in writing to the process that will be followed and as to confidentially. No record shall be kept of any supervisory response meetings or discussions. While legal counsel cannot be present, the respondent and complainant may be accompanied by a representative with the right to voice.

If the supervisory response produces a resolution, it shall be put into writing and signed by the parties and shall cover what information may be disclosed to third parties. The bishop in charge and the two appointees from the committee on episcopacy shall ensure that the resolution is fulfilled.

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<sup>83</sup> See ¶ 2704.1c.

Complaints may be dismissed by the College when the supervisory process leads to reconciliation between the parties and, in the judgment of the College, no additional action is necessary. When a complaint is dismissed for whatever reason, including reconciliation, a record of the complaint and the result shall be kept in the personnel records of the bishop and in the files of the College.

If an initial complaint is not resolved through the supervisory options chosen, or if supervision does not bring about reconciliation between the complainant and the respondent, the president and secretary of the College of Bishops may refer the matter as an administrative complaint to the jurisdictional/central conference committee on episcopacy. The committee shall follow the fair process provisions of ¶ 362.2 in reviewing the complaint. The committee may dismiss the complaint or recommend involuntary retirement, disability leave, one of the remedial measures of ¶ 363.2, or other appropriate action.

When the jurisdictional/central conference committee on episcopacy determines the matter is serious enough, or when one or more offenses listed in ¶ 2702 are involved, the committee may refer the complaint back to the president and secretary of the College of Bishops for referral as a judicial complaint to the jurisdictional/central conference committee on investigation.

Any action taken on the complaint by the committee shall be reported to the subsequent session of the jurisdictional/central conference.

## **VI. Fair Process in Administrative Hearings (¶ 362.2).**

### **A. General.**

The procedures presented in ¶ 362.2 are for the protection of the rights of individuals and the Church in administrative hearings. The process set forth in this paragraph commences upon referral of a matter as an administrative complaint. Special attention should be given to the timely disposition of all matters and to ensuring racial, ethnic, and gender diversity in the committee hearing the complaint.

The administrative fair process provisions are an important part of all administrative proceedings. Fair process seeks to protect the rights of the respondent by providing sufficient detail on the administrative complaint and adequate time to prepare and effectively present a response. These provisions are intended to enhance trust in and reliance upon the Church's own process as a fair method to resolve disputes.

The *Discipline* cannot anticipate each and every potential scenario and has therefore sought to provide these overriding principles of fairness that should be applicable in any situation. They parallel the fair process provisions for judicial complaints found in ¶ 2701, with the exception that references to “Double Jeopardy” and “Healing Process” are omitted.

**B. Right To Be Heard (¶ 362.2a).**

This section gives the respondent the right to be heard before any final action is taken. The respondent has a right to be heard and to present his/her position in an administrative hearing before the board of ordained ministry or any of its committees.

**C. Notice (¶ 362.2b).**

Notice must be given sufficiently in advance so that it is received at least twenty (20) days before the hearing date. The notice should specify the purpose of the hearing, a list of individuals who may be present at the hearing (including those who may be present on behalf of the respondent), and the specific date, time, and place of the hearing.

The notice should be in written form and, ideally, be delivered personally to the respondent or sent via certified mail with attached return receipt requested, and with a separate identical copy sent by regular mail. When at all possible, a verbal confirmation of the hearing or acknowledgment of the respondent's receipt of the mailed notice should be acquired. Taking these steps can prevent a last-minute cancellation or postponement of the hearing due to allegations of a lack of notice.

Promptness is essential in many of these procedures. No postponement or delay should be permitted without proof of good cause or good reason.

**D. Representative Present (§ 362.2c).**

The respondent has the right to be accompanied and supported by another clergy person at any administrative hearing. The clergy person accompanying the respondent shall have the right to speak and present the respondent's viewpoint. Ideally, the respondent would directly speak to the issues in the complaint as well.

Where administrative or judicial proceedings are pending, a clergy person has the right to select, and when warranted change, his or her advocate. All persons involved in administrative or judicial proceedings are bound by confidentiality.<sup>84</sup>

**E. No *Ex Parte* Communications (§ 362.2d).**

Whenever a single party, or that party's representative, communicates with the body that conducts an administrative hearing, that body may be unduly influenced. Therefore, the *Discipline* prohibits such *ex parte* communications. Even if there is no influence or prejudice in any *ex parte* communication, there may be the appearance of impropriety. The opposing party must be present, hear what is being stated, and have an opportunity to respond.

Matters of procedure, however, may be raised *ex parte* with the chair of the board or body. The chair may respond to a party's request for: information concerning the rules of procedure and process regarding notice; filing of materials; the persons who may be present at a hearing; confirming a date, time, or place; or other procedural concerns.

Any member of a board or body, when asked to discuss substantive matters in a pending hearing, must decline to do so. If an individual other than a chair is asked any question whatsoever, it should be referred to the chair. The chair can then decide whether the question raised is of a substantive (inappropriate) or procedural (appropriate) nature and respond accordingly.

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<sup>84</sup> *Decision 972*; see also [Chapter 2](#) of this Handbook.

**F. Right To Records Relied Upon (§ 362.2e).**

When the board reviews and uses written records in making its determination, the respondent is to be allowed to access those records. Without access to this information, the respondent cannot properly prepare a response. Therefore, the board or body must keep a record of what material was reviewed and relied upon and make that information available to the respondent. The Judicial Council has clarified when the respondent has a right to view the complaint and any supporting documents:

A respondent cannot make an adequate response to a complaint without being privy to the complaint in its totality. Fairness alone dictates access to such written complaints and their supporting documents. Full disclosure of all information concerning a complaint must occur for the respondent to make an adequate response.<sup>85</sup>

Preservation of the integrity of any documents or evidence is critical. If a respondent wishes to review records or other information, photocopies or duplicates of that information should be provided, when at all possible. If for some reason the original must be viewed, the respondent should view it in the presence of a reliable third party (preferably a member of the board), to protect both the respondent and the conference from any charges or allegations of tampering with or destruction of any materials. Under no circumstances should original documents be shown to the respondent or a representative of the respondent absent close supervision. If the respondent would like copies of materials, they should be marked or identified as copies and then provided by the Church's representative.

Minutes shall be maintained as a record of administrative hearings conducted by the board or other body. All written documents submitted during a hearing shall be kept as part of that record, as well. Copies of the actions of the body shall be placed in the personnel files maintained by the board or the annual conference.

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<sup>85</sup> *Decision 974.*



**G. Failure to Respond/Appear (§ 362.2f).**

This provision is intended to avoid the delay that would result if a respondent knowingly seeks to avoid a process or proceeding. It is important that there is a clear record of the giving of notice and of all attempts to contact the respondent and to reschedule. If the chairperson of the board believes that there is no good excuse for a failure to appear, the hearing should proceed. As part of the record, the chair should note all of the reasons why proceeding in the respondent's absence is appropriate. While a hearing, with witness testimony, may proceed without the respondent's presence, it is recommended that the board gives the respondent the opportunity to be heard at a different time, before a final decision is reached.

From time to time, parties to a hearing may request a continuance or delay. Paragraph 362.2*b* requires that the respondent be given at least twenty (20) days notice of the hearing date. The chair of the hearing may, for good cause, grant a delay or additional time for preparation. If the delay is for medical reasons, the chair should obtain written substantiation of the medical reason for the delay from the requesting party's treating doctor, including an estimation of when the party will be able to proceed with the hearing. The chair must then weigh the medical concerns against the need to proceed and have the matter heard in a timely and expeditious manner.

**VII. Clergy Residing Beyond the Bounds of the Conference (§ 363.3).**

If a respondent resides or is under appointment in a conference other than the one in which membership is held, the respondent is still subject to administrative complaints or processes in the membership conference. However, the presiding bishops of those two conferences, and the respondent, may agree that fairness would be better served by having the process carried out in the appointment/resident conference.

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## Chapter 6

### READMISSION TO CONFERENCE RELATIONSHIP<sup>86</sup>

#### I. Readmission to Provisional Membership (¶ 364).

The readmission of provisional members requires: a request for readmission to the conference from which they were discontinued; the recommendation of the district committee on ordained ministry, the board of ordained ministry, and the cabinet; a review of their qualifications and the circumstances relating to their discontinuance; and the vote of the clergy members in full connection.

#### II. Readmission After Honorable or Administrative Location (¶ 365).

Ordained ministers requesting readmission after honorable or administrative location shall: present their certification of location; have recommendations from their charge conference and local church pastor; receive the recommendation of the district committee on ordained ministry, the board of ordained ministry, and the cabinet, after review of their qualifications and the circumstances relating to their location; and be reinstated by vote of the clergy members in full connection.

The conference board of ordained ministry may require at least one (1) year of service as a local pastor prior to readmission from honorable or administrative location.

#### III. Readmission After Leaving the Ordained Ministerial Office (¶ 366).

Clergy members who have left the ministerial office under the provisions of ¶ 360.1 (Withdrawal to Unite with Another Denomination), ¶ 360.2 (Leaving the Ordained Ministerial Office), ¶ 360.3 (Withdrawal Under Complaints or Charges), or ¶ 360.4 (Withdrawal Between Conferences) may be readmitted upon their request and with the recommendation of the district committee on ordained ministry, the board of ordained ministry, and the cabinet, after review of their qualifications and circumstances relating to their leaving the ministerial office. Clergy

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<sup>86</sup> See also Board of Ordained Ministry Handbook (2009 – 2012), [Chapter 27](#).

seeking readmission under this paragraph must have served as a local pastor for at least two (2) years.<sup>87</sup>

*Decision 552* requires that associate members or members in full connection of an annual conference who have surrendered their ministerial office must “seek readmission to the annual conference, or its legal successor, to which such surrender was made.” Although persons who have discontinued from provisional membership may begin anew in another annual conference of The United Methodist Church, associate members or members in full connection who have surrendered their credentials do not have that option.

#### **IV. Readmission After Termination by Action of the Annual Conference (§ 367).**

Persons who have been terminated by an annual conference may seek full membership, upon recommendation of the cabinet, after completing all of the requirements for full membership, including all requirements for election to candidacy and provisional membership.

#### **V. Readmission After Involuntary Retirement (§ 368).**

Clergy members desiring to return to effective relationship after having been involuntarily retired (§ 358.3) shall: submit a written request to the board of ordained ministry; receive the recommendation of the board of ordained ministry and cabinet after a review of the member’s qualifications and the circumstances relating to the retirement; present their certification of retirement; and receive a certificate of good health from a physician approved by the board of ordained ministry.

The board of ordained ministry may require a psychological evaluation for those being readmitted to conference membership. Clergy seeking readmission under this paragraph must have served as a local pastor for at least two (2) years.

Any pension being received through the General Board of Pension and Health Benefits shall be discontinued upon their return to an effective relationship. The pension is reinstated upon subsequent retirement.

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<sup>87</sup> This service may be rendered in any annual conference of The United Methodist Church, with the consent of the board of ordained ministry of the annual conference in which members previously held membership.

## Chapter 7

### ADMINISTRATIVE REVIEW COMMITTEE

#### I. General (¶ 636).

This committee is to review involuntary leaves of absence (¶ 354.1*b*), administrative location (¶ 362.2*c*), involuntary retirement (¶ 358.3), and the involuntary discontinuance of provisional members of the annual conference (¶ 327.6).<sup>88</sup> It is highly recommended that the chairperson of the board of ordained ministry notify the chairperson of the administrative review committee of the commencement and completion of those four actions. The chairs should discuss how such notification and information can best be provided.

The committee membership is comprised of three clergy in full connection who are not members of the cabinet or board of ordained ministry, or their immediate family members (so they are objective and independent when rendering a review). The committee should meet soon after election and choose a chairperson.

The administrative review committee does not assess the merits of a recommendation or action. It simply makes sure that the relevant provisions of the *Discipline* have been followed, including the fair process provisions of ¶ 362.2.<sup>89</sup>

The findings of a committee are to be reported to the clergy session of members in full connection with the annual conference prior to any vote by the clergy session. The committee may find that while there was some error or omission, it was harmless and so note in its report.<sup>90</sup> However, if the committee determines that there has been a serious error or omission, it may report this finding to the appropriate person or body with a recommendation on how to cure this problem (repeat a hearing, give access to certain information, etc.). By reporting the issue prior to the clergy session, the problem may be solved without a long time delay.

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<sup>88</sup> EDITOR'S NOTE: Paragraph 636 does not list the involuntary discontinuance of provisional members as one of the actions that the committee reviews. However, ¶ 327.6 does state that the committee shall review the process.

<sup>89</sup> See *Decision* 921.

<sup>90</sup> See *Decisions* 724, 748.

## II. Suggested Steps for Review of Administrative Location.<sup>91</sup>

Whenever there is a recommendation for administrative location presented to the clergy session of members in full connection, the administrative review committee shall make a report on the entire process leading to the recommendation. It may be useful to use the checklists found in the [Appendix](#) to this Handbook. The purpose of the report is to document that the Disciplinary provisions for administrative location were followed. The committee may want to examine the correspondence, minutes, and records of the board of ordained ministry and/or the cabinet and chronicle the actions taken which led to the recommendation. This chronicle may include:

- Date of any cabinet decision to recommend administrative location;
- Date of any communication of cabinet recommendation to the board of ordained ministry;
- Date of board recommendation for administrative location, at least sixty (60) days before an annual conference;
- Date the board recommendation is communicated to the clergy member;
- Date of any request for hearing before the bishop, cabinet, or executive committee, no more than thirty (30) days after notification by the board (Who was present? Were the hearings held separately?);
- Date of any executive committee/cabinet notification of hearing, at least twenty (20) days prior to the joint hearing; and
- Date of any hearings (Who was present? Were the hearings held separately?).

At any point in the process, the committee also may wish to voice its concern if the required steps have not been followed and recommend remedial action to the bishop or chairperson of the board of ordained ministry. The committee has the right to retain, in confidence, a complete record of the matters it reviews.

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<sup>91</sup> EDITOR'S NOTE: While these suggestions specifically refer to administrative location actions, they should be useful to the committee when reviewing other actions, as well.

## Chapter 8

# JUST RESOLUTION AND RESTORATIVE JUSTICE<sup>92</sup>

### I. Just Resolution Principles and Processes in the Complaint Procedure.

#### A. Summary of Complaint Procedure.

- *Primary Purpose or Goal:* Just Resolution.<sup>93</sup>
- *Hope:* That God's work of justice, reconciliation and healing may be realized in the body of Christ.<sup>94</sup>
- *Key principles* that define just resolution:<sup>95</sup>
  - Repairing harm to people and communities
  - Achieving real accountability by making things right in so far as possible
  - Bringing healing to all the parties
  - Through an engagement of the parties.

#### B. General Elements of the Process in All Contexts: Supervisory, Administrative, and Judicial.<sup>96</sup>

- This process can be instituted at any time in the supervisory or complaint procedure.
- The goal of the process is a written resolution agreement satisfactory to all parties.
- The process is assisted by a trained, impartial third party facilitator(s) or mediator(s).

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<sup>92</sup> This Chapter is courtesy of Rev. Thomas W. Porter and Rev. Stephanie Anna Hixon, Co-Executive Directors of The United Methodist Church's JUSTPEACE Center for Mediation and Conflict Transformation. JUSTPEACE has developed a manual for this work: [\*Just Resolution and Restorative Justice Principles in the Complaint Procedure of The United Methodist Church.\*](#)

<sup>93</sup> ¶¶ 361.1, 2701.

<sup>94</sup> *Id.*

<sup>95</sup> ¶ 361.1.

<sup>96</sup> ¶ 361.1b.

- Prior to the process, a written agreement describing the process is developed by the facilitator(s) in consultation with the bishop or other instituting person(s), and other appropriate persons. The written agreement should outline the process, including any agreements on confidentiality.
- If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties. In the case of a judicial complaint, the resolution agreement shall be signed by the same persons who signed the written agreement outlining the just resolution process.<sup>97</sup>
- If resolution is achieved, the parties shall agree on any matters to be disclosed to third parties.
- This is not an administrative or judicial proceeding.
- Special attention should be given to ensuring that cultural, racial, ethnic, and gender contexts are valued throughout the process in terms of their understandings of fairness, justice, and restoration.<sup>98</sup>

**C. Additional Elements Specific to “Just Resolution” Processes in the Context of Supervisory, Administrative, and Judicial Responses.**

- Supervisory Response:
  - The bishop is the person who initiates a just resolution process for local pastors, associate members, probationary members, full members, and diaconal ministers.<sup>99</sup>
  - The president of the College of Bishops, or the secretary if the complaint concerns the president, initiates the just resolution process for a bishop.<sup>100</sup>
    - The written agreement of resolution in regard to a bishop shall be given to the person in charge of that stage of the process for further action consistent with the agreement.<sup>101</sup>
  - A pastor or district superintendent, as well as the bishop, might institute a just resolution process for a layperson. In all cases, the pastor or district

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<sup>97</sup> ¶ 2706.5.

<sup>98</sup> ¶ 361.1.

<sup>99</sup> ¶¶ 361.1b, 2704.3a.

<sup>100</sup> ¶ 413.3c.

<sup>101</sup> *Id.*

superintendent should take pastoral steps to resolve any grievances or complaints.<sup>102</sup>

- Administrative Complaint:<sup>103</sup>
  - The Board of Ordained Ministry may refer the matter back to the resident bishop who shall institute a just resolution process.
  - Such referral will not constitute a dismissal.
  - The parties shall be told that any resolution remains subject to final approval by the board, which can include dismissal, retaining oversight relating to any terms or conditions of the statement of resolution, or other action as deemed appropriate.
  - The written agreement describing the process shall be developed by the facilitator(s) and appropriate persons, including a cabinet member and a representative of the board of ordained ministry.
  - The board's response will be shared with the clergyperson, the bishop, the cabinet, and the person bringing the original complaint.
  
- Judicial Complaint, for both the Committee on Investigation and the Trial Court:<sup>104</sup>
  - The appropriate persons for working out the written agreement on the process with the facilitator(s) shall include the counsel for the Church and the counsel for the respondent.
  - If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the disciplinary disclosures required for possible readmission.
  - If a resolution is achieved, a written statement of resolution shall be signed by the same persons who signed the written agreement outlining the process.<sup>105</sup>
  
- Committee on Investigation:<sup>106</sup>
  - The committee may refer the matter to the resident bishop for a just resolution process upon recommendation of the counsel for the Church and the counsel for the respondent. The bishop shall institute such a process.
  - This referral will not constitute a dismissal or double jeopardy under ¶ 2701.5.

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<sup>102</sup> ¶¶ 228.2b[6], 2704.4a.

<sup>103</sup> ¶ 363.1.

<sup>104</sup> ¶ 2701.

<sup>105</sup> ¶¶ 2706.5, 2708.3.

<sup>106</sup> ¶ 2706.5c[3].



- A written statement of resolution shall be given to the bishop for further action(s) to implement the agreement.
- If the process does not result in resolution, the matter shall be returned to the committee.
- Trials:<sup>107</sup>
  - Trials are regarded as an expedient of last resort.
  - The presiding officer may refer the matter to the resident bishop for a just resolution process upon consultation with the counsel for the Church and counsel for the respondent.
  - This referral will not constitute a dismissal or double jeopardy under ¶ 2701.5.
  - A written statement of resolution shall be given to the presiding officer and the presiding officer shall take action consistent with the agreement.
  - If no resolution results, the matter is returned to the presiding officer for further action.
- A Process for Healing:
  - The bishop and cabinet shall provide a process for healing within the congregation, annual conference, or other context of ministry if there has been significant disruption by the complaint. This process may include sharing of information by the bishop and/or cabinet about the nature of the complaint, without disclosing alleged facts, which may compromise any possible forthcoming administrative or judicial process. This may include a process of a just resolution, which addresses unresolved conflicts, support for victims, and reconciliation for parties involved.<sup>108</sup>

## **II. Discussion of the Steps in the Just Resolution Process.**

### **A. Decision as to Referral to a Just Resolution Process.**

- A referral is not mandatory. This is not a coercive or mandatory process as its ideal is the consent and voluntary involvement of all the key parties.
- A referral can be made at any time or at any point in the complaint process.
- A referral decision is made by the following:

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<sup>107</sup> ¶¶ 2707, 2708.3.

<sup>108</sup> ¶¶ 362.1e, 2701.4c.

- The resident bishop in a supervisory response involving local pastors, associate members, probationary members, full members, and diaconal ministers.
  - The president of the College of Bishops, or the secretary if the complaint concerns the president, in a supervisory response involving a bishop.
  - The pastor or district superintendent, as well as the bishop, in a supervisory response involving a layperson.
  - The Board of Ordained Ministry in response to an administrative complaint, with the referral to the resident bishop who shall institute a just resolution process.
  - A Committee on Investigation in response to a judicial complaint upon recommendation of the counsel for the Church and the counsel for the respondent, with the referral to the resident bishop who shall institute such a process.
  - The presiding officer of a Trial Court in response to a judicial complaint refers the matter to the resident bishop for a just resolution process upon consultation with the counsel for the Church and counsel for the respondent.
- Some issues to consider in making a referral:
    - The goal of the complaint procedure is just resolution with the hope of justice, reconciliation, and healing in the body of Christ, recognizing that reconciliation and healing are gifts, but that we can provide the sacred space and time where reconciliation and healing might be experienced.
    - The work of just resolution keeps in mind the goals and works toward them, recognizing that the result will not be perfection but will be the best approximation under all the circumstances, with an agreement that is satisfactory to all parties.
    - The principles of just resolution should always be kept in mind in considering such a process:
      - Repairing any harm to people and communities.
      - Achieving real accountability by making things right in so far as possible.
      - Bringing healing to all the parties.
      - Through engagement of the parties.
    - Is the time right?
      - Generally, the sooner you can deal with the issues involved in a complaint the better, but you need to be sure that you have a pretty good idea of the relevant facts and the timing is right in regard to the other issues below.

- The best time to do a just resolution process is during the supervisory response.
  - However, sometimes the parties come together only after the matter has been made an administrative or judicial complaint.
- Is the respondent willing to participate?
- Generally, you begin by exploring a just resolution process with the respondent.
  - The ideal is to have the respondent voluntarily participate.
  - The ideal for such a process is a respondent who admits to some or all of what has been charged. This is not a requirement.
  - One of the most appropriate situations for such a just resolution process, for example, is when the respondent confesses and is willing to surrender credentials. Just surrendering credentials, in most situations, does not address most of the needs of those harmed, the offender, or the church. It is easy to receive credentials and consider the matter concluded. Much is often left unresolved and not healed.
  - Respondents need to understand the consensus nature of the process, the opportunities such a process provides, as well as the realities of trials. A just resolution process does not proceed without the consent of the respondent and no agreement is reached without such consent.
  - The parties should be consulted on the process so they help design it and fully understand it.
  - Respondents are generally more willing to tell the truth in the context of a just resolution process than in the context of a hearing or trial.
  - In situations of false allegations or denial, the process might not bring resolution and a hearing or a trial might be the only way to reach a resolution. Nothing should be done to impact the respondent's right to a hearing or a trial.
  - In some situations of denial, where the person bringing the original complaint and the respondent are willing to participate, a facilitated conversation might result in a better outcome for everyone, even if it cannot be called a just resolution process fulfilling all the principles of such a process. All parties need to be clear about the process and the expectations of the process before participating. In such a process, the conversation might lead to an honest and frank discussion that moves the process toward the fulfillment of the principles of just resolution, or it might lead to a reasonable agreement that is in the best interests of everyone.

- Is the person bringing the original complaint willing to participate?
  - In just resolution processes, complainants and/or those harmed are never coerced into participating. Their involvement is voluntary.
  - Complainants need to understand the opportunities such a process provides, the realities of trials, and the consensus nature of the process.
  - They need to be assured that the process will provide a space that is sacred, as well as relatively safe. No one can provide or should guarantee absolute safety.
  - They should be consulted on the process so they help design it and fully understand it.
  - When the person who brought the original complaint decides not to pursue the complaint, it is often a good idea to invite them to any process, but the process can proceed without them.
  - Where the local church is harmed, the church needs to agree on a few participants for the process whom it will trust with the outcome.
  
- Are all parties willing to live with the resolution reached by the process?
  - In regard to just resolution processes in the context of a committee on investigation or trial, actions must be taken that are consistent with the agreement that is reached at the end of the process. In other words, the bishop, the board of ordained ministry, and other bodies cannot second guess the resolution and should act consistently with the agreement.
  - This is also true of the judgment by members of a trial court. The judgment must be accepted and acted upon by the bishop and the board of ordained ministry.
  - A problem is created for respondents, and for those who brought the original complaint, if they cannot be assured that the results of the process will be respected. Without these assurances, should or would the parties have the frank and honest discussion that is needed or do the hard work to reach an agreement?
  - Since it is by consensus and since a written agreement needs to be reached on the process, including who will participate, and since the resolution or final agreement is one that satisfies all the stakeholders, the bishop and the board of ordained ministry should be willing to assure the participants that they will support the resolution or agree that they will act consistently with the agreement.
  - In the administrative hearing, the board of ordained ministry might also be willing to assure the participants that they will act consistently with the

agreement in the same way as committees on investigation and trial courts must act consistently with the agreement.

**B. Choice of a Facilitator(s) or Mediator(s).**

- The just resolution process is one that is better described as a facilitated conversation, rather than mediation. Some people do not like to think of resolving their harm or dealing with their principles as mediation. This is simply to say that the term “facilitator” for the third party or parties is probably a more acceptable designation.
  - The third party or parties need to be trained and impartial, or accepted as impartial by the parties.
  - In some situations, it is better to have two facilitators rather than one.
- Role of the Facilitator(s) or Mediator(s):
  - A facilitator(s) should be chosen early in the process to assist the parties in determining if a just resolution process is appropriate.
  - The facilitator shall work with the bishop, other appropriate persons, and the parties to determine the appropriate process and the matters that will go into a written agreement about the process, including who should participate.
  - The facilitator shall work to make sure that cultural, racial, and ethnic, and gender contexts are valued in terms of their understandings of fairness, justice, and restoration.
  - The facilitator helps prepare the parties for the process. This involves building trust and relationship. This is a time of determining issues, concerns, and needs. The process needs to be clearly understood and the role of the facilitator needs to be understood by the parties.
  - The need to talk separately with each party without the other being present is one of the key reasons why the *Discipline* is clear that this facilitated conversation is not an administrative or judicial proceeding.
  - The facilitator is responsible for facilitating the process.
  - The facilitator is responsible for helping the parties write any agreements.
  - The facilitator can assist with follow up.

**C. Who Should Ideally Participate?**

- Complainant(s).
- Respondent.

- Persons or representatives of entities injured. For example, the chair of the local church's Finance Committee or Pastor Parish Relations Committee.
- Persons or representatives necessary to implement the resolution. For example, if a resolution would require action by the cabinet or board of ordained ministry, these bodies should have a representative at the process or, if not, agree that they will act consistently with the agreement.

#### **D. Development of Written Agreement on the Process.<sup>109</sup>**

*This is a key step in the process. Here the facilitator(s) can help develop a spirit of collaboration. Through participating in designing the process, all parties develop a sense of ownership and responsibility for the process, as well as a sense that the process will create a relatively safe space.*

- The first decision is who should be involved in consulting on the process and signing the agreement:
  - At a minimum, the bishop, the complainant(s), and the respondent should be signatories.
  - In most cases, getting the chair of the board of ordained ministry to agree on behalf of the board is a wise move.
- The next decision is the design of the process and what should be included. The agreement should include the following:
  - A description of the process, so that everyone understands and accepts the process.
  - The parties who will participate. This differs according to the situation, but the following should be considered:
    - The complainant(s).
    - The respondent.
    - The district superintendent.
    - A representative of the board of ordained ministry.
    - Support people as needed for the respondent and the complainants.
    - Anyone who might sabotage the agreement, if not included.
    - Perhaps an ex-offender who can help with the accountability and healing process.

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<sup>109</sup> See the Appendix to this Handbook for a [Sample Agreement for a Facilitated Conversation](#).

- Provisions for confidentiality:
  - This is required by the *Discipline* and also by the need of the process to provide a relatively safe space for frank and honest conversation, and the need to preserve the opportunity and right to a trial.
  - The agreement should say that the ideal is to move toward as much transparency as possible, but only to the extent agreement can be reached.
  - The agreement should note that if a resolution is reached, the resolution agreement shall spell out what will be disclosed, with the understanding of the need of the board of ordained ministry, in cases where there is an issue of readmission, to know what was agreed and what needs to be considered on readmission.
- The fact that the resolution is by consensus of those participating should be spelled out as well as any other decision process, if it is not by consensus.
- The commitment of the bishop and board of ordained ministry to support a resolution should be included. It is suggested the board take a vote consistent with the agreement after the agreement is reached.
- In the context of an administrative hearing, an understanding that any resolution remains subject to the final approval of the board, unless the board is willing to say that it will act consistently with the resolution.
- An understanding of what happens if no resolution is reached.
- An understanding of when and where the process will take place.
- A commitment to stay with the process until all agree that it is fruitless.
- A relational covenant as to how everyone should be treated in the process. This is an important part of the process. This involves the parties deciding how they want to be treated in the process. All parties generally have the same concerns and can reach agreement, demonstrating that they can collaborate with each other. This is key to developing a safe and sacred space.

**E. Written Agreement for Resolution.<sup>110</sup>**

- The agreement should include the terms and conditions in realistic, clear, and simple language.
- The specifics should be addressed: who, what, when, where, how.
- The resolution agreement should spell out what is to be disclosed, and to whom, beyond the bishop and the board of ordained ministry and/or other appropriate

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<sup>110</sup> See also [Chapter 10, Section V-E](#) of this Handbook and the [Sample Accountability Agreement](#) in the Appendix.

body. This language should be consistent with the Disciplinary disclosures required for possible readmission where resolution results in a change of ministerial status.

- The resolution agreement should be clear about the monitoring and follow up and the need to have a record in the bishop's office, the board of ordained ministry, and/or other appropriate locations.
- The resolution agreement should be clear on how to handle any further problems that arise. Most agreements do have wrinkles that develop. Generally this involves persons agreeing to address any potential problems through a facilitated or mediated process.
- The resolution agreement should be clear on future monitoring and follow-up.
- The resolution agreement should be signed by all the participants in the process and, for a judicial complaint, by the same persons who signed the written agreement outlining the just resolution process.

**F. Follow-up.**

*This is as important as any other step in the process. The agreement should include what needs to be done. Oversight might be with the bishop's office and/or with the board of ordained ministry or other appropriate body with oversight. The resolution agreement should include a description of the follow-up.*

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# Chapter 9

## JUDICIAL COUNCIL

### I. Description and Duties of the Judicial Council.

The Judicial Council is the highest judicial body for the denomination. Its authority is based in the Constitution (§§ 55-58) and the *Discipline* (§§ 2601-12). It has original and appellate jurisdiction to consider questions of church law, and appellate jurisdiction to hear appeals originating in annual and jurisdictional conference committees on investigation and trial courts. Its decisions concerning matters of Church law are final.<sup>111</sup>

All Judicial Council decisions and memoranda are available on the internet and are searchable. They can be accessed through the Judicial Council [section](#) of the denomination's website. At least thirty (30) days before each meeting of the Judicial Council, its docket is available on the website and is published in *Newscope* and *The Interpreter*. Within ninety (90) days after each judicial session, a digest of the new decisions is printed in those same publications.<sup>112</sup> Decisions are also published in each year's General Minutes.<sup>113</sup> The *Rules of Practice and Procedure of the Judicial Council* are also available [online](#).

Judicial Council members may not privately discuss matters pending before them or that may be referred to them for determination, outside of the Judicial Council in session.<sup>114</sup> This prohibition of *ex parte* communication was extended by the 2004 General Conference to include any publication or communication on any matter of substance, including communication by email.<sup>115</sup>

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<sup>111</sup> § 57.

<sup>112</sup> § 2612.1.

<sup>113</sup> § 2612.2.

<sup>114</sup> See generally § 2607; see also *Decisions* 807 (voting members of an annual conference abstained from participating in a Judicial Council decision involving that annual conference), 1031 (voting member of the Judicial Council abstained from voting on a matter in his conference's clergy session).

<sup>115</sup> *Id.*

Procedural questions may be raised with the president or secretary of the Judicial Council. It is not permissible to present fact situations or to request an informal opinion or ruling from the Judicial Council. Procedural questions on filing requirements, rules, and regulations are proper inquiries. The President of the Judicial Council for the 2009-2012 term is Susan Henry-Crowe. The Vice President is Jon R. Gray. The Secretary is F. Belton Joyner, Jr., to whom communications with the Judicial Council should be addressed ([judicialcouncil@umc.org](mailto:judicialcouncil@umc.org)).

## II. Judicial Council Jurisdiction (¶¶ 2609-10).

### A. Jurisdiction Other Than Appeals from Administrative or Judicial Processes.

**Rulings of Law.** The bulk of the Judicial Council's work is the review of decisions of law made by bishops while presiding in the central, jurisdictional, and annual conferences. A request for a ruling must be germane to an action then occurring in the conference, and be submitted to the presiding bishop, in writing, in the regular business of a session.<sup>116</sup> Any member of the body can request a ruling. Such a request, if properly submitted in writing, germane to the business then before the conference, and not ruled out of order,<sup>117</sup> should be answered by the bishop during the annual conference, and must be answered within thirty (30) days after the close of the conference session.<sup>118</sup> All such rulings are reviewed as a matter of course by the Judicial Council.

**Annual Conference Appeals of Other Decisions.** In an annual conference, an appeal from a bishop's decision on any question of law can be made by 1/5 of the conference members present and voting.<sup>119</sup> This appeal could be sought when the bishop's decision of law is not in response to a formal request for a ruling on a question of church law, and therefore is not automatically reviewed by the Judicial Council. The Judicial Council has ruled that bishops are

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<sup>116</sup> ¶ 2609.6; *see also* Decision 969, Memorandums 763, 1064 (stating that a bishop has no authority to make substantive rulings on judicial/administrative processes).

<sup>117</sup> Rulings of law pertain only to the *Discipline*. Examples of requests that can be ruled out of order and not answered by the bishop include requests for rulings on parliamentary procedure and requests for rulings on civil law. *See* Decision 381. Even if such a request is couched in language that suggests it is a request for a ruling on the *Discipline*, it is appropriate for the bishop to rule the request out of order. *See generally* Memorandum 799.

<sup>118</sup> ¶ 2609.6.

<sup>119</sup> ¶ 2609.7.

not required to provide substantive answers to moot or hypothetical questions, even though that exception no longer appears in the *Discipline*.<sup>120</sup>

Parties seeking review by the Judicial Council should pay careful attention to the jurisdictional requirements in ¶ 2609.<sup>121</sup>

**Declaratory Decisions.** The Judicial Council has jurisdiction to make declaratory decisions as to the “constitutionality, meaning, application, or effect of the *Discipline* or any portion thereof, or of any act or legislation of a General Conference.”<sup>122</sup> Numerous entities, listed in ¶ 2610.2, may seek a declaratory decision. The Judicial Council has strictly construed the requirements to seek a declaratory decision.

The declaratory decision process is often an alternative to appeals of a bishop’s decision of law in an annual conference setting. Care must be taken in devising the question to be asked in such a way as to resolve the issue. Unlike other appeals, a hypothetical fact situation on which the ruling is sought can be construed via this process, if the process is carefully followed.<sup>123</sup>

**Original Jurisdiction Requests for Rulings.** In response to a proper request from certain listed bodies, the Judicial Council may determine the constitutionality of acts or proposed legislation of General Conference, of any action taken by a jurisdictional/central conference, of any action taken by a body created by General Conference or by a jurisdictional/central conference, and of actions taken by any body created or authorized by General Conference or a jurisdictional/central conference on a matter affecting an annual or a provisional annual conference.<sup>124</sup> When General Conference is in session, any decision finding an action unconstitutional shall be reported to General Conference immediately.<sup>125</sup>

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<sup>120</sup> See the Appendices to the Judicial Council’s *Rules*; see also *Decisions* 33, 651, 750, 816, 820, 846, *Memorandums* 747, 799.

<sup>121</sup> See e.g., *Decision* 153 (strict adherence to process for invoking Judicial Council jurisdiction); see also *Memorandums* 569, 799.

<sup>122</sup> ¶ 2610.1; see also *Memorandum* 996 (no jurisdiction to decide hypothetical non-compliance with ¶ 2610.1). However, the decision provides examples of inappropriate requests, but appears to mix the rules for declaratory decisions with rulings of law.

<sup>123</sup> See *Memorandum* 785; but see *Memorandum* 996.

<sup>124</sup> ¶¶ 2609.1-.5.

<sup>125</sup> ¶ 2609.10. The only exception to the 30-day notice requirement of ¶ 2610.3 is a request made at General

Each of these situations sets forth the specific body that is permitted to bring the appeal before the Judicial Council. For example, if GCFA wishes to raise a question as to the legality of its own actions, one-third of its members would be required to authorize such a request.<sup>126</sup> If an annual conference wishes to question the legality of an action taken by GCFA that affects the annual conference, it would require a two-thirds vote of the members of that annual conference present and voting to authorize such an appeal to the Judicial Council.<sup>127</sup>

## **B. Jurisdiction Over Appeals from Judicial Processes.**

The Judicial Council also has the power to review decisions of the committees on appeal of a jurisdictional/central conference that appear to be at variance with the *Discipline*, a prior Judicial Council decision, or an opinion or decision of the committee on appeals of another jurisdictional/central conference on a question of Church law. In addition to appeals made by the respondent, other listed parties have the right to initiate a review, the committee on appeals may certify the case to the Judicial Council, or the Judicial Council can review the decision *sua sponte*.<sup>128</sup> The Judicial Council's scope of review in this circumstance is limited to a question of Church law. It does not rule on the facts of the case.

The opinions of the jurisdictional and central conference committees on appeal shall be sent to the Secretary of the Judicial Council within thirty (30) days after the decision, unless the Judicial Council decides otherwise.<sup>129</sup>

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Conference concerning legality or constitutionality.

<sup>126</sup> ¶ 2609.4.

<sup>127</sup> ¶ 2609.5.

<sup>128</sup> ¶ 2609.8. The Church has no right of appeal, although it can appeal from the committee on investigation and arguably from the jurisdictional court of appeals. ¶ 2715.10; *Decisions* 980, 1027.

<sup>129</sup> ¶ 2609.8d.

## Chapter 10

# FAIR PROCESS IN JUDICIAL PROCEEDINGS<sup>130</sup>

### I. Introduction.

Although “Fair Process” is sometimes used as a shorthand reference for the denomination’s trial process, it actually refers to how the process is conducted, not the process itself.

An important element of the Church’s judicial process is its theological underpinning. The introduction to ¶ 2701 makes it clear that the purpose is “a just resolution in the hope that God’s work of justice, reconciliation and healing may be realized in the body of Jesus Christ.” The judicial fair process provisions are an important part of all judicial proceedings. The judicial fair process guarantees of ¶ 2701 were developed to ensure that the Church procedures to which they apply are just and equitable. Thus, the respondent is presumed innocent until the conclusion of the trial process.

The concept of innocent until proven guilty is part of the secular law tradition in England and the United States. In secular law, it does not mean that a person accused of a serious crime may not be incarcerated prior to a judgment of “guilty” or that a court may not choose to protect society from the accused (who may commit further crimes). Rather, it is a directive to the jury that it have no preconceived notion of guilt. Similarly, while an accused Church member is presumed to be innocent until proven guilty, the bishop must act responsibly and, when appropriate, suspend the respondent pending the outcome of the judicial complaint.

Fair process seeks to protect the rights of the respondent by giving him/her every opportunity to know sufficient detail of the charges, to have adequate time to prepare a response, and to effectively present that response. These provisions are intended to enhance trust and reliance upon the Church’s own process as a fair method to resolve disputes.

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<sup>130</sup> See [Chapter 5](#) of this Handbook for a discussion of fair process as it relates to administrative complaints.

Whenever a Church committee or court is formed, sensitivity to the racial, ethnic, and gender diversity of the Church should be reflected in the composition of that body.<sup>131</sup> Special consideration should be given to selecting a pool from which such committee or court may be drawn, that, if possible, includes members of the same race, ethnicity, and gender as both the complainant and the respondent.

It is very important that prompt action be taken to expedite the investigation, trial, and appeal process. A thorough, complete, and timely handling of all matters allows all persons involved to feel that justice has been afforded.

*Decision 784* provides important guidance on several fair process issues. Any and all records submitted or developed as a part of a disciplinary proceeding should be carefully preserved and not destroyed. Counsel for the Church must draft the complaint carefully to meet all of the requirements for a complaint to go forward. The allegations must be within the statute of limitations. The allegations should be as clear and specific as possible, rather than general.<sup>132</sup> The committee on investigation should be clear in its recommendations to forward a complaint or dismiss it. A dismissal should be stated as such and a verbatim record must accompany the committee on investigation's recommendation. Fair process is intended to protect all parties.

The fair process principles of ¶ 2701 are meant to be applicable to the procedures outlined in the 2700 paragraphs. The committee on investigation, trial court, and committee on appeals should review these principles prior to undertaking their specific functions. The *Discipline* cannot anticipate each and every potential scenario and has therefore sought to provide these overriding principles of fairness that should be applicable in any situation. The specific judicial fair process sections are discussed below.

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<sup>131</sup> ¶ 2701.

<sup>132</sup> See sample [Judicial Complaint/Bill of Charges](#) in the Appendix to this Handbook.

## **II. Rights of the Complainant (§ 2701.1).**

### **A. Right to Be Heard (§ 2701.1a).**

If this right is exercised, the complainant must be heard before any final action can be taken. When the complainant is not an individual, it may be wise to have the presiding officer determine the complainant's representative. For example, if a local church is the complainant, the pastor may be designated as its representative.

### **B. Right to Notice of Hearings (§ 2701.1b).**

This right requires that the complainant be given at least twenty (20) days notice of any hearing. The notice should specify the date, time, and place of the hearing, along with an explanation of the hearing's purpose. The use of the term "hearing" is important. This right does not apply to pre-trial procedural meetings. The twenty (20) day period may be waived if all involved agree to a shorter period.

Although written notice is not required, it is strongly encouraged. Otherwise, it may be difficult to prove that the notice was actually given. There should also be some way to confirm the date and time of the notice's delivery. A simple statement by the courier or a receipt will suffice if delivered personally to the complainant (e.g., "I delivered the attached Notice of Hearing to Ms. Jones at 8:00 p.m. on May 19, 2005. Signed \_\_\_\_."). Delivery can also be confirmed by use of overnight or certified mail with attached return receipt request and a separate identical copy sent by regular mail. This mailing should not be sent twenty (20) days prior to the hearing, but instead should be planned so that it may be received by the complainant at least twenty (20) days before the hearing. When at all possible, a verbal confirmation of the complainant's receipt of the notice also should be acquired. If a verbal notification is made in addition to written notice, a dated note confirming such notice also should be added to the file. By taking these steps, it may be possible to prevent a last-minute cancellation or postponement of the hearing due to an allegation of failure to notify. The Appendix to this Handbook contains sample forms for [Notice of Hearing](#), [Certificate of Service](#), and [Verbal Notice](#) that may be used to show mailing or other notification.

The complainant also has the right to be present at any hearing.

**C. Right to Be Accompanied (§ 2701.1c).**

The complainant has the right to be accompanied by another person to an interview or hearing to which the complainant is subject. This person does not have the right to voice. The accompanying individual may be an attorney. Complainant’s counsel may not be one “who earlier considered the case.”<sup>133</sup>

**D. Right to Be Informed of Resolution (§ 2701.1d).**

When a resolution to the complaint is reached, the complainant shall be informed of that resolution. To the extent permissible, the *Discipline* encourages such notification to include the rationale behind the resolution.

**III. Rights of the Respondent (§ 2701.2).**

**A. Right to Be Heard (§ 2701.2a).**

During any judicial proceeding, the respondent has the right to be heard before final action is taken.

**B. Right to Notice of Hearings (§ 2701.2b).**

This right requires that the respondent be given at least twenty (20) days notice to prepare for a hearing. The notice should specify the date, time, and place of the hearing, along with the reason, in sufficient detail, for the hearing. The use of the term “hearing” is important. This right does not apply to pre-trial procedural meetings. The twenty (20) day period may be waived if all involved agree to a shorter period.

Although written notice is not required, it is strongly encouraged. Otherwise, it may be difficult to prove that the notice was actually given. There should also be some way to confirm the date and time of delivery. A simple statement by the courier or a receipt will suffice if delivered personally to the respondent (e.g., “I delivered the attached Notice of Hearing to Rev. Smith at 8:00 p.m. on May 19, 2005. Signed \_\_\_\_\_.”). Delivery can also be confirmed by use

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<sup>133</sup> § 2708.7.



of overnight or certified mail with attached return receipt request and a separate identical copy sent by regular mail. This mailing should not be sent twenty (20) days prior to the hearing, but instead should be planned so that it is received by the respondent at least twenty (20) days before the hearing. When at all possible, a verbal confirmation of the respondent’s receipt of the notice also should be acquired. If a verbal notification is made in addition to written notice, a dated note confirming such notice also should be added to the file. By taking these steps, it may be possible to prevent a last-minute cancellation or postponement of the hearing due to an allegation of failure to notify. The Appendix to this Handbook contains sample forms for [Notice of Hearing](#), [Certificate of Service](#), and [Verbal Notice](#) that may be used to show mailing or other notification.

The respondent also has the right to be present at any hearing.

**C. Right to Be Accompanied (¶ 2701.2c).**

The respondent has the right to be accompanied by a clergyperson in full connection at any judicial hearing.<sup>134</sup> This counsel has the right to voice. The respondent may also choose an assistant counsel (who can be an attorney) who does not have the right to voice. Although the respondent is entitled to only one counsel and assistant counsel at any given time, the respondent does not have to retain the same individuals throughout the entire judicial process. The respondent may choose one representative during the investigation stage, another for trial, and then another for appeal. If the respondent does not choose counsel, the presiding officer shall appoint one.<sup>135</sup>

A clergy in full connection serving as respondent’s counsel may not be one “who earlier considered the case.”<sup>136</sup> Therefore, a district superintendent who was on the cabinet during the supervisory response may not serve as counsel. Similarly, if a respondent, in connection with the current process, was placed on involuntary leave of absence by the board of ordained ministry,

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<sup>134</sup> EDITOR’S NOTE: Here, ¶ 2701.2c directs the reader to ¶ 2706.2 (presumably, ¶¶ 2706.2c-d specifically). Those sections divide respondents into two groups – lay respondents and clergy respondents. They provide for counsel for clergy respondents just as does ¶ 2701.2c (i.e., clergy in full connection). For lay respondents, however, the *Discipline* provides that they may select a lay member, rather than a clergyperson in full connection. Paragraph 2708.7 reiterates these different options for clergy and lay respondents.

<sup>135</sup> *Id.*

<sup>136</sup> ¶ 2708.7.

no board member could be the respondent's counsel. Presumably, any person who heard a parallel or related administrative matter (such as board of ordained ministry members) would not be allowed to serve as counsel in the judicial process.

While counsel may be present and can speak for the respondent, the process is about the respondent's covenantal relationship with and accountability to the Church, so it is hoped that the respondent would testify and speak for himself/herself, too.

**D. Right Against Double Jeopardy (§ 2701.2d).**

Double jeopardy means that an individual cannot be subjected to the judicial process a second time for a set of facts that has already been the subject of an earlier certified bill of charges by a committee on investigation. Thus, if a certified bill of charges for immorality dated December 1, 2005, contains a specification of adultery that occurred on March 1, 2005, then regardless of the outcome, that March 1 incident cannot become the basis for a subsequent charge of crime, sexual abuse, disobedience, or immorality in a new judicial process brought in 2007 (or at any other time). However, a charge of immorality involving a specification of adultery that allegedly occurred with the same (or a different) person in December 2005 (i.e., a different adulterous act) could be brought without resulting in double jeopardy.

Because "jeopardy" does not attach until the COI issues a bill of charges, a supervisory response could be initiated, dismissed, and then later re-initiated without implicating double jeopardy. A process may also be put on hold while a just resolution is attempted, then resumed if the mediation is unsuccessful without producing a double jeopardy scenario.

**E. Right of Access to Records (§ 2701.2e).**

The respondent has the right to view all records that may be relied upon by the committee on investigation, trial court, or appellate committee/body.

When the committee on investigation reviews written records in a process that may result in a trial, and relies upon those records in making its determination, the respondent must be allowed access to those specific records. In other words, the respondent must be able to see what evidence or other records are to be relied upon to reach a decision so that the respondent may

prepare a response. The committee should keep a record of what material was reviewed and relied on and make that information available to the respondent. Access must be provided early in the process, and cannot be denied until the end.

Preservation of the integrity of any documents or evidence is critical. If a respondent wishes to review records or other information, photocopies or duplicates of that information should be provided, when at all possible. If for some reason the original must be viewed, the respondent should view those materials in the presence of a reliable third party (preferably a member of the board), to protect both the respondent and the conference from any charges or allegations of tampering with or destruction of any materials. Under no circumstances should original documents be shown to the respondent or a representative of the respondent absent close supervision. If the respondent would like copies of materials, they should be marked or identified as “copies” and then provided by the Church’s representative.

The Church’s representative is not required to give copies to third parties, including the respondent’s attorney. Such requests should be handled on a case-by-case basis.

This paragraph apparently applies only while the matter is pending. Once the files have been filed with the conference secretary, the rules in ¶ 2713.5 apply.

#### **IV. Rights of the Church.**

##### **A. Right to Be Heard (¶ 2701.3a).**

The Church has the right to be heard before any final action is taken in any judicial proceeding.

##### **B. Right to Counsel (¶¶ 2704, 2706.2a, 2708.7, 2712-14).**

Like the respondent and the complainant, the Church has the right to counsel. This counsel represents the Church throughout the judicial process. Counsel for the Church should be appointed when a written judicial complaint is received.<sup>137</sup> Who shall serve as counsel is dependent upon the status of the respondent:

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<sup>137</sup> See generally ¶ 2704.

<b>Respondent</b>	<b>Counsel for the Church</b>	<b>Who appoints counsel for the Church</b>
Bishop <sup>138</sup>	An elder in full connection from the same jurisdictional/central conference	The president of the College of Bishops
Clergy member of the annual conference, clergy member on honorable or administrative location, or local pastor <sup>139</sup>	A clergyperson in full connection	The bishop
Diaconal minister <sup>140</sup>	A clergyperson in full connection <u>or</u> a diaconal minister	The respondent's district superintendent
Layperson <sup>141</sup>	A United Methodist	The pastor in charge, or co-pastors, of the local church, in consultation with the district superintendent and the district lay leader

Counsel for the Church is entitled to choose one assistant counsel, who may be an attorney but who will not have voice.<sup>142</sup> The Church's counsel cannot be an individual who earlier considered the case.<sup>143</sup>

If for some reason counsel for the Church has not been appointed, the official charged with convening the court shall appoint such counsel.<sup>144</sup>

<sup>138</sup> ¶ 2704.1a. Paragraph 2712.4 further states that counsel must be “a bishop or another clergyperson in full connection.”

<sup>139</sup> ¶ 2704.2a.

<sup>140</sup> ¶ 2704.3a; *but see* ¶ 2713.4 (stating that counsel only may be “a clergyperson in full connection”).

<sup>141</sup> ¶ 2704.4a.

<sup>142</sup> ¶ 2706.2a; *see also* ¶ 2708.7.

<sup>143</sup> ¶ 2708.7.

<sup>144</sup> *Id.*

## V. Process and Procedure (§ 2701.4).

### A. Failure to Appear or Respond (§ 2701.4a).

This provision is intended to avoid the delay that would result if a respondent knowingly seeks to avoid a process or proceeding. It is important that there is a clear record of the giving of notice and of all attempts to contact the respondent and to reschedule. If the chair/presiding officer believes that there is no good excuse for a failure to appear, the hearing should proceed. The hearing may go forward with just a representative of the respondent present or in the absence of the respondent or any representative. The chair/presiding officer should note in the record the reasons why it is appropriate to proceed in the respondent's absence.

**Continuance.** From time to time, parties to a hearing may request a continuance or delay. Paragraph 2701.2b requires that the respondent be given at least twenty (20) days notice prior to the hearing date. The chair/presiding officer may, for good cause, grant a delay or additional time for preparation. If the delay is for medical reasons, the chair/presiding officer should obtain written substantiation of the medical reason for the delay from the respondent's treating doctor, including an estimation of when the respondent will be able to proceed with the hearing. The chair/presiding officer must weigh the medical concerns against the need to proceed and to have the matter heard in a timely and expeditious manner.<sup>145</sup> If possible, all parties should be involved in an attempt to arrive at a mutually agreeable continuance date. Unless the consent of all concerned is obtained, an additional twenty (20) day notice is required before the next hearing date to ensure all have an opportunity to be present.

### B. Communications (§ 2701.4b).

Whenever a party, or that party's representative, communicates with the committee on investigation, trial court, or appellate body, the communication may influence that body. Therefore, such *ex parte* communications are prohibited. Even if there is no influence or prejudice in any *ex parte* communication, there may be the appearance of impropriety. When

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<sup>145</sup> The same would be true if an important witness requested a continuance.

substantive matters are being discussed, the other side must always be present to hear what is being stated and to have the opportunity to respond.

Any member of a committee, court, or body, when asked to discuss substantive matters in a pending case, must decline to do so. If an individual other than the chair/presiding officer is asked any question, it should be referred to the chair/presiding officer. The chair/presiding officer can then decide whether the question raised is of a substantive (inappropriate) or procedural (appropriate) nature and respond accordingly.

Matters of procedure may be raised *ex parte* with the chair/presiding officer or secretary of the committee on investigation, trial court, or appellate body. They may respond to a party's request for information concerning: rules of procedure and process regarding notice; filing of materials; persons who may be present at a hearing; confirmation of date, time, or place; or other procedural concerns. A verbal response is appropriate to simple procedural questions. However, if the question involves any but the simplest procedural matter, the question should be put in written form and sent to all parties and/or their representatives (i.e., not just to the requesting party). For complicated matters, the parties may wish to make written submissions to support or oppose a request. The response to written questions should be in writing, sent to all parties, and preserved as part of the record.

### **C. Healing (§ 2701.4c).**

The *Discipline* gives broad discretion to the bishop and cabinet about when and how information is to be shared and a healing process is to be provided. It seeks to ensure that the line of communication begun when the complaint was first brought continues throughout the judicial process. The bishop and cabinet must weigh the importance of being open with a local church against concerns about confidentiality.<sup>146</sup> There is to be consultation with the chair/presiding officer regarding what may be communicated.

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<sup>146</sup> *Decision 751* deals with confidentiality in the complaint process and the control by the annual conference over the complaint. The clear intent of General Conference in this provision is to give the bishop and the cabinet the ability to facilitate the healing process by all appropriate means, including the sharing of information. *See also* [Chapter 2](#) of this Handbook.

When appropriate, the bishop or district superintendent may choose to consult with the respondent and/or the original complainant regarding what information may be shared with the local church. In some instances, an agreement about the nature and content of the communications can be reached. Regardless, the ultimate decision rests with the bishop. Even if there is not agreement, in most cases the respondent and the original complainant should be notified of what actions are being taken and what information is being shared. This may be in the form of copies of the reporting required by ¶ 361.1, or it may be independent reports. It is usually appropriate to share with the local church the following:

- The bishop’s pastoral concerns for the healing of the church;
- An outline of the nature of the complaint, without disclosing details or the name(s) of the complainant(s) (e.g., sexual misconduct involving a minor child, immorality involving a sexual relationship outside of marriage, sexual harassment involving a layperson, etc.);
- An outline of the judicial process and where the matter is in the process at the present time;
- A reminder that there is to be “no gossip” (see Prov. 11:13, Prov. 13:3, Eph. 4:29, Prov. 6:1-2, Matt. 12:36, Prov. 29:20) and of the importance of allowing the process to go forward unimpeded by rumor; and
- A reminder of the importance of the notion of “innocent unless and until proven guilty.”

The healing process may call for regular, ongoing communications and updates. The *Discipline* calls specifically for healing in the local congregation and for victims. It is important to keep in mind that many individuals may be in pain and in need of a caring hand, including but not limited to the complainant, the respondent, and their families.

#### **D. Immunity of Participants (¶ 2701.4d).**

This provision prohibits a person from bringing a complaint against a participant in a particular judicial process, on the basis of that participation. This prohibition ensures that the leaders and other participants in the Church’s judicial processes are able to proceed without fear of retribution or unfair complaints by parties unhappy with the events or outcome.

This provision provides neither a complete immunity nor a bar to the bringing of a complaint. Rather, it sets a high standard on the complainant to show that the participant carried

out his or her role in conscious and knowing bad faith. Two examples may help to illustrate the point:

*Example One.* The chair of the committee on investigation, Rev. Water, and the respondent, Rev. Oil, have never gotten along (since seminary). When a complaint against Rev. Oil comes before the committee, the chair, Rev. Water, is asked to recuse himself because of personal conflict. He refuses and is later heard commenting, prior to the presentation of any evidence, that Rev. Oil is guilty. His rulings clearly and unfairly disfavor and discredit Rev. Oil. As a result, a bill of charges is prepared and is sent to trial. At the trial, it comes to light that Rev. Water had in his possession substantial documentary evidence that created a strong defense for Rev. Oil. Rev. Water never shared this information with the committee and failed to reveal it to Rev. Oil, instead keeping it secret. When confronted, he first denied any knowledge and then later admitted he had suppressed the evidence. The exculpatory evidence is key to a not guilty finding at trial.

*Example Two.* The chair of the committee on investigation, Rev. Water, and the respondent, Rev. Oil, have never gotten along (since seminary). When a complaint against Rev. Oil comes before the committee, the chair, Rev. Water, is asked to recuse himself because of personal conflict. He refuses. At the hearing, the evidence against Rev. Oil is formidable. Rev. Water's rulings are in line with the evidence presented and, as a result, a bill of charges is prepared and is sent to trial, where Rev. Oil is found guilty.

As ¶ 2701.4d only provides immunity, not a bar to the bringing of a complaint, in both examples Rev. Oil may bring a complaint against Rev. Water. Clearly, however, the validity of the two complaints would be quite different. In the first example, Rev. Water has carried out his official function in conscious and knowing bad faith and Rev. Oil appears to have clear and convincing evidence of that fact. In the second example, while Rev. Water probably should have recused himself from the proceedings due to his personal history with the respondent, there is no indication that he failed to carry out his official function in anything other than an impartial manner. In this situation, it would seemingly be very difficult for Rev. Oil to clearly and convincingly show that Rev. Water acted in conscious and knowing bad faith.

#### **E. A Just Resolution in Judicial Proceedings (¶ 2701.5).**

The *Discipline* emphasizes the importance of making all reasonable efforts to reach a just resolution, throughout the judicial process. Such a resolution “focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as



possible and bringing healing to all the parties.” In reaching just resolutions, trained and impartial third party facilitators/mediators may be used. If any just resolution process is initiated, the *Discipline* requires that all appropriate parties, including the Church’s and respondent’s counsels, agree in writing on the steps to be taken and as to confidentiality.

This paragraph also states the importance of a written settlement agreement. An example of an [Accountability Agreement](#) is found in the Appendix to this Handbook. Such an agreement may include:

- Identification of the parties.

*Example:* Respondent, counsel for the church, board of ordained ministry.

- Clear description of the incident or allegation, with sufficient detail to serve as an admission of guilt should the resolution fail and further process is required.

*Example:* From January until May 2006, Rev. Smith made improper advances to Ms. Jones, and threatened that her job at the church would be in jeopardy if she did not accompany him on a date.

- Listing of what the respondent may or will do, or may not or will not do.

*Example:* Rev. Allen will instruct the bank to remove his name from the list of signers on the church’s checking account.

- Listing of what any other party to the agreement (complainant, board of ordained ministry, local church, etc.) may or will do, or may not or will not do.

*Example:* The Chair of the Board of Ordained Ministry will review monthly reports from Rev. Gary’s counselor to ensure she is attending counseling sessions concerning her depression which is affecting her ability to perform ministry at First UMC.

- Clear description of what will happen if the respondent successfully complies with the terms of the agreement.

*Example:* If after two years of counseling Rev. Howard’s psychologist Dr. Kohler gives a satisfactory report, Rev. Howard will be eligible for a new appointment and this matter will be considered successfully resolved. Whether a report is “satisfactory” will be determined by the Executive Committee of the Board of Ordained Ministry.

- Clear description of what will happen if the respondent does not comply with the agreement, either in whole or in part.

*Example:* If Rev. Perrone fails to attend 80% of weekly AA meetings over any 2 month period, or otherwise shows evidence that she continues to abuse alcohol, this agreement will be deemed breached, and Rev. Perrone's case will be referred to the Board of Ordained Ministry. Rev. Perrone understands and consents to a finding at that time by the Board without further hearing or investigation that she is ineffective in her ministry, and consents to early retirement.

- Who will determine compliance, or how compliance will be measured.

*Example:* The chair of First UMC's PPRC will notify the District Superintendent if Rev. Nixon is absent from any regularly scheduled committee meeting, and Rev. Nixon's reason for absence, if any.

- Under what conditions the agreement may be modified.

*Example:* The terms of this agreement (except for the minimum period for involuntary leave of absence) may be modified by the Board of Ordained Ministry for good cause.

- Signature by all relevant parties and/or their representatives. In addition to the respondent, any party whose rights are affected by, or who are involved in monitoring, the agreement should sign it.

*Example:* If the agreement requires Rev. Smith to make monthly reports to the chair of the church's PPRC, the chair should also be a signer.

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# Chapter 11

## CHARGEABLE OFFENSES AND STATUTE OF LIMITATIONS

### I. General.

*The Appendix to this Handbook includes a [Checklist for Processing Complaints Against Clergypersons](#). It is suggested that the checklist be reviewed by all persons involved in the judicial process.*

Allegations in a Judicial Complaint prepared by Counsel for the Church and later contained in the Bill of Charges adopted by the committee on investigation must be framed into one or more of the chargeable offenses listed in ¶ 2702. The ultimate decision whether a chargeable offense has been committed is left to the trier of fact (the trial court) following the decision of a committee on investigation to refer the matter for trial.

Questions often arise as to what constitutes a chargeable offense, how immorality is defined, what is a crime, what is the difference between sexual abuse, sexual misconduct, and sexual harassment, etc. The *Discipline* is consciously silent on definitions. Each clergyperson is in a covenant relationship and charged with living a moral, Christian life. When the bishop, counsel for the Church, the members of the committee on investigation, or the trial court review the alleged offense, they must draw on their own knowledge, experience, education, understanding of the covenant, Christian faith, and prayer to arrive at an ultimate decision. There are no universal written standards to fit every fact situation. Thus, conscience and common sense must prevail in making these hard decisions.<sup>147</sup> In more difficult cases, or where

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<sup>147</sup> In a recent case involving a disciplinary action against an attorney, the Illinois Supreme Court used the following language as guidance for sexual misconduct by an attorney in having a sexual relationship with an existing client: “We do not believe that the accused (attorney) or any member of the bar could reasonably have considered the conduct involved here to be acceptable behavior under the rules of the legal profession.” The chair of the disciplinary body insightfully noted in an interview with the media that, “the strongest message is that we are a profession and that we don’t need detailed proscriptions to tell us how to define acceptable behavior.”

those involved in the process want more guidance, it may be helpful to refer to the policies adopted by General Conference and the annual conference.<sup>148</sup>

## **II. Chargeable Offenses Added by General Conference.**

The 1996 General Conference added the chargeable offenses of “child abuse” and “sexual misconduct.” Both of these charges were covered under other existing offenses (e.g., immorality, crime, sexual abuse), but are now explicitly enumerated. If a respondent is to be charged with alleged offenses which occurred prior to April 27, 1996, it is important that those charges not be labeled “child abuse” or “sexual misconduct.” The alleged abuse or misconduct may fall within the scope of charges that did exist at that time, as long as there is no statute of limitations impediment. As the Judicial Council has stated, “[a]ny charges filed must be in the language of the *Discipline* in effect at the time the offense is alleged to have occurred.”<sup>149</sup> Complaints and charges brought for offenses occurring after April 26, 1996, may use these new chargeable offenses.

The 2000 General Conference did not change the chargeable offenses for clergy but did separate sexual harassment, sexual misconduct, and sexual abuse into distinct chargeable offenses. While it was previously understood that each could stand on their own as individual offenses, the separation clarifies that they are three separate chargeable offenses, distinct from one another.

The 2004 General Conference added racial and gender discrimination to racial and sexual harassment, and clarified that (1) sexual activity outside of marriage and (2) listed activities found to be participating in or condoning homosexuality are proscribed.

### **A. Lay Charges (§ 2702.3).**

The 2004 General Conference added racial and gender discrimination and undermining the ministry of persons serving within an appointment.

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<sup>148</sup> While sexual harassment or misconduct polices may be introduced into the proceedings, it is not appropriate to use them as “jury instructions” or as an exclusive definition controlling clergy conduct.

<sup>149</sup> *Decision* 691.

### **III. Commentary: Crime as an Offense.**

A few comments are necessary on the chargeable offense of crime. The use of this charge does not require that the respondent be charged with or found guilty of a crime in a secular criminal court, nor does it preclude a church trial when the respondent has been acquitted by a criminal court.

The trier of fact must ultimately decide what constitutes a crime, in his or her judgment. The secular burden of proof for a criminal conviction is “beyond a reasonable doubt,” a higher burden of proof than the “clear and convincing evidence” standard in a Church trial. Thus, evidence of a secular court acquittal, particularly where the facts alleged in the church charges are identical or similar, is persuasive but not dispositive of the church charges. On the other hand, a plea of “guilty” to charges of embezzlement of church funds in a secular criminal court could be entered as evidence into a church trial arising from the same set of facts on a charge of “crime” and, absent some unusual circumstance, be considered sufficiently “clear and convincing” to convict.

Consideration should be given regarding the timing of the action in relation to secular criminal proceedings. In some instances, the conference may wish to institute a disciplinary procedure regardless of whether a criminal complaint has been filed or prosecuted in a secular court. In some cases, however, when a criminal action has been filed, the conference may choose to wait (at the request of the State’s Attorney, to avoid prejudicing that proceeding, or the complainant, to avoid undue burden, etc.) and bring a charge of crime only after the secular proceeding has concluded. In some instances, the result in the secular court will make resolution in the Church court easier. There should be a consideration of the needs of the complainant, respondent, local church, and conference when any delay takes place and, when appropriate, consultation and explanation of the reasons for the delay.

### **IV. Statute of Limitations (¶ 2702.4).**

While the *Discipline* states that there is no statute of limitations on sexual abuse or child abuse, the Judicial Council has made it clear that the “no limitations” rule cannot be applied retroactively. What this means in practical terms is that all offenses allegedly committed by

clergy prior to January 1, 1993, are time barred.<sup>150</sup> Similar offenses are time barred for bishops prior to April 26, 1996.<sup>151</sup> Likewise, if there is a new offense that is created by General Conference, the Judicial Council has held that those offenses take effect only prospectively. The 2004 General Conference added “immorality” and “crime” to offenses to which there is no statute of limitations, if those offenses include specifications of sexual or child abuse.

The six (6) year limitation is tolled (i.e., paused) while a clergy respondent is on leave of absence. Therefore, a complaint about a crime committed eight (8) years ago by a clergyperson who had been on leave for three (3) years would still be timely.

#### **A. The Statute of Limitations and Relevant and Reliable Evidence.**

While the statute of limitations may cut off certain occurrences or conduct from being the subject of a chargeable offense, in some instances, events which took place prior to a statute of limitations cut-off date may come in as evidence. The chair/presiding officer must decide whether such evidence is both relevant and reliable. In almost every case, evidence of prior bad acts is not relevant, as they neither prove nor disprove that the specification under consideration actually occurred. On the other hand hearsay evidence (evidence written or spoken elsewhere offered for the truth of the matter asserted) may be admissible in a committee on investigation, which has lower evidentiary standards, but not in a trial. Civil rules of evidence on topics such

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<sup>150</sup> The Judicial Council has ruled that the change made on the statute of limitations by the 1992 General Conference cannot be applied retroactively. See *Decision 691, Memorandum 704*. The statute of limitations was previously two years and was changed to six years (with no statute of limitations for sexual or child abuse). This change was effective prospectively starting January 1, 1993, as interpreted by the Judicial Council. The drafters intended that the six-year period (or the removal of the statute of limitations for certain offenses) would cover all past occurrences. In *Memorandum 704*, the Judicial Council stated:

Basic to our sense of justice is the conviction that a person must not be placed in judicial jeopardy by a law passed after the act in question was committed. To lengthen the term of the statute of limitations and apply it retroactively has precisely that effect. To do so would be to violate the standards of justice by which The United Methodist Church and its predecessor denominations have been guided for generations.

*Memorandum 704* further suggests a possible modification of *Decision 691* by stating:

Perhaps it will be more clearly understandable if . . . the section is amended to read: “A change in a statute of limitations may not take effect retroactively, nor may church laws defining chargeable offenses be made retroactive. A person may not be charged with an offense that was not a violation at the time it was alleged to have been committed. Any charges filed must be in the language of the *Discipline* in effect at the time the offense is alleged to have occurred, and must relate to an action listed as a chargeable offense in that *Discipline*.”

See also *Memorandum 723, Decisions 726, 741, 753, 754, 761*.

<sup>151</sup> The 1996 *Discipline* was the first time the unlimited statute of limitations was applied to bishops.

as hearsay are often instructive, but ultimately it is up to the chair/presiding officer to determine if any particular item is sufficiently relevant and reliable.

**V. Time of the Offense (§ 2702.5).**

This provision (effective January 1, 2001) codified Judicial Council decisions which found it impermissible for an offense to be brought against an individual if it was not listed as a chargeable offense in the *Discipline* at the time of the alleged wrongdoing.<sup>152</sup> For example, a clergy person could not be charged in 2000 with the offense of “child abuse” for acts that occurred in 1995, as the *Discipline* did not contain the chargeable offense of “child abuse” in 1995. However, the clergy person could be charged with a chargeable offense that did exist in 1995, such as crime or immorality, based on the same alleged wrongdoing. The footnotes to §§ 2702.1 and .3 delineate the effective dates of the most recently added offenses.

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<sup>152</sup> *Decision 691, Memorandum 704.*

# Chapter 12

## COMMITTEE ON INVESTIGATION

### I. Introduction.

The Committee on Investigation examines allegations in a judicial complaint to determine if a bill of charges and specifications should be brought to trial. The committee does not determine innocence or guilt.

In carrying out its function, the committee must follow all of the *Discipline*'s fair process requirements. Racial, ethnic, and gender diversity are expected. From time to time a vacancy will occur, in which event the *Discipline* mandates how the alternates are to step in. Diversity should be considered when choosing the alternate to fill a vacancy. For example, if the committee has two women members and one resigns, the vacancy should be filled with a female alternate, if possible.

The judicial process begins upon submission of a complaint to the committee by counsel for the Church. The fair process protections of ¶ 2701 are in effect at this point. The committee must determine whether “reasonable grounds exist” to forward the matter to trial.<sup>153</sup> This standard is less strict than “beyond a reasonable doubt,” “clear and convincing evidence,” and “more likely than not.” There should be a written record of the committee’s vote (e.g., seven members voted on May 5; six were in favor of adopting charges and one opposed). If the committee concludes there are reasonable grounds to bring charges against the respondent, the committee should draft its bill of charges (setting forth the chargeable offenses and specifications), then sign, certify, and forward it to the individuals named in ¶ 2706.5*b*. Certified, return receipt mail should be used for mailings to the respondent. The sample [Certificate of Service](#) in the Appendix to this Handbook may be used by the committee for these mailings.

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<sup>153</sup> ¶ 2706.1.



It may be helpful for the committee to consult with an attorney regarding legal and procedural issues. Even if the committee chooses not to have an attorney present at hearings, due to cost or other concerns, having outside legal counsel that is knowledgeable of the committee's role "on call" should be seriously considered. Some attorneys will do this type of work on a flat rate, heavily discounted, or *pro bono* (volunteer) basis. It is important to work out any fee arrangement ahead of time (with the bishop's blessing). The attorney should be familiar with the Church's process. The conference chancellor shall not serve as counsel to the committee.<sup>154</sup>

Every member of the committee should review *Decision* 980, which requires that members recuse themselves if they cannot uphold the *Discipline*.

#### **A. The Committee and Just Resolutions.**

The *Discipline* holds out just resolution as part of the judicial process. There are times when a committee on investigation is unsure whether it has a role with respect to efforts for just resolution and, if so, how that role meshes with its investigatory responsibility. For example, if a respondent accused of sexual misconduct claims that the case should be resolved through reconciliation, including but not limited to mediation, what should the committee do?

The committee should not directly supervise or direct efforts at reconciliation or just resolution. If the parties, independent of the committee, believe that they have resolved the matter through some form of reconciliation, and to the satisfaction of the complainant, the respondent, and the Church (through counsel for the Church), the committee may take this into consideration when deciding whether to certify the charges for trial.

However, the committee on investigation is not a mediation service, nor is its role primarily one of facilitating a just resolution. A proposed just resolution through reconciliation does not necessarily resolve the committee's work. The committee must still follow through on the responsibility given to it by the *Discipline*. If the committee is uncomfortable with the proposed resolution, if some of the parties do not believe that the proposed resolution is

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<sup>154</sup> ¶ 2706.2b.

adequate, or if the efforts at resolution are hindering the committee's work, the committee should not feel compelled to stop its investigatory work.

## II. Composition of the Committee (¶ 2703).

As of the publication of this Handbook, the potential for confusion regarding the composition of the committee on investigation is great. The 2008 *Discipline* describes the composition of the committee, based on the nature of the respondent. Some of these provisions, however, are not effective (and may never become effective). Neither are the provisions of the 2004 *Discipline*. In order to determine the appropriate composition of the committee, a Judicial Council Memorandum must be used. Obviously, a brief explanation is necessary.

The 2004 General Conference adopted legislation that rewrote ¶ 2703. These changes mainly involved the giving of voting power to lay committee members on charges relating to clergy. This, said the Judicial Council, violated then ¶ 31 (current ¶ 33) and was therefore unconstitutional.<sup>155</sup> The Judicial Council later set forth, via *Memorandum* 1006, the effective versions of ¶ 2703.<sup>156</sup> The 2008 General Conference acted to remove the constitutional impediment. It adopted a constitutional amendment to ¶ 33 that would permit lay committee members to vote on matters relating to clergy, along with enabling legislation changing ¶ 2703.<sup>157</sup> The amendment is not currently effective (and therefore neither are the changes to ¶ 2703), as the annual conferences have yet to ratify it. Unless and until the amendment is ratified, the effective provisions of ¶ 2703 will remain those as stated in *Memorandum* 1006.

The following chart outlines the composition of the committee, as stated in both *Memorandum* 1006 and the 2008 *Discipline*. It is critical that the correct composition is used. The judicial process relating to an individual complaint must be governed by the version of the

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<sup>155</sup> *Decision* 993.

<sup>156</sup> EDITOR'S NOTE: *Decision* 993 and *Memorandum* 1006 did not impact ¶¶ 2704.3-.4, as those paragraphs deal with charges relating to diaconal ministers and lay members, not clergy. Thus, those paragraphs, as they are written in the 2008 *Discipline*, are currently effective and not dependent on the amendment's ratification.

<sup>157</sup> The language of the constitutional amendment is not printed in the 2008 *Discipline*. The enabling legislation, however, is printed.

*Discipline* that is in effect on the date the chair of the committee on investigation receives the bill of charges and specifications.<sup>158</sup>

<b>Respondent</b>	<b>Nomination and election of committee members</b>	<b>Committee composition</b>	
		<b><i>Memo. 1006</i></b>	<b><i>2008 Discipline</i></b>
Bishop <sup>159</sup>	Nominated by the College of Bishops and from the floor of the jurisdictional/central conferences; elected by each jurisdictional/central conference	7 clergy in full connection (five alternates), 2 <u>lay observers</u> (1 alternate)	4 clergy in full connection (3 alternates), 3 professing members (3 alternates)
Clergy member of the annual conference, clergy member on honorable or administrative location, or local pastor <sup>160</sup>	Nominated by the presiding bishop; elected quadrennially by the annual conference	7 clergy in full connection (five alternates), 2 <u>lay observers</u> (1 alternate)	4 clergy in full connection (3 alternates), 3 professing members (3 alternates)
Diaconal minister <sup>161</sup>	Nominated by the presiding bishop; elected quadrennially by the annual conference		At least 4 diaconal ministers <u>or</u> professing members (5 alternates); 3 clergy in full connection (5 alternates)
Layperson <sup>162</sup>	The pastor in charge, or co-pastors, of the local church, <u>appoints</u> the committee <sup>163</sup>		4 professing members, 3 clergy in full connection

Regardless of the classification of the respondent, any committee member who was a party to any prior proceedings relating to the charge before the committee is disqualified from service for that case. Additionally, members of the board of ordained ministry and the cabinet, and their immediate family members, cannot serve on the committee.

<sup>158</sup> ¶ 2719.5.

<sup>159</sup> ¶ 2703.1.

<sup>160</sup> ¶ 2703.2.

<sup>161</sup> ¶ 2703.3.

<sup>162</sup> ¶ 2703.4.

<sup>163</sup> If the pastor or co-pastors are bringing the charge, the district superintendent appoints the committee.

### III. Form and Referral of the Complaint; Suspension (§§ 2704-5).

#### A. Summary Table.

The following table summarizes the provisions of § 2704 regarding the handling of judicial complaints. The particular procedures and individuals involved may vary, depending on the respondent's status.

Respondent	Who receives original complaint and appoints counsel for the Church	Counsel for the Church	Convening of the committee	Suspension is recommended by
Bishop <sup>164</sup>	President (and secretary) of the College of Bishops	Elder in full connection from the same jurisdictional/central conference	60 days after chairperson receives the complaint	At least 5 committee members
Clergy member of the annual conference, clergy member on honorable or administrative location, or local pastor <sup>165</sup>	Bishop	Clergyperson in full connection		At least 5 committee members
Diaconal minister <sup>166</sup>	District superintendent	Clergyperson in full connection <u>or</u> diaconal minister		At least 2/3 of the committee
Layperson <sup>167</sup>	The pastor in charge, or co-pastors, of the local church	United Methodist member	No deadline given	At least 5 committee members

#### B. The Form of the Judicial Complaint (§ 2705).

The complaint, prepared and signed by counsel for the Church, explains to the committee the alleged events relating to the chargeable offense(s). All relevant documents and exhibits should be attached to it. The chargeable offenses should be named and proposed specifications

<sup>164</sup> § 2704.1.

<sup>165</sup> § 2704.2.

<sup>166</sup> § 2704.3.

<sup>167</sup> § 2704.4.

for each should be included. At the same time, counsel for the Church must send a copy of the complaint, and the attached documents and exhibits (if possible), to the respondent and the respondent's counsel.

### **C. The Role of Counsel for the Church.**

The role of counsel for the Church may be compared to a prosecutor who, in the secular criminal courts, represents the people or the state (not the alleged victim) in bringing a criminal complaint against a defendant. Similarly, counsel for the Church does not represent the original complainant. In pressing forward the original complainant's allegations, counsel represents the Church. There may be unusual circumstances in which the original complainant has chosen not to be present, or has voiced willingness to accept some remedy short of the investigation. Counsel for the Church may still pursue the complaint, as the process is about the respondent's accountability to the Church.

Counsel for the Church should be appointed on a case-by-case basis and, in most instances, should be the same person throughout the entire judicial process. It is important that the individual selected is able to devote the time to following a matter from the initial complaint stage possibly through an appeal. The same individual may or may not be appointed for different cases.

Care should be given in selecting counsel for the Church to find someone who has not previously considered the matter and will not give the appearance of a conflict of interest (an elder who is supervised by the respondent could be perceived as biased, a bishop who is a close personal friend of the respondent could be perceived as biased, etc.). It is helpful to select an individual who is familiar with the Church's judicial process and comfortable serving in the role.

A district superintendent may be counsel for the Church. However, he or she must not be the respondent's district superintendent, and must not have been on the cabinet that previously supervised the same matter.<sup>168</sup> If the cabinet recommended involuntary leave of absence and all district superintendents participated, no district superintendent could serve as counsel.

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<sup>168</sup> See ¶ 2708.7.

Therefore, if the bishop has decided that one specific district superintendent is likely to be chosen as counsel for the Church, that district superintendent should not be involved at all in supervisory consideration or recommendations regarding potential judicial complaints.

The *Discipline* permits counsel for the Church to select one assistant counsel, without voice.<sup>169</sup> This assistant counsel may be an attorney. It would be very helpful to select an individual who has experience with the Church's judicial process.

The assistant counsel may be chosen as soon as the counsel for the Church is named and may assist in any investigation preparation and also may be present during committee hearings. The scope of the work to be done by the assistant counsel, as well as the time commitment, should be fully explored. It may be appropriate to select a conference chancellor to serve as assistant counsel, but care should be given not to select a conference chancellor who works directly for/with the respondent. Counsel for the Church should discuss with the resident bishop any expenses to be incurred, including possible remuneration for the assistant counsel.

#### **D. Forwarding of the Judicial Complaint.**

The Judicial Complaint should be sent by certified mail, return receipt requested, or by another reliable and verifiable method, to the respondent and by regular mail to the chairperson of the committee on investigation, the complainant, and the respondent's bishop. A letter explaining the trial process should also be sent promptly by counsel for the Church.

Counsel for the Church drafts the judicial complaint and forwards it, along with all relevant documents and materials, to the chair of the committee on investigation. It is important for counsel for the Church to take great care when reviewing the initial complaint and redrafting it into the judicial complaint. It must contain information sufficient to allow the respondent to

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<sup>169</sup> ¶ 2706.2a; see also *Decision* 846 (stating that assistant counsel may not be called as a witness). EDITOR'S NOTE: The provisions of paragraph ¶ 2704 specifically dealing with complaints against diaconal ministers and laypersons do not provide for the appointment of assistant counsel. However, ¶ 2706.2a provides generally for the appointment of assistant counsel, regardless of the respondent's status.

prepare a response to the allegations. Counsel for the Church should make all necessary revisions (including additional information) to the complaint before signing and forwarding it.<sup>170</sup>

To the greatest extent possible, the format of the judicial complaint should be similar to the format of the Bill of Charges and Specifications created by the committee and contain information relating to the date, time, and place of the events which occurred. The complaint itself must contain only factual elements of the offense. In preparing the complaint, counsel for the Church should make sure there is enough supporting information to present a clear picture of the facts and circumstances. When appropriate, additional investigation and questioning of witnesses may be required. Assistant counsel can do some of the investigating and help in the drafting of the complaint. It may be desirable to show a copy of the draft Judicial Complaint to the complainant to ensure that the complainant will be able to fully support all of the facts as stated. In the Appendix to this Handbook is a sample [Judicial Complaint](#) which includes a list of relevant information and exhibits as well as a suggested witness list.

The *Discipline* explicitly states that relevant materials and supporting documents should be attached. This includes relevant statements of the original complainant and/or witnesses, journals, calendars, receipts, letters, and other materials. This avoids the arduous task of the committee having to start from square one. Note, however, that all such material must also be shared with the respondent. This means that any privileged or otherwise strictly confidential documents may need to be withheld and not provided to the committee.

Counsel for the Church forwards the judicial complaint to the respondent, committee on investigation, and the bishop, all at the same time. The respondent has the right to prepare and forward to the chair of the committee (and to counsel for the Church) a written response within thirty (30) days of receipt of the complaint.<sup>171</sup> When forwarding the complaint to the respondent, counsel for the Church may wish to include a letter reiterating the right to submit this written

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<sup>170</sup> See *Decision* 784.

<sup>171</sup> Questions may arise as to whether thirty (30) days is adequate response time or what is the nature of the response. For good cause the chairperson may grant additional time, since there is no penalty for a late response. The response typically would seek to tell the respondent's side of the story. This could be as simple as a straight denial or alternately writing a different version of the events, setting forth an "alibi," etc. At some point in time, it may also be appropriate for the respondent's counsel to present written documentation to the committee, suggest a witness list, list of questions, etc.

response. Counsel for the Church should send the judicial complaint by certified mail, return receipt requested and verify the service.<sup>172</sup> Any verification should accompany the mailing to the committee chair. Counsel should also send the notice of mailing, along with any signed return receipt, to the chair, which should then be made part of the record.

#### **E. Suspension.**

A judicial suspension of the respondent clergyperson may be recommended in circumstances when it has been determined that there is a need to protect the well-being of the complainant, the respondent, the bishop, other individuals, or the Church. This can be done at any stage, including prior to the formal convening of the committee for purposes of the hearing, as long as the committee has sufficient information to warrant this action. This suspension may continue throughout the entire judicial process, including any appeal. The rights and privileges under ¶ 334 (including appointment, salary, and benefits for elders) are retained during the suspension. The committee should have an understanding of the financial implications of suspension.

### **IV. Procedures (¶ 2706).**

#### **A. Standard of Proof.**

The committee's standard of proof is whether or not there are reasonable grounds to proceed to trial. This is different from the trial court's standard (clear and convincing evidence). In civil courts one standard of proof is "preponderance of the evidence" or "more likely true than not true," which is often equated with 51% v. 49%. The standard for convictions in secular criminal courts is proof "beyond a reasonable doubt" which, while still less than 100%, is a very high standard. "Clear and convincing evidence" is somewhere in between these two.

The *Discipline* does not define "reasonable grounds," but this standard is far less than any of the above standards. Each committee member must decide in his or her own mind how to apply this standard.

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<sup>172</sup> See the sample [Certificate of Service](#) in the Appendix to this Handbook.



**B. Parties and Counsel (¶ 2706.2).**

In hearings before the committee, the parties are the respondent and the Church. In these hearings, both parties and the committee itself are permitted to have counsel present. Who may and may not serve as these respective counsels is discussed elsewhere in this Handbook.

**C. Preliminary Meeting (¶ 2706.3).**

An informal, preliminary meeting is to be held by the committee chair. The respondent and his/her counsel, counsel for the Church, any other assistant counsels, and the complainant may be present to discuss procedures to be followed (the date, time, and place of the committee hearing, who may be present, the manner in which written information should be submitted, etc.). In addition, more substantive procedural issues may be determined (inclusion/exclusion of certain evidence or witnesses, requests to add to the witness list, etc.). Procedural issues may be argued by the respondent, the respondent's counsel, counsel for the Church, and the complainant. There is no right for the complainant's advocate or counsel to be present or to argue these issues. The chairperson has ultimate authority to decide procedural matters. Any decisions must be put into writing and made available at all subsequent stages of the case.

This meeting may be held with just the chairperson of the committee to save on time and expense. The chairperson may wish to reserve some decisions until he or she has had time to consult with the full committee. In some complicated cases, it may be appropriate to have more than one preliminary meeting before the full committee meets.

When feasible, this preliminary meeting should be scheduled at a time and place agreed to by all those involved. If that is not feasible, the chair should set a time and issue a notice of an informal meeting. While a twenty (20) day notice is not required (this meeting is not a hearing), the more notice that can be given, the better.

The chairperson has absolute authority to decide to allow other individuals to be present in this informal meeting. The chair should consider why such a request is made and how it would further resolution or justice.

#### **D. Hearing Before the Committee on Investigation (§ 2706.4).**

The *Discipline* states a preference that the complainant and the respondent are brought together face to face. This is not a requirement for the hearing to occur. The preference is instead intended to increase the chance of reaching resolution or reconciliation. Due to the potentially emotional nature of some allegations, it sometimes may be undesirable or impossible to do so. However, it is important to note that if the complainant testifies, the respondent has the right to be present. In difficult situations, the committee chair has considerable discretion in fulfilling this requirement.<sup>173</sup>

The proceedings are informal and without oaths. Even though informal, the proceedings should be run in an orderly and fair manner. The chair's procedural rulings must be made on the record, either in writing and then read into the verbatim record or orally as a part of the verbatim record. Witnesses should be allowed to testify without any intimidation or fear. Sometimes, when there is friction or indication of past intimidation between individuals in the hearing room, it may be desirable to separate them to the greatest degree possible. The committee chair should make sure the setting is large enough for the group, allows for the privacy of the hearing, and provides a place for witnesses to wait prior to giving testimony. Witnesses should not be in the hearing room while another witness is giving testimony. Broad discretion is given to the committee chair to ensure an orderly proceeding and fair process.

Because of the time constraints and/or availability of witnesses, it is often necessary for the hearing to be conducted on more than one date. It can be helpful for the committee chair to have a tentative schedule mapped out ahead of time with the committee, counsel for the Church, and respondent.

**Interview of Witnesses Prior to or Outside of Hearing (§ 2706.4b).** The chair may appoint a committee member to interview witnesses other than at the hearing. All parties are allowed to be present, without voice. The chair must notify all parties of the time and place of

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<sup>173</sup> From time to time the committee may need to be creative in fulfilling the directive that the parties "shall be permitted to be present." In one case in which there was a restraining order barring the complainant and the respondent from coming within 100 feet of one another, a camera and monitor were arranged so the "presence" was video images of testimony in another room.

the interview, at least three (3) days in advance. This provision parallels the power given to the presiding officer of the trial court by ¶ 2708.10. The interviewing process is somewhat like a deposition that is taken in a secular court proceeding. It has the same validity as testimony given before the committee and therefore it is essential that fair process is followed and that:

- A reason should be given why “live” testimony cannot be heard (e.g., illness, extreme inconvenience, expense of travel from a long distance, or other good cause);
- The parties are consulted when setting the interview date;
- A verbatim record (by court stenographer, if possible) is made;
- The appointed committee member certifies the record via signature; and
- The committee decides how the interview testimony will be presented and made a part of the hearing record (often such testimony is read into the hearing record by a third party so that the committee can treat this testimony the same as other testimony of witnesses who are present).

**Examination of Witnesses (¶ 2706.4c).** The sole right to call witnesses rests with the committee. Counsel for the parties may (and probably should) suggest the names of witnesses but do not have the right to demand their presence. It is permissible for counsels to suggest (preferably in writing) a list of proposed witnesses and/or lines of questioning to the committee. There is no right of cross examination by the counsels. While it is usually less stressful for all concerned if the process is cooperative, it is essential to keep in mind that the committee is in charge and that neither counsels nor the parties dictate how the hearing is conducted. The hearing is not a trial, and the focus should be on establishing whether there are reasonable grounds for proceeding to trial.

**Evidence (¶ 2706.4d).** The committee must only consider evidence that is both relevant and reliable. The chair rules on any challenges to relevance or reliability. Evidence relating to events barred by the statute of limitations may be permitted, if relevant and reliable. In almost every case, evidence of prior bad acts is not relevant, as they neither prove nor disprove that the specification under consideration actually occurred. On the other hand, hearsay evidence (evidence written or spoken elsewhere offered for the truth of the matter asserted) may be admissible in a committee on investigation, which has lower evidentiary standards, but not in a trial. Civil rules of evidence on topics such as hearsay are often instructive, but ultimately it is up to the chair to determine if any particular item is sufficiently relevant and reliable.

**Verbatim Transcript (¶ 2706.4e).** A verbatim transcript shall be made of all testimony and motions. A specific form is not required. Options include a tape recording, a videotaping, or a written transcript via a court reporter. A professional court reporter should be used when feasible. The advantage of a written transcript taken by an experienced court stenographer is that it is reliable and easy to duplicate, review, and store. Counsel for the Church and for the respondent in most cases will find this written transcript quite useful at trial. Most court reporters have an hourly or daily attendance charge, plus a per-page transcription charge. The production of a transcript can be expensive. If the complaint is not sent forward as a bill of charges, a verbatim transcript need not be created. In such a case, it is important that the committee instruct the court reporter or other party maintaining the record that no transcript is to be prepared without the express written direction of the committee chair or secretary. It is not appropriate for a complainant or respondent to request a transcript to use in a civil court proceeding. If any other means are used, it is very important that they be done in a professional manner and that copies are made. Errors may occur if someone forgets to change the recording tape and an hour of testimony is lost or a tape is accidentally erased or misplaced.<sup>174</sup>

If charges are brought, the transcript is forwarded to the trial court. A copy should also be provided to the respondent and counsel for the Church. Typically the conference should bear the cost of the transcription of the record. If the matter is not sent on to trial, the transcript (or whatever record may exist) should be sent to the conference secretary, to be kept during the respondent's lifetime. This record should be marked "confidential" and opened only for good cause. All deliberations of the committee are private and confidential. Anytime the committee meets alone or with its counsel, a transcript shall not be taken.

**E. Bill of Charges and Specifications (¶ 2706.5a).**

A charge is one of the chargeable offenses listed in ¶ 2702. More than one charge against the same person may be presented and tried at the same time, but each charge shall not include more than one chargeable offense. Each charge must be separately written, with one or more specifications of fact that support the charge. Each specification, standing alone, must allege a

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<sup>174</sup> See *Decision 698, Memorandum 704* (discussing the need for verbatim transcripts in the former Joint Review hearings); see also *Decision 784* (discussing the need to preserve transcripts).

factual occurrence which, if found to be true, would support a finding of guilt on the related charge. The specifications should be as detailed as possible, with information such as the date, time, and place of specific events alleged to have occurred. The bill of charges and specifications may contain other relevant and material background and factual evidence as an introduction (separate and apart from the actual charges and specifications). In short, the charges are the offenses on which the committee on investigation votes to send on to trial. The specifications are the facts that are necessary to support the charges. There is a sample [Bill of Charges](#) in the Appendix to this Handbook.

The committee should try to stand back and look at the draft bill of charges from the perspective of each person who will receive it and use it, including counsel for the Church, the respondent, the complainant, the presiding officer at trial, the trial court, and the appellate court. Is the draft bill of charges clear? Is it understandable? Is each stated specification truly a specification?

#### **Helpful Questions to Ask About Specifications**

1. Does each specification, if true, support the charge to which it relates?
2. Is the statement (specification) capable of being answered with a verdict of “guilty” or “not guilty” by the trial court?

Counsel for the Church, and later the committee on investigation, must spend considerable time and thought when preparing the charges and specifications. The bill of charges and specifications is the document that sets the framework for the trial: it informs counsel for the Church what must be proven at trial; it explains to the respondent what wrongs have been alleged, which is necessary for the respondent to prepare a proper defense; it explains to the complainant what accusations will go forward for proof at trial; it explains to the presiding officer what the trial will be about; and, ultimately, it is what the trial court must evaluate in determining the respondent’s guilt or innocence.

In sending forward a bill of charges and specifications, the committee on investigation has found that they are based on reasonable grounds. It will be up to counsel for the Church to decide what evidence to present to support the charges and specifications at trial, and for the respondent to decide what additional facts are important to refute, explain, or justify them.

These facts are not all specifications. The other underlying facts to be presented by counsel for the Church and the respondent constitute evidence that generally will be intended to support or refute the specifications.

Each case is unique. In some cases, it will be easy and obvious for the committee on investigation to figure out the charges and specifications. In other cases, it will be more difficult. The committee may not know all of the factual allegations that it would like to have, such as a specific date on which the alleged offense took place. Or, there may be conflicting evidence as to some of the factual allegations. The committee can only work with the factual allegations that have come forward. It is up to the committee to decide which alleged facts are essential to support the charges (the specifications) and how to frame those facts in the bill of charges.

#### **F. Example Charge and Specifications.**

##### **Charge:**

The respondent is charged with commission of a crime, under ¶ 2702.1c of *The Book of Discipline*.

##### **Specifications:**

1. On January 2, 1999, Rev. Jones took approximately \$400 in cash offerings from the collections at Trinity United Methodist Church for his personal use.
2. On January 10, 1999, Rev. Jones cashed one check from Mr. Charles Schmidt, dated January 9, made payable to Trinity United Methodist Church in the amount of \$350, and used the funds for his own personal use.
3. On the morning of January 12, 1999, Mrs. Edna Warehouse gave Rev. Jones a \$250 cash contribution intended for Trinity United Methodist Church. Rev. Jones did not give the \$250 to the church treasurer or any other financial officer, nor did he deposit it in any church account.

There is no doubt that many additional facts will be important to this case, such as how the loss was discovered, how can the loss of a cash contribution be substantiated, how do we

know that Rev. Jones is the one who took the cash, how did he get the cash from the collection plate, why he took the cash, where was it spent, etc. Not all facts are “specifications.” For example, the fact that Rev. Jones insisted on counting the offering alone, contrary to the church’s written policy that two counters must always count the offering, is relevant evidence, but it is not a “specification” (because it is not the actual act of committing the wrongdoing). Only the actual taking of money from the church in an improper manner should be listed as a specification.

**G. Voting and Finding of Reasonable Grounds (¶ 2706.5b).**

Committee members must base their votes solely on whether or not reasonable grounds exist to support the charges. If there are multiple charges and specifications, each must be voted on separately. As with other steps in the judicial process, the voting requirements and the procedure for referring the bill of charges and specifications varies, depending upon the respondent’s status:

<b>Respondent</b>	<b>Number of votes required</b>	<b>Who receives bill of charges and specifications</b>
Bishop <sup>175</sup>	Five	Respondent, jurisdictional/central conference secretary, president and secretary of the College of Bishops, counsel for the Church, jurisdictional committee on episcopacy chairperson
Clergy member of the annual conference, clergy member on honorable or administrative location, or local pastor <sup>176</sup>	Five	Respondent, complainant, annual conference secretary, counsel for the Church, resident bishop <sup>177</sup>
Diaconal minister <sup>178</sup>	Two	Respondent, annual conference secretary, Board of Ordained Ministry chairperson, respondent’s district superintendent, counsel for the Church, resident bishop <sup>179</sup>
Layperson <sup>180</sup>	Five	Respondent, charge conference recording secretary, counsel for the Church, pastor(s), district superintendent

<sup>175</sup> ¶ 2706.5b[1].

<sup>176</sup> ¶ 2706.5b[2].

<sup>177</sup> This must be done within five (5) days.

<sup>178</sup> ¶ 2706.5b[3].

<sup>179</sup> This provision also contains a five (5) day deadline, although it is written in such a way that makes it appear to only apply to the notice sent to the respondent.

<sup>180</sup> ¶ 2706.5b[4].

## **H. Findings of Other than Reasonable Grounds (§ 2706.5c).**

**No Reasonable Grounds (§ 2706.5c[1]).** If the committee believes there are no reasonable grounds to go forward with the complaint, then it should dismiss the complaint. In certain situations, the committee may decide, in addition to dismissing the complaint, that the matter should be referred to the appropriate Church official for further action:

*Example:* A complaint of sexual harassment is based on an incident in which the pastor, on one occasion, shook a female parishioner's hand so hard that she went to the doctor fearing injury. While the committee may determine that there are no reasonable grounds for a charge of sexual harassment, it might, in dismissing the action, ask the bishop to consider working with the parties for reconciliation and healing.

*Example:* If a complaint is brought for a chargeable offense that is barred because of the running of the statute of limitations, the committee may find that there are no reasonable grounds (due to lack of admissible evidence) but still feel that the incident is serious enough to warrant counseling or another supervisory response by the bishop and cabinet.

The respondent, complainant, counsel for the Church, and the proper referring Church official should be notified of these actions.

**Referral as an Administrative Complaint (§ 2706.5c[2]).** There may be instances in which dismissal is less than satisfactory to the committee's sense of fairness and well-being – for the respondent, the complainant, and/or the Church – or in which it concludes that the complaint is not based on chargeable offenses. In these situations, it may be appropriate for the committee to refer the matter for administrative or other action:

*Example:* A complaint of sexual misconduct is brought that involves hugging. The committee believes that the pastor is unknowingly and without ill motive hugging on both male and female parishioners. There is little dispute over the facts but the pastor contends he was unaware of any offense or the inappropriate nature of his conduct. It may be appropriate to attempt to have this matter handled administratively through mediation, counseling, and some other supervision, rather than proceed to a trial.

*Example:* A complaint of sexual harassment involves allegations of inappropriate language. The parties attempted reconciliation at the supervisory level but were unable to come to a satisfactory resolution. Counsel for the Church, the respondent, and the complainant all now appear ready to come to a resolution,



with the bishop's blessing. The committee may choose to refer the matter back to the bishop to bring about this resolution.

The respondent, complainant, counsel for the Church, and the proper referring Church official should be notified of these actions. A referral pursuant to this provision is not a dismissal and does not produce a double jeopardy situation.

**Referral Seeking a Just Resolution (§ 2706.5c[3]).** If counsel for the Church and for the respondent so recommend, the committee may refer the matter to the resident bishop for a process seeking a just resolution. If the process does not result in such a resolution, it shall be referred back to the committee. A referral pursuant to this provision is not a dismissal and does not produce a double jeopardy situation.

**V. Special Investigations (§ 2706.6).**

If a respondent – charged with child abuse, sexual abuse, or sexual misconduct – dies or surrenders his or her credentials before the judicial proceeding has concluded, the presiding bishop may request the committee to convene and inquire into the charges. This inquiry shall not be judicial in nature. The committee may hear witnesses and consider evidence and shall report its findings and recommendations to the respondent's membership body.

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# Chapter 13

## TRIAL PROCEDURES

The *Discipline* offers many opportunities for disputes to be resolved prior to a church trial. A trial is regarded as an expedient of last resort and should only be considered an option “after every reasonable effort has been made to correct any wrong and adjust any existing difficulty.”<sup>181</sup> Sometimes, despite the best efforts of many persons in many settings, a trial must occur. This Chapter outlines how that trial must be conducted.

### I. General Observations - Church/State Separation.

Questions sometimes arise as to the relationship of church trials to secular legal processes. As the *Discipline* states, “no such [church] trial as herein provided shall be construed to deprive the respondent or the Church of legal civil rights.”<sup>182</sup> Conversely, decisions of church courts and authorities concerning ecclesiastical matters are generally respected by the civil courts, pursuant to the First Amendment’s protection of free religious exercise.<sup>183</sup> This strong and fundamental constitutional principle has long stood for the position that the secular courts, except in highly unusual circumstances, will not inquire into such matters as the qualification, placement, and discipline of clergy. Therefore, when a church process or tribunal has decided on a clergyperson’s status within The United Methodist Church or other denomination, those decisions should not be subject to review or reversal in the secular courts.

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<sup>181</sup> ¶ 2707.

<sup>182</sup> *Id.*

<sup>183</sup> See e.g., *Serbian Eastern Orthodox Diocese v. Milivojevich*, [426 U.S. 714](#) (1976). In this suit, the Supreme Court of Illinois had held that the defrocking of a bishop was improper. The U. S. Supreme Court, upon review, disallowed interference in the affairs of a religious body by the state:

[C]ivil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide such disputes]. . . . Such a determination . . . frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide . . . religious law [governing church polity] . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine.

*Milivojevich* at 708-9 (citing *Md. & Va. Churches v. Sharpsburg Church*, [396 U.S. 367, 369](#) (1970) (BRENNAN, J., concurring)). See also *United Methodist Church, Baltimore Annual Conference v. White*, 571 A.2d 790 (D.C. 1990); *Young v. Northern Illinois Conference of United Methodist Church*, 21 F.3d 184 (7<sup>th</sup> Cir. 1994).

## II. General Organization and Pre-Trial Procedures (§ 2708).

### A. Officers of the Court (§ 2708.1).

The *Discipline* provides for a presiding officer, a secretary, and “such other officers as may be deemed necessary.” If the respondent is a bishop, the president of the jurisdictional/central conference’s College of Bishops is the presiding officer, unless he or she has designated another bishop to the role.<sup>184</sup> If the respondent is any other clergy member, local pastor, or diaconal minister, the presiding officer shall be a bishop designated by the resident bishop.<sup>185</sup> If the respondent is a layperson, that person’s district superintendent is the presiding officer, unless he or she has designated another clergyperson in full connection to the role.<sup>186</sup> In order to minimize scheduling issues, it is important that the presiding officer is selected as early as possible.<sup>187</sup>

Some presiding officers choose to appoint a bailiff or “sergeant-at-arms” to assist in keeping order, seating arrangements, witness protection, timekeeping, etc. The resident bishop should suggest the name of a local individual, considering whenever possible, gender, ethnic, and racial diversity. The presiding officer may also use legal counsel for advice regarding Disciplinary and procedural issues. This legal counsel cannot be the conference’s chancellor. The resident bishop may make suggestions for this legal counsel. Any expense for the presiding officer’s legal counsel is paid by the annual conference holding the trial.

### B. Time and Place of Trial (§ 2708.2).

“The official charged with convening the trial court” has the duty to fix the trial date and to send notice to the presiding officer, respondent, complainant, and counsel for the Church.<sup>188</sup> These notices shall be provided at least twenty (20) days prior to the start of the trial.

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<sup>184</sup> § 2712.2. If the respondent is the president of the College of Bishops, then the secretary shall be the presiding officer.

<sup>185</sup> § 2713.2. Thus, the resident bishop cannot be the presiding officer.

<sup>186</sup> § 2714.2.

<sup>187</sup> The GCFA Legal Services Department maintains a list of bishops who have indicated their availability to serve as presiding officers.

<sup>188</sup> The person who appoints (or is named as) the presiding officer is the person who convenes the trial court.

The resident bishop is not one of the persons who may be present, by right, at a closed trial. Questions have arisen as to the possible prejudicial influence of having the resident bishop, who may be the bishop of the trial court members, present at the trial. While clergy are in covenant to act in a truthful and Christian manner in all of their conduct, including trial court service, there is no set process for what convening actually means. Therefore it may be appropriate for the resident bishop to come only for the first few minutes of the trial, outside the presence of the trial court pool, convene the court, and then leave. Alternatively, if the resident bishop were for good cause unable to attend, presumably the convening role could be delegated (just as the resident bishop's role of presiding over annual conference may on some occasions be delegated).

If the resident bishop has been chosen as assistant counsel to counsel for the Church, the resident bishop's role as convenor must be delegated to another.

### **C. Pre-Trial Motions and Referrals (§ 2708.3).**

As part of any proceeding, it is very desirable for the presiding officer and counsel to have a preliminary meeting(s) to better understand the trial procedures and requirements. As part of such a meeting called by the presiding officer (and which typically would be a teleconference), counsel may raise objections, present motions, present witness lists, give some understanding of how much time they will need, and discuss documentary evidence, rules of evidence, trial court selection, trial procedures, and trial court instructions.

The counsels for both sides need to be prepared prior to the trial to present any motions or objections to any prior proceedings (e.g., committee on investigation hearing).<sup>189</sup> If these matters are not appealed before the trial is convened, the right to appeal is waived.

The presiding officer should ensure that copies of any motions or objections are provided to both sides and may ask that written arguments be submitted that detail the specific issues. This process enables correction, if possible, of such errors before the expenditure of time and funds for a full trial. Examples of procedural matters that need to be raised at this time are: the

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<sup>189</sup> See *Decision* 1094.

adequacy of notice provided, access to records, hearing rights, right to be accompanied by another person, and the hearings and rulings of the committee on investigation. Known violations of the fair process protections of ¶ 2701 prior to trial must be appealed before it is convened or the right is waived.

Should the trial court rule in the respondent's favor on some of these matters, some or all of the charges may be dismissed, or some procedural steps may need to be repeated, unless the error was deemed harmless (e.g., if a notice was sent 19 days instead of 20 days prior to a hearing and no prejudice is shown). In the event that the presiding officer rules against the respondent, then that decision is to be preserved on the record for any future appeals of the matter.

Pre-trial amendments to a bill of charges are permitted, at the discretion of the presiding officer, as long as they do not change its general nature.

The presiding officer has the power to dismiss a bill of charges. This is an extreme remedy, and is limited to a very narrowly defined situation in which the specifications have no factual or legal basis or in which the specifications, even if true, do not constitute a chargeable offense. Because jeopardy has already attached, a charge dismissed by the presiding officer may not be raised again.

The presiding officer may also refer the matter for a process that seeks a just resolution. Should such a resolution not occur, the matter shall be referred back to the presiding officer.

**D. Change of Venue (¶ 2708.4).**

The *Discipline* permits the respondent to request a venue change. This request must be in writing and made to the presiding officer no more than ten (10) days after the respondent receives notice of the trial. The Church's and respondent's counsels may argue the merits of the request before the presiding officer. Changes of venue may be granted in circumstances where, due to prejudice or bias brought on by pre-trial publicity or other factors, the presiding officer finds that a fair trial would not be possible in the original location. The inability to obtain an acceptable trial pool, because of the respondent's ethnicity, gender, or stature, could be a consideration in deciding on the need for a change of venue.

The presiding officer has sole discretion to grant the request. If the request is granted, the presiding officer chooses another annual conference, outside of the episcopal area, to hold the trial. The annual conference in which the case originated shall still bear the costs of the trial.

**E. Notice (§ 2708.5).**

Any notice relating to an investigation, trial, or appeal must be in writing, signed by/on behalf of the person/body giving the notice, and addressed to the person/body to which it must be given. Notices may be delivered in person, or by other delivery means, to the last known residence or address of the party/body. Verification shall be provided and shall become a part of the record.

Use of alternative delivery systems such as email or faxes may be considered proper, but before relying on these alternatives, a ruling should be sought from the presiding officer. Certification of Service is required, so evidence of the delivery (by use of return receipts, certified mail, etc.) must be obtained.

If the recipient does not cooperate and refuses to acknowledge receipt, the certification should reflect this fact. As a result, there will be a record of the post office's service or attempt at service that can be provided as part of the record of the case. This record eliminates allegations that notice was never provided. Sample [Notices](#) and [Certificates of Service](#) forms are included in the Appendix to this Handbook.

Any time notice must be given to the bishop or district superintendent and that person is the respondent, the notice shall instead be given to another bishop in the same jurisdiction or to the bishop in charge, respectively.

**F. Trial Scheduling and Continuances (§ 2708.6).**

If the respondent has been duly notified of the trial, but either refuses or neglects to appear, the trial may still proceed. The presiding officer may reschedule the trial, if there is good and sufficient reason for the respondent's absence, or due to the absence of another essential person. The presiding officer has broad discretion to grant a continuance or to proceed with the trial.

### **G. Counsel (§ 2708.7).<sup>190</sup>**

The respondent has the right to be represented by counsel. Counsel will have the right to speak in all proceedings. The Church shall also be represented by counsel. This will typically be the same counsel for the Church who drafted the complaint and represented the Church before the committee on investigation. Both sides will have the right to choose an assistant counsel, who may be an attorney and who will not have the right to voice at trial. If the respondent has not chosen trial counsel, the presiding officer shall appoint one, even if the respondent has not requested counsel.

No one who was a member of the cabinet, board of ordained ministry, or the committee on investigation that previously considered the case is eligible to serve as counsel for any of the parties. If the resident bishop has been chosen as assistant counsel to counsel for the Church, the resident bishop's role as convenor must be delegated to another.

It is important that these decisions be made as early in the proceedings as possible. Counsel for both sides should be chosen at least forty-five (45) days prior to the trial in order to allow for preparation and for any pre-trial motions, conferences, or meetings. Trial counsel should communicate with one another and a representative of the court (presiding officer or his counsel), regarding procedural issues (trial proceedings, schedule, witnesses, requests regarding evidence, etc.) prior to the actual trial date.

Many presiding officers prefer to have their own counsel (§ 2708.1) who can coordinate many of the administrative matters. This person functions in much the same way as a civil judge's law clerk, and can engage in *ex parte* communications, which are proscribed for the presiding officer.

### **H. Witnesses and Witness Qualifications (§§ 2708.8-9).**

The *Discipline* imposes a duty upon clergy and lay members of The United Methodist Church to appear and testify when summoned. Refusal to appear or answer questions ruled by

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<sup>190</sup> For additional discussion of the various counsels, see [Chapter 10](#) and [Chapter 12, Section III-C](#).

the presiding officer to be relevant may be considered disobedience to the *Discipline*. Witnesses do not need to be members of the Church in order to be considered “qualified.”

A witness may be excused under two extremely limited circumstances: “a good faith claim that answering might tend to incriminate the witness under state or federal criminal law or . . . a claim of confidential communication to a clergyperson under ¶ 341.5.” For example, a co-conspirator in a theft would not have to testify if the testimony might incriminate that witness under criminal law.<sup>191</sup> The second part of the exception relates only to clergy. The clergy confidence is an inherent and important part of the United Methodist polity under ¶ 341.5. It is a narrow confidence, not to be invoked lightly. The specific facts and circumstances will typically control and need to be viewed carefully. For example, if the respondent, as part of a supervisory (not pastoral) response admits to both the district superintendent and the bishop that he/she committed an act, this probably would not be a confidential communication and could be reported.

Instances can occur when witnesses are not clergy or lay members of The United Methodist Church. All steps should be taken to encourage important witness(es) to be present. Should it be necessary to pay certain travel, lodging, or meal expenses for witness(es), such payment should be disclosed to the presiding officer. No other payments to witnesses should be made (except in the very unusual case that the presiding officer decides that an expert witness is required).

All notices are to be issued in the name of the Church and signed by the presiding officer.

#### **I. Commissioned Out-of-Court Testimony (¶ 2708.10).**

Out-of-court testimony is roughly equivalent to a deposition in a secular court matter. It is appropriate when a witness cannot appear at trial. The party requesting the out-of-court testimony has the burden of showing good cause as to why it is necessary and bears the cost of conducting it. If the presiding officer deems such testimony to be necessary, a commissioner(s)

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<sup>191</sup> “I refuse to answer on the grounds that it may tend to incriminate me and I invoke paragraph 2708.8.” This is a somewhat dubious response for a clergy (or lay) member who essentially would be stating that if he or she tells the truth, it will reveal participation in a crime.



will be appointed.<sup>192</sup> The adverse party must be given three (3) days notice of the testimony's time and place.

It is recommended that a court reporter be present to record and transcribe the testimony, and to then certify the testimony, along with the commissioner(s). The out-of-court record would typically be read to the members of the trial court, with an explanation of why the witness was unable to be present. The presiding officer should instruct the jury that such testimony is to receive the same weight as it would have if it had been given at trial.

#### **J. Amendments to Bill of Charges and Specifications (¶ 2708.11).**

The presiding officer may amend the bill of charges, or request the committee on investigation to do so. However, the presiding officer may not permit amendments that are materially harmful to the respondent's ability to prepare a defense. Amendments, if sought, should come at the earliest possible opportunity. Good cause to allow the amendments should be shown and, if allowed, the respondent must be afforded adequate time to prepare a defense. Examples of appropriate amendments include clarification of a specification, separating one specification into two specifications, or deleting a specification that the presiding officer believes is not really a specification.

The trial court may not hear evidence concerning charges that have been denied by the presiding officer pursuant to ¶ 2708.3 or that were dropped by the committee on investigation. This requirement ensures that the respondent knows which matters are before the trial court. It is unfair to introduce matters for which the respondent has been unable to prepare.

#### **K. Open or Closed Trials (¶ 2708.12).**

The *Discipline* starts with the presumption that trials are to be closed. If respondent's counsel requests in writing for the trial to be open, the presiding officer shall open the trial. The Church's counsel or respondent's counsel may also make a written request that the trial be open to the respondent's family, the complainant's family, and/or to other personally significant

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<sup>192</sup> The commissioner(s) may be a clergy or lay member, or one of each.

people.<sup>193</sup> The presiding officer can also close parts of the trial. All motions to open the trial should be made prior to the trial's start.

Regardless of whether the trial is open or closed, the presiding officer, the trial court members, the complainant(s), the Church's representative and counsel, and the respondent and respondent's counsel have the right to be present.

Deliberations of the trial court are always closed.

#### **L. Combined Trials of Multiple Persons (§ 2708.13).**

The *Discipline* permits the combination of the trials of multiple individuals who are charged with the same offenses, in relation to the same set of facts (e.g., multiple clergypersons are accused of participating in a same-sex union or marriage). The presiding officer evaluates and decides whether to combine the trials, and will need to consider issues of fairness, expediency, whether the evidence is the same for all respondents, etc.

### **III. Trial Convening and Organization (§ 2709).**

#### **A. Convening of the Trial (§ 2709.1).**

The trial convenor must notify the respondent in writing of the time and place of the trial. Notice must be at least twenty (20) days prior to the trial and must provide enough time for trial court selection.

#### **B. Trial Pool (§ 2709.2).**

The thirteen (13) members and two (2) alternates of the trial court shall be selected from the trial pool. The selection shall be in the presence of the respondent (and counsel), the counsel for the Church, and the presiding officer. The *Discipline* requires that special consideration be

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<sup>193</sup> EDITOR'S NOTE: Here, the *Discipline* states that the presiding officer "may" open the trial to these individuals. This appears to give discretion to the presiding officer in relation to these requests, as opposed to the *Discipline's* directive that the presiding officer "shall" open the trial at the respondent's request.

given to making the trial pool representative racially, ethnically, and gender diverse.<sup>194</sup> The respondent’s status dictates the makeup of the trial pool:

<b>Respondent</b>	<b>Makeup of the trial pool (at least 35)</b>
Bishop <sup>195</sup>	Clergy in full connection, named by the College of Bishops, in approximately equal numbers from each episcopal area within the jurisdictional/central conference
Clergy member of the annual conference, clergy member on honorable or administrative location, or local pastor <sup>196</sup>	Clergy in full connection, appointed by the district superintendent; clergy in full connection from other annual conferences may be included to ensure diversity <sup>197</sup>
Diaconal minister <sup>198</sup>	Diaconal ministers and, if necessary, Church members
Layperson <sup>199</sup>	Professing members from local churches other than the respondent’s, appointed by the district superintendent

**C. Selection of the Trial Court (§ 2709.3).**

Members of the cabinet, board of ordained ministry, and committee on investigation that previously considered the case coming before the trial court are not eligible to serve on the trial court.

In selecting the trial court, both counsel for the Church and for respondent shall have four “peremptory” challenges and unlimited “for cause” challenges. Peremptory challenges permit

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<sup>194</sup> EDITOR’S NOTE: Paragraph 2709.2 specifies racial, ethnic, and gender diversity for the trial pool. The paragraphs cited in the following five footnotes, which define the trial pool for each type of respondent, also specify that the pool should be diverse as to age, except one. The provision describing the pool for diaconal minister respondents (§ 2713.3b) does not require age diversity. It is unknown whether such inconsistency was planned or inadvertent.

<sup>195</sup> § 2712.3.

<sup>196</sup> § 2713.3a.

<sup>197</sup> The *Discipline* does not spell out how elders in full connection would be chosen from other conferences, should the number within the conference be inadequate. It might be possible for the bishop to contact the College of Bishops and request that referrals for other elders be given to the district superintendents for their appointment.

<sup>198</sup> § 2713.3b.

<sup>199</sup> § 2714.3.

counsel to remove persons from the trial pool for any reason. Disclosure of the reason for a peremptory challenge is not required. On the other hand, challenges for cause require a ruling by the presiding officer as to the sufficiency of the cause. If by reason of these challenges, the number in the trial pool is reduced below fifteen (15), additional members shall be nominated to the pool. The selection process must continue until thirteen (13) members and two (2) alternates have been selected.

It can facilitate the selection of the trial court if each member of the trial court pool completes a written questionnaire, agreed upon in advance by counsels for the Church and the respondent, and the presiding officer. This questionnaire should be completed by each trial pool member and then distributed to counsels and to the presiding officer prior to trial court selection. The replies should be held confidential. There is a sample [Trial Court Questionnaire](#) in the Appendix to this Handbook.

If questions of a personal nature are anticipated when selecting the trial court, the presiding officer may want this interview (voir dire) process to take place in a closed session, with the members of the pool called into the room one at a time.

*Decision* 980 requires that all members of the trial court uphold the *Discipline*. A question about this should be included in the questions to the pool and the trial court.

#### **D. Alternates (¶ 2709.4).**

The alternates sit as observers of the trial and only replace a trial member if that member is unable to continue. At the beginning of the trial, it is important to designate the alternates as first and second alternates. If one or both of the alternates do not replace a trial member, they are dismissed when deliberations begin.

If the trial court is reduced below thirteen (13) members during the course of the trial, due to problems or illness and after both alternates have been used, the parties may stipulate that the trial proceed with fewer than thirteen (13) trial court members. Any such agreement should be entered into the record. The *Discipline* does not address the issue of whether the trial could proceed absent such agreement. Given the required thirteen-member court, it would be unwise

to proceed further absent an agreement by the parties. Keep in mind that there must be a vote of at least nine (9) members to sustain a charge and for conviction.<sup>200</sup>

**E. Trial Court Questions (¶ 2709.5).**

Trial court members and alternates may ask questions regarding evidence submitted during the trial, with the approval of the presiding officer.

**IV. Trial Guidelines and Rules (¶ 2710).**

**A. Authority of Presiding Officer (¶ 2710.1).**

The presiding officer has a great deal of discretion in deciding trial process and procedural matters. Some matters, such as when to recess, are relatively minor. Others, such as the setting of reasonable time limits for the presentation of each side’s case, are more important and should be put in writing. The presiding officer does not have power to pronounce any judgment over the accused. That duty, as well as that of establishing the penalty, is retained exclusively by the trial court.

One of the most important duties of the presiding officer is to instruct the trial court with regard to the Church law involved in the case, both at the beginning of the trial and just prior to deliberations. Such instructions should include the exact charges, the specifications that (if proven) would lead to the sustaining of each charge, the burden of proof upon the Church to provide clear and convincing evidence of each specification and charge in order for a finding of “guilty,” and the requirement of nine (9) or more votes for conviction. In some cases, the instructions may include reading sections of the *Discipline* and possibly Judicial Decisions that are on point. However, the presiding officer may not interpret the *Discipline* to the trial court.

The [Trial Checklist](#) in the Appendix to this Handbook should be a useful tool for the presiding officer.

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<sup>200</sup> ¶ 2711.2.

**B. Order of Trial (§ 2710.2).**

The order of the trial shall be as follows:

- Opening statements by the counsels;
- Offering of documentary evidence and questioning of witnesses;
- Closing statements by the counsels;
- Deliberation; and
- Receiving of the verdict.

**C. Oaths (§ 2710.3).**

Oaths are not required. However, the presiding officer should explain that the trial will be conducted in a Christian manner and review, as relevant to the parties involved, the elements of the ordained ministry covenants (§§ 311.3f and 334) and the responsibilities of Church membership (§ 218).

**D. Entering of the Plea (§ 2710.4).**

When a respondent pleads “guilty,” evidence will be taken only in regard to the penalty that may be imposed, as the issues of fact upon which the trial would have been conducted have been resolved. If the respondent enters a “not guilty” plea, the trial shall proceed as planned.

If a respondent fails to appear for trial or refuses to participate, the court will hear evidence, make a finding of guilt or innocence, and, if necessary, fix a penalty. If only respondent’s counsel is present, the trial may proceed with that representative acting on the respondent’s behalf.

**E. Recess and Trial Procedures (§ 2710.5).**

Decisions to recess are made by the presiding officer. In unusual cases, when it becomes necessary to protect the integrity of the trial process, trial court members and alternates shall be sequestered in order to eliminate contact with third parties. Sequestering is used in criminal trials when it is feared that there may be too much outside influence (typically from media coverage), rendering the jurors unable to be neutral and unbiased in making their decision. The presiding officer must impress upon the trial court the importance of their role in remaining

neutral and unbiased and instruct them to avoid media coverage or other third-party contacts. They also need to be instructed not to discuss the trial amongst themselves, or with family, friends, the presiding officer, parties, counsels, or anyone else. Any attempt to influence members or officers of the trial court may be disobedience to the order and discipline of the Church and could lead to a complaint being filed against the offending person.

It is very important to remember that trial court members are not to be contacted by anyone during their deliberations on either the verdict or the penalty to be imposed. The Judicial Council, in *Decisions* 497 and 504, ordered a new trial in a case where a meeting between the trial court and the presiding officer took place prior to the setting of the penalty.

**F. Objections (§ 2710.6).**

If any party objects to any aspect of the proceeding, that objection must be noted in the record.

**G. Exclusion of Witnesses (§ 2710.7).**

Witnesses who have not yet testified may be excluded from the courtroom on request of the opposing party. This is a good practice to follow. This exclusion does not apply to the complainant or respondent, who always have the right to be present.

There will first be direct examination of witnesses by the party producing the witness, followed by cross-examination by the opposing party. Direct questioning of witnesses by members of the trial court may also occur, upon approval of the presiding officer.

The presiding officer determines issues of evidence relevancy and competency. The *Discipline* allows evidence of prior conduct not directly related to the charges involved, if the presiding officer determines that such evidence is “relevant and competent.” “Relevant” testimony is testimony which relates closely to the chargeable offense. “Competent” testimony is typically believable, credible, first hand information from a witness.<sup>201</sup> Third hand evidence may be found not competent in many instances. Testimony of a person who has a reputation for

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<sup>201</sup> EDITOR’S NOTE: Other provisions of the *Discipline* refer to the “relevancy and reliability” of evidence, not “relevancy and competency.” Presumably, these concepts are identical.

not telling the truth or has a medical or mental disability might be challenged as not competent. To avoid unfair influence, these questions should be considered outside the presence of the trial court.

#### **H. Recording of Proceedings (§ 2710.8).**

The presiding officer or secretary certifies the record of the trial proceedings. It is recommended that a court reporter be used to record the trial proceedings. This trial record is the only background material that may be reviewed by appellate bodies, so it must be accurate and complete. The record should include all exhibits, papers, and evidence admitted at trial. This record may be a substantial expense and may be limited, or not transcribed at all, if no appeal is made.

#### **I. Evidence (§ 2710.9).<sup>202</sup>**

Any documentary evidence that the presiding officer deems relevant and reliable may be used by the trial court during its deliberations.

#### **J. Instructions and Charges (§ 2710.10).**

The presiding officer has the limited but important role of presenting the bill of charges to the trial court. The presiding officer is required to charge the trial court as to the relevant Church law. The presiding officer may be requested by counsel to instruct on Church law.<sup>203</sup> The presiding officer may not:

- Review or explain the evidence;
- Comment on the merits of the case presented;
- Express, while the court is deliberating, any opinion as to the law or the facts;  
or
- Interpret Church law to the trial court.

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<sup>202</sup> See also [Chapter 11, Section IV-A](#); [Chapter 12, Section IV-D](#).

<sup>203</sup> General Conference has never attempted to specifically define the chargeable offenses in § 2702. It has generally been thought that it is up to the conscience and judgment of each member of the trial court to decide what facts are necessary to sustain or not sustain a specific chargeable offense. Each clergyperson is in a covenant relationship and charged with living a moral, Christian life. The trial court must draw on its own knowledge, experience, education, understanding of the covenant, Christian faith, and prayer to arrive at an ultimate decision as to the definitions of an offense. *But see Decision 980* (overturning a decision by a committee on investigation); dissent to *Decision 984*.



If either counsel is aware of certain Church law instructions that he/she wishes to be given by the presiding officer, these should be presented in writing. Whenever possible, this should be discussed in a preliminary meeting. Difficult or complicated issues of church law should not be left to the last minute. The charge may include reading the *Discipline* or Judicial Decisions that are on point.

Instructions may be given to the trial court at the beginning of the trial, during the trial, prior to beginning deliberations, during the deliberations, or at any combination of these points.

## **V. Power of the Trial Court (§ 2711).**

Full power to try the respondent rests with the trial court. The trial court is intended to remain a continuing body throughout the disposition of the complaint. Continuous presence by the trial court members is mandated. Should any trial court member or alternate miss the presentation of any evidence or of any oral argument, that member is disqualified from further service on the trial court and shall not participate in the deliberations and the vote.

### **A. Votes (§ 2711.2).**

The burden of proof for a vote to convict shall be “clear and convincing evidence.”<sup>204</sup> The *Discipline* requires that at least nine (9) members of the trial court vote to sustain a charge and to convict.<sup>205</sup> Therefore, if eight (8) members vote in favor of conviction and five (5) do not, the respondent shall be acquitted.<sup>206</sup> The fact that some members do not vote does not alter the nine (9) vote requirement. A vote must be taken on each separate charge and specification (i.e.,

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<sup>204</sup> Standards of proof are, by their nature, subjective relative to the individuals making the decision. In civil law, one standard often used is the “preponderance of evidence” standard. This is often meant to convey a “more likely true than not true” position. It has been analogized to a 51% standard of proof. Another standard is a required finding that a person is guilty “beyond a reasonable doubt.” This is a very strong standard of proof, basically requiring that a trier of fact would have no reasonable doubt that the allegations have been proven as true. The “clear and convincing” standard falls somewhere between a “preponderance of evidence” and a “beyond a reasonable doubt” standard.

<sup>205</sup> EDITOR’S NOTE: On its face, this provision seems to contemplate two different votes by the trial court – one to “sustain the charge” and one to “convict.” However, no guidance is provided as to the difference between these two votes. Thus, this Handbook shall treat them as if they are one and the same, and shall refer to the voting action of the trial court as either producing a “conviction” or an “acquittal.”

<sup>206</sup> If any member of the trial court has not attended all the sessions, he or she may not vote, but the rest of the court may proceed. An alternate should vote in that member’s place.

the trial court may convict the respondent of one charge but acquit as to another). A sample [Trial Court Verdict Form](#) is provided in the Appendix to this Handbook.

**B. Penalties – If the Trial Results in Conviction (§ 2711.3).**

If the trial court convicts the respondent, a separate vote must be taken to determine the penalty to be imposed. Prior to voting on the penalty, the trial court may hear further testimony and counsel arguments. For a penalty to be imposed, only seven (7) votes are required. The penalty imposed by the trial court may be removal from professing membership, termination of conference membership, revocation of credentials of conference membership, revocation of ordination or consecration, suspension, or some other lesser penalty.

Any terms and conditions of a “lesser penalty” must be clear and enforceable. The presiding officer (on his/her own initiative or at the request of counsel) may ask the trial court to clarify or explain a penalty. This clarification should be sought before the trial court announces the penalty. An example of a lesser penalty is as follows:

The clergyperson shall be suspended for up to two years and the board of ordained ministry shall assist in providing counseling. When the clergyperson has successfully completed counseling, the clergyperson may return to active ministry. Benefits will continue.

While the trial court has the right to make these decisions, the board of ordained ministry and the conference may have difficulty understanding how to implement them. A clearer penalty might give the board of ordained ministry and the conference discretion in implementation:

The clergyperson shall be suspended for a period of two years.<sup>207</sup> The board of ordained ministry shall require counseling during that period, under terms and conditions that it imposes, in its sole discretion. Reports of the counselor will be provided to the executive committee of the board of ordained ministry. The counseling shall be paid for by the clergyperson. No compensation will be paid to the clergy during this suspension. The conference, at its option, may make arrangements with The General Board of Pensions and Health Benefits or other health care provider, to continue in providing health benefits.

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<sup>207</sup> One jurisdictional committee on appeals decided that an indefinite suspension, contingent on certain events taking place, was improper. Therefore, the trial court may be well advised to set an absolute limit. *See Decision* 240.

If the trial court imposes a lesser penalty, it should be clearly spelled out, and if possible, reasonably implemented and supervised by a third party, such as the board of ordained ministry. For instance, if the trial court imposes as a penalty mandatory counseling four times a month for a year, practical questions can arise. Who chooses the counselor and what qualifications should the counselor have? Who pays? Who supervises the counseling? Does anyone receive reports? What happens if the clergy person refuses to attend?

## **VI. Trial Process (§§ 2712-14).**

Much of the information contained in §§ 2712-14 is discussed earlier in this Chapter, and in other Chapters (who convenes the court, who appoints, and serves as, counsel for the Church, the makeup of the trial pool, etc.) Again, many of these steps will vary, depending on whether the respondent is a bishop, other clergy member, a diaconal minister, or a layperson. The chart on the following page presents, as comprehensively as possible, the specifics pertaining to each respondent, as contained in §§ 2712-14.

### **A. Preservation of Trial Court Records.**

One general item to note in regard to these paragraphs is the maintenance of the trial records. All records from the trial must be kept and sent to the appropriate secretary, including any prior iterations of the Bill of Charges and Specifications. These documents may become very important if an appeal is made. Questions have arisen as to how long these records should be kept. The *Discipline* is silent on a cutoff point at which trial court records can be destroyed. During the lifetime of the respondent, trial records should be kept with the secretary. After that time (assuming that there could be no further appeals, decisions affecting a pension, etc.), it would be appropriate to forward such records on to Archives and History, or to destroy them.

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<b>Respondent</b>	<b>Convener</b>	<b>Presiding Officer</b>	<b>Trial pool</b>	<b>Counsel for the Church</b>	<b>Who receives trial court records</b>
Bishop <sup>208</sup>	President of the College of Bishops of the jurisdictional/central conference	President of the College Bishops (or a bishop designated by him/her)	Clergy in full connection, named by the College of Bishops, in approx. equal numbers from each episcopal area of the jurisdictional/central conference	Bishop <u>or</u> clergyperson in full connection	Secretary of the jurisdictional/central conference
Clergy member of the annual conference, clergy member on honorable or administrative location, or local pastor <sup>209</sup>	Resident bishop	Another bishop, appointed by the resident bishop	Clergy in full connection, may be from another annual conference to ensure diversity	Clergyperson in full connection	Secretary of the annual conference
Diaconal minister <sup>210</sup>	Resident bishop	Another bishop, appointed by the resident bishop	Diaconal ministers, or Church members, if necessary	Clergyperson in full connection	Secretary of the annual conference
Layperson <sup>211</sup>	District Superintendent	District superintendent (or a clergyperson in full connection designated by him/her)	Professing members from local churches other than the respondent's	Professing member or clergyperson of the Church	Secretary of the charge conference

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<sup>208</sup> ¶ 2712. If the president is the respondent, the secretary is the convener and presiding officer.

<sup>209</sup> ¶ 2713.

<sup>210</sup> *Id.*

<sup>211</sup> ¶ 2714.

# Chapter 14

## APPEAL PROCEDURES

### I. Appeal Procedures – General (¶ 2715).

Anyone seeking to appeal the trial court’s decision must give written notice within thirty (30) days<sup>212</sup> and must give to the “officer receiving such notice” and to “the counsel”<sup>213</sup> a written explanation of the grounds for the appeal.<sup>214</sup> The Church does not have the right to appeal the trial court’s decision.<sup>215</sup> The “officer receiving such notice” depends upon the respondent’s status:

Respondent	“Officer receiving such notice”
Bishop <sup>216</sup>	President and secretary of the College of Bishops and the presiding officer
Clergy member of the annual conference, clergy member on honorable or administrative location, or local pastor <sup>217</sup>	Presiding bishop of the conference and the presiding officer
Diaconal minister <sup>218</sup>	Presiding bishop of the conference and the presiding officer
Layperson <sup>219</sup>	Pastor and district superintendent

The appellate body’s hearing shall be limited to the grounds contained in the written explanation.

Generally, the appellate body does not have the discretion to refuse to hear an appeal.<sup>220</sup> However, if the respondent failed or refused to appear at trial, either in person or through

<sup>212</sup> EDITOR’S NOTE: Here, the *Discipline* does not state from what date/event this time period is calculated. The relevant provisions of ¶¶ 2716-17, however, provide that appeals must be within thirty (30) days of “conviction.”

<sup>213</sup> EDITOR’S NOTE: This general reference to “counsel” likely means the Church’s counsel, specifically. As the Church does not have the right to appeal a trial court decision (¶ 2715.10), it is the respondent who would be bringing the appeal.

<sup>214</sup> ¶ 2715.1.

<sup>215</sup> ¶ 2715.10.

<sup>216</sup> ¶ 2716.2.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> ¶ 2717.1

<sup>220</sup> *See* ¶ 2715.3.

counsel, the appellate body may determine if the right to appeal is forfeited.<sup>221</sup> Additionally, should the appellate body determine that the respondent has engaged in misconduct, including bringing a civil lawsuit against any of the parties connected to the trial court prior to the appeal being decided, refusing to abide by the trial court's findings, withdrawing from the Church, or failing to appear in person or through counsel to prosecute the appeal, the right to appeal is forfeited.<sup>222</sup> The respondent's death does not forfeit the right to appeal.<sup>223</sup> The respondent's heirs or legal representatives may bring the appeal on the respondent's behalf. Once the right to appeal is forfeited, it cannot be revived.<sup>224</sup>

## II. The Appeal Hearing.

The appellate body may only answer two questions:

- Does the weight of the evidence support the conviction?
- Did errors of Church law vitiate the conviction and/or the penalty?<sup>225</sup>

In answering these questions, the appellate body may only consider the trial court record and the Church's and respondent's counsels' arguments.<sup>226</sup> Under the *Discipline*, the trial court is directed to produce a written copy of the record. It would appear to be discretionary whether the trial court provides the written copy to the appellant free of charge or forwards it with a request for a portion of the cost. The appellate body may not hear witness testimony.<sup>227</sup> Although the parties may not present evidence in an appeal from a trial court decision, questions of Church law may be raised.<sup>228</sup>

The appellate body may reverse all or a portion of the conviction, remand the case for a new trial on guilt or penalty, or lessen the penalty imposed by the trial court.<sup>229</sup> If any of these actions are taken, the appellate body must provide the convening officer of the trial court with a

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<sup>221</sup> ¶ 2715.3.

<sup>222</sup> *Id.*

<sup>223</sup> ¶ 2715.5.

<sup>224</sup> ¶ 2715.4.

<sup>225</sup> ¶ 2715.7.

<sup>226</sup> *Id.*, ¶ 2715.6.

<sup>227</sup> ¶ 2715.7.

<sup>228</sup> ¶ 2715.9.

<sup>229</sup> ¶ 2715.8.

statement explaining the grounds for such action.<sup>230</sup> A reversal or remand of a conviction or penalty should not be based on harmless errors.<sup>231</sup> If the body does not reverse, remand, or modify the trial court's decision, that judgment shall stand. Actions by the appellate body require a majority vote.<sup>232</sup> See *Decision 1027* for an example of a trial court verdict that was reversed on appeal by the jurisdictional court of appeals, and then reversed again by the Judicial Council.

Any procedural questions should be presented to the presiding officer or secretary of the appellate body.<sup>233</sup> As with other steps in the judicial process, the *Discipline* prohibits all other *ex parte* communications with the appellate body.<sup>234</sup>

The appellate body may retain legal counsel, which may not be the conference chancellor from the annual conference from which the appeal comes.<sup>235</sup>

#### **A. Weight of the Evidence.**

An appeal is not meant to be a new trial or a do-over of the work that was done to bring the case forward to this point. The committee on appeals reviews only the trial record, which includes the evidence and documents of the trial. Civil appellate courts have different standards to review a trial court's evaluation of the evidence. One typical standard is to review whether the verdict is against the manifest weight of the evidence presented at trial. When appellate courts weigh evidence that has already been evaluated by the trial court, there is a strong deference to the decision of that finder of fact. That is not to say that civil trial court verdicts are never reversed, but there is a high standard applied when reversing the trial court's verdict. This background may be useful in determining the answer to the question whether the weight of the verdict supports the conviction.

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<sup>230</sup> ¶ 2715.2.

<sup>231</sup> ¶ 2715.8.

<sup>232</sup> *Id.*

<sup>233</sup> ¶ 2715.11.

<sup>234</sup> *Id.*, ¶ 2715.13.

<sup>235</sup> ¶ 2715.7.

## **B. Errors of Law.**

The second ground for appeal involves a review of specified rulings of Church law made by the presiding officer to determine whether any errors were made. An example of such questions would be whether the fair process requirements in the *Discipline* were adequately followed. Should the committee on appeals determine that, for some reason, the appellant was not given the required time to prepare, was not fully and properly advised of the charges brought against him or her, or in some other specific way was procedurally denied fair process, the committee may consider an appropriate remedy. The committee must be convinced that, even if there was a failure of fair process, such errors were sufficient to vitiate the verdict and/or the penalty. In other words, the committee may find that the challenged rulings of Church law were appropriate, that the rulings were harmless errors of law,<sup>236</sup> or that the rulings were so erroneous that the verdict and/or penalty should be overturned.

## **III. Limited Appeal by the Church from the Committee on Investigation (§ 2715.10).**

Although the Church cannot appeal a trial court decision, it does have a very narrow right to appeal if the committee on investigation has committed “egregious errors of Church law” and there has been no trial. In *Decision* 980, the Judicial Council held that “nullification of the *Discipline* is egregious error” and affirmed the Church’s appeal pursuant to this paragraph. Other possible examples of such a serious error may be:

- The committee fails to tell counsel for the Church about the hearing date until one day prior to the hearing.
- The complainant sends the committee several letters, allegedly from the respondent, which totally contradict the respondent’s statements regarding the judicial complaint. The committee refuses to show the letters to counsel for the Church and dismisses the complaint.
- A party’s assistant counsel is allowed to address the committee.

A committee’s dismissal of a complaint in and of itself is not an egregious error of Church law. If the appellate body finds that the committee made an “egregious error,” it shall remand the matter back to the committee for a new hearing and include a statement to the committee chair explaining the grounds for the remand.

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<sup>236</sup> See e.g., *Decision* 1094.



**A. Appeals by the Church from the Jurisdictional Committee on Appeals.**

Paragraph 2716 appears to prohibit the Church from appealing a decision by the jurisdictional committee on appeals. However, the Judicial Council considered such an appeal by the Church in *Decision 1027*, citing without discussion ¶ 2609.8 as the jurisdictional basis.

**IV. Appeals by Bishops, Clergy, Local Pastors, and Diaconal Ministers (¶ 2716).**

When the presiding officer of the trial court receives notice of an appeal by a bishop, clergyperson, local pastor, or diaconal minister, he or she shall notify the secretary of the jurisdictional/central conference committee on appeals and forward the documents of the case to that person (or instruct the annual conference secretary to do so).<sup>237</sup> The committee must then notify, within thirty (30) days, the presiding bishop of the respondent's annual conference (or the president and/or secretary of the College of Bishops if the respondent is a bishop) and the respondent of the date, time, and place of the appeal hearing, which must be within 180 days of the committee receiving notice of the appeal.<sup>238</sup> At the hearing, the respondent, the Church, and the annual/missionary/provisional conference may be represented by counsel.<sup>239</sup> The committee itself may also retain counsel as an adviser.<sup>240</sup>

**A. Expenses (¶ 2716.4).**

The expenses incurred by the committee, including the cost of its counsel, shall be paid by the administrative fund of the jurisdictional/central conference from which the appeal comes. The committee president must approve all of these expenses. The annual conference shall pay the expenses of the counsel for the Church. The respondent shall be responsible for his or her own expenses, unless the committee determines that fairness requires that the annual conference pay such expenses.

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<sup>237</sup> ¶ 2716.3.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *See* ¶ 2716.4.

**B. Makeup of the Committee on Appeals (§ 2716.1).**

Each jurisdictional/central conference shall elect a committee on appeals, from nominations made by the College of Bishops, which shall consist of four (4) clergy, one (1) diaconal minister, one (1) full-time local pastor, and three (3) laypersons (who have been members of the Church for at least six (6) consecutive years). Alternates for each of these members shall also be elected. Committee members serve until their successors are elected. Any committee member from a conference in the appellant's episcopal area shall be ineligible to hear that appeal. Vacancies in the committee are filled by the College of Bishops. Once constituted, the committee shall elect a president and secretary and adopt its own rules of procedure. The College of Bishops designates a bishop to convene the committee so that it may elect its officers. Aside from appeals to the Judicial Council on questions of Church law pursuant to ¶2609.8, the decision of the committee is final.

**V. Appeals by Lay Members (§ 2717).**

After receiving a notice of appeal from a lay member, the district superintendent gives written notice of the date, time, and place of the hearing to "all concerned."<sup>241</sup> This hearing must occur at least ten (10) days, but not more than thirty (30) days, after the district superintendent has given notice.<sup>242</sup> After the committee on appeals makes a determination, the district superintendent shall certify such decision to the pastor of the lay member's local church.<sup>243</sup>

**A. Makeup of the Committee on Appeals (§ 2717.3).**

The district superintendent appoints eleven (11) professing members of the Church within the respondent's annual conference that are not from the respondent's local church. These professing members cannot be the lay leader or a lay member of the annual conference and cannot have served on the trial court. When the committee is convened, at least seven (7) of these members shall be selected to serve. The respondent's and Church's counsels may

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<sup>241</sup> ¶ 2717.2.

<sup>242</sup> *Id.*

<sup>243</sup> ¶ 2717.4.

challenge the selection of the members, for cause, which shall be ruled upon by the presiding officer (the district superintendent).

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# APPENDIX

## DEFINITIONS

**Administrative complaint:** A complaint based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties. It is prepared and presented to the board of ordained ministry by the bishop.

**Administrative process:** A hearing by the board of ordained ministry, or its committee, of an administrative complaint (or a hearing to process a request for leave of absence during the pendency of a judicial complaint). Not part of the judicial process. Penalties are specified in ¶ 362, but cannot include excommunication or defrocking.

**Bill of charges and specifications:** A document drafted by the committee on investigation when it refers a judicial complaint forward for trial. Sometimes just called “bill of charges”. *Cf.* “judicial complaint,” which is the document prepared by counsel for the Church.

**Charge:** The chargeable offense or offenses, as set forth in the bill of charges, which the committee on investigation votes to send to trial.

**Complainant:** The person making the original allegations. Sometimes referred to in the *Discipline* as “the person making the original complaint.”

**Complaint:** A written and signed statement alleging a chargeable offense (in the case of a lay or clergy respondent) or unsatisfactory performance of the ministerial duties (in the case of a clergy respondent). May eventually become an administrative or judicial complaint. A complainant initially may bring a “complaint” verbally, which may trigger investigation or supervision by the cabinet. However, in order for a complaint to be processed formally as an administrative or judicial matter, it must be in a signed, written statement.

**Confidential:** A matter that is not to be disclosed to persons who have no legitimate need or right to know. Subject to ¶¶ 361.1e, 635.2l, and 2701.4c, a matter that is confidential nonetheless may be disclosed to investigatory bodies, parties to a complaint, and, in appropriate cases, to families and affected persons, congregations, and/or organizations.

**Convener of the trial court:** Person who referred the complaint to counsel for the Church, or otherwise arranged for a presiding officer, trial court, and time and location of trial.

**Counsel for the respondent:** Person selected by the respondent to advocate, with voice, on the respondent's behalf. The respondent may also select an assistant counsel, without voice. May be appointed by the presiding officer if the respondent fails to do so.

**Counsel for the Church:** The individual appointed to draft the complaint and press the Church's case.

**Fair process:** The special protections set forth in the *Discipline* that are intended to provide fair procedures for the adjudication of complaints. Sometimes the entire supervisory, administrative, and judicial process is inaccurately called "fair process."

**Judicial complaint:** The document that is drafted and signed by counsel for the Church, based on the complaint relating to a chargeable offense (and related information), referred by the bishop for handling as a judicial matter. It is delivered by counsel for the Church to the chair of the committee on investigation.

**Judicial process or proceeding:** All proceedings, from the referral of a judicial complaint to the committee on investigation to the final disposition of that complaint. It is based on chargeable offenses and may result in defrocking or excommunication.

**Just resolution:** A mediated, voluntary, and non-retributive resolution of a complaint.

**Respondent:** The person against whom an administrative or judicial complaint has been brought.

**Specifications:** The fact statements, as set forth in the bill of charges and specifications that must be proven at trial to support a conviction.

**Supervisory response:** The informal, pastoral, and supervision-based response made to a complaint. It is not part of any judicial or administrative process. Unless the complaint is resolved, a supervisory response precedes any further administrative or judicial process.

**Trial court:** The persons selected to render a verdict in a trial, also referred to as “members of the trial court.” The civil equivalent is the petit jury.

**Trial court pool:** The persons appointed to potentially serve as members of the trial court.

**Verbatim record:** The transcript, ideally prepared by a court reporter, of a proceeding, that is intended to record every word spoken.

**Voice, right of:** The right to engage in substantive discussion, argument, or examination during the meeting/hearing by the committee on investigation or during trial. Counsel has voice, assistant counsel does not.

*These definitions are not official or binding. They are intended to be helpful, broad statements to give the newcomer a snapshot of how some key words are used in this Handbook and in the Disciplinary paragraphs on the judicial and administrative processes. The Judicial Council has discussed the issue of defining chargeable offenses in several of its Decisions.*

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## SUMMARY TABLE OF JUDICIAL PROCESS REQUIREMENTS<sup>244</sup>

		Bishops	Clergy of an annual conference or on location and local pastors	Diaconal ministers	Lay members	
<b>Who receives original complaint:</b>		COB president (and secretary)	Presiding bishop	District Superintendent (DS)	Pastor/co-pastors in charge	
<b>Counsel for the Church:</b>		Elder in full connection from the same jurisdictional/central conference, appointed by the COB president	Clergyperson in full connection (CIFC), appointed by the bishop	CIFC <u>or</u> a diaconal minister, appointed by the respondent's DS	Member of the Church (clergy <u>or</u> lay), appointed by the pastor/co-pastors in charge	
<b>Committee on Investigation</b>	<b>Nomination of members:</b>	By the COB and from the floor of the jurisdictional/central conference	By the presiding bishop	By the presiding bishop	N/A	
	<b>Election/appointment of members:</b>	By the jurisdictional/central conference	Quadrennially by the annual conference	Quadrennially by the annual conference	By the pastor/co-pastors in charge	
	<b>Composition</b>	<b>Memo. 1006:</b>	7 CIFC (5 alternates), 2 <u>lay observers</u> (1 alternate)	7 CIFC (5 alternates), 2 <u>lay observers</u> (1 alternate)		
		<b>2008 Discipline:</b>	4 CIFC (3 alternates), 3 professing members (3 alternates)	4 CIFC (3 alternates), 3 professing members (3 alternates)	At least 4 diaconal ministers <u>or</u> professing members (5 alternates), 3 CIFC (5 alternates)	4 professing members, 3 CIFC

<sup>244</sup> EDITOR'S NOTE: This table summarizes much of the respondent-specific information from Chapters 10-14. However, all comments on, and explanations and discussions of, this information have been omitted. Thus, this table should be used in conjunction with, rather than in place of, those Chapters.



		<b>Bishops</b>	<b>Clergy of an annual conference or on location and local pastors</b>	<b>Diaconal ministers</b>	<b>Lay members</b>
<b>Committee on Investigation</b>	<b>Convening of the committee:</b>	Within 60 days of the committee chair receiving the complaint			No deadline given
	<b>Suspension is recommended by:</b>	At least 5 committee members	At least 5 committee members	At least 2/3 of the committee	At least 5 committee members
	<b>No. of votes required to forward bill of charges:</b>	5	5	2	5
	<b>Who receives bill of charges (in addition to respondent):</b>	Jurisdictional/central conference secretary, COB president and secretary, counsel for the Church, jurisdictional committee on episcopacy chair	Complainant, annual conference secretary, counsel for the Church, resident bishop	Annual conference secretary, Board of Ordained Ministry chair, respondent's district superintendent, counsel for the Church, resident bishop	Charge conference recording secretary, counsel for the Church, pastor/co-pastors in charge, DS
<b>Trial Court</b>	<b>Makeup of the trial pool (at least 35):</b>	CIFC, named by the College of Bishops, in approx. equal numbers from each jurisdictional/central conference episcopal area	CIFC, appointed by the district superintendent and, if necessary to ensure diversity, CIFC from other conferences	Diaconal members and, if necessary, Church members	Professing members from local churches other than the respondent's, appointed by the DS
	<b>Convenor of the court:</b>	Jurisdictional/central conference COB president	Resident bishop	Resident bishop	DS
	<b>Presiding officer:</b>	Convenor, or another bishop designated by him/her	Another bishop, appointed by the convenor	Another bishop, appointed by the convenor	Convenor, or another CIFC appointed by him/her
	<b>Who receives trial court records:</b>	Jurisdictional/central conference secretary	Annual conference secretary	Annual conference secretary	Charge conference secretary

		<b>Bishops</b>	<b>Clergy of an annual conference or on location and local pastors</b>	<b>Diaconal ministers</b>	<b>Lay members</b>
<b>Appeals</b>	<b>Notice of appeal must be given to:</b>	COB president and secretary and presiding officer	Presiding bishop and presiding officer	Presiding bishop and presiding officer	Pastor and DS
	<b>Makeup of committee:</b>	4 clergy, 1 diaconal minister, 1 full-time pastor, 3 laypersons (who have been Church members for at least 6 consecutive years), nominated by COB and elected by the jurisdictional/central conference			11 professing members within the respondent's annual conference but not from the respondent's local church, appointed by DS
	<b>No. of votes required to take action:</b>	A majority			

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# SAMPLE AGREEMENT FOR A FACILITATED CONVERSATION

## A JUST RESOLUTION PROCESS

The following is a sample of an Agreement for a Facilitated Conversation based on components described on pages 45-46 of the manual “Just Resolution and Restorative Justice Principles in the Complaint Procedure of The United Methodist Church” available at [www.justpeaceumc.org](http://www.justpeaceumc.org). An agreement is developed by the facilitator(s) in consultation with the appropriate instituting persons and parties in the process and will include items specific to those circumstances. This is a sample of key components.

---

All parties to this process understand and agree as follows:

1. This facilitated conversation will take place at **[name of location]**, located at **[address of location]** on **[days and dates]**. We will begin at **[time]** and end at approximately **[time]** with a meal break. We will resume on **[day and date]** at **[time]** and end by **[time]** with a meal break. If we come to a just resolution prior to the designated ending time, we will adjourn.
2. In addition to the facilitators, the following persons may participate: **[List names of participants]**.
3. The facilitators’ role is to manage the process of the conversation. The facilitators are not decision makers. **[Names of facilitators]** are impartial participants and do not represent any party.
4. This is a non-judicial process. It is a voluntary facilitated conversation between the parties trying to seek a just and healing resolution. Every effort will be made to provide a safe and fair process and protect due process for the parties. By its nature, this facilitated conversation seeks to enable open communication unencumbered by more formal judicial practices such as motions or cross examinations. What is shared in the context of this facilitated conversation may not be used against the parties in any other church judicial or administrative proceeding (including but not limited to a potential church trial) or civil action.
5. The facilitators, at times, might need to meet separately with the parties in order to further the conversation and to attempt to reach resolution. The parties agree that such separate meetings can and should take place and waive any rights, if such exist, to be present at such separate meetings.
6. In order to promote frank communication and resolution, personal information disclosed during this process will be kept confidential and is privileged from disclosure in any proceeding, unless it is agreed to do otherwise during our time together. The only other exception to confidentiality is the threat of serious imminent harm to someone. No party shall subpoena the facilitators, their documents or notes in any proceeding. We recognize

that it would be good for all the participants to reach a place where they can be as transparent as they can be to the larger community of the church, but this transparency and what is disclosed shall only happen by agreement.

7. To facilitate the conversation, we will use a circle process of accountability and healing, using a talking piece.
8. All decisions shall be made by consensus with the understanding that consensus is where everyone is willing to accept the outcome, even though participants might not necessarily agree.
9. If no resolution is reached, the matter shall be returned to **[name appropriate administrator of process depending on when referred]**.
10. The parties have agreed to the relational covenant found below.
  - a. Speak with respect:
    - i. Speak only when you have the talking piece.
    - ii. Speak from the heart.
    - iii. Speak only for yourself.
    - iv. Be specific.
    - v. Speak in a way that encourages dialogue.
    - vi. Be brief and to the point.
  - b. Listen with respect:
    - i. Listen for understanding.
    - ii. Be open to be transformed.
  - c. Stay in circle: Respect for the circle calls upon people to stay in circle while the circle works to find resolution to the issues raised.
  - d. Keep personal information confidential.

**SIGNATURES:**

_____	_____
_____	_____
_____	_____

**DATE:** \_\_\_\_\_

## SAMPLE FORMS

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When hearings are held, ¶¶ 362.2*b* and 2701.2*b* require that there be at least twenty (20) days notice given. The following forms are suggested ways to provide a notice of hearing and a certificate of service, which gives evidence that the notice was actually sent.

Where a formal written notice is required, there should be proof it was received or at least proof of delivery. This can be accomplished by **certified mail, return receipt requested, as well as regular mail or by hand delivery**. When the return receipt card is returned it should be attached as part of this written certificate of service to show both that the service was made and that there was actual delivery. By having a verbal notification certificate, there is also proof that the party had actual knowledge of the matter. **This is not to suggest that a verbal notification is the proper way, by itself, to provide notice.** The verbal notice should only be used to supplement the written notice.

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# Sample Notice of Hearing Form

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## NOTICE OF HEARING

**[Date]**

In the matter of **[respondent's name]**

To: **[name and address of respondent/complainant/etc.]**

You are hereby notified that on **[day, date, and year of hearing]**, at **[time of hearing]**, a hearing of the **[\_\_\_\_\_ conference trial court/committee on investigation/committee on appeals]** will be conducted at **[location of hearing]**, for the purpose of

**[Purpose and description of hearing - this notice must give the reason for the hearing with sufficient detail to allow the respondent the right to prepare a response and must be given not less than twenty days prior to the hearing]<sup>245</sup>**

If you have any questions, you may contact me at **[presiding officer's/committee chair's/convenor's address, email, and phone number]**.

**[Name and signature of presiding officer/committee chair/trial convenor]**

***NOTE: A Certificate of Service Form should be completed and attached to any notice that is sent.***

---

<sup>245</sup> This information should also be incorporated into a letter or memo that will become part of the file.

## Sample Certificate of Service Forms

The following are examples of proof/certification of service, which may be used when a notice of hearing is given. The certification should be attached to the notice of hearing form.

---

### CERTIFICATE OF SERVICE

I, [name of person certifying the mailing], deposited the foregoing notice in the U.S. Mail on [day, date, and year], addressed to [name and address of respondent/complainant/witness/etc.].

---

[Signature of person certifying the mailing]

---

### CERTIFICATE OF PERSONAL SERVICE

I, [name of person certifying the service], personally delivered a copy of the foregoing notice to [name of respondent/complainant/witness/etc.] at [location, day, date, and time of service].

---

[Signature of person certifying the service]

---

### CERTIFICATE OF VERBAL NOTICE\*

I, [name of person certifying verbal notice], personally [telephoned/spoke in person to] [name of respondent/complainant/witness/etc.] at [telephone number/location of in person meeting] on [day, date, and time of verbal notice]. I personally informed [name of respondent/complainant/witness/etc.] of the [hearing/meeting/etc.] on [date, time, and location of hearing/meeting/etc.] and that the purpose of said [hearing/meeting/etc.] was:

[Purpose and description of hearing - this notice must give the reason for the hearing with sufficient detail to allow the respondent the right to prepare a response and must be given not less than twenty days prior to the hearing.]

---

[Signature of person certifying the verbal notice]

---

*\*Verbal notice is in addition to, not in place of, written notice.*

# Sample Form to Witness at a Committee on Investigation

---

## NOTICE TO APPEAR

**[Date]**

In the matter of **[respondent's name]**

To: **[name and address of witness]**

You are requested by the Committee on Investigation to appear as a witness in the matter of **[respondent's name]** and to testify at the committee's hearing to be held on **[day, date, and time of hearing]**, at **[location of hearing]**.

When you arrive, please check in with the secretary or chair of the committee. If you have questions, please call **[name of committee chair or secretary]** at **[phone number]**.

Issued in the name of the **[name of the annual conference]** of The United Methodist Church.

**[Name and signature of chair/secretary]**

**[Date]**

**NOTE:** *A Certificate of Service Form should be completed and attached to any notice that is sent.*



# SAMPLE JUDICIAL COMPLAINT/BILL OF CHARGES AND SPECIFICATIONS AND SUPPORTING DOCUMENTS

This sample Judicial Complaint/Bill of Charges and Specifications and Supporting Documents (list of written documents and exhibits, list of suggested witnesses) are entirely fictitious. It is presented solely to show one way that charges and specifications may be presented. It attempts to be realistic by dealing with an imperfect set of facts and events.

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## THE COMMITTEE ON INVESTIGATION OF THE ABC ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH

In the Matter of Rev. Phillip Doe, Respondent

The Counsel for the Church of the ABC Annual Conference of The United Methodist Church (“Conference”), pursuant to ¶ 2706 of the *Discipline*, brings this Judicial Complaint against Rev. Phillip Doe, on the basis of the complaints of Ms. Sally Smith and District Superintendent June Cook (on behalf of Ms. Wanda Jones). This is a confidential conference document, and shall not be shared with any unauthorized individuals.

### **Statement of Information [OPTIONAL]**

The respondent in this matter is Rev. Phillip Doe. **[Fill in appropriate biographic data with: education, conference relationship, appointments, personal information, as necessary]** Rev. Doe is currently appointed to the First United Methodist Church of Metropolis and has been there since 1993.

The initial complainants were Ms. Sally Smith and District Superintendent June Cook, on behalf of Ms. Wanda Jones.

Ms. Sally Smith is a member of Trinity United Methodist Church in Springfield. She was a member of First United Methodist Church of Metropolis from 1985 to 2005. Ms. Smith is 32 years old, married and has one child.

Ms. Wanda Jones not currently a member of any United Methodist church and was not at the time of the alleged misconduct. She is 28 years old, divorced, with no children.

Rev. June Cook is district superintendent for the XYZ District of the ABC Annual Conference, in which Rev. Doe serves.

## Charge I

**Charge:** The first charge is immorality, under ¶ 2702.1a of the *Discipline*, relating to the Complaint by Ms. Sally Smith

**The charge of immorality is supported by the following specifications:**

- a. Hugging and kissing on or about June 14, 2005, around 3:30 p.m. in pastor's office at First UMC, Metropolis after a counseling session.
- b. Attempted sexual contact in pastor's office and contact of a sexual and emotional nature in Smith's car in the church parking lot on or about July 23, 2005, around 4:00 p.m. after a counseling session.
- c. Sexual contact of kissing and touching in the parking lot of the Sugar Bowl restaurant, on Route 34 near Metropolis on July 27, 2005, around 3:00 p.m.
- d. Sexual contact of kissing, hugging and touching in Doe's office on or about August 22, 2005 at 3:00 p.m. during a counseling session.
- e. Statements by Doe after mid July 2005, of the special relationship, how much he cared for her personally, about Doe's unhappy marriage and his promises to continue to see Smith, all of which were well beyond the proper bounds of a counselor-counselee relationship.

## Charge II

**Charge:** The second charge is sexual misconduct, under ¶ 2702.1k of the *Discipline*, relating to the Complaint by Ms. Sally Smith

**The charge of sexual misconduct is supported by the following specifications:**

- f. Hugging and kissing on or about June 14, 2005, around 3:30 p.m. in pastor's office at First UMC Metropolis after a counseling session.
- g. Attempted sexual contact in pastor's office and contact of a sexual and emotional nature in Smith's car in the church parking lot on or about July 23, 2005 around 4:00 p.m. after a counseling session.
- h. Sexual contact of kissing and touching in the parking lot of the Sugar Bowl restaurant, on Route 34 near Metropolis on July 27, 2005, around 3:00 p.m.
- i. Sexual contact of kissing, hugging and touching in Doe's office on or about August 22, 2005, at 3:00 p.m. during a counseling session.

- j. Statements by Doe after mid July 2005, of the special relationship, how much he cared for her personally, about Doe’s unhappy marriage and his promises to continue to see Smith, all of which were well beyond the proper bounds of a counselor-counselee relationship.

**Charge III**

**Charge:**        **The third charge is disobedience to the order and discipline of The United Methodist Church, under ¶ 2702.1e of the *Discipline*, relating to the Complaint by Ms. Sally Smith**

**The charge of disobedience to the order and discipline of The United Methodist Church is supported by the following specifications:**

- a. Rev. Doe, after being specifically told by the Bishop not to attempt to contact Smith, called Smith on the telephone at her home on the afternoon of February 18, 2006.

**Date:** \_\_\_\_\_

**Respectfully Submitted,**

\_\_\_\_\_  
**Counsel for the Church**

[THIS SPACE INTENTIONALLY LEFT BLANK]

## LIST OF WRITTEN DOCUMENTS AND EXHIBITS

1. Copy of the initial, signed complaint of Sally Smith, dated February 19, 2006.
2. Copy of Wanda Jones statement as written by District Superintendent June Cook and initialed by Ms. Jones, dated December 3, 2005.
3. Transcript and copy of an audio tape of a voice message reported to be from Pastor Doe, of the telephone answering machine owned by Wanda Jones from October 2005.
4. Notes of conversation on March 1, 2006 between district superintendent June Cook with Cynthia Richards, church secretary at First Church Metropolis.
5. Copy of a letter from Susie Ouska, undated, received by district superintendent Cook in January 2005, marked "private." Ms. Ouska has been contacted and has agreed to allow this letter to be shown to both the counsel for the Church, the committee and Rev. Doe.
6. Notes of Rev. Cook from February 3, 2005, of a conversation with Ms. Ouska.
7. Notes of Rev. Cook of a meeting on February 12, 2005, with Rev. Doe.
8. Copy of the statement of Rev. Doe dated March 6, 2006 addressed to Bishop Washington.
9. Copy of Petition for Dissolution of Marriage of Phyllis Doe and Rev. Phillip Doe dated November, 2005.

[THIS SPACE INTENTIONALLY LEFT BLANK]

## LIST OF SUGGESTED WITNESSES<sup>246</sup>

Name	Address	Telephone Number
1. Sally Smith	1111 Maple Springfield, State 00000	111-111-0000
2. Wanda Jones	Work Address	Call at work only, home telephone is unlisted

(**Note:** It is suggested that, to the greatest extent possible, the committee attempt to accommodate Ms. Jones and if she continues to be unwilling to testify in front of the entire committee, it may be advisable to consider a separate interview, with notice to the respondent.)

3. Cynthia Richards	Address	Phone
4. Laura Reed		
5. Etc. . . .		

**NOTE:** *All attachments and lists such as this one should be supplied to the other party's counsel at the same time it is provided to Committee or Presiding Officer of the court.*

[THIS SPACE INTENTIONALLY LEFT BLANK]

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<sup>246</sup> List all potential witnesses who you believe may have relevant and reliable information.

# SAMPLE LETTER FROM RESIDENT BISHOP TO DISTRICT SUPERINTENDENTS FOR APPOINTMENTS TO THE TRIAL POOL<sup>247</sup>

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[Date]

Re: Church Trial of [respondent]

Dear [district superintendent]:

Pursuant to ¶ 2713 of the *Discipline*, I am asking that you send the dean of the cabinet the names and addresses of [number] clergy members of the [annual conference] in your district who may be appointed as members of the trial court pool for the trial of [respondent]. The trial will take place on [day, date, and time], at [location]. The building is handicap accessible. After I have received those names in writing from you, I will write to the individuals I choose from that list and appoint them to the trial court pool.

I would ask that you carefully consider the following Disciplinary requirements when you send me the names of clergy:

“Special consideration should be given so that the pool includes persons representative of racial, ethnic, and gender diversity.” ¶ 2709.2.

“No person shall serve as a member of the trial court who was a member of the cabinet, board of ordained ministry, or committee on investigation who considered the case in the process of coming before the trial court.” ¶ 2709.3.

“The trial court for a clergy member shall . . . [consist of] clergy in full connection.” ¶ 2713.3.

Please forward these names to me no later than [date].

Yours in Christ,

[resident bishop]

cc: [dean of the cabinet, presiding officer]

---

<sup>247</sup> EDITOR’S NOTE: This sample letter is written as if the respondent is a clergyperson, rather than as a bishop, diaconal minister, or layperson. It can be utilized for any respondent, after appropriate changes are made to its contents.

## SAMPLE LETTER FROM DEAN OF CABINET TO APPOINTEES OF TRIAL COURT POOL

---

Dear [appointee]:

Upon the appointment by your district superintendent and pursuant to ¶ 2713.3a of *The Book of Discipline*, I am appointing you to serve as a member of the trial court pool for the trial of [respondent], which begins on [date]. You should be at [trial location] on [day, date, and time].

The first order of business will be the choosing of the panel to serve during the trial. If you are not among the thirteen (plus two alternates) chosen, you will be dismissed at that time. However, if you are chosen you will be expected to serve until the conclusion of the trial. It is, of course, impossible to determine how long such an event will last; however, no less than two days should be reserved for this purpose. As such you may need to consider overnight accommodations.

We have attempted to carefully follow the *Discipline's* provisions in appointing you. For a trial of a clergy member you must be a clergy in full connection. Paragraph 2709.3 of the *Discipline* provides: “No person shall serve as a member of the trial court who was a member of the cabinet, board of ordained ministry, or committee on investigation who considered the case in the process of coming before the trial court.” If you believe you have served in such a role and have considered the matter of [respondent], please notify me or the secretary of the trial court. It is possible you may be excused from the trial pool.

I remind you of the *Discipline's* provisions regarding the presumption of innocence and confidentiality of church trial proceedings. Please do not discuss this case or any possible conduct involving [respondent] with anyone. If you have specific questions, you may refer them to the secretary of the trial court, [name and phone number], or me.

Directions to [trial location] are enclosed for your convenience.

Yours in Christ,

[dean of the cabinet]

cc: [district superintendents, secretary and presiding officer of the trial court, resident bishop]

# SAMPLE CONFIDENTIAL TRIAL COURT QUESTIONNAIRE

This is a sample questionnaire that may be useful for posing questions to the trial court pool prior to trial to help with the selection of the trial court at the beginning of trial. A questionnaire like this should be used only upon agreement of counsel for the Church, the respondent, and the presiding officer of the trial court. Also, the questions should be reviewed carefully and customized to fit the needs of the particular case at hand. The completed questionnaires should be returned to a designated person (such as secretary of the trial court or presiding officer) prior to the trial date. A designated person should then share them with counsel for the Church and for respondent prior to trial. If used, the questionnaire should be accompanied by a cover letter explaining the purpose and the confidential treatment of all responses. The advantages of using a questionnaire are that it allows the trial court pool time to carefully answer the questions, and it saves time at the trial, as the questioning of the trial court pool (*voir dire*) can be expedited. This sample questionnaire is geared toward a trial involving charges of misconduct of a sexual nature. **Note:** The questionnaire responses should be kept strictly confidential (counsels should never share with third parties any of the information) and should be collected by the secretary of the trial court and sealed or destroyed after the trial is completed.

---

## CONFIDENTIAL TRIAL COURT QUESTIONNAIRE

In re the matter of [respondent]

**Name:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Email:** \_\_\_\_\_

1. Please provide the following information: educational background, boards, commissions, agencies on which you have served, membership or affiliations with any other religious, professional, educational, governmental or non-profit organizations.

\_\_\_\_\_  
\_\_\_\_\_

2. Have you any relationship, by blood, marriage, or close friendship (i.e., something more than an acquaintance, entailing an especially long or close professional or social relationship), with the Complainant, \_\_\_\_\_, counsel



for the Church, \_\_\_\_\_, the Respondent, \_\_\_\_\_  
\_\_\_\_\_, or Respondent's counsel, \_\_\_\_\_?

If so, please specify: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Have you ever served on the cabinet, board of ordained ministry or committee on investigation that considered this case before the Trial Court? \_\_\_\_\_

If so, please specify: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Have you or anyone in your immediate family (i.e. spouse, parent, child) or circle of close friends been the victim of sexual abuse, harassment, or misconduct? \_\_\_\_\_

If so, has this necessitated treatment with a counselor, psychologist or therapist?  
\_\_\_\_\_  
\_\_\_\_\_

5. Have you been charged, formally or informally, by grievance, complaint or verbal assertions, with any allegation of sexual abuse, harassment, or misconduct?

\_\_\_\_\_  
\_\_\_\_\_

6. Assuming clear and convincing evidence is presented on trial, is there any reason why you could not find a clergy colleague guilty of sexual abuse, sexual harassment, or immorality?

\_\_\_\_\_  
\_\_\_\_\_

7. Assuming the evidence fails to convince you of the guilt of the Respondent as to any of the charges before the Court is there any reason that would prevent you from voting to find him/her not guilty of that charge?

\_\_\_\_\_

---

8. You understand that under the *Discipline*, the Respondent is presumed innocent of all charges unless and until the members of the Trial Court find him guilty after all the evidence and arguments of counsel have been presented to you. Could you follow that principle?

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9. You understand that if the members of the Trial Court find the Respondent guilty of any of the charges before the Court, as a member of the Court, you will be required to vote on the penalty to be imposed. Would you be able to fairly consider all of the possible penalties that might be imposed?

---

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10. Is there any reason why you could not physically or emotionally be able to listen, observe, and consider the evidence and arguments in this matter?

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11. Is there any other information that you want to share on your ability to serve as a member of the Trial Court?

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12. Are you willing and able to abide by the provisions of *The Book of Discipline of The United Methodist Church*, setting aside your own opinions and feelings, and find the respondent guilty, if there is clear and convincing evidence to convict?

---

---

---

**SIGNED**

**DATE**

# SAMPLE WITNESS AT TRIAL FORM

---

## NOTICE TO APPEAR

In the Matter of **[respondent]**

To: **[name and address of witness]**

You have been named by the counsel for the **[Church/respondent]** as a witness in the matter of **[respondent]**, and you are herewith requested to appear and testify at the Church trial to be held on **[day, date, and time]** at **[trial location]**. When you arrive, please check in with the secretary of the trial court or the bailiff. If you have questions, please call **[secretary of trial court]** at **[phone number]**. This notice is issued under the provisions of ¶ 2708.8 of *The Book of Discipline of The United Methodist Church*.

Issued in the name of the **[annual conference]** of The United Methodist Church.

**[name and signature of presiding officer]**

**[date]**

**NOTE:** *A Certificate of Service Form should be completed and attached to any notice that is sent.*

*A cover letter, typically sent by secretary of trial court, explaining the process in more detail could accompany this form.*

# SAMPLE TRIAL COURT VERDICT FORM

**NOTE:** This verdict form should be part of the record.

---

## VERDICT FORM

A vote of at least nine (9) members of the trial court is required to convict the respondent of the charge. The burden of proof for a vote to convict is “clear and convincing evidence.” The trial court must present to the presiding officer a decision on each charge and each specification under each charge. ¶ 2711.2

As to the **Charge I**, \_\_\_\_\_ we, the trial court find the respondent:

- [guilty]  
 [not guilty] (*Check one*)

There were \_\_\_\_\_ votes for “guilty” and \_\_\_\_\_ votes for “not guilty.”

As to **Specification # 1, Charge I**, we, the trial court find the respondent:

- [guilty]  
 [not guilty] (*Check one*)

There were \_\_\_\_\_ votes for “guilty” and \_\_\_\_\_ votes for “not guilty.”

As to **Specification # 2, Charge I**, we, the trial court find the respondent:

- [guilty]  
 [not guilty] (*Check one*)

There were \_\_\_\_\_ votes for “guilty” and \_\_\_\_\_ votes for “not guilty.”

**Date:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Chair of the Trial Court**

The undersigned certify that this is the true and correct decision of this trial court.

\_\_\_\_\_  
**Presiding Officer**

\_\_\_\_\_  
**Secretary of the Trial Court**

# SAMPLE TRIAL COURT PENALTY FORM

**Note:** This penalty form should be part of the record.

---

## PENALTY FORM

If the trial court finds the respondent guilty of the charge(s), designate here the penalty: ¶ 2711.3

- Expel the respondent from the Church
- Withdrawal of the credentials of ordination or consecration of the respondent
- Withdrawal of the credentials of ordination or consecration of the respondent
- Suspend the respondent from the exercise of the functions of office for \_\_\_\_\_  
\_\_\_\_\_ (period of time). Other details:  
\_\_\_\_\_  
\_\_\_\_\_
- Lesser penalty (specify):  
\_\_\_\_\_  
\_\_\_\_\_
- Other conditions (specify):  
\_\_\_\_\_  
\_\_\_\_\_

**Date:** \_\_\_\_\_

**Signed:** \_\_\_\_\_  
**Chair of the Trial Court**

The undersigned certify that this is the true and correct decision of this trial court.

\_\_\_\_\_  
**Presiding Officer**

\_\_\_\_\_  
**Secretary of the Trial Court**

*Note: If suspension or lesser penalty is set, it is important to state in detail who has responsibility for monitoring or supervising the penalty, (e.g., the board of ordained ministry, the bishop, the district superintendent, etc.*

# SAMPLE ACCOUNTABILITY AGREEMENT

---

## AGREEMENT

THE \_\_\_\_\_ ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH (“the Conference”), by and through its representative BISHOP \_\_\_\_\_ (“Resident Bishop”); \_\_\_\_\_, Church Counsel; Complainant \_\_\_\_\_ (“COMPLAINANT’S NAME”); Complainant’s father \_\_\_\_\_ and Respondent \_\_\_\_\_ (“RESPONDENT’S NAME”) (collectively identified as the “Parties”) hereby enter into this Agreement.

WHEREAS, on \_\_\_\_\_, 2002, COMPLAINANT’S NAME filed with the Conference a written complaint containing allegations of a chargeable offense(s) under ¶ 2702.1 of *The Book of Discipline* (hereafter “the *Discipline*”) against RESPONDENT’S NAME;

WHEREAS, in response to COMPLAINANT’S NAME’s complaint the Conference undertook a review of RESPONDENT’S NAME’s ministerial office pursuant to ¶ 361 of the *Discipline*;

WHEREAS, subsequent to the Conference’s review, the matter was referred to church counsel as a judicial complaint for investigation and trial in accordance ¶¶ 2701 *et seq.* of the *Discipline*;

WHEREAS, the judicial complaint certified by the Committee on Investigation containing a chargeable offense(s) against RESPONDENT’S NAME has been set for trial in \_\_\_\_\_ 2003;

WHEREAS, RESPONDENT’S NAME denies the allegations of the chargeable offense(s) contained in the judicial complaint;

WHEREAS, the parties wish to avoid uncertainty as to the outcome and the expense of a church trial;

NOW, THEREFORE, the Parties relinquish their right to resolution of the complaint by church trial, including the right of appeal, and agree as follows:

***[EXAMPLE OF RESOLUTION OF THIS MATTER:]***

1. The chargeable offense(s) now pending against RESPONDENT’S NAME is withdrawn and all related proceedings are terminated.

***[EXAMPLE OF WHAT RESPONDENT GETS/KEEPS:]***

2. No party to this Agreement will directly or through another re-assert a chargeable offense against RESPONDENT’S NAME on the facts that form the basis of the charges withdrawn pursuant to this Agreement. However, nothing herein precludes COMPLAINANT’S

NAME from initiating a related action against RESPONDENT's NAME in any other forum of competent jurisdiction.

3. RESPONDENT's NAME's continued participation in the Conference health insurance program shall be at the same rate and on the same terms and conditions as other retired clergy and nothing herein shall limit or otherwise restrict the Conference's right to amend or discontinue its health insurance program for all retired clergy, including RESPONDENT's NAME.

***[EXAMPLE OF WHAT RESPONDENT GIVES UP:]***

4. RESPONDENT's NAME relinquishes all rights and privileges as an ordained clergy of the United Methodist Church, including the right of voice and vote as a member of the Conference. He retains the status of "retired clergy" for the sole purpose of continuing his participation in the Conference health insurance program and he will retain no other of the rights generally afforded retired clergy.

***[EXAMPLE OF WHAT RESPONDENT CAN/CANNOT DO:]***

5. RESPONDENT's NAME will not hold himself out (or allow another to do the same) as an ordained United Methodist clergy person nor will he undertake ministry on behalf of this or any other denomination. In furtherance of this provision, but not by way of limitation, RESPONDENT's NAME will not undertake to do any of the following:

- a. Request any appointment status other than retired.
- b. Serve on the staff of any United Methodist congregation or organization affiliated with United Methodism.
- c. Represent himself as a clergy person in good standing with the Conference or within United Methodism.
- d. Perform weddings or sacramental acts, funerals, supply preaching; engage in counseling; or act as pastor in any church of any denomination.

***[HOW COMPLIANCE WILL BE VERIFIED:]***

6. RESPONDENT's NAME will designate a charge conference within the Conference as the charge conference to which he will relate and to whose district superintendent and pastor he will account for his compliance or non-compliance with the provisions of this Agreement. To that end, RESPONDENT's NAME will appear before the district superintendent and pastor, jointly, no later than December 1<sup>st</sup> of each year, beginning December 1, 2003, to give an accounting of his activities over the prior year. The district superintendent and pastor may seek to corroborate RESPONDENT's NAME's accounting by any reasonable means and they will make a written report of same to the Resident Bishop and cabinet.

***[WHAT WILL HAPPEN IF AGREEMENT VIOLATED:]***

7. The Resident Bishop will determine whether RESPONDENT's NAME has committed any material breach of the provisions of this Agreement, said determination to be at the bishop's sole discretion. Should the bishop determine such a breach has occurred, RESPONDENT's NAME will immediately surrender his credentials in accordance with ¶¶ 358.3-4 of the *Discipline*, whichever is applicable. RESPONDENT's NAME's failure to surrender his credentials under this paragraph shall be deemed disobedience to the Order and Discipline of The United Methodist Church (a chargeable offense under ¶ 2702.1e) and the Parties agree that the penalty for same shall be termination of RESPONDENT's NAME's conference membership, revocation of his credentials of ordination and termination of his participation in the Conference health insurance program.

8. This Agreement constitutes the entire agreement of the Parties and there are no other oral or written agreements between or among them. No waiver, modification, or amendment of any term, condition, or provision of this Agreement shall be valid or have any force or effect unless made in writing and signed by the Parties.

9. This Agreement shall be construed and governed in accordance with church law and not the civil law of *[STATE]* or any other secular jurisdiction inasmuch as the supervision of clergy is a matter reserved to the church under the First Amendment of the Constitution of The United States of America.

10. The Parties shall keep the terms of this Agreement confidential, except to the extent that disclosure is required in fulfilling a party's obligation pursuant to this Agreement or in response to a subpoena by a court of competent jurisdiction.

11. The provisions of this Agreement are severable, and the invalidity of any one or more provisions shall not affect or limit the enforceability of those remaining.

12. Each of the Parties to this Agreement affirms that he executes it knowingly and voluntarily and that each has had the opportunity to seek legal counsel with regard to the meaning and effect of its provisions.

***[SIGNATURE BLOCKS FOR ANYONE WHOSE RIGHTS OR DUTIES ARE AFFECTED BY THIS AGREEMENT, OR HAVE A DUTY SUCH AS REPORTING OR VERIFICATION:]***

PARTIES:

Dated: \_\_\_\_\_ ANNUAL CONFERENCE OF THE UNITED  
METHODIST CHURCH  
By: \_\_\_\_\_  
Resident Bishop

Dated: \_\_\_\_\_  
Church Counsel



Dated: \_\_\_\_\_  
Complainant

Dated: \_\_\_\_\_  
Respondent

ACKNOWLEDGED:

Dated: \_\_\_\_\_  
Presiding Officer

Dated: \_\_\_\_\_  
Counsel for Respondent

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# CHECKLIST FOR PROCESSING COMPLAINTS AGAINST CLERGYPERSONS

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This Checklist may be a helpful tool for keeping track of complaints against clergypersons, as they move through the administrative process. It probably will be most useful overall to the bishop, district superintendent, counsels for the Church and the respondent, committee on investigation chair, and presiding officer.

This checklist is based on *The Book of Discipline* (2008). It is always advisable to review relevant Judicial Council Decisions. This Appendix contains sample forms that may be useful.

Respondent: \_\_\_\_\_

Home Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Present Appointment: \_\_\_\_\_

District Superintendent: \_\_\_\_\_

Respondent's Representative: \_\_\_\_\_

Address, phone number, email: \_\_\_\_\_

\_\_\_\_\_

## **Check When Completed**

### **\_\_\_\_\_ 1. Complaint**

The initial complaint is a written statement signed by the bishop, district superintendent, or other party, claiming misconduct or unsatisfactory performance of ministerial duties by the respondent. ¶ 361.1a.

Date initial complaint received or initiated: \_\_\_\_\_

\_\_\_\_\_ **2. Notice of Complaint**

Bishop or district superintendent shall inform complainant and respondent of the process for filing the complaint and its purpose. ¶ 361.1a.

Date respondent informed: \_\_\_\_\_

Date complainant informed: \_\_\_\_\_

\_\_\_\_\_ **3. Supervisory Response**

Bishop or district superintendent shall initiate a supervisory response to the initial complaint, whose purpose is a just resolution and/or reconciliation among all parties. ¶ 361.1b. (Think about whether there are any statute of limitations issues before setting up any meetings with the complainant or respondent.)

Date of meeting with complainant: \_\_\_\_\_

Date of first supervisory meeting with respondent: \_\_\_\_\_

Date(s) of any subsequent meetings (and parties involved): \_\_\_\_\_

\_\_\_\_\_

Proposed supervisory response by bishop or district superintendent:

\_\_\_\_\_

\_\_\_\_\_

Date of suspension of respondent, if any, under ¶ 361.1c: \_\_\_\_\_

Supervisory follow-up with local church congregation under ¶ 361.1e:

\_\_\_\_\_

\_\_\_\_\_

Supervisory follow up with respondent’s family: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ **4. Referral of a Matter for Mediation or Other Just Resolution Process (may occur at any time)**

Date referred to neutral party: \_\_\_\_\_

Name, address, email, and phone number of neutral party: \_\_\_\_\_

\_\_\_\_\_

Date(s) of mediation or just resolution process: \_\_\_\_\_

Resolution: \_\_\_\_\_

\_\_\_\_\_

Date accountability agreement/other documentation of resolution terms signed: \_\_\_\_\_

Date written notification sent to parties: \_\_\_\_\_

\_\_\_\_\_ **5. Referral as a Judicial Complaint**

If the bishop determines that the initial complaint is based on a chargeable offense (¶ 2702), the bishop selects and then refers the complaint to counsel for the Church (a clergyperson in full connection). Counsel for the Church makes sure the judicial complaint is written properly, redrafts and/or makes any necessary revisions/additions (date, place, specifics of alleged events), signs the complaint as a judicial complaint and then forwards it to the committee on investigation, along with any relevant material that supports the judicial complaint. ¶ 2704.2a. (see also the sample Complaint in this Appendix)

Name of counsel for the Church (make sure provisions of ¶ 2708.7 are followed so that no counsel has “considered the case”): \_\_\_\_\_

Date judicial complaint mailed to the committee on investigation: \_\_\_\_\_

Date judicial complaint mailed to respondent: \_\_\_\_\_

*(Remember the importance of keeping the complainant informed of the process.)*

\*\*\*Skip to #7 – Committee on Investigation.

\_\_\_\_\_ **6. Referral as Administrative Complaint**

If the bishop determines that the initial complaint is based on allegations of incompetence, ineffectiveness, unwillingness or inability to perform ministerial duties, then the bishop shall

refer the complaint to the board of ordained ministry as an administrative complaint for its consideration of remedial or other action. ¶ 362.1a.

Date administrative complaint sent to chair of board of ordained ministry: \_\_\_\_\_

Date complainant and respondent informed of referral: \_\_\_\_\_

\*\*\*Skip to #9 – Remedial Actions.

## 7. Committee on Investigation — Judicial Complaints

The investigative procedure conducted by the committee is the first step in the judicial process. The committee is responsible for sending a copy of the judicial complaint to the respondent (if counsel for the Church has not already sent it), and the respondent has thirty (30) days in which to file a response. The committee investigates and determines whether there are reasonable grounds for charges, and, on a vote of five (5) members, signs and certifies charges as proper for trial. The charges are to list the chargeable offenses and as much detail as possible about the allegations (date, place, specifics of the alleged events, etc.). (see sample Bill of Charges in this Appendix)

Date judicial complaint mailed to respondent: \_\_\_\_\_

Name, address, email, and phone number of counsel (not an attorney) for respondent (if any):

\_\_\_\_\_  
\_\_\_\_\_

*(Make sure provisions of ¶ 2708.7 are followed so that no counsel has “considered the case.”)*

**Note:** It can be helpful for the committee to have its own legal representation to give advice and counsel.

Name, address, email, and phone number of legal counsel retained to assist the committee:

\_\_\_\_\_  
\_\_\_\_\_

Date respondent’s answer to judicial complaint received: \_\_\_\_\_

Date of any preliminary meeting/teleconference with chair of committee on investigation, respondent, and counsels (to discuss procedure. etc.): \_\_\_\_\_

Date witness notice to appear form(s) sent (see sample Notices in this Appendix):

---

Date committee convened (60 days to convene after receipt of judicial complaint by chair):

---

Date 5 committee members recommended suspension: \_\_\_\_\_

Name of court reporter/ person creating the transcript: \_\_\_\_\_

Date and names of witnesses interviewed (if any) (**Note:** all parties are entitled to be present and have three (3) days notice of such interviews):

---

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Name(s) of committee member(s) appointed to conduct interview:

---

Date notice of hearing sent: \_\_\_\_\_

Date of hearing: \_\_\_\_\_

Decision of committee: \_\_\_\_\_

---

Date Bill of Charges and Specifications or referral or dismissal mailed to all parties (**Note:** Must be within 5 days of date charges and specifications are adopted) (to the respondent, complainant, counsel for the Church, presiding bishop, and secretary of the annual conference):

---

Bishop and cabinet supervisory follow-up with local church congregation under ¶ 2701.4c:

---

*(Remember importance of keeping complainant informed)*

**8. Trial – Judicial (See also more detailed Trial Checklist)**

The bishop of the respondent names another bishop to be the presiding officer when the committee on investigation adopts changes. Counsel for the Church may continue. The respondent may select counsel, who would typically be the same person who served as respondent’s counsel before the committee on investigation. If the respondent fails to select counsel, the presiding officer must appoint counsel for him/her. ¶ 2708.7.

Name of presiding officer: \_\_\_\_\_

Date notice of presiding officer name and address sent to respondent: \_\_\_\_\_

Name, address, email, phone number of respondent’s counsel: \_\_\_\_\_

Date of any preliminary meeting/teleconference between presiding officer, respondent, and all counsel: \_\_\_\_\_

Date notice of trial sent to respondent by the resident bishop, ¶ 2708.2: \_\_\_\_\_

Date and place of trial: \_\_\_\_\_

Date resident bishop’s request sent to district superintendent to make appointment of clergypersons to trial court pool, ¶ 2713.3: \_\_\_\_\_

Date of out-of-court testimony or depositions, if any authorized by presiding officer (all parties are entitled to have three (3) days notice of such testimony), ¶ 2708.10: \_\_\_\_\_

Name(s) of commissioner(s) appointed to examine witnesses:

\_\_\_\_\_

Date of receipt by presiding officer of witness list from counsel: \_\_\_\_\_

Date of receipt by resident bishop of district superintendent appointments: \_\_\_\_\_

Notices sent to witnesses by presiding officer, ¶ 2708.8: \_\_\_\_\_

Date of any procedural or substantive matter appeals to presiding officer (must be done before convening of trial court and should be maintained as part of the trial record), ¶ 2708.3:

\_\_\_\_\_

Date and disposition of charges by trial court: \_\_\_\_\_

\_\_\_\_\_

Date trial court sends records to secretary of annual conference: \_\_\_\_\_

Date notice of appeal, if any, sent by respondent to presiding bishop and bishop of the conference from which the appeal is taken (must be within thirty (30) days of trial court disposition and penalty): \_\_\_\_\_

Date and disposition of appeal, if any: \_\_\_\_\_

\_\_\_\_\_

Bishop and cabinet supervisory follow-up with local church congregation, ¶ 2701.4c:

\_\_\_\_\_

**\_\_\_\_\_ 9. Remedial Action – Administrative Complaint, ¶¶  
362.2, 363 (see also more detailed Administrative Complaint Checklist)**

Date administrative complaint received or initiated: \_\_\_\_\_

Date of notice of hearing or meeting with board of ordained ministry sent to respondent:

\_\_\_\_\_

(Consider notifying the administrative review committee also.)

Date of hearing by conference relations committee: \_\_\_\_\_

Date of meeting or hearing with clergyperson and board of ordained ministry:

\_\_\_\_\_

Board of ordained ministry response: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*(Remember right to hearing before the board, bishop and district superintendent, ¶ 355.1.)*



Date board of ordained ministry response sent to respondent, bishop, cabinet, and complainant:

\_\_\_\_\_

Date administrative review committee contacted regarding recommendation for administrative location, involuntary leave of absence, involuntary retirement (this should occur prior to annual conference), ¶ 636: \_\_\_\_\_

Name of board or conference person to monitor any follow-up or supervision:

\_\_\_\_\_

Date of any scheduled follow-up meetings: \_\_\_\_\_

Other action: \_\_\_\_\_

\_\_\_\_\_

Date of report of recommendation to clergy session of members in full connection with the annual conference: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Report by board of ordained ministry to clergy members in full connection of recommendation to administrative location, involuntary leave, and involuntary retirement:

\_\_\_\_\_

\_\_\_\_\_

Administrative review committee action and/or report to clergy session of members in full connection with annual conference: \_\_\_\_\_

\_\_\_\_\_

Date and action of clergy session: \_\_\_\_\_

\_\_\_\_\_ **10. Withdrawal Under Complaints or Charges, ¶¶ 360.3, 2719**

Date withdrawal request received: \_\_\_\_\_

Date withdrawal request reported to board of ordained ministry: \_\_\_\_\_

Date of annual conference approval of withdrawal: \_\_\_\_\_

Date credentials surrendered to bishop or district superintendent: \_\_\_\_\_

Date credentials deposited with secretary of conference: \_\_\_\_\_

Date(s) request/letter sent if credentials not surrendered: \_\_\_\_\_

*(NOTE: If credentials are never surrendered, these letters should be put in the file; alternately a signed and dated statement or affidavit of “lost credentials” may be prepared by the respondent and put in the file.)*

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# CHECKLIST FOR FAIR PROCESS OF ADMINISTRATIVE COMPLAINTS<sup>248</sup>

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Clergyperson Name: \_\_\_\_\_

1. A complaint may be received or initiated by the bishop or district superintendent. (§ 361.1a)  
Date received: \_\_\_\_\_  
Complainant: \_\_\_\_\_  
(A complaint is a written and signed statement claiming misconduct or unsatisfactory performance of ministerial duties.)

Nature of complaint: \_\_\_\_\_  
\_\_\_\_\_

2. The person filing the complaint and the clergyperson against whom complaint is filed shall be informed in writing by the district superintendent or bishop of the process for filing the complaint and its purpose, and of the process to be followed.  
(The Discipline does not specify a time period for providing these notices. It is recommended that they be provided as soon as possible.)

Date notices sent: \_\_\_\_\_

3. Upon receiving a written and signed complaint, the Bishop shall, within 45 days (extendable by 30 days with written consent of complainant and respondent), either **dismiss the complaint** after consultation with the cabinet **or initiate the Supervisory Response Process**. (§ 361.1d) The complaint may be dismissed if the bishop, after consultation with the cabinet, concludes that it has no basis in law or in fact.

\_\_\_\_\_ Complaint dismissed. \_\_\_\_\_ Supervisory Response Process initiated.

Date of dismissal or initiation of Supervisory Response Process: \_\_\_\_\_

#### 4. **Suspension**

When deemed appropriate, the Bishop, with the recommendation of the Executive Committee of Board of Ordained Ministry, may suspend the person for a period not to exceed 90 days. (§ 361.1c)

Date of suspension: from \_\_\_\_\_ to \_\_\_\_\_

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<sup>248</sup> This checklist was created by GBHEM and the GCFA Legal Services Department in 2009.

**5. Supervisory Response Process**

The Supervisory Response Process shall be completed within 120 days from the date of initiation. This time limitation may be extended for 30 days upon the consent of the complainant and the respondent. (§ 361.1d)

Date of initiation: \_\_\_\_\_ + 120 days = completion deadline of: \_\_\_\_\_

Deadline extension #1 to (date): \_\_\_\_\_

Deadline extension #2 to (date): \_\_\_\_\_

At all supervisory meetings no verbatim record will be made; no legal counsel will be present; the clergyperson may choose another person to accompany him or her with right to voice; and the person making the complaint will also have the right to choose a person to accompany him or her with right to voice. (§ 361.1b)

The bishop may notify the chair of the board of ordained ministry that a complaint has been filed (not mandatory). (§ 361.1b)

Date chair of BOM notified of initiation, if notified: \_\_\_\_\_

Date(s) of meeting(s): \_\_\_\_\_

Who was present: \_\_\_\_\_

Complainant accompanied by: \_\_\_\_\_

Respondent accompanied by: \_\_\_\_\_

**Outcome of Supervisory Response:**

\_\_\_\_\_ Written just resolution, including any terms and conditions, reached and signed by the parties. (§ 361.1b)

\_\_\_\_\_ Referred the matter to a third party mediator, if not previously attempted. (§ 361.1d[1])

\_\_\_\_\_ Referred the matter as an Administrative Complaint. (§ 362.1a)

\_\_\_\_\_ Referred the matter as a Judicial Complaint. (§ 2704)

\_\_\_\_\_ Dismissed the complaint with consent of cabinet giving reasons in writing.

Date completed: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. If the complaint is referred as an Administrative Complaint, the bishop shall notify the Board of Ordained Ministry in writing for its consideration of remedial or other action. (§ 362.1a)  
Date notification sent/received: \_\_\_\_\_
7. The Board of Ordained Ministry (BOM) shall refer the administrative complaint to the Conference Relations Committee (CRC) or its equivalent. (§ 362.1a)
8. The procedures for fair process in administrative hearings commences upon referral as an administrative complaint. (§ 362.2)
9. **Disposition of Administrative Complaints (§ 363)**  
**Fair Process in Administrative Hearings (§ 362.2)**  
The bishop or the bishop's designee and the respondent shall have a right to be heard before any final action is taken. (§ 362.2a)

Due notice of any hearing shall be sent at least 20 days before the hearing. Notice should be sent certified mail. The notice shall advise the respondent of the reasons for the proposed procedures with sufficient detail to allow the respondent to prepare a response. (§ 362.2b)

Date mailed: \_\_\_\_\_  
Date received: \_\_\_\_\_

- A. A hearing will be held with the members of the Conference Relations Committee. (§ 363.1)  
Date meeting held: \_\_\_\_\_
- B. The clergyperson in question may select an advocate who is in full connection to be present and give voice. (§§ 362.2c, 363.1)  
Name: \_\_\_\_\_
- C. The bishop or a district superintendent will present the administrative complaint to the committee. (§ 363.1)  
Who presented: \_\_\_\_\_
- D. Others may be invited to present as determined by the CRC chair. (§ 363.1)  
Other presenter(s): \_\_\_\_\_
- E. No ex parte communications. One party will not discuss substantive issues with members of the pending hearing body, without the other party being present. (§ 362.2d)
- F. Questions of procedure may be raised with the presiding officer of the hearing body. (§ 362.2d)
- G. The respondent will have access to all records relied upon in the determination of the outcome of the administrative process. (§ 362.2e)

- H. Agenda will be: (§ 363.1)
- i. Presentation by the Bishop or cabinet representative;
  - ii. Questions by the Conference Relations Committee;
  - iii. Presentation of the clergy person in question, with assistance by accompanying clergy in full connection;
  - iv. Questions by the Conference Relations Committee;
  - v. Presentation by others as determined by the chair of the Conference Relations Committee;
  - vi. All except committee members depart.

- I. The Conference Relations Committee will make a recommendation to the BOM. (§§ 363.1, 363.2)
- Action and Date completed: \_\_\_\_\_

Recommendation may be:

- Program of continuing education
- Leave of Absence, voluntary or involuntary
- Early or Involuntary Retirement
- Sabbatical leave
- Honorable Location
- Surrender of ordained ministerial office
- Counseling/Therapy
- Program of Career Evaluation
- Peer support/supervision
- Private Reprimand
- Administrative Location
- Refer back to Bishop as possible Judicial Complaint
- Dismissal of the complaint

- J. The Board of Ordained Ministry may accept or amend the recommendation of the Conference Relations Committee, dismiss the complaint, or make a referral. (§ 363.1)

BOM Action and Date: \_\_\_\_\_

\_\_\_\_ Accepted CRC's recommendation

\_\_\_\_ Amended CRC's recommendation: \_\_\_\_\_

\_\_\_\_ Dismissed

\_\_\_\_ Referred to Bishop for referral as a judicial complaint

\_\_\_\_ Referred to Bishop for a process that seeks a just resolution  
(See § 363.1 for extensive details on this process).

- K. Respondent is to be notified in writing of BOM decision.

Date written notification mailed: \_\_\_\_\_ received: \_\_\_\_\_

- L. If the recommendation is for **Involuntary Leave of Absence**, the provisions of ¶ 355 shall be followed.
- The respondent has a right to a hearing before the Bishop, Cabinet, and Executive Committee of the Board of Ordained Ministry, preferably at least ninety days prior to the annual conference. (¶ 355.1) Note the Judicial Council rulings related to this hearing and the fair process procedures of ¶ 362.2 shall be followed.)
  - The 90 days notice of involuntary leave may be waived by recommendation of the Bishop, district superintendents, and Board of Ordained Ministry, by a 2/3 vote of the clergy executive session prior to taking action on the recommendation for involuntary leave. (¶ 355.3)
  - A 2/3 majority vote is required by the clergy executive session for involuntary leave of absence. A counted vote shall be recorded for any action.(¶ 355.3)
  - For ad interim action, see ¶ 355.4.
- M. If the recommendation is for **Administrative Location**, the provisions of ¶ 363.3*b* shall be followed.
- Notice of the recommendation must be sent by the BOM to the respondent, the chair of the administrative review committee, the bishop, the district superintendent, and the complainant at least sixty (60) days before the opening of the next annual conference. (¶ 363.3*b*[2])
  - The notice shall inform the respondent of the right to a hearing, before the executive committee, prior to the recommendation being forwarded to the clergy session for consideration and action. (¶ 363.3*b*[2])
  - The choice for a hearing before the board must be made by the respondent, and notification of the choice sent to the bishop and chair of the Board of Ordained Ministry, within thirty days following receipt of notice from the board. (¶ 363.3*b*[2])
  - The BOM chair will preside at such a hearing, (¶ 363.3*b*[2])
  - The fair process procedures of ¶ 362.2 shall be followed.
  - \*The administrative review committee (¶ 636) shall ensure the required process is followed and report its findings to the Clergy Executive Session before a vote is taken. (¶ 363.3*b*[3]) (See \* on last page for more detail.)
  - The recommendation of the Board of Ordained Ministry shall be acted upon by the clergy session of members in full connection. (¶ 363.3*b*[2])
- N. If the recommendation is for **Involuntary Retirement**, the provisions of ¶ 358.3 shall be followed.
- The proceedings for fair process in administrative hearings (¶ 362.2) shall be followed.
  - Written notice of the intended action shall be given to such member by the BOM at least 180 days prior to annual conference.
  - Written notice should also be given to the chair of the administrative review committee.
  - A 2/3 majority vote is required by the clergy executive session for involuntary retirement.
  - Any clergy member who is placed in the retired relationship under this subparagraph shall be entitled to the privilege of receiving his or her pension for the number of

approved years served in the annual conference or conferences and such other benefits as the final annual conference may provide, payment to begin the first of any month after the ordained minister attains age 62.

- O. If the recommendation is for **discontinuance of provisional membership**, the provisional member shall be advised of the right to a hearing before the Executive Committee of the Board of Ordained Ministry. The provisions of fair process shall be observed and be reviewed by the administrative review committee. (§ 327.6)

Recommendation: \_\_\_\_\_

- P. If a vote of the clergy session is required for any action recommended, the BOM will present the recommendation to the Clergy Executive Session.

**\*Administrative Review Committee**

The purpose of the Administrative Review Committee is to ensure that the disciplinary procedures for involuntary leave of absence, involuntary retirement, or administrative location are properly followed. The entire administrative process leading to the action will be reviewed. (§§ 636, 363.3b[3])

The Administrative Review Committee will notify the parties of the review process. (§ 636)

Who was notified:

\_\_\_\_\_ Date done: \_\_\_\_\_  
\_\_\_\_\_ Date done: \_\_\_\_\_  
\_\_\_\_\_ Date done: \_\_\_\_\_  
\_\_\_\_\_ Date done: \_\_\_\_\_

Administrative Review Committee will report its findings to the Clergy Executive Session of Members in Full Connection before a vote is taken. (§ 363.3b[3])

Date of Report: \_\_\_\_\_

Committee Members present: \_\_\_\_\_

Prior to its report, if Administrative Review Committee determines that any error has occurred, it may recommend to appropriate person or body that action be taken promptly to remedy the error, decide the error is harmless, or take other action. (§ 636)

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# CHECKLIST FOR TRIAL<sup>249</sup>

This checklist is to assist the convening bishop (also referred to as “resident bishop”), the bishop named as the presiding officer, counsel for the Church, and counsel for the respondent. When a committee on investigation adopts charges and specifications, notice is sent to the resident bishop as the first step towards a trial. That bishop is the convening bishop and names another bishop to be the presiding officer at the trial (¶¶ 2712.2 and 2713.2). The convening (resident) bishop schedules a time when the presiding bishop will be available and arranges a place for the trial to occur. The counsel for the Church who served at the committee on investigation continues at trial.

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## GENERAL INFORMATION

### Check when completed

\_\_\_\_\_ Name, address, email, and phone and fax numbers of respondent.

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\_\_\_\_\_ Name, address, phone and fax numbers of the presiding officer.

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\_\_\_\_\_ Name, address, email, and phone and fax numbers of respondent’s counsel. If the respondent fails to select counsel, the presiding officer must appoint counsel for him/her. ¶ 2708.7.

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<sup>249</sup> EDITOR’S NOTE: This Checklist is written as if the respondent is a clergyperson, rather than as a bishop, diaconal minister, or layperson. However, the procedural steps are essentially the same, regardless of the respondent’s status. Thus, after making the appropriate substitutions within the Checklist (e.g., the convenor of the trial when the respondent is a bishop is the president of the College of Bishops, not the resident bishop), it can be utilized for any respondent.

\_\_\_\_\_ Name, address, email, and phone and fax numbers of respondent's assistant counsel (may be an attorney, without voice).

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\_\_\_\_\_ Name, address, email, and phone and fax numbers of counsel for the Church. If the existing counsel does not continue, new counsel must be named by the resident bishop within thirty (30) days of receiving the charges. ¶ 2708.7.

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\_\_\_\_\_ Name, address, email, and phone and fax numbers of assistant counsel for the Church (may be an attorney, without voice). (**Note:** It is important and desirable to have an understanding of financial arrangements.)

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\_\_\_\_\_ Name, address, email, and phone and fax numbers of legal counsel to the presiding officer.

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\_\_\_\_\_ Name, address, email, and phone and fax numbers of complainant's advocate.

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Counsel to the presiding officer of the trial court shall not be the conference chancellor. ¶ 2708.1. The expense of such counsel is to be paid for by the respondent's annual conference, unless agreed otherwise. It is important to have an understanding of financial arrangements.

## PRE-TRIAL PROCEDURES

\_\_\_\_\_ Date charges and specifications received by the resident bishop from committee on investigation.

---

\_\_\_\_\_ For respondents residing beyond the bounds of the conference in which membership is held, bishops and clergy to decide the site of trial. ¶ 2719.1.

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\_\_\_\_\_ Name of bishop selected by resident bishop to be the presiding officer. ¶ 2713.2.

---

\_\_\_\_\_ If no advocate for the original complainant exists, the resident bishop should assist in finding an advocate.

\_\_\_\_\_ Date and place of trial as set by the resident bishop (in consultation with presiding officer).

---

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It is important to proceed promptly but still allow adequate time for trial preparation. Each situation will vary, but it is suggested that it be no less than 90 days nor more than 150 days after receipt of the charges. The place should be able to comfortably accommodate the hearing (handicap accessible), be convenient for witnesses, and to the greatest extent possible, be convenient for members of the trial court. In addition to a room for the trial court, separate rooms for the presiding officer, trial court, and witnesses will be needed. There should be eating facilities and also food may need to be prepared and/or ordered for the trial pool.

---

Date notice of trial (time and place) sent to respondent by the resident bishop. ¶ 2708.2. This notice should also give the name, address, and phone number of the presiding officer, to allow for the respondent to communicate with him/her. A copy should be sent to counsel for the Church and to the complainant.

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Date of receipt of request for change of venue, if any. ¶ 2708.4. Must be sent to presiding officer within ten (10) days of receipt of notice by the respondent to appear for trial.

---

---

Secretary of trial court named by presiding bishop, in consultation with the resident bishop. ¶ 2708.1. A secretary may assist the presiding officer in keeping track of written motions and notices to attend pre-trials and in setting up the site of trial, meals (paying for meals), housing, meetings, etc. At trial, the secretary may assist the stenographer in entering exhibits and written motions and in ministerial duties during the trial and transcription of the record.

---

(The resident bishop should supply the presiding officer with suggested individuals; it is recommended racial, ethnic, and gender diversity be considered in naming trial court officers. **Note:** The secretary of the trial court is not the stenographer.)

---

Date of any initial pre-trial meeting/teleconference between presiding officer, respondent, and counsels.

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It is recommended that this take place early in the process to allow an understanding of procedures to be followed, informal notice of any motions or objections which may be raised, exchange of witness lists, and a determination of the time required for the trial. At this meeting/teleconference or at a later time, there should be discussion of the requirement that all motions objecting to the proceeding be made prior to the trial session, of time limits set for presentation of the case, and any special requests (set up of the trial court room, etc.). It also may be helpful to review with counsels the trial process, including information such as how documents are introduced into evidence, making objections, trial court instructions, etc. ¶ 2708.3.

\_\_\_\_\_ Date letter from presiding officer sent to respondent and counsels regarding rights and requirements for written objections and motions on substantive or procedural matters and telling respondent's counsel that failure to so appeal will forfeit appeal rights. ¶ 2708.3.

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It is recommended that the presiding officer's letter should direct that any appeals of a substantive or procedural nature be presented to the presiding officer in writing. ¶ 2708.3. In addition, the letter should give a deadline for receipt of written motions and witness lists from counsel, require copies of all motions to be sent to the other party, and allow time for a written response from the other party. When possible, a ruling by the presiding officer on an appeal should be given prior to the convening of the trial court. Any written documents, motions, and rulings should be entered as part of the record shortly after the trial convenes.

\_\_\_\_\_ Date of receipt of any appeal of a procedural or substantive nature to presiding officer (must be done before convening of trial court). ¶ 2708.3.

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\_\_\_\_\_ Date resident bishop's request is sent to district superintendents to make appointment of thirty-five (35) or more clergypersons to trial court pool. ¶ 2713.3. Special attention should be given so that the pool includes persons representative of racial, ethnic, age, and gender diversity.

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\_\_\_\_\_ Date of any out-of-court testimony or depositions, if authorized by the presiding officer, name(s) of witness(es), and name(s) of the commissioner(s) appointed to examine the witness(es). All parties and the complainant are entitled to three (3) days notice of such testimony and may be present. ¶ 2708.10.

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\_\_\_\_\_ Date of receipt by presiding officer of witness list from counsels.

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\_\_\_\_\_ Date notices sent to witnesses by the presiding officer (or mailed by secretary). ¶ 2708.8. It is assumed that the complainant is a witness and as such will be given notice of the hearing.

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The complainant must be notified of the proceedings. It is recommended that the resident bishop or counsel for the Church ensure that the complainant is kept regularly informed of the process and that the formal notice of hearing be sent to the complainant by counsel for the Church.

\_\_\_\_\_ Date of receipt of district superintendents' appointments to the trial court pool.

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\_\_\_\_\_ Date of final pre-trial teleconference/meeting between the presiding officer, respondent, and counsels to hear any motions, have final discussions on procedures, set number of witnesses, decide who may attend trial, set seating arrangements, set hours for hearings, predict length of trial, etc.

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\_\_\_\_\_ Notice sent to trial court pool appointees to advise of date, location, and length of trial and possible need for overnight accommodations by the dean of the cabinet, in consultation with the resident bishop and the presiding officer/secretary of trial court.

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\_\_\_\_\_ Name of bailiff or sergeant-at-arms appointed by presiding officer. ¶ 2708.1. The duties include: to keep order in the court; to assist during the trial court selection; witness protection; escorting witnesses in and out of the court; include and exclude third parties; lunch arrangements; and any communications with presiding officer needed by the trial court during deliberations. The resident bishop should supply the presiding officer with names and suggested individuals; racial, ethnic, and gender diversity should be considered.

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\_\_\_\_\_ Name of time keeper or assistant secretary appointed. A time keeper can be helpful in unusually complex cases to time presentations and in assisting the secretary and/or bailiff. ¶ 2708.1.

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\_\_\_\_\_ Date stenographer selected by convening bishop or secretary of trial court, in consultation with the presiding officer, and the stenographer's name, address, email, and phone number.

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\_\_\_\_\_ Review of need for healing at the local church by resident bishop and cabinet, in consultation with presiding officer. ¶ 2701.4c.

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## **TRIAL**

\_\_\_\_\_ Resident bishop convenes the trial court and introduces the presiding officer who takes over. Resident bishop leaves.

\_\_\_\_\_ Presiding bishop leads an opening prayer.

\_\_\_\_\_ Announcement of decision on open or closed court (hopefully decided in pre-trial motion). ¶ 2708.12.

\_\_\_\_\_ Preliminary discussion with trial court pool.

Presiding officer should remind trial court pool that all must be elders (thirteen members and two alternates) and make any preliminary determinations whether anyone should be excused for health reasons or obvious conflicts. This discussion with anyone who has confidential concerns about his/her ability to serve should be done with the presiding officer in a private room.

\_\_\_\_\_ Selection of trial court.

Counsel for the Church, counsel for the respondent, and the presiding officer will have agreed to this process ahead of time, including whether counsels wish to ask questions of the pool, the form of the questions, how the random drawing of names will be handled, how attention to diversity will be handled, how challenges will be handled, and whether the selection process will be done in a closed court room, even if the trial itself is opened. **Note:** A closed court room, with each potential trial court member brought into the room one at a time may be important if the members of the trial court pool are going to be asked personal, sensitive questions.

\_\_\_\_\_ Opening remarks by presiding officer.

Set the stage; no oaths required because operating within clergy covenant; introduce persons assisting trial court and counsels; explain whether trial is open or closed; who has voice; no discussion with anyone; no contact with presiding officer; nine (9) votes for guilty verdict; role of alternate jurors; explanation of clear and convincing; trial court may ask questions of witnesses (please be judicious); review charges and specifications; invite any questions or concerns now.

\_\_\_\_\_ Any written prior motions/rulings are entered in the record.

\_\_\_\_\_ Covenant with trial court not to discuss case with anyone (or one another until the time for deliberations).

\_\_\_\_\_ Reading of charges and specifications.

\_\_\_\_\_ Ask for and enter plea of respondent in the record (in some cases this may be appropriate prior to trial court selection). ¶ 2710.4.

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\_\_\_\_\_ Check to be sure all witnesses are excluded from the room. ¶ 2710.7.

\_\_\_\_\_ The original complainant is allowed to remain. ¶ 2708.12.



\_\_\_\_\_ Opening statements (Church, respondent).

**Note:** The presiding officer needs to decide ahead of time whether to split the verdict deliberations from the penalty deliberations.

\_\_\_\_\_ Church counsel's presentation of evidence and witnesses (cross examination and re-direct).

\_\_\_\_\_ Recess, as needed.

\_\_\_\_\_ Respondent counsel's presentation of evidence and witnesses (cross examination and re-direct).

\_\_\_\_\_ Recess, as needed.

\_\_\_\_\_ Church counsel's rebuttal (if any).

\_\_\_\_\_ Closing statements (respondent, Church).

\_\_\_\_\_ Charge by presiding officer to trial court on Church law. ¶ 2710.10.

Trial court's solemn responsibility; ask trial court to select a chair and notify sergeant at arms; tell jury they will be given a copy of the charges and specifications and exhibits; responsibility to deliberate until reach verdict; guilty verdict requires nine (9) votes; use verdict form (sample attached); each charge and each specification must be voted separately – nine (9) votes required for each; presiding officer may only discuss questions of Church law with trial court and any such discussions will be in the presence of the respondent and the two counsels; method of voting (secret ballot or other) is up to trial court but must be an identifiable count vote; trial court may order the deliberations in any manner it finds suitable; discussion of how they are to proceed regarding penalty; etc. Address the right of the trial court to view written/tangible exhibits.

**Note:** The *Discipline* does not define the chargeable offenses. The trial court should draw on their own understandings and experiences in defining the chargeable offense(s) and determining the respondent's conduct in relation to the charges.

**Note:** This Appendix contains samples of a Trial Court Verdict Form and a Trial Court Penalty Form. It is important that the Penalty Form clearly explains any special terms and conditions.

It is important to be prepared for possible concerns by the trial court about the financial implications of the removal of clergy orders. You may wish to be able to explain or stipulate to the impact on active or retired clergy in relation to salary benefits (medical insurance, etc.), pension, and housing allowance. It may be useful to have a letter from the conference explaining each benefit on termination of orders.

\_\_\_\_\_ Trial court announces verdict in courtroom.

\_\_\_\_\_ Date and disposition of each charge by trial court. A decision is to be presented by trial court on each charge and each specification. ¶ 2711.2.

\_\_\_\_\_ If guilty finding, and the verdict and penalty deliberations are split, trial court may offer counsel opportunity to speak to mitigation and/or possible penalties.

\_\_\_\_\_ Trial court deliberates to set penalty.

\_\_\_\_\_ Penalty is issued by trial court.

\_\_\_\_\_ Presiding officer reviews penalty to make sure terms of suspension or lesser penalty are clear.

\_\_\_\_\_ Closing remarks and prayer by presiding officer.

Thank you for service to jury; thank you for hard work to both counsels; open trial court does not mean open jury deliberations; how to handle media/interview requests; a word about the pain and importance of healing for all; return all notes and exhibits to presiding bishop or secretary; importance of process; prayer.

## POST TRIAL MATTERS AND APPEAL

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Date transcript of trial record ordered from stenographer. ¶ 2710.8. This could be a large expense; it would be helpful to obtain a price from the stenographer prior to trial, if possible, because they often charge by the page for the transcription. Ordering a transcript probably is discretionary if no appeal, but the stenographer at the very least should be requested to keep the record available in case, at any time in the future, an actual transcript is needed. The stenographer should be told in writing not to produce the transcript without the written direction of the presiding officer or secretary of the trial.

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Date of certification of written trial record by presiding officer and secretary. ¶ 2710.8.

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Date trial court sends trial records to secretary of annual conference. **Note:** Secretary of trial court should be asked by presiding officer to perform this function. ¶ 2713.5.

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Dates notice of appeal, if any, is received by resident bishop of the conference from which the appeal is taken, and presiding officer. Must be within thirty (30) days of trial court disposition and penalty. ¶ 2715.1.

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Date notice of appeal sent by presiding officer to secretary of committee on appeals.

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Date for committee on appeals hearing.

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\_\_\_\_\_ Date notice of hearing sent to respondent and counsels.  
\_\_\_\_\_

\_\_\_\_\_ Name of counsel for Church.  
\_\_\_\_\_

\_\_\_\_\_ Date trial record sent to appropriate committee on appeals.  
\_\_\_\_\_

\_\_\_\_\_ Disposition of appeal, if any.  
\_\_\_\_\_

\_\_\_\_\_ Resident bishop and cabinet healing process with local church congregation. ¶  
2701.8.  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Date credentials surrendered to bishop or district superintendent (if terminated by  
trial court).  
\_\_\_\_\_

\_\_\_\_\_ Date credentials deposited with secretary of conference (if terminated by trial  
court).  
\_\_\_\_\_

\_\_\_\_\_ Date(s) request/letter sent if credentials not promptly surrendered (if terminated by trial court).

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\_\_\_\_\_ Date notice put in personnel record if the credentials are not surrendered (if terminated by trial court).

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\_\_\_\_\_ Pastoral care (as needed) by resident bishop, district superintendent, etc., for complainant and family, respondent and family, local church, counsel for the Church, counsel for the respondent, advocates, respondent's new appointment (if any), and others.

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# RELEVANT DISCIPLINARY PARAGRAPHS<sup>1</sup>

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¶ 320. *Exiting, Reinstatement, and Retirement of Local Pastors Who Are Not Provisional Members*—1. *Discontinuance of Local Pastor*—Whenever a local pastor retires or is no longer approved for appointment by the annual conference as required in ¶ 318, whenever any local pastor severs relationship with The United Methodist Church, whenever the appointment of a local pastor is discontinued by the bishop, or whenever the district committee on ordained ministry does not recommend continuation of license, license and credentials shall be surrendered to the district superintendent for deposit with the secretary of the conference. After consultation with the pastor, the former local pastor shall designate the local church in which membership shall be held. The Board of Ordained Ministry shall file with the resident bishop a permanent record of the circumstances relating to the discontinuance of local pastor status as required in ¶ 635.3d.

2. *Withdrawal Under Complaints and Charges*—When a local pastor is accused of an offense under ¶ 2702 and desires to withdraw from the Church, the procedures described in ¶ 2719.2 shall apply.

...

¶ 327. *Eligibility and Rights of Provisional Membership*—

...

6. *Discontinuance from Provisional Membership*—Provisional members may request discontinuance of this relationship or may be discontinued by the annual conference upon recommendation of the Board of Ordained Ministry. When provisional members in good standing withdraw to unite with another denomination or to terminate their membership in The United Methodist Church, their action shall be considered a request for discontinuance of their relationship and their credentials shall be surrendered to a district superintendent. Prior to any final recommendation of discontinuance without consent, a provisional member will be advised of the right to a hearing before the executive committee of the conference Board of Ordained Ministry. A report of the action will be made to the full board. The provisions of fair process (¶ 362.2) shall be observed and there shall be a review by the administrative review committee under ¶ 636 prior to hearing by the annual conference. When this relationship is discontinued, they shall no longer be permitted to exercise ministerial functions and shall return their credentials to the district superintendent for deposit with the secretary of the conference, and their membership shall be transferred by the district superintendent to the local church they designate after consultation with the pastor. The Board of Ordained Ministry shall file with the resident bishop and the secretary of the conference a permanent record of the circumstances relating to discontinuance as a provisional member as required in ¶ 635.3d. After discontinuance, provisional members may be classified and approved as local pastors in accordance with the provision of ¶ 316.

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<sup>1</sup> **EDITOR'S NOTE:** All footnotes in the paragraphs reproduced here are included. However, the numbering of those footnotes will not necessarily coincide with their respective numbers as printed in the *Discipline*.

...

¶ 354. *Voluntary Leave of Absence*—1. Provisional, associate, or members in full connection of the annual conference who for sufficient reason choose to temporarily take leave from their ministerial appointment may request in writing with a copy to the bishop and their district superintendent a voluntary leave through the Board of Ordained Ministry. This leave is granted or renewed by vote of the clergy members in full connection upon recommendation by the Board of Ordained Ministry.

2. A voluntary leave of absence may be taken for a variety of reasons:

a) *Personal Leave*—A relationship that is granted to clergy who self-determine for personal reasons that they are temporarily unable or unwilling to continue in a ministry appointment.

b) *Family Leave*—A relationship that is granted to clergy who, because of an immediate family member's need for full-time care, are temporarily unable to continue in a ministry appointment.

c) *Transitional Leave*—A leave granted for up to twelve months with approval of the bishop and the Board of Ordained Ministry Executive Committee to provisional and associate members and full clergy members in good standing who are temporarily between appointments.

A transitional leave of absence may be granted for the following reasons:

1) A provisional or full member deacon needs to seek and secure an appointable primary position—compensated or non-salaried.

2) A provisional member, associate member, or full member elder needs to transition from an extension ministry to another appointment.

During transitional leave, the clergyperson shall provide quarterly substantiation of his or her effort to obtain such an appointable position to the bishop and to the Board of Ordained Ministry Executive Committee.

3. Written request for a voluntary leave of absence, with the exception of transitional leave, should be made at least ninety days prior to the annual conference session giving specific reasons for the request.<sup>2</sup> 37 Representatives of the annual conference Board of Ordained Ministry may interview the clergy member to determine sufficient cause.<sup>3</sup> This relationship shall be approved annually upon written request of the clergy member and personal or family leave shall not be granted for more than five years in succession, except by a two-thirds vote of the clergy members in full connection.<sup>4</sup> The leave shall be counted as a part of the eight-year limit for provisional members (¶ 327) unless the limit is extended by the clergy session of members in full connection with the annual conference upon the recommendation of the Board of Ordained Ministry.

4. Between sessions of the annual conference, voluntary leave of absence may be granted or terminated, with the approval of the bishop and district superintendents, by the executive committee of the Board of Ordained Ministry.<sup>5</sup> This interim action shall be subject to the approval of the clergy session of members in full connection with the annual conference at its next session.<sup>6</sup>

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<sup>2</sup> See Judicial Council Decision 689.

<sup>3</sup> See Judicial Council Decision 782.

<sup>4</sup> See Judicial Council Decisions 581, 782.

<sup>5</sup> See Judicial Council Decision 689.

<sup>6</sup> See Judicial Council Decision 689.

5. Should there be active complaints or charges, a request for voluntary leave of absence shall not be permitted until those complaints or charges have been resolved.

6. Clergy on voluntary leave of absence shall have no claim on the conference funds. Notwithstanding the foregoing, where the conference has made certain elections under applicable benefit plans that require continued participation by clergy on voluntary leaves of absence, the clergy shall continue to participate in such plans. They may participate in the conference health program through their own contributions, if applicable. However, in exceptional circumstances, on recommendation of the bishop and district superintendents, salary and/or other benefits, subject to the terms of the applicable benefit plans, may be granted to a clergy member, if applicable, by vote of the clergy session of members in full connection with the annual conference. In an interim between sessions of the annual conference, by vote of the bishop, cabinet, and executive committee of the Board of Ordained Ministry, salary and/or benefits, subject to the terms of the applicable benefit plans, may be granted, if applicable.

7. Clergypersons on voluntary leave shall be eligible for membership on annual conference committees, commissions, or boards. They may vote for other clergy delegates to general or jurisdictional conferences and may be elected to serve as delegates themselves.

8. After consultation and with the written consent of the pastor in charge, and with the approval of the district superintendent and the staff-parish relations committee of a local church, clergy members shall designate a charge conference within the bounds of the annual conference to which they shall relate and submit an annual report. They shall report all marriages performed, baptisms administered, funerals conducted and other ministerial activities to the charge conference, pastor in charge, and Board of Ordained Ministry. The exercise of this ministry shall be limited to the charge conference in which their membership is held and with the written permission of the pastor in charge unless special permission is granted by the bishop of the conference where membership is held. With the permission of the bishop of the conference where membership is held, under the supervision of the district superintendent, the clergy member may preach, teach, perform marriages, and, if holding sacramental privileges, administer the sacraments outside of the charge where membership is held.

9. Those on voluntary leave of absence shall be held amenable to the annual conference for their conduct and the performance of their ministry. In case of failure to report to the Board of Ordained Ministry, the complaint procedures may be invoked (§ 361).

10. Clergy members on voluntary leave of absence may, with the permission of the bishop and with the approval of the United Methodist Endorsing Agency, continue to hold an existing reserve commission as an armed forces chaplain, but may not voluntarily serve on extended active duty.

11. When an end to voluntary leave of absence is requested, except for transitional leave, it shall be by written request at least six months prior to the session of annual conference.<sup>7</sup> The Board of Ordained Ministry shall review the circumstances surrounding the granting of the leave for the purpose of determining whether those circumstances have been alleviated or resolved. When the board has determined that the circumstances of the voluntary leave have not been alleviated or resolved and the request is denied, the board will inform the person of the remaining options, which include: *a)* remaining on voluntary leave of absence; *b)* taking honorable location; *c)* being recommended to the bishop and district superintendents to be placed

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<sup>7</sup> See Judicial Council Decision 721.



on involuntary leave, administrative location, or involuntary retirement,<sup>8</sup> using the fair process of ¶ 362.2; or *d*) such other action as deemed appropriate.

12. When clergy members on voluntary leave of absence do not request an annual extension of the leave of absence during the five-year period or do not indicate willingness to return to the itinerant ministry at the end of the five-year period, following documented efforts to make contact with the clergyperson, the provisions of location (¶ 359)<sup>9</sup> or the complaint procedures of ¶ 361 may be invoked.

¶ 355. *Involuntary Leave of Absence*—1. The bishop and the district superintendents may request an involuntary leave of absence without the consent of the provisional, associate, or full member, preferably ninety days prior to the annual conference session. They shall give to the clergy member and the Board of Ordained Ministry in writing specific reasons for the request. The fair process for administrative hearings as set forth in ¶ 362.2 shall be followed in any involuntary leave of absence procedure. The clergyperson has a right to a hearing before the bishop, district superintendents,<sup>10</sup> and executive committee of the Board of Ordained Ministry prior to being placed on involuntary leave of absence.

2. An involuntary leave may be requested by the bishop and the district superintendents when:

*a*) A written or signed complaint is not resolved through the supervisory response process (¶ 361.1b) within 120 days and is referred as an administrative complaint (¶ 361.1d).

*b*) Remedial action is required to address allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties, which becomes an administrative complaint (¶¶ 362.1a and 363.2).

*c*) An administrative or judicial complaint requires more than a ninety-day suspension (¶ 361.1c).

Should there be complaints or charges pending at the time of a request for involuntary leave of absence, they should be placed in the personnel file of the clergyperson. All subsequent actions concerning such entries should be duly noted and placed in the file.

3. Involuntary leave of absence shall be approved by two-thirds vote of the clergy session of members in full connection with the annual conference.<sup>11</sup> By two-thirds vote of the clergy session of members in full connection with the annual conference, upon recommendation of the bishop, district superintendents, and Board of Ordained Ministry, the ninety-day notice requirement may be waived. Involuntary leave shall be approved annually upon written request of the district superintendents and shall not be approved for more than three years in succession.

4. Between sessions of the annual conference, an involuntary leave of absence may be granted or terminated, with the approval of the bishop and cabinet, by the executive committee of the Board of Ordained Ministry. This interim action shall be subject to the approval of the clergy session of members in full connection with the annual conference at its next session.

5. Clergy on involuntary leave shall have no claim on the annual conference funds. The annual conference assumes no financial responsibility for salary, pension, or other benefits for clergy on involuntary leave of absence. Notwithstanding the foregoing, where the conference has made certain elections under applicable benefit plans that require continued participation by

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<sup>8</sup> See Judicial Council Decision 689.

<sup>9</sup> See Judicial Council Decisions 450, 459, 508, 524, 530.

<sup>10</sup> See Judicial Council Decisions 917.

<sup>11</sup> See Judicial Council Decision 782.

clergy on involuntary leaves of absence, the clergy shall continue to participate in such plans. They may participate in the conference health plan through their own contributions, if applicable. In exceptional circumstances, with the recommendation of the bishop and cabinet, salary and/or other benefits, subject to the terms of the applicable benefit plans, may be granted by vote of the clergy session of the annual conference. Between sessions of the annual conference, in unusual circumstances, the bishop and cabinet may recommend and the executive committee of the Board of Ordained Ministry may approve funding of pensions and other benefits, subject to the terms of the applicable benefit plans, pending approval by the annual conference.

6. Clergy placed on involuntary leave shall designate a charge conference within the bounds of the annual conference. Ministerial service shall be limited to that charge and shall only be provided with the written consent of the pastor in charge and with the approval of the district superintendent, bishop, and pastor/staff parish relations committee.

7. Clergy on involuntary leave shall not participate in the boards and agencies of the annual conference, be delegates to General and Jurisdictional Conferences, or vote on other clergy delegates.

8. When an end to the involuntary leave of absence is requested by the bishop and district superintendents, it shall be by written request at least six months prior to the session of annual conference. The Board of Ordained Ministry shall review the circumstances surrounding the granting of the relationship for the purpose of determining whether the conditions of the leave have been met. If the board determines that the conditions of the involuntary leave have not been resolved, they may recommend other courses of remedial action as stated in ¶ 363.2.

9. If the district superintendents and bishop do not intend to appoint a person after three (3) years on involuntary leave, they shall notify both the Board of Ordained Ministry and the clergyperson at least six months prior to the session of the annual conference and recommend an appropriate change in conference relationship. The clergyperson shall have the right to request a change to a voluntary leave of absence or termination of the involuntary leave of absence.

10. The administrative review committee (¶ 636) shall ensure that the disciplinary procedures for involuntary leave of absence were properly followed. The entire process leading to the recommendation for involuntary leave of absence and its resolution shall be reviewed by the administrative review committee, and it shall report its findings to the clergy session of members in full connection with the annual conference.

¶ **356. *Maternity or Paternity Leave***—Maternity or paternity leave, not to exceed one fourth of a year, will be available and shall be granted by the bishop and the cabinet, and the executive committee of the Board of Ordained Ministry to any local pastor, provisional member, associate member, or clergy member in full connection who so requests it at the birth or arrival of a child into the home for purposes of adoption.

1. Persons desiring maternity or paternity leave should file their request with the committee on pastor-parish relations after consulting with the district superintendent at least ninety days prior to its beginning to allow adequate pastoral care for the churches involved to be developed.

2. During the leave, the clergy member's annual conference relations will remain unchanged, and the health and welfare benefit plans will remain in force.

3. A maternity or paternity leave of up to one quarter of a year will be considered as an uninterrupted appointment for pension purposes.

4. Compensation will be maintained for no less than the first eight weeks of leave.

5. During the leave time, pastoral responsibility for the church or churches involved will be handled through consultation with the committee on pastor-parish relations of the local church(es) and the district superintendent.

6. Special arrangements shall be made for district superintendents, bishops, and those under special appointment.

¶ **357. *Incapacity Leave Resulting From Health Matters and Disabling Conditions***—1. When clergy who are members of an annual conference (¶ 369) are unable to perform their ministerial work because of incapacity due to health matters and disabling conditions, upon recommendations of the conference Board of Ordained Ministry and the conference board of pensions, and by a majority vote of the executive session of clergy members in full connection with the annual conference who are present and voting, they may be granted annual incapacity leave without losing their relationship to the annual conference; provided, however, that such leave may be granted or renewed upon reasonable and appropriate investigation of the case by the joint committee on incapacity of the annual conference, or the party responsible for managing the incapacity of clergy in accordance with the annual conference's policies, which will report its findings to the conference Board of Ordained Ministry and the conference board of pensions. This relationship may be initiated by the clergy member or cabinet with or without the consent of the clergy member through the Board of Ordained Ministry. When incapacity leave is given without the clergy member's consent, reasonable accommodation shall be offered whenever possible. When a clergy member is granted incapacity leave by the annual conference, if the medical evidence has not yet met the standards for the receipt of benefits as set forth in the Comprehensive Protection Plan, section 5.04, the conference board of pensions may authorize payment of the benefits in the amount that would otherwise be payable from the Comprehensive Protection Plan. The payments shall be made by the General Board of Pension and Health Benefits as a charge to the annual conference granting the incapacity leave. If payments from the Comprehensive Protection Plan are subsequently approved, the annual conference will be reimbursed for benefits already paid, not to exceed the amount otherwise payable from the Comprehensive Protection Plan. Each incapacity leave granted by the annual conference shall be recorded in the conference minutes.

2. When clergy who are members of an annual conference are unable to perform their ministerial work between sessions of the annual conference on account of health matters and disabling conditions, with the approval of a majority of the district superintendents, after consultation with the executive committee of the conference Board of Ordained Ministry and the executive committee of the conference board of pensions, an incapacity leave may be granted by the bishop for the remainder of the conference year; provided, however, that such leave may be granted upon reasonable and appropriate investigation of the case including accommodation provisions by the joint committee on incapacity of the annual conference, or the party responsible for managing the incapacity of clergy in accordance with the annual conference's policies, which will report its findings to the conference Board of Ordained Ministry and the conference board of pensions. When a clergy member is granted incapacity leave by the bishop, if the medical evidence has not yet met the standards for receipt of benefits as set forth in the Comprehensive Protection Plan, section 5.04, the conference board of pensions may authorize payment of the benefits in the amount that would otherwise be payable from the Comprehensive Protection Plan. The payments shall be made by the General Board of Pension and Health Benefits as a charge to the annual conference granting the incapacity leave. If payments from the Comprehensive Protection Plan are subsequently approved, the annual conference will be

reimbursed for benefits already paid, not to exceed the amount otherwise payable from the Comprehensive Protection Plan.

3. When clergy members on incapacity leave provide medical evidence that they have recovered sufficiently to resume ministerial work, or are able to return through reasonable accommodation, they may receive an appointment from a bishop between sessions of the annual conference, thereby terminating the incapacity leave. Such appointment shall be reported immediately by the cabinet to the conference board of pensions and to the General Board of Pension and Health Benefits. Such termination of leave, together with the effective date, shall also be recorded in the minutes of the annual conference at its next regular session.<sup>12</sup>

4. A person under consideration for incapacity leave shall have the right to appear before the joint committee on incapacity or to designate someone to meet with the committee on his or her behalf.

¶ **358. Retirement**—Retired clergy members are those who have been placed in the retired relation either at their own request or by action of the clergy session upon recommendation of the Board of Ordained Ministry.<sup>13</sup> (See ¶¶ 1506-1509 and the Ministerial Pension Plan, amended and restated effective January 1, 2007, as the Clergy Retirement Security Program, for pension information.) Requests for retirement shall be stated in writing to the bishop, cabinet, and Board of Ordained Ministry at least one hundred twenty days prior to the date on which retirement is to be effective unless waived by the bishop and cabinet. The Board of Ordained Ministry shall provide guidance and counsel to the retiring member and family as they begin a new relationship in the local church.

1. *Mandatory Retirement*—Every clergy member of an annual conference who will have attained age seventy-two on or before July 1 in the year in which the conference is held shall automatically be retired.<sup>14</sup>

2. *Voluntary Retirement*—a) *With Twenty Years of Service*—Any clergy members of the annual conference who have completed twenty years or more of service under appointment as ordained ministers or as local pastors with pension credit for service before 1982 or with full participation in the Comprehensive Protection Plan since 1981 prior to the opening date of the session of the conference may request the annual conference to place them in the retired relation with the privilege of receiving their pensions for the number of approved years served in the annual conference or conferences and such other benefits as the final annual conference may provide, payment to begin the first of any month after the ordained minister attains age sixty-two.<sup>15</sup> If pension begins prior to the age at which retirement under ¶ 358.2c could have occurred, then the provisions of ¶ 1506.4i shall apply.

b) *With Thirty Years of Service or at Age Sixty-two*—At their own request and by vote of the clergy members in full connection, any clergy members who will have attained age sixty-two on or before July 1 in the year in which the session of the annual conference is held or will have completed thirty years of service under appointment as an ordained minister, or a local pastor with pension credit for service before 1982 or with full participation in the Comprehensive

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<sup>12</sup> See Judicial Council Decision 473.

<sup>13</sup> See Judicial Council Decisions 87, 88, 531.

<sup>14</sup> See Judicial Council Decisions 7, 165, 413, 578.

<sup>15</sup> See Judicial Council Decision 717.

Protection Plan since 1981, as of the conference session may be placed in the retired relation with an annuity claim for an actuarially reduced pension (see ¶ 1506.4i).<sup>16</sup>

c) *With Forty Years of Service or at Age Sixty-five*—At their own request and by vote of the clergy members in full connection, any clergy members who will have attained age sixty-five on or before July 1 in the year in which the session of the conference is held or will have completed forty years of service under appointment as an ordained minister, or as a local pastor with pension credit for service before 1982 or with full participation in the Comprehensive Protection Plan since 1981, as of the conference session may be placed in the retired relation with the privilege of making an annuity claim.<sup>17</sup>

d) The dates specified in ¶ 358.1 and .2a-c notwithstanding, between sessions of the annual conference any member who attains the age and/or number of years of service specified in those sections may, upon the member's own request and with the approval of the bishop, cabinet, and executive committee of the Board of Ordained Ministry, be granted the retired relation *ad interim*, with applicable annuity claim, subject to the approval of the clergy members in full connection at the next annual conference session.

e) The annual conference, at its discretion, upon joint recommendation of the Board of Ordained Ministry and the conference board of pensions, may designate any time within the ensuing conference year as the effective date of retirement of a clergy member who is placed in the retired relation under the provisions of § 2b or § 2c above.<sup>18</sup>

3. *Involuntary Retirement*—By a two-thirds vote of those present and voting, the clergy members in full connection may place any clergy members in the retired relation with or without their consent and irrespective of their age if such relation is recommended by the Board of Ordained Ministry and the cabinet.<sup>19</sup> The procedures for fair process in administrative hearings shall be followed in any involuntary retirement procedure. Written notice of the intended action shall be given to such member by the Board of Ordained Ministry at least one hundred and eighty days prior to annual conference. Written notice also should be given to the chairperson of the administrative review committee. The administrative review committee (¶ 636) shall ensure that the disciplinary procedures for involuntary retirement were properly followed. The entire process leading to the recommendation for involuntary retirement shall be reviewed by the administrative review committee, and it shall report its findings to the clergy session of members in full connection of the annual conference. Any clergy member who is placed in the retired relationship under this subparagraph shall be entitled to the privilege of receiving his or her pension for the number of approved years served in the annual conference or conferences and such other benefits as the final annual conference may provide, payment to begin the first of any month after the ordained minister attains age sixty-two. If pension begins prior to the age at which retirement under ¶ 356.2c could have occurred, then the provisions of ¶ 1506.4i shall apply.

4. *Preretirement Counseling*—The Board of Ordained Ministry in cooperation with the conference board of pensions shall offer to all clergy members anticipating retirement preconsultation at least five years prior to the date of anticipated retirement (¶ 635.2n). The purpose of the consultation will be to assist the clergy and spouses to plan and to prepare for the

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<sup>16</sup> See Judicial Council Decision 428.

<sup>17</sup> See Judicial Council Decision 379.

<sup>18</sup> See Judicial Council Decision 769.

<sup>19</sup> See Judicial Council Decisions 522, 769.

adjustments associated with retirement as well as providing guidance and counsel for their return to a new relationship in the local church. In preretirement counseling the Board of Ordained Ministry and the conference board of pensions may relate to the annual conference association of retired ministers or similar organization where it exists. The boards shall take initiative in assisting retirees to establish such organizations.

5. *Charge Conference Membership*—a) All retired clergy members who are not appointed as pastors of a charge, after consultation with the pastor and the district superintendent, shall have a seat in the charge conference and all the privileges of membership in the church where they elect to hold such membership except as set forth in the *Discipline*. They shall report to the charge conference and to the pastor all marriages performed, baptisms administered, and other pastoral functions. If they reside outside the bounds of the conference, they shall forward annually to the conference where membership is held a report of their Christian and ministerial conduct, together with an account of the circumstances of their families, signed by the district superintendent or the pastor of the charge within the bounds of which they reside. Without this report, the conference, after having given thirty days' notice, may locate them without their consent.

6. *Appointment of Retired Ordained Ministers*—A retired ordained minister shall be eligible to receive an appointment when requested by the bishop and cabinet. A retired ordained minister appointed to a pastoral charge shall have neither a claim upon minimum compensation, nor further pension credit. Retired ordained ministers may serve on conference agencies.<sup>20</sup>

7. *Return to Effective Relationship*—A clergy member who has retired under the provisions of ¶ 358.2 may at his or her own request be made an effective member upon recommendation of the Board of Ordained Ministry, the bishop and cabinet, and by majority vote of the clergy members in full connection of the annual conference and thereby be eligible for appointment so long as he or she remains in the effective relation or until ¶ 358.1 applies. Each clergy member requesting return to effective relationship after voluntary retirement must meet the following conditions: (1) presentation of their certificate of retirement; (2) a satisfactory certificate of good health on the prescribed form from a physician approved by the Board of Ordained Ministry. However, any pension being received through the General Board of Pension and Health Benefits shall be discontinued upon their return to the effective relationship. The pension shall be reinstated upon subsequent retirement.

¶ 359. *Honorable Location*—1. An annual conference may grant clergy members in full connection certificates of honorable location at their own request, provided that the Board of Ordained Ministry shall have first examined their character and found them in good standing, and provided that the clergy session shall also pass on their character after the request is made, and provided further, that this relation shall be granted only to one who intends to discontinue service in the itinerant ministry. The Board of Ordained Ministry shall provide guidance and counsel to the locating member and family as they return to a new relationship in the local church.<sup>21</sup> Upon recommendation of the Board of Ordained Ministry, an annual conference may offer transition assistance.

2. Location shall be certified by the presiding bishop. Associate members or clergy members in full connection located according to the provisions of this paragraph shall not continue to hold membership in the annual conference, and they shall surrender their certification

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<sup>20</sup> See Judicial Council Decisions 87, 88, 531, 558.

<sup>21</sup> See Judicial Council Decision 366.

of conference membership for deposit with the conference secretary. After consultation and with the written consent of the pastor in charge, and with the approval of the district superintendent and the staff-parish relations committee of a local church, located clergy members shall designate the local church in which they shall hold membership. Documentation of this consent and approvals shall be filed with the Board of Ordained Ministry. As clergy members of the charge conference, they shall be permitted to exercise ministerial functions only with the written permission of the pastor in charge. They shall have all the privileges of membership in the church where they elect to hold charge conference membership, except as set forth in the *Book of Discipline*. When approved by the executive committee of the Board of Ordained Ministry, a person on honorable location may be appointed *ad interim* by the bishop as a local pastor. A copy of the annual report to the charge conference shall be forwarded to the registrar of the Board of Ordained Ministry in order for location to be continued. They shall report to the charge conference and the pastor all marriages performed, baptisms administered, and funerals conducted and shall be held amenable for their conduct and the continuation of their ordination rights to the annual conference within which the charge conference membership is held.

Failure to submit the report for two consecutive years may result in termination of orders upon recommendation of the Board of Ordained Ministry and vote of the clergy session. The provisions of this paragraph shall not apply to persons granted involuntary location prior to the General Conference of 1976. The names of located members after the annual passage of their character shall be printed in the journal.

3. Ordained ministers on honorable location may request the annual conference to grant them the status of honorable location-retired.<sup>22</sup> Requests for retired status shall be stated in writing to the bishop, cabinet, and registrar of the Board of Ordained Ministry at least ninety days prior to the annual conference session. Those granted honorable location retired status shall be accountable for all ministerial services performed to the charge conference in which they hold membership. If such services have been performed, they shall report to that charge conference and exercise their ministry under the supervision of the pastor in charge therein as outlined in ¶ 359.2. They shall continue to be held amenable for their conduct, through accountability to their charge conference, to the annual conference in which charge conference membership is held.

¶ 360. *Withdrawal*—1. *Withdrawal to Unite with Another Denomination*<sup>23</sup>—When ordained members in good standing withdraw to unite with another denomination or to terminate their membership in the denomination, their certification of conference membership, and their written request to withdraw shall be deposited with the conference secretary.

2. *Withdrawal from the Ordained Ministerial Office*—Ordained members of an annual conference in good standing who desire to leave their ministerial office and withdraw from the conference may be allowed to do so by the annual conference at its session. The ordained minister's certifications of ordination and conference membership, and their written request to withdraw, shall be given to the district superintendent for deposit with the secretary of the conference, and his or her membership may be transferred to a church which he or she designates, after consultation with the pastor, as the local church in which he or she will hold membership.<sup>24</sup>

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<sup>22</sup> See Judicial Council Decision 717.

<sup>23</sup> See Judicial Council Decision 696.

<sup>24</sup> See Judicial Council Decision 552.

3. *Withdrawal Under Complaints or Charges*—When clergy members are named as respondents to a complaint under ¶ 361.1(d) and desire to withdraw from the membership of the annual conference, it may permit them to withdraw under the provisions of ¶ 2719.2. The clergy member's certifications of ordination and conference membership shall be surrendered to the district superintendent for deposit with the secretary of the conference, and their membership may be transferred to a local church that they designate, after consultation with the pastor.<sup>25</sup>

Withdrawn under complaint or withdrawn under charges shall be written on the face of the credentials.

4. *Withdrawal Between Conferences*<sup>26</sup>—In the event that withdrawal by surrender of the ministerial office, to unite with another denomination, or under complaints or charges, should occur in the interval between sessions of an annual conference, the clergy member's credentials, under the provisions of ¶ 360.1 and .3, shall be surrendered to the bishop or district superintendent along with a letter of withdrawal from the ordained ministry. Both the credentials and the letter of withdrawal shall be deposited with the secretary of the conference. This action shall be reported by the Board of Ordained Ministry to the annual conference at its next session.<sup>27</sup> The effective date of withdrawal shall be the date of the letter of withdrawal.<sup>28</sup>

¶ 361. *Complaint Procedures*—1. Ordination and membership in an annual conference in The United Methodist Church is a sacred trust. The qualifications and duties of local pastors, associate members, provisional members, and full members are set forth in *The Book of Discipline of The United Methodist Church*, and we believe they flow from the gospel as taught by Jesus the Christ and proclaimed by his apostles. Whenever a person in any of the above categories, including those on leaves of all types, honorable or administrative location, or retirement, is accused of violating this trust, the membership of his or her ministerial office shall be subject to review.

This review shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation and healing may be realized in the body of Christ. A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible and bringing healing to all the parties. In appropriate situations, processes seeking a just resolution as defined in ¶ 361.1(b) may be pursued. Special attention should be given to ensuring that cultural, racial, ethnic and gender contexts are valued throughout the process in terms of their understandings of fairness, justice and restoration.

When a complaint is received by the bishop, both the person making the complaint and the person against whom the complaint is made will be informed in writing of the process to be followed at that stage. When and if the stage changes, those persons will continue to be informed in writing of the new process in a timely fashion.

a) *Supervision*—In the course of the ordinary fulfillment of the superintending role, the bishop or district superintendent may receive or initiate complaints about the performance or character of a clergy person.<sup>29</sup> A complaint is a written and signed statement claiming misconduct

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<sup>25</sup> See Judicial Council Decisions 552, 691.

<sup>26</sup> See Judicial Council Decision 696.

<sup>27</sup> See Judicial Council Decision 552.

<sup>28</sup> See Judicial Council Decision 691.

<sup>29</sup> See Judicial Council Decision 685.



or unsatisfactory performance of ministerial duties.<sup>30</sup> The person filing the complaint and the clergyperson shall be informed by the district superintendent or bishop of the process for filing the complaint and its purpose.<sup>31</sup>

*b) Supervisory Response*—The supervisory response is pastoral and administrative and shall be directed toward a just resolution among all parties. It is not part of any judicial process. The complaint shall be treated as an allegation or allegations during the supervisory process. At all supervisory meetings no verbatim record shall be made; no legal counsel shall be present; the person against whom the complaint was made may choose another person to accompany him or her with the right to voice; the person making the complaint shall have the right to choose a person to accompany him or her with the right to voice.<sup>32</sup>

The supervisory response shall be carried out by the bishop or the bishop's designee in a timely manner, with attention to communication to all parties regarding the complaint and the process. At the determination of the bishop, persons with qualifications and experience in assessment, intervention, or healing may be selected to assist in the supervisory response. The bishop also may consult with the committee on pastor-parish relations for pastors, the district committee on superintendency for the district superintendents, appropriate personnel committee or other persons who may be helpful.

The supervisory response may include a process that seeks a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s), in reaching an agreement satisfactory to all parties.<sup>33</sup> The bishop, the person filing the complaint, the respondent, and other appropriate persons shall enter into a written agreement outlining the process, including any agreements on confidentiality. If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties.

A process seeking a just resolution may begin at any time in the supervisory or complaint process. This is a not an administrative or judicial proceeding.

When the supervisory response is initiated, the bishop may notify the chairperson of the Board of Ordained Ministry that a complaint has been filed, of the clergyperson named, of the general nature of the complaint; and, when concluded, of the disposition of the complaint.<sup>34</sup>

*c) Suspension*—When deemed appropriate, to protect the wellbeing of the person making the complaint, the congregation, annual conference, other context for ministry, and/or clergy, the bishop, with the recommendation of the executive committee of the Board of Ordained Ministry, may suspend the person from all clergy responsibilities, but not from an appointment, for a period not to exceed ninety days. During the suspension, salary, housing, and benefits provided by a pastoral charge will continue at a level no less than on the date of suspension.<sup>35</sup> The person so suspended shall retain all rights and privileges as stated in ¶ 334. The cost of supply of a pastor during the suspension will be borne by the annual conference.

*d) Referral of a Complaint*—Upon receiving a written and signed complaint, the Bishop shall, within 45 days, either dismiss the complaint after consultation with the cabinet, as

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<sup>30</sup> See Judicial Council Decisions 763, 777.

<sup>31</sup> See Judicial Council Decision 751.

<sup>32</sup> See Judicial Council Decision 836.

<sup>33</sup> See Judicial Council Decisions 691, 700, 751, 763, 768.

<sup>34</sup> See Judicial Council Decisions 691, 982.

<sup>35</sup> See Judicial Council Decision 776.

having no basis in law or fact, or shall initiate the supervisory response process. If within 120 days after the initiation of the supervisory response, resolution is not achieved, the bishop shall either:

- (1) Refer the matter to a 3rd party mediator(s) if this has not been attempted;<sup>36</sup> or
- (2) Dismiss the complaint with the consent of the cabinet giving the reasons therefore in writing, a copy of which shall be placed in the pastor's file; or
- (3) Refer the matter as an administrative complaint (§ 362.1a) or judicial complaint (§ 2704).<sup>37</sup>

All time limitations may be extended for 30 days upon the consent of the complainant and the respondent.

*e) Supervisory Follow-up and Healing*—The bishop and cabinet shall provide a process for healing within the congregation, annual conference, or other context of ministry if there has been significant disruption by the complaint. This process may include sharing of information by the bishop or the bishop's designee about the nature of the complaint without disclosing alleged facts, which may compromise any possible forthcoming administrative or judicial process. When facts are disclosed, due regard should be given to the interests and needs of all concerned, including the respondent and complainant who may be involved in an administrative or judicial process. This may include a process of a just resolution, which addresses unresolved conflicts, support for victims, and reconciliation for parties involved.<sup>38</sup>

¶ **362. Administrative Complaint**—1. *Definition of Referred Complaints*—*a) Administrative Complaint*—If the bishop determines that a complaint is based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties, he or she shall refer the complaint as an administrative complaint to the Board of Ordained Ministry for its consideration of remedial or other action<sup>39</sup> (see § 363.2).

*b) Judicial Complaint*—If the bishop determines that the complaint is based on allegations of one or more offenses listed in § 2702.1, the bishop shall refer the complaint to counsel for the church, in accordance with the provisions of § 2704.2.

2. *Fair Process in Administrative Hearings*—The following procedures are presented for the protection of the rights of individuals and for the protection of the Church in administrative hearings. The process set forth in this paragraph commences upon referral of a matter as an administrative complaint. Special attention should be given to the timely disposition of all matters and to ensuring racial, ethnic, and gender diversity in the committee hearing the complaint.

*a)* In any administrative proceeding the bishop or the bishop's designee and the respondent (the person against whom the administrative complaint has been filed) shall have a right to be heard before any final action is taken.

*b)* Notice of any hearing shall advise the respondent of the reason for the proposed procedures with sufficient detail to allow the respondent to prepare a response. Notice shall be given not less than twenty days prior to the hearing.

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<sup>36</sup> See Judicial Council Decision 700.

<sup>37</sup> See Judicial Council Decision 700.

<sup>38</sup> See Judicial Council Decision 763.

<sup>39</sup> See Judicial Council Decision 763.

c) The respondent shall have a right to be accompanied by a clergyperson in full connection to any hearing, in accordance with the appropriate disciplinary provisions. The clergyperson accompanying the respondent shall have the right to voice.<sup>40</sup>

d) In any administrative hearing, under no circumstances shall one party, in the absence of the other party, discuss substantive issues with members of the pending hearing body. Questions of procedure may be raised with the presiding officer of the hearing body.

e) The respondent shall have access to all records relied upon in the determination of the outcome of the administrative process.<sup>41</sup>

f) In the event that a clergyperson fails to appear for supervisory interviews, refuses mail, refuses to communicate personally with the bishop or district superintendent, or otherwise fails to respond to supervisory requests or requests from official administrative committees, such actions or inactions shall not be used as an excuse to avoid or delay any Church processes, and such processes may continue without the participation of such individual.

3. *Immunity from Prosecution*—In order to preserve the integrity of the Church's administrative process and ensure full participation in it at all times, the bishop, cabinet, Board of Ordained Ministry, witnesses, advocates, administrative review committee, clergy in full connection voting in executive session, and all others who participate in the Church's administrative process shall have immunity from prosecution of complaints brought against them related to their role in a particular administrative process, unless they have committed a chargeable offense in conscious and knowing bad faith. The complainant/plaintiff in any proceeding against any such person related to their role in a particular judicial process shall have the burden of proving, by clear and convincing evidence, that such person's actions constituted a chargeable offense committed knowingly in bad faith. The immunity set forth in this provision shall extend to civil court proceedings, to the fullest extent permissible by the civil laws.

¶ 363. *Disposition of Administrative Complaints*—1. When a complaint has been received, the Board of Ordained Ministry shall develop a response in a timely manner. The complaint shall be referred to a committee of the board that deals with matters of conference relations (other than the executive committee) and this committee shall conduct an administrative hearing following the fair process provisions of ¶ 362.1a. The bishop or a cabinet representative shall present the administrative complaint to the committee. The respondent shall be given an opportunity to address the administrative complaint in person, in writing and with the assistance of a clergyperson in full connection, with voice. Once the committee has heard the bishop or the bishop's designee, the respondent, and others as determined by the chairperson of the committee, it may recommend remedial action, discontinuance, leave of absence, administrative location, dismissal of the complaint or such other action that it deems appropriate, to the Board of Ordained Ministry. The board may accept or amend the recommendations of the committee, or it may dismiss the complaint. In rare instances, the board may refer the complaint back to the bishop for possible referral as a judicial complaint. The board alternately may refer the matter to the resident bishop as deemed appropriate for a process that seeks a just resolution (see ¶ 361.1b). The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal. The appropriate persons, including a cabinet member and a representative of the Board of Ordained Ministry, shall enter into a written agreement outlining the process including any

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<sup>40</sup> See Judicial Council Decision 972.

<sup>41</sup> See Judicial Council Decision 974.

agreement on confidentiality. The parties shall be told that any resolution remains subject to final approval by the board. If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties and the parties shall agree on any matters disclosed to third parties. If the just resolution process results in resolution, the signed written statement of resolution shall be given to the board, and the board may dismiss the matter, retain oversight relating to any terms or conditions of the statement of resolution or take such other action as deemed appropriate. If the process does not result in resolution, it is returned to the board for further action. The board's response will be shared with the clergyperson, the bishop, the cabinet, and the person bringing the original complaint.<sup>42</sup>

2. *Remedial Action*—In cooperation with the cabinet and in consultation with the clergyperson, the Board of Ordained Ministry may choose or recommend one or more of the following options for a program of remedial action, subject to regular oversight by the board and annual review:

- a) Program of continuing education (§ 351);
- b) Leave of absence, voluntary or involuntary (§§ 354, 355);
- c) Early retirement (§ 358.2) or involuntary retirement (§ 358.3);
- d) Sabbatical leave (§ 352);
- e) Honorable location (§ 359);
- f) Surrender of ordained ministerial office (§ 360.2);
- g) Personal counseling or therapy;
- h) Program of career evaluation;
- i) Peer support and supervision;
- j) Private reprimand: a letter signed by the chairperson of the Board of Ordained Ministry and the clergyperson's district superintendent, addressed to the clergyperson with a file copy in the permanent file of the Board of Ordained Ministry (§ 606.6) stating the appropriateness of the complaint, the specific remedial action required, and the conditions under which the reprimand shall be withdrawn. A report of the reprimand and the remedial action taken shall remain in the personnel file of the respondent once the reprimand has been withdrawn.

3. *Administrative location*—a) *Clergy Residing Beyond the Bounds of the Conference*—Any clergy members residing beyond the bounds of the conference in which membership is held shall be subject to administrative complaints or process exercised by the appropriate officers or committees of the conference of which he or she is a member, unless the presiding bishops of the two annual conferences and the clergy member subject to the process agree that fairness would be better served by having the process carried out in the annual conference in which he or she is serving under appointment, or if retired, currently residing.

b) *Recommendation to Administrative Location*—(1) Upon recommendation of the Board of Ordained Ministry, the annual conference may place members on administrative location when, in the judgment of the annual conference, members have demonstrated a pattern of being unable effectively and competently to perform the duties of itinerant ministry; provided that the annual conference shall have first examined their character and found them in good standing. The requirements of fair process as set forth in § 362.1a shall be followed in any administrative location procedure.

(2) The Board of Ordained Ministry shall notify the clergy member, chairperson of the administrative review committee, bishop, district superintendent, and the complainant of

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<sup>42</sup> See Judicial Council Decision 917.

the recommendation to administrative location at least sixty days before the opening of the next annual conference.

The notice to the clergy member shall also inform the member of the right to a hearing before the executive committee of the Board of Ordained Ministry prior to the recommendation being forwarded to the clergy session for consideration and action.<sup>43</sup> Such choice by the ordained member must be made and notification of the choice sent to the bishop and the chairperson of the Board of Ordained Ministry within thirty days following receipt of notice from the board.<sup>44</sup> The chairperson of the Board of Ordained Ministry shall preside at such a hearing. The recommendation of the Board of Ordained Ministry shall be acted upon by the clergy session of members in full connection with the annual conference.

(3) The administrative review committee (§ 636) shall ensure that the disciplinary procedures for administrative location were properly followed. The entire process leading up to the recommendation to administrative location shall be reviewed by the administrative review committee, and it shall report its findings to the clergy session of members in full connection with the annual conference.

(4) The provisions of § 363.3*b* above apply to administrative location, except that a person on administrative location may not be given *ad interim* appointments by the bishop. Upon recommendation of the Board of Ordained Ministry, an annual conference may offer financial assistance from conference resources in this transition.

*4. Recommendation to Discontinue Probationary Membership—*

a) The Board of Ordained Ministry shall recommend the discontinuance of a probationary member in keeping with the provisions of § 327.6.

b) This process shall be reviewed by the Administrative Review Committee pursuant to § 636.

¶ 364. *Readmission to Provisional Membership*—Persons who have been discontinued as provisional members under the provisions of § 327.6 from an annual conference of The United Methodist Church or one of its legal predecessors may be readmitted by the annual conference in which they held previously such membership and from which they requested discontinuance or were discontinued, or its legal successor, or the annual conference of which the major portion of their former conference is a part, upon their request and recommendation by the district committee on ordained ministry, the Board of Ordained Ministry, and the cabinet after review of their qualifications, as required in § 324, and the circumstances relating to their discontinuance. When reinstated by vote of the clergy members in full connection, their provisional membership in the conference shall be restored, they shall serve a minimum of two years of provisional membership according to § 326 prior to ordination, and they shall be authorized by licensing and/or commissioning to perform those ministerial functions for which they are qualified.

¶ 365. *Readmission after Honorable or Administrative Location*—Associate members or clergy members in full connection requesting readmission after honorable or administrative location must meet the following conditions:

1. Presentation of their certificate of location.

2. A satisfactory report and recommendation by the charge conference and pastor of the local church in which their membership is held.

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<sup>43</sup> See Judicial Council Decisions 917, 950.

<sup>44</sup> See Judicial Council Decisions 384, 485.

3. A satisfactory certificate of good health on the prescribed form from a physician approved by the Board of Ordained Ministry. The Board of Ordained Ministry should require psychological evaluation.

4. Recommendation by the district committee on ordained ministry, the Board of Ordained Ministry, and the cabinet after review of their qualifications, the circumstances relating to their location and conduct during the period of time while on location. When reinstated by vote of the clergy members in full connection of the annual conference that granted the location, their membership in the conference shall be restored, and they shall be authorized to perform all ministerial functions. The conference Board of Ordained Ministry may require at least one year of service as a local pastor prior to readmission to conference membership.

¶ **366.** *Readmission After Leaving the Ministerial Office*—Associate members or clergy members in full connection who have left the ministerial office under the provisions of ¶ 360 to an annual conference of The United Methodist Church or one of its legal predecessors may be readmitted by the annual conference in which they held previously such membership and to which they surrendered the ministerial office, or its legal successor, or the annual conference of which the major portion of the former conference is a part, upon their request and recommendation by the district committee on ordained ministry, the Board of Ordained Ministry, and the cabinet after review of their qualifications and the circumstances relating to the surrender of their ministerial office. A period of at least two years service as a local pastor shall be required prior to readmission to conference membership. This service may be rendered in any annual conference of The United Methodist Church with the consent of the Board of Ordained Ministry of the annual conference in which members previously held membership. When reinstated by vote of the clergy members in full connection, their membership in the conference and their credentials shall be restored, and they shall be authorized to perform all ministerial functions.<sup>45</sup>

¶ **367.** *Readmission After Termination by Action of the Annual Conference*—Persons who have been terminated by an annual conference of The United Methodist Church or one of its legal predecessors may seek full membership in the annual conference in which they previously held membership and from which they were terminated, or its legal successor, or the annual conference of which the major portion of their former conference is a part, upon recommendation of the cabinet and completion of all requirements for full membership, including all requirements for election to candidacy and provisional membership. The provisions of this paragraph shall apply to all persons terminated or involuntarily located prior to General Conference of 1976.

¶ **368.** *Readmission After Involuntary Retirement*—Clergy members of an annual conference desiring to return to effective relationship after having been placed in involuntary retirement (¶ 358.3) must meet the following conditions:

1. Submit a written request for reinstatement to the Board of Ordained Ministry.
2. The Board of Ordained Ministry and the cabinet shall review the member's qualifications and the circumstances relating to his or her retirement.
3. Recommendation by the Board of Ordained Ministry, the bishop, cabinet, and a two-thirds vote of the clergy members in full connection of the annual conference that granted the involuntary retirement. A period of at least two years of service as a local pastor shall be required prior to readmission to conference membership.
4. Presentation of the certificate of retirement.

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<sup>45</sup> See Judicial Council Decisions 515, 552.

5. Presentation of satisfactory certificate of good health on the prescribed form from a physician approved by the Board of Ordained Ministry. The Board of Ordained Ministry may require a psychological evaluation. Any pension being received through the General Board of Pension and Health Benefits shall be discontinued upon their return to effective relationship. The pension shall be reinstated upon subsequent retirement.

¶ 413. *Complaints Against Bishops*—1. Episcopal leadership in The United Methodist Church shares with all other ordained persons in the sacred trust of their ordination. The ministry of bishops as set forth in *The Book of Discipline of The United Methodist Church* also flows from the gospel as taught by Jesus the Christ and proclaimed by his apostles (¶ 402). Whenever a bishop violates this trust or is unable to fulfill appropriate responsibilities, continuation in the episcopal office shall be subject to review. This review shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God’s work of justice, reconciliation, and healing may be realized.

2. Any complaint concerning the effectiveness, competence, or one or more of the offenses listed in ¶ 2702 shall be submitted to the president of the College of Bishops in that jurisdictional or central conference. If the complaint concerns the president, it shall be submitted to the secretary of the College of Bishops. A complaint is a written statement claiming misconduct, unsatisfactory performance of ministerial duties, or one or more of the offenses listed in ¶ 2702.<sup>46</sup> For the purposes of this paragraph, the United Methodist bishops of the central conferences shall constitute one college of bishops.

3. After receiving a complaint as provided in ¶ 413.2, the president and the secretary of the College of Bishops, or the secretary and another member of the college if the complaint concerns the president (or the president and another member of the college if the complaint concerns the secretary), shall, within 10 days, consult the chair of the jurisdictional or central conference committee on episcopacy who shall appoint from the committee one professing member and one clergy member who are not from the same episcopal area; who are not from the episcopal area that the bishop under complaint was elected from or has been assigned to; and who are not of the same gender.<sup>47</sup>

a) When deemed appropriate to protect the well-being of the complainant, the Church and/or bishop, the College of Bishops, in consultation with the jurisdictional or central conference committee on episcopacy, may suspend the bishop from all episcopal responsibilities for a period not to exceed sixty days. During the suspension, salary, housing and benefits will continue.

b) The supervisory response is pastoral and administrative and shall be directed toward a just resolution. It is not a part of any judicial process. The supervisory response should be carried out in a confidential manner and should be completed within 120 days. There may be an extension of 120 days if the supervising bishop and the two jurisdictional or central conference episcopacy committee members appointed to the supervisory process shall determine that an extension will be productive. There may be a second extension of 120 days by the mutual written consent of the supervisory bishop, members of the jurisdictional or central conference episcopacy committee appointed to the supervisory process, the complainant and the bishop under complaint.

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<sup>46</sup> See Judicial Council Decision 751.

<sup>47</sup> See Judicial Council Decision 763.

The supervising bishop shall regularly advise all parties of the status of the process and shall notify all parties within 7 days after a determination is made that the supervisory response will not lead to a resolution of the matter.

No verbatim record shall be made and legal counsel shall not be present, although the bishop against whom the complaint was made and the complainant both may choose another person to accompany him or her, with the right to voice. At the determination of the president (secretary), persons with qualifications and experience in assessment, intervention, or healing may be selected to assist in the supervisory responses. Others may be consulted as well.

c) The supervisory response may include a process seeking a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s) in reaching an agreement satisfactory to all parties. (See ¶ 361.1[b]). The appropriate persons, including the president of the College of Bishops, or the secretary if the complaint concerns the president, should enter into a written agreement outlining such process, including an agreement as to confidentiality. If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties. Such written statement of resolution shall be given to the person in charge of that stage of the process for further action consistent with the agreement.

d) If the supervisory response results in the resolution of the matter, the bishop in charge of the supervisory response and the two episcopacy committee members appointed to the supervisory process (¶ 413.3) shall monitor the fulfillment of the terms of the resolution. If the supervisory response does not result in resolution of the matter, the president or secretary of the College of Bishops may refer the matter as an Administrative Complaint (¶ 413.3[e]) or a Judicial Complaint (¶ 2704.1).

e) *Administrative Complaint*—If the complaint is based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform episcopal duties, the president and secretary of the College of Bishops (or the two members of the college who are handling the complaint) shall refer the complaint to the jurisdictional or central conference committee on episcopacy.<sup>48</sup> The committee may recommend involuntary retirement (¶ 408.3), disability leave (¶ 410.4), remedial measures (¶ 363.2), other appropriate action, or it may dismiss the complaint. When the jurisdictional or central conference committee on episcopacy deems the matter serious enough and when one or more offenses listed in ¶ 2702 are involved, the committee may refer the complaint back to the president and secretary of the College of Bishops (or the two members of the college who are handling the complaint) for referral as a judicial complaint to the jurisdictional or central conference committee on investigation. The provisions of ¶ 362.2 for fair process in administrative hearings shall apply to this administrative process.

4. Any actions of the jurisdictional or central conference committee taken on a complaint shall be reported to the next session of the jurisdictional or central conference.

5. Each jurisdiction shall develop a protocol for the caring of lay, clergy and staff determined to be affected by the processing of the complaint.

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¶ 636. *Conference Administrative Review Committee*—There will be an **administrative review committee** composed of three clergy in full connection and two alternates who are not members of the cabinet, the Board of Ordained Ministry or immediate family members of the

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<sup>48</sup> See Judicial Council Decision 784.



above. The committee shall be nominated by the bishop and elected quadrennially by the clergy session of members in full connection with the annual conference. Its only purpose shall be to ensure that the disciplinary procedures for involuntary leave of absence (§ 354.1*b*), involuntary retirement (§ 358.3), or administrative location (§ 362.2*c*) are properly followed. The entire administrative process leading to the action for change in conference relationship shall be reviewed by the administrative review committee, and it shall report its findings to the clergy session of members in full connection with the annual conference prior to any action of the annual conference. The administrative review committee shall notify the parties of the review of the process. The administrative fair process hearing procedures (§ 362.1*a*) should be followed by the administrative review committee. Prior to its report, if the committee determines that any error has occurred, it may recommend to the appropriate person or body that action be taken promptly to remedy the error, decide the error is harmless, or take other action.<sup>49</sup>

¶ **2609. *Jurisdiction and Powers***—1. The Judicial Council shall determine the constitutionality of any act of the General Conference upon an appeal by a majority of the Council of Bishops or one-fifth of the members of the General Conference.

2. The Judicial Council shall have jurisdiction to determine the constitutionality of any proposed legislation when such declaratory decision is requested by the General Conference or by the Council of Bishops.

3. The Judicial Council shall determine the constitutionality of any act of a jurisdictional or central conference upon an appeal by a majority of the bishops of that jurisdictional or central conference or upon an appeal by one-fifth of the members of that jurisdictional or central conference.<sup>50</sup>

4. The Judicial Council shall hear and determine the legality of any action taken by any body created or authorized by the General Conference or any body created or authorized by a jurisdictional or central conference, upon appeal by one-third of the members thereof or upon request of the Council of Bishops or a majority of the bishops of the jurisdictional or central conference wherein the action was taken.

5. The Judicial Council shall hear and determine the legality of any action taken by any body created or authorized by a General Conference or any body created or authorized by the jurisdictional or central conference on a matter affecting an annual or a provisional annual conference, upon appeal by two-thirds of the members of the annual or provisional annual conference present and voting.<sup>51</sup>

6. The Judicial Council shall pass upon and affirm, modify, or reverse the decisions of law made by bishops in central, district, annual, or jurisdictional conferences upon questions of law submitted to them in writing in the regular business of a session; and in order to facilitate such review, each bishop shall report annually in writing to the Judicial Council on forms provided by the council all the bishop's decisions of law. No such episcopal decision shall be authoritative, except in the case pending, until it has been passed upon by the Judicial Council, but thereafter it shall become the law of the Church to the extent that it is affirmed by the council. Normally, the bishop shall rule before the close of the annual conference session during which the question was submitted, but in no case later than thirty days after the close of the

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<sup>49</sup> See Judicial Council Decision 921.

<sup>50</sup> See Judicial Council Decision 338.

<sup>51</sup> See Judicial Council Decision 463.

session. The annual conference secretary shall enter in the annual conference journal an exact statement of the question submitted and the ruling of the bishop.<sup>52</sup>

7. The Judicial Council shall hear and determine any appeal from a bishop's decision on a question of law made in a central, district, annual, or jurisdictional conference when said appeal has been made by one-fifth of that conference present and voting.<sup>53</sup>

8. The Judicial Council shall have power to review an opinion or decision of a committee on appeals of a jurisdictional or central conference if it should appear that such opinion or decision is at variance with the *Book of Discipline*, a prior decision of the Judicial Council, or an opinion or decision of a committee on appeals of another jurisdictional or central conference on a question of Church law. In the event the committee on appeals decision appears to be at variance with the decision of another committee on appeals, then the following procedure should be followed:

a) Any party to the opinion or decision may appeal the case to the Judicial Council on the ground of such conflict of decisions; or

b) The committee on appeals rendering the last of such opinions or decisions may certify the case to, and file it with, the Judicial Council on the ground of such conflict of decisions; or

c) The attention of the president of the Judicial Council being directed to such conflict or alleged conflict of decisions, the president may issue an order directing the secretaries of the committees on appeals involved to certify a copy of a sufficient portion of the record to disclose the nature of the case and the entire opinion and decision of the committee on appeals in each case to the Judicial Council for its consideration at its next meeting.

The Judicial Council shall hear and determine the question of Church law involved but shall not pass upon the facts in either case further than is necessary to decide the question of Church law involved. After deciding the question of Church law, the Judicial Council shall cause its decision to be certified to each of the committees on appeals involved, and such committees on appeals shall take such action, if any, as may be necessary under the law as determined by the Judicial Council.

d) All opinions and decisions of jurisdictional and central conference committees on appeal shall be sent to the secretary of the Judicial Council within thirty days after a decision. These decisions shall be made available to those who are involved in trials when needed and for those preparing for trial, but not otherwise.

9. The Judicial Council shall have other duties and powers as may be conferred upon it by the General Conference.

10. All decisions of the Judicial Council shall be final. However, when the Judicial Council shall declare any act of the General Conference then in session unconstitutional, that decision shall be reported to that General Conference immediately. This legislation shall take effect immediately upon passage by the General Conference.

¶ **2610. Declaratory Decisions**—1. The Judicial Council, on petition as hereinafter provided, shall have jurisdiction to make a ruling in the nature of a declaratory decision as to the constitutionality, meaning, application, or effect of the *Discipline* or any portion thereof or of

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<sup>52</sup> See Judicial Council Decisions 747, 762, 763, 799, 879, 978.

<sup>53</sup> See Judicial Council Decision 153.

any act or legislation of a General Conference; and the decision of the Judicial Council thereon shall be as binding and effectual as a decision made by it on appeal.<sup>54</sup>

2. The following bodies in The United Methodist Church are hereby authorized to make such petitions to the Judicial Council for declaratory decisions: (a) the General Conference;<sup>55</sup> (b) the Council of Bishops; (c) any body created or authorized by the General Conference on matters relating to or affecting the work of such body; (d) a majority of the bishops assigned to any jurisdiction on matters relating to or affecting jurisdictions or the work therein; (e) a majority of the bishops assigned to any central conference on matters relating to or affecting the central conferences or the work therein; (f) any jurisdictional conference on matters relating to or affecting jurisdictions or jurisdictional conferences or the work therein; (g) any body created or authorized by the jurisdictional conference on matters relating to or affecting the work of such body; (h) any central conference on matters relating to or affecting central conference or the work therein; (i) any body authorized or created by a central conference on matters relating to or affecting the work of such body; and (j) any annual conference on matters relating to annual conferences or the work therein.<sup>56</sup>

3. When a declaratory decision is sought, all persons or bodies who have or claim any interest that would be affected by the declaration shall be parties to the proceeding, and the petition shall name such parties. Except for requests filed during the General conference, any party requesting a declaratory decision shall file a brief statement of the question involved with the secretary of the Judicial Council. After receiving such request, the secretary of the Judicial Council shall submit a brief statement of the question involved to *Newscope*, or any publication specified by notice in *Newscope*, to be included—without cost—in the next edition. The Judicial Council shall not hear and determine any such matter until thirty days after such publication in *Newscope*. The same information shall also be printed in *The Interpreter* and be published at the official United Methodist Web site ([www.umc.org](http://www.umc.org)) or its successor. If the president of the council determines that other parties not named by the petition would be affected by such a decision, such additional parties shall also be added, and the petitioner or petitioners, upon direction of the secretary of the Judicial Council, shall then be required to serve all parties so joined with a copy of the petition within fifteen days after such direction by the secretary of the Judicial Council. In like manner, any interested party may, on the party's own motion, intervene and answer, plead, or interplead.<sup>57</sup>

¶ **2701. Preamble and Purpose**—The judicial proceedings and the rights set forth in this paragraph commence upon referral of a matter as a judicial complaint from counsel for the Church to the committee on investigation. The judicial process terminates at the end of any appeal or right of appeal. The judicial process shall have as its purpose a just resolution of judicial complaints, in the hope that God's work of justice, reconciliation and healing may be realized in the body of Jesus Christ. The following procedures are presented for the protection of the rights of individuals guaranteed under Section III, Article IV, of our Constitution and for the protection of the Church. The presumption of innocence shall be maintained until the conclusion

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<sup>54</sup> See Judicial Council Decisions 106, 172, 301, 434, 443, 454, 463, 474, 566.

<sup>55</sup> See Judicial Council Decision 889.

<sup>56</sup> See Judicial Council Decisions 29, 212, 255, 301, 309, 382, 452, 535.

<sup>57</sup> See Judicial Council Decision 437.

of the trial process. Special attention should be given to ensuring racial, ethnic, age, and gender diversity of boards, committees, and courts and the timely disposition of all matters.<sup>58</sup>

1. *Rights of the Complainant (the person filing the complaint)*

a) *Right to Be Heard*—In any judicial proceeding, the complainant shall have a right to be heard before any final action is taken.

b) *Right to Notice of Hearings*—Notice of any hearing shall advise the complainant about proposed procedures, with sufficient detail to allow the complainant to prepare. Notice shall be given not less than twenty (20) days prior to the hearing. The complainant shall have the right to be present at any judicial process hearing.

c) *Right to Be Accompanied*—The complainant shall have the right to be accompanied by another person to any interview or hearing to which they are subject. The person accompanying the complainant may be an attorney, but shall not have the right to voice.

d) *Right to be Informed of Resolution*—The complainant shall have the right to be informed of the disposition of the complaint of the judicial proceeding as part of a holistic process of healing. Church officials are encouraged, as may be permissible, to include rationale.

2. *Rights of the Respondent*

a) *Right to Be Heard*—In any judicial proceeding, the respondent (the person to whom the procedure is being applied) shall have a right to be heard before any final action is taken.

b) *Right to Notice of Hearings*—Notice of any judicial process hearing shall advise the respondent of the reason for the proposed procedures, with sufficient detail to allow the respondent to prepare a response. Notice shall be given not less than twenty (20) days prior to the hearing. The respondent shall have the right to be present at any judicial process hearing.

c) *Right to Be Accompanied*—The respondent shall have a right to be accompanied by a clergy person in full connection pursuant to ¶ 2706.2. The clergy person accompanying the respondent shall have the right of advocacy. The respondent shall be entitled to choose one assistant counsel without voice who may be an attorney.

d) *Right Against Double Jeopardy*—No bill of charges shall be certified by any committee on investigation after an earlier bill of charges has been certified by a committee on investigation based on the same alleged occurrences.

e) *Right of Access to Records*—The respondent and the Church shall have access to all records relied upon in the determination of the outcome of the committee on investigation, trial court, or appeal committee or body.<sup>59</sup>

3. *Rights of the Church*

a) *Right to Be Heard*—In any judicial proceeding, the Church shall have the right to be heard before any final action is taken. b) For other rights and responsibilities of the church and counsel for the church see ¶ 2706.

4. *Process and Procedure*

a) *Failure to Appear or Respond*—In the event that the respondent fails to appear for any judicial process hearing, refuses mail, refuses to communicate personally with the bishop or district superintendent, or otherwise fails to respond to requests from official judicial committees, such actions or inactions shall not be used as an excuse to avoid or delay any Church processes, and such processes may continue without the participation of such individual.

<sup>58</sup> See Judicial Council Decision 695.

<sup>59</sup> See Judicial Council Decisions 691, 765.

*b) Communications*—In any judicial proceeding, under no circumstances shall one party or counsel, in the absence of the other party or counsel, discuss substantive matters with members of the pending hearing, trial, or appellate body while the case is pending. Questions of procedure may be raised and discussed *ex parte*, but only with the presiding officer or secretary of the hearing or appellate body.

*c) Healing*—As a part of the judicial process, the bishop and cabinet, in consultation with the presiding officer of the pending hearing, trial, or appellate body then sitting, shall provide for healing if there has been significant disruption to the congregation, the annual conference, or the context of ministry by the judicial matter. This may include a just resolution process for unresolved conflicts, support for victims, and reconciliation for all who are involved. This process may also include the sharing of information by the bishop or a cabinet member about the nature of the complaint without disclosing alleged facts underlying the complaint that might compromise the judicial process.

*d) Immunity of Participants*—In order to preserve the integrity of the Church's judicial process and ensure full participation in it at all times, the resident bishop, the cabinet, the presiding officer of the trial, trial officers, trial court, witnesses, counsels, assistant counsels, advocates, complainant, committee on investigation and all others who participate in the Church's judicial process shall have immunity from prosecution of complaints brought against them related to their role in a particular judicial process, unless they have committed a chargeable offense in conscious and knowing bad faith. The complainant in any proceeding against any such person related to their role in a particular judicial process shall have the burden of proving, by clear and convincing evidence, that such person's actions constituted a chargeable offense committed knowingly in bad faith. The immunity set forth in this provision shall extend to civil court proceedings, to the fullest extent permissible by the civil laws.

5. *A Just Resolution in Judicial Proceedings*—A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible and bringing healing to all the parties. Special attention should be given to ensuring that cultural, racial, ethnic, age and gender contexts are valued throughout the process in terms of their understandings of fairness, justice, and restoration. During the just resolution process, the parties may be assisted by a trained, impartial third party facilitator(s) or mediator(s), in reaching an agreement satisfactory to all parties. Processes that seek a just resolution are encouraged at any time, including through the judicial proceedings. After the referral of a matter as a judicial complaint from counsel for the church to the committee on investigation, if a process seeking a just resolution is used, the appropriate persons, including the counsel for the Church and the counsel for the respondent, should enter into a written agreement outlining such process, including any agreement on confidentiality. If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by the same persons who signed the written agreement outlining the process, and they shall agree on any matters to be disclosed to third parties. If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the disciplinary disclosures required for possible readmission.

¶ 2702. 1. A bishop, clergy member of an annual conference (¶ 369), local pastor,<sup>60</sup> clergy on honorable or administrative location, or diaconal minister may be tried when charged

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<sup>60</sup> See Judicial Council Decision 982.

\* The statute of limitations went into effect as law on a prospective basis starting on January 1, 1993. All alleged

(subject to the statute of limitations in ¶ 2702.4)\* with one or more of the following offenses: (a) immorality including but not limited to, not being celibate in singleness or not faithful in a heterosexual marriage;\*\* (b) practices declared by The United Methodist Church to be incompatible with Christian teachings,<sup>61</sup> including but not limited to: being a self-avowed practicing homosexual; or conducting ceremonies which celebrate homosexual unions; or performing same-sex wedding ceremonies;\*\*\* (c) crime; (d) failure to perform the work of the ministry; (e) disobedience to the Order and Discipline of The United Methodist Church; (f) dissemination of doctrines contrary to the established standards of doctrine of The United Methodist Church; (g) relationships and/or behavior that undermines the ministry of another pastor;<sup>62</sup> (h) child abuse;\*\*\* (i) sexual abuse;<sup>63</sup> (j) sexual misconduct\*\*\* or (k) harassment, including, but not limited to racial and/or sexual harassment; or (l) racial or gender discrimination.<sup>64</sup>

2. A bishop, clergy member of an annual conference, or diaconal minister may be brought to trial when the appropriate body recommends involuntary termination.<sup>65</sup>

3. A professing member of a local church may be charged with the following offenses, and, if so, may choose a trial: (a) immorality; (b) crime; (c) disobedience to the Order and Discipline of The United Methodist Church; (d) dissemination of doctrines contrary to the established standards of doctrine of The United Methodist Church; (e) sexual abuse; (f) sexual misconduct;‡ (g) child abuse; (h) harassment, including, but not limited to racial and/or sexual harassment; (i) racial or gender discrimination; or (j) relationships and/or behaviors that undermine the ministry of persons serving within an appointment.

4. *Statute of Limitations*—No judicial complaint or charge shall be considered for any alleged occurrence that shall not have been committed within six years immediately preceding the filing of the original complaint, except in the case of sexual or child abuse and in the case of immorality or crime, when the alleged occurrence(s) include allegations of sexual abuse or child abuse, there shall be no limitation (¶ 2704.1a).\*\*\*

Time spent on leave of absence shall not be considered as part of the six years.

5. *Time of Offense*—A person shall not be charged with an offense that was not a chargeable offense at the time it is alleged to have been committed. Any charge filed shall be in the language of *The Book of Discipline* in effect at the time the offense is alleged to have occurred except in the case of immorality or crime, when the alleged occurrence(s) include allegations of sexual abuse or child abuse. Then it shall be in the language of *The Book of Discipline* in effect at the time the charge was filed. Any charge must relate to an action listed as a chargeable offense in the *Discipline*.

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offenses that occurred prior to this date are time barred. See Judicial Council Decisions 691, 704, and 723.

<sup>61</sup> See Judicial Council Decisions 702, 984, 985.

<sup>62</sup> See Judicial Council Decision 702.

\*\* The language beginning “including but not limited to . . .” first appeared in the 2004 *Book of Discipline*, effective January 1, 2005.

<sup>63</sup> See Judicial Council Decisions 736, 768.

<sup>64</sup> See Judicial Council Decision 986.

<sup>65</sup> See Judicial Council Decision 767.

\*\*\*This offense was first listed as a separate chargeable offense in the 1996 *Book of Discipline* effective April 27, 1996. See Judicial Council Decision 691.

‡This offense was first listed as a separate chargeable offense in the 2000 *Book of Discipline*, effective January 1, 2001. See Judicial Council Decision 691.

¶ 2703. *Composition of the Committee on Investigation*

1. *When respondent is a bishop*—There shall be a **committee on investigation** elected by each jurisdictional or central conference. Nominations shall be made by the College of Bishops in consultation with the jurisdictional episcopacy committee. Further nominations may be offered from the floor of the jurisdictional or central conference. The committee shall consist of four clergy in full connection and three professing members (with not more than one person from each annual conference, if possible), and six alternate members, three of whom shall be clergypersons in full connection and three of whom shall be professing members. If additional members or alternates are needed, they may be named by the College of Bishops. Committee members shall be in good standing and should be deemed of good character. The committee should reflect racial, ethnic, and gender diversity. The committee shall elect a chairperson and organize at the jurisdictional or central conference. Seven members or alternates seated as members of the committee shall constitute a quorum.

2. *When respondent is a clergy member of an annual conference, a clergy member on honorable or administrative location or a local pastor*—There shall be a committee on investigation consisting of four clergy in full connection, three professing members, and six alternate members, three of whom shall be clergy in full connection and three of whom shall be professing members.<sup>66</sup> The committee shall be nominated by the presiding bishop in consultation with the Board of Ordained Ministry (for clergy members) and the conference board of laity (for professing members) and elected quadrennially by the annual conference. If additional members or alternates are needed, the annual conference may elect members to serve for the remainder of the quadrennium. Committee members shall be in good standing and should be deemed of good character. The committee should reflect racial, ethnic, and gender diversity. The committee on investigation shall elect a chair and organize at the annual conference. None of the members or alternates shall be members of the Board of Ordained Ministry, the cabinet, or immediate family members of the above. Should a member of the committee on investigation have been a party to any of the prior proceedings in a case that finally comes before the committee, he or she shall be disqualified from sitting on the committee during its consideration of that case, and his or her place shall be taken by an alternate member. Seven members or alternates seated as members of the committee shall constitute a quorum.

3. *When respondent is a diaconal minister*—In all cases, the pastor, district superintendent or bishop should take supervisory steps to resolve any grievances or complaints. There shall be a committee on investigation consisting of not fewer than four diaconal ministers or professing members of the church, three clergy in full connection, and ten alternate members, five of whom shall be diaconal ministers or professing members and five clergy in full connection. Nominations shall be made by the bishop in consultation with the board of the laity (for professing members) and with the Board of Ordained Ministry (for clergy in full connection and diaconal ministers) and elected quadrennially by the annual conference. If additional members or alternates are needed, the annual conference may elect members to serve for the remainder of the quadrennium. Committee members shall be in good standing and should be deemed of good character. The committee should reflect racial, ethnic, and gender diversity. The committee on investigation shall elect a chair and organize at the annual conference. Seven members or alternates seated as members of the committee shall constitute a quorum.

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<sup>66</sup> See Judicial Council Decision 887.

4. *When respondent is a layperson*—In all cases, the pastor or district superintendent should take pastoral steps to resolve any complaints. If such pastoral response does not result in resolution and a written complaint is made against a professing member for any of the offenses in ¶ 2702.3, the pastor in charge or co-pastors (¶ 205.1) of the local church, in consultation with the district superintendent and the district lay leader, may appoint a committee on investigation consisting of four professing members and three clergy in full connection (both clergy and professing members must come from other congregations, exclusive of the churches of the respondent or the complainant). Committee members shall be in good standing and should be deemed of good character. The committee should reflect racial, ethnic, and gender diversity. When the pastor in charge is (or co-pastors are) bringing the charge, the district superintendent, in consultation with the district lay leader, shall appoint the committee on investigation. Five members shall constitute a quorum.

¶ 2704. *Referral of Original Complaint to Counsel for the Church, Who Shall Prepare Judicial Complaint and Supporting Material for Consideration by Committee on Investigation*

1. *When respondent is a bishop*

a) *Judicial Complaint*—A complaint based on allegations that a bishop has committed one or more of the offenses listed in ¶ 2702 shall initially be served on the president and secretary of the College of Bishops. Upon receipt of the complaint the president of the College of Bishops shall forthwith deliver a copy of the complaint to the respondent bishop, notify active bishops of the existence and nature of the complaint, and refer the complaint to an elder in full connection within the same jurisdictional or central conference, who shall serve as counsel for the Church. Counsel for the Church shall represent the interests of the Church in pressing the claims of the person making the complaint. Counsel for the Church shall have the right to choose one assistant counsel without voice who may be an attorney. The counsel for the Church shall draft and sign the complaint as a judicial complaint, forward it to the jurisdictional or central conference committee on investigation (¶ 2704), and represent the Church in the judicial process. The fair process provisions in ¶ 2701 shall apply to this judicial process. The statute of limitations in ¶ 2702.4 should be considered prior to the referral of a judicial complaint.<sup>67</sup>

b) If a written complaint is made against a bishop for any of the offenses in ¶ 2702.1, the counsel for the Church, as appointed under ¶ 2704.1a, shall prepare, sign, and forward the judicial complaint and all documentary evidence under consideration to the chairperson of the committee on investigation, the person making the original complaint, and the bishop being charged (respondent). The respondent shall be given an opportunity to submit to the committee on investigation a written response to the judicial complaint within thirty days of receipt of the judicial complaint. The chairperson shall convene the committee on investigation within sixty days of receiving the judicial complaint.

c) If five or more members of the committee on investigation so recommend, the jurisdictional committee on the episcopacy may suspend the respondent pending the outcome of the judicial process.

d) For the purpose of this paragraph, the United Methodist bishops of the central conferences shall constitute one College of Bishops.

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<sup>67</sup> The statute of limitations for bishops went into effect as law on a prospective basis on April 27, 1996. All alleged offenses that occurred prior to this date are timebarred.



2. *When respondent is a clergy member of an annual conference, clergy on honorable or administrative location or a local pastor*

a) *Judicial Complaint*—If the bishop determines that the complaint is based on allegations of one or more offenses listed in ¶ 2702.1, the bishop shall refer the complaint to the counsel for the Church, who shall be appointed by the bishop. The counsel for the Church shall be a clergyperson in full connection and shall have the right to choose one assistant counsel without voice who may be an attorney. The counsel for the Church shall draft and sign a judicial complaint, attaching as exhibits all relevant written materials, including but not limited to information from the supervisory process and a suggested list of witnesses as deemed appropriate, forward the judicial complaint to the committee on investigation and represent the Church in the judicial process. The statute of limitations in ¶ 2702.4 should be considered prior to the referral of a judicial complaint.

b) If a written complaint is made against a clergyperson for any of the offenses in ¶ 2702.1, the bishop shall appoint a clergyperson in full connection as counsel for the Church (see ¶ 361.1d[1]). Counsel for the Church shall prepare, sign, and refer the judicial complaint, with all relevant material, to the chairperson of the conference committee on investigation and represent the interests of the Church in pressing the claims of the person making the original complaint in any proceedings before the committee. A copy of the complaint and documentary evidence under consideration shall be sent to the respondent, the person making the original complaint, and the bishop. The respondent shall be given an opportunity to submit to the committee on investigation a written response to the judicial complaint within thirty days of receipt of the judicial complaint. The chairperson of the conference committee on investigation shall have sixty days to convene the committee on investigation after receiving the judicial complaint.

c) If five or more members of the committee on investigation so recommend, the bishop may suspend the person charged from all clergy responsibilities pending the outcome of the judicial process. The respondent retains all rights and privileges as stated in ¶ 334.

3. *When respondent is a diaconal minister*

a) If a written complaint is made against a diaconal minister for any of the offenses in ¶ 2702.1, the supervisory response should be initiated and a just resolution process may be used. (See ¶ 361.1(b) for a discussion of a just resolution.) If the supervisory process does not result in resolution, the respondent's district superintendent may appoint a clergyperson in full connection or diaconal minister as counsel for the Church. Counsel for the Church shall prepare, sign, and refer the judicial complaint, with all relevant material, to the chairperson of the conference committee on investigation for diaconal ministers and represent the interests of the Church in pressing the claims of the person making the original complaint in any proceedings before the committee. A copy of the complaint and documentary evidence under consideration shall be sent to the respondent, the person making the original complaint, and the bishop. The respondent shall be given an opportunity to submit to the committee on investigation a written response to the judicial complaint within thirty days of receipt of the judicial complaint. The chairperson of the conference committee on investigation shall have sixty days to convene the committee on investigation after receiving the judicial complaint.

b) If at least two-thirds of the committee on investigation so recommend, the bishop may suspend the person charged from all professional responsibilities pending the outcome of the judicial process.

4. *When respondent is a layperson*

a) In all cases, the pastor or district superintendent should take pastoral steps to resolve any grievances or complaints. Such steps may include a just resolution process. See ¶ 361.1(b) for a discussion of a just resolution. If after such steps have been taken and have not resulted in a resolution and a written complaint is made against a layperson for any of the offenses in ¶ 2702.3, the pastor in charge or co-pastors (¶ 205.1) of the local church, in consultation with the district superintendent and the district lay leader, may appoint counsel for the Church, who shall be a United Methodist. Counsel for the Church shall prepare, sign, and refer the judicial complaint, with all relevant material, to the chairperson of committee on investigation.

b) If five or more members of the committee so recommend, the pastor may suspend the charged professing member from exercising any Church office pending outcome of the judicial process.

c) All complaints against a professing member under ¶ 2702.3 shall be submitted in writing, signed by the person(s) making the original complaint, and delivered to the pastor in charge of the local church of which the respondent is a member, and a copy shall be sent to the respondent.

d) The member shall be given an opportunity to submit to the committee on investigation a written response to the judicial complaint within thirty days of a receipt of the judicial complaint and the appointing of the committee and before consideration of the judicial complaint by the committee.

e) The district superintendent shall preside at all meetings of the committee, shall be given a copy of the judicial complaint and any response, and shall have the right to be present and to speak at all meetings of the committee.

¶ 2705. *The Form of the Judicial Complaint*—The judicial complaint shall be prepared and signed by counsel for the Church. The complaint should explain to the committee on investigation the alleged events surrounding and relating to one or more chargeable offense(s). All relevant documents and other exhibits supporting the judicial complaint may be attached; and a true copy of the complaint and reproducible documents and exhibits shall be sent by counsel for the Church to the respondent and his/her counsel at the same time as they are sent to the Committee on Investigation. The judicial complaint should include the appropriate chargeable offense(s) based on the list in ¶ 2702 and proposed specifications.

¶ 2706. *Committee on Investigation—Procedures*

1. *Introduction*—The role of the committee on investigation is to conduct an investigation into the allegations made in the judicial complaint and to determine if reasonable grounds exist to bring a bill of charges and specifications to trial. If so, it shall prepare, sign and certify a bill of charges and specifications. The committee's duty is only to determine whether reasonable grounds exist to support the charges. It is not the committee's duty to determine guilt or innocence.

2. *Parties and Counsel*—The parties are the respondent and the Church.

a) *Counsel for the Church*—Counsel for the Church shall be appointed as provided in ¶ 2708.7. Counsel for the Church shall be entitled to choose one assistant counsel without voice who may be an attorney.

b) *Committee on Investigation*—The committee on investigation may have legal counsel present, who shall not be the conference chancellor, for the sole purpose of providing advice to the committee.

c) *When respondent is a bishop, a clergy member of an annual conference, clergy on honorable or administrative location, a local pastor, a clergyperson, or a diaconal minister*—A respondent who is a bishop, a clergyperson, or a diaconal minister shall be entitled to select a clergyperson in full connection to serve as respondent’s counsel. A respondent shall be entitled to choose one assistant counsel without voice who may be an attorney.

d) *Investigation of a respondent who is a layperson*—A lay respondent shall be entitled to select a lay member or clergyperson to serve as respondent’s counsel. A respondent shall be entitled to choose one assistant counsel without voice who may be an attorney.

3. *Preliminary Meeting*—Basic procedural decisions shall be made in a preliminary meeting. During this meeting, the respondent and the respondent’s counsel, the person making the original complaint, and the counsel for the Church shall have the right to argue procedural points before a decision is made by the chair. All advance procedural decisions and such unanticipated decisions as may come in the course of the meeting of the committee on investigation shall be rendered in writing so as to be available for consideration in all further possible stages of the case.

#### 4. *Hearing before the Committee on Investigation*

a) If possible, the respondent and the person(s) bringing the original complaint shall be brought face to face, but the inability to do this shall not invalidate an investigation. Notice of the hearings shall be given to all parties, and the person(s) bringing the original complaint and they all shall be permitted to be present during testimony, but not during deliberations. Proceedings in the investigation shall be informal. No oaths shall be taken. All procedural decisions shall be made by the chairperson.

b) *Interview of witness prior to or outside of hearing*—The chairperson shall have the power, whenever it is appropriate in the committee’s own discretion, to appoint a member(s) of the committee to interview any witness(es), provided that all parties may be present (without voice) and that three days notice of the time and place of such interview shall have been given to all parties. The person(s) so appointed shall create a verbatim record of the interview and certify the record by signature for transmittal to the chairperson.

c) *Examination of witnesses*—The committee on investigation may call and question such persons or request such written information, including but not limited to materials from the supervisory process, as it deems necessary to establish whether or not there are reasonable grounds for formulating a charge or charges. The committee may receive from the counsels suggested lists of persons to be questioned, sources of written material or questions. There shall be no right of cross-examination by either the respondent or the person(s) bringing the original complaint.

d) *Evidence*—The committee should only consider testimony or evidence which is relevant and reliable. The chairperson or presiding officer, after consultation with counsel for both parties, shall rule on challenges to relevance and reliability. The introduction of any material relating to events barred by the statute of limitations (§ 2702.4) as evidence, as preface to evidence, or as build-up for evidence in the procedures of the committee on investigation or the trial proceedings shall be permitted when the presiding officer, after consultation with counsel for both parties, rules that such material is relevant and reliable.

e) *Verbatim transcript*—There shall be a verbatim record of all proceedings of the committee on investigation, except when the committee meets in executive session. The term *executive session* shall mean the committee meeting alone or with its legal counsel. If the

complaint is dismissed or returned to the bishop, no verbatim record need be transcribed and the record that exists will be sent to the conference secretary for retention.

5. *Bill of Charges and Specifications, Deliberations, Vote, and Referral*—A vote on each charge and each specification shall be taken separately. It is incumbent on each member of the committee to base his or her vote solely on whether reasonable grounds exist to support the charges. If there are members who are unwilling to uphold the *Discipline* for reasons of conscience or otherwise, such members must step aside in this matter and either alternate members or others who are willing to uphold the *Discipline* must be appointed to the Committee to enable it to complete its responsibility.<sup>68</sup>

a) *Bill of Charges and Specifications*—A charge is one of the chargeable offenses listed in ¶ 2702. A charge shall not include more than one such chargeable offense. More than one charge against the same person may be presented and tried at the same time. Each charge must be written, with specifications that support the charge. Each charge must be accompanied by one or more specifications of fact. Each specification, standing alone, must allege a factual occurrence that, if found to be true, would support a finding of guilty on the related charge. The specifications should be as specific as possible with information such as date, place, and specific events alleged to have occurred.

b) *Finding of reasonable grounds by committee and referral of bill of charges and specifications for trial*

(1) *When respondent is a bishop*—A vote to adopt any charge or specification shall require five votes. Any bill of charges and specifications adopted shall be sent to the bishop charged, to the secretary of the jurisdictional or central conference, to the president and secretary of the College of Bishops, to counsel for the Church, and to the chairperson of the jurisdictional committee on the episcopacy.

(2) *When respondent is a clergyperson other than a bishop*—A vote to adopt any charge or specification shall require five votes. Any bill of charges and specifications adopted by the committee on investigations shall be sent by the chairperson within five days to the respondent, the person making the complaint, the secretary of the annual conference, the counsel for the Church, and the resident bishop.

(3) *When respondent is a diaconal minister*—A vote to adopt any charge or specification shall require two votes. Any bill of charges and specifications adopted shall be sent to the respondent within five days, the secretary of the annual conference, the chairperson of the Board of Ordained Ministry, the respondent's district superintendent, counsel for the Church, and the resident bishop.

(4) *When respondent is a layperson*—A vote to adopt any charge or specification shall require five votes. Any bill of charges and specifications adopted by the committee shall be sent to the person charged, the recording secretary of the charge conference, counsel for the Church, the pastor(s), and the district superintendent.

c) *Findings other than reasonable grounds by committee or other actions*

(1) If the committee on investigation determines that there are no reasonable grounds for charges, it may dismiss the judicial complaint. When deemed appropriate, it may also refer matters of concern to the proper referring Church official (to the president or secretary of the College of Bishops in the case of bishop, to the resident bishop in the case of a clergyperson or diaconal minister, or to the pastor or co-pastors in the case of layperson) for

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<sup>68</sup> See Judicial Council Decision 980.

administrative or other action. Notification of these actions, should be given to the respondent, the person making the original complaint, counsel for the Church and the proper referring Church officials.

(2) If the committee on investigation determines that the judicial complaint is not based upon chargeable offenses, or for other good cause, the committee may refer the complaint to the proper referring Church official (see ¶ 2706.5c[1] above) for administrative or other action. Such referral will not constitute a dismissal or double jeopardy under ¶ 2701.5. Notification of these actions should be given to the respondent, the person making the original complaint, counsel for the Church and the proper referring Church officials.

(3) Upon recommendation of the counsel for the Church and the counsel for the respondent, the committee may refer the matter to the resident bishop as deemed appropriate for a process seeking a just resolution. The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal or double jeopardy under ¶ 2701.5. The appropriate persons, including the counsel for the Church and counsel for the respondent, should enter into a written agreement outlining the process, including any agreements on confidentiality. If resolution is achieved, a written statement, affirming such resolution, including any terms and conditions, shall be signed by the same persons who signed the written agreement outlining the process, and they shall agree on any matters to be disclosed to third parties. If the resolution results in a change of ministerial status, the disclosure agreement shall not prevent the Disciplinary disclosures required for readmission. The written statement affirming such resolution shall be given to the bishop for further action(s) to implement the agreement, if any. If the process does not result in resolution, the matter shall be returned to the committee.

6. *Special Investigations*—In the event that jurisdiction in a judicial proceeding is ended as a result of the death of, or surrender of credentials by, the respondent in cases where the chargeable offense includes those listed in ¶ 2702.1(h), (i), or (j), the Committee on Investigation may be convened at the request of the presiding bishop to make pastoral inquiry into the charges. The inquiry shall:

- (a) not be judicial in nature;
- (b) be empowered to receive witnesses and to consider evidence; and
- (c) make a report of the inquiry to the body where the respondent's membership was held, including recommendations if any.

¶ 2707. *Fundamental Principles for Trials*—Church trials are to be regarded as an expedient of last resort. Only after every reasonable effort has been made to correct any wrong and adjust any existing difficulty should steps be taken to institute a trial. No such trial as herein provided shall be construed to deprive the respondent or the Church of legal civil rights, except to the extent that immunity is provided as in ¶ 2701.9. All trials shall be conducted according to *The Book of Discipline* in a consistent Christian manner by a properly constituted court after due investigation.

¶ 2708. *General Organization and Pre-Trial Procedures*

1. *Officers of the Court*—Officers shall consist of a presiding officer (see ¶¶ 2712.2, 2713.2, 2714.2), who shall appoint a secretary and such other officers as deemed necessary. The presiding officer may have legal counsel, who shall not be the conference chancellor, at the expense of the annual conference holding the trial, for the sole purpose of advice to the presiding officer during the trial.

2. *Time and Place of Trial*—The official charged with convening the trial shall also fix the time and place for the trial and will notify the presiding officer, the respondent, counsel for the Church and the person making the original complaint. In all cases, sufficient time shall be allowed for these persons to appear at the given place and time and for the respondent to prepare for the trial. The presiding officer shall decide what constitutes “sufficient time,” but in no case shall this time be less than twenty days.

3. *Pre-Trial Motions and Referrals*—All appeals of any procedural or substantive matters that have occurred prior to referral of the charges to trial must be appealed to the presiding officer of the trial court before the convening of the trial. Otherwise, the right to appeal on such matters is forfeited. All objections to and motions regarding the regularity of the proceedings and the form and substance of charges and specifications must be made before the convening of the trial court. The presiding officer may determine all such preliminary objections and motions; in furtherance of truth and justice may permit amendments to the specifications or charges not changing the general nature of the same; and may dismiss all or any part of the bill of charges upon a finding by the presiding officer (1) that all or such part is without legal or factual basis or (2) that, even assuming the specifications to be true, they do not constitute a basis for a chargeable offense. The presiding officer may refer the matter as deemed appropriate for a process seeking a just resolution to the resident bishop upon consultation with the counsel for the Church and counsel for the respondent. The bishop shall institute such a process and may use the assistance of a trained, impartial third party facilitator(s) or mediator(s). Such referral will not constitute a dismissal or double jeopardy under ¶ 2701.5. If a process seeking a just resolution is used, the appropriate persons, including the counsel for the Church and counsel for the respondent, should enter into a written agreement outlining such process, including any agreement on confidentiality. If resolution is achieved, a written statement, affirming such resolution, and any terms and condition, shall be signed by the same persons who signed the written agreement outlining the process, and they shall agree on all matters to be disclosed to third parties. Such a written statement shall be given to the presiding officer and the presiding officer shall take action consistent with the agreement. If no resolution results, the matter is returned to the presiding officer for further action.

4. *Change of Venue*—The respondent may request a change of venue. This shall be a written request to the presiding officer of the court within ten days of receipt of notice to appear for trial. The presiding officer shall rule upon the request after hearing arguments by the respondent and the Church. If the motion is approved, the presiding officer shall name the annual conference outside the episcopal area wherein the trial shall be held and shall notify the resident bishop of that conference, who shall convene the court. The cost of prosecution shall be borne by the conference where the case originated.

#### 5. *Notice*

a) All notices required or provided for in relationship to investigations, trials, and appeals shall be in writing, signed by or on behalf of the person or body giving or required to give such notice, and shall be addressed to the person or body to whom it is required to be given. Such notices shall be served by delivering a copy thereof to the party or chief officer of the body to whom it is addressed in person or sent by other delivery system to the last-known residence or address of such party. Proof of notice shall be provided and becomes a part of the record of the case.

b) In all cases wherein it is provided that notice shall be given to a bishop or district superintendent and the charges are against that particular person, then such notice (in addition to

being given to the accused) shall be given, in the case of a bishop, to another bishop within the same jurisdiction and, in the case of a district superintendent, to the bishop in charge.

6. *Trial Scheduling and Continuances*—If in any case the respondent, after due notice (twenty days) has been given, shall refuse or neglect to appear at the time and place set forth for the hearing, the trial may proceed in the respondent’s absence. However, if in the sole discretion of the presiding officer there is good and sufficient reason for the absence of the respondent or another essential person, the presiding officer may reschedule the trial to a later date.

7. *Counsel*—In all cases, a respondent shall be entitled to appear and to select and be represented by counsel, a clergyperson in full connection of The United Methodist Church if the respondent is a bishop, a clergyperson, or a diaconal minister; and a lay or clergy member of The United Methodist Church if the respondent is a lay member. The respondent and the Church shall be entitled to have counsel heard in oral or written argument or both. The official charged with convening the court (see ¶¶ 2712.1, 2713.1, 2714.1) shall, within thirty days after receiving a copy of the charges and specifications, appoint counsel for the Church, if counsel has not been previously appointed. In the case of a trial of a bishop, clergyperson, or local pastor, counsel for the Church shall be a clergyperson in full connection (¶¶ 2704.2a, 2712.4) to represent the interests of the Church in pressing the claims of the person making the complaint.

No person who was a member of the cabinet, Board of Ordained Ministry, or committee on investigation who earlier considered the case now before the trial court shall be appointed counsel for the Church or serve as counsel for the respondent or any of the persons bringing complaints in a case. In all cases of trial where counsel has not been chosen by the respondent, counsel shall be appointed by the presiding officer. The counsel for the Church and for the respondent each shall be entitled to choose one assistant counsel, who may be an attorney, without voice. “Without voice” means without the ability to speak to or within the hearing of the trial court.

8. *Witnesses*—Notice to appear shall be given to such witnesses as either party may name and shall be issued in the name of the Church and be signed by the presiding officer of the trial. It shall be the duty of all clergy and lay members of The United Methodist Church to appear and testify when summoned. Refusal to appear or to answer questions ruled by the presiding officer to be relevant may be considered as disobedience to the Order and Discipline of The United Methodist Church except when refusal to answer is based on a good faith claim that answering might tend to incriminate the witness under state or federal criminal law or is based on a claim of confidential communication to a clergyperson under ¶ 341.5.

9. *Witness Qualifications*—A witness, to be qualified, need not be a member of The United Methodist Church.

10. *Commissioned Out-of-Court Testimony*—The presiding officer of any court before which a case may be pending shall have power, whenever the necessity of the parties or witnesses shall require, to appoint, on the application of either party, a commissioner or commissioners, either a clergy or a layperson or both, to examine the witnesses; provided that three days’ notice of the time and place of taking such testimony shall have been given to the adverse party. The party making this request shall have the burden of showing good cause and shall bear the cost of such commissioned out-of-court testimony. Counsel for both parties shall be permitted to examine and cross-examine the witness or witnesses whose testimony is thus taken. The commissioners so appointed shall take such testimony in writing as may be offered by either party. The testimony properly certified by the signature of the commissioner or

commissioners shall be transmitted to the presiding officer of the court before which the case is pending.

11. *Amendments to Bill of Charges and Specifications*—After consultation with counsels, the presiding officer of the trial may make amendments to the bill of charges, or request that the committee on investigation make amendments to the bill of charges; provided that they do not change the nature of the charges and specifications and do not introduce new matter of which the respondent has not had due notice. When an amendment or amendments to a bill of charges is or are denied by the presiding officer, it or they shall not be introduced in the form of testimony in the trial. Charges or specifications previously considered and dropped by the committee on investigation shall not be introduced in the trial in the form of evidence or otherwise.

12. *Open or Closed Trials*—The deliberations of the trial court shall be closed. All other sessions of the trial shall be closed, except upon written request to the presiding officer by counsel for the respondent, the trial shall be open. Also, the trial may be opened by the presiding officer, upon written request of either the counsel for the Church or the counsel for the person charged, to family of the person charged, or family of the person making the original complaint, and/or to other personally significant people. Any motions to open the trial should be presented and decided prior to the date of the trial. In addition, the presiding officer may, in his or her judgment on motion of counsel for either party or on the presiding officer's own motion, declare a particular session of the court to be closed. At all times, however, in the hearing portion of the trial, the presiding officer, the members of the trial court, the person(s) making the original complaint, the person representing the Church as well as counsel for the Church, the respondent, and counsel for the respondent shall have a right to be present.

13. *Combined Trials of Multiple Persons*—In cases in which a number of persons have allegedly engaged in the same offense at the same time and place, their trials may be combined into one trial for that same offense. The presiding officer shall make the determination on combination of trials.

#### ¶ 2709. *Trial Convening and Organization*

1. *Convening of the Trial*—The convenor shall notify the respondent in writing to appear at a fixed time and place no less than twenty days after service of such notice and within a reasonable time thereafter for selection of the members of the trial court.

2. *Trial Pool*—At the appointed time, in the presence of the respondent, counsel for the respondent, counsel for the Church, and the presiding officer, thirteen persons shall be selected as a trial court out of a pool of thirty-five or more persons selected according to ¶¶ 2712.3, 2713.3, and 2714.3. Special consideration should be given so that the pool includes persons representative of racial, ethnic, and gender diversity.

3. *Selection of the Trial Court*—No person shall serve as a member of the trial court who was a member of the cabinet, Board of Ordained Ministry, or committee on investigation who considered the case in the process of coming to trial court. The counsel for the Church and the respondent shall each have up to four preemptory challenges and challenges for cause without limit. If by reason of challenges for cause being sustained the number is reduced to below thirteen, additional appropriate persons shall be nominated in like manner as was the original panel to take the places of the numbers challenged, who likewise shall be subject to challenge for cause. This method of procedure shall be followed until a trial court of thirteen members and two alternate members has been selected.

4. *Alternates*—The two alternate members shall sit as observers of the trial. They shall replace members of the trial court who are not able to continue to serve, so that the trial court



shall always consist of thirteen members, unless the respondent and counsel for the Church agree to a lesser number.

5. *Trial Court Questions*—The members of the trial court, including the alternate members, may, subject to the approval of the presiding officer of the court, ask questions on matters on which evidence has been presented.

¶ 2710. *Trial Guidelines and Rules*

1. *Authority of Presiding Officer*—After the trial is convened the authority of the presiding officer shall include the right to set reasonable time limits, after consultation with counsel for the Church and counsel for the person charged, for the presentation of the case, provided such time is equal for both. The authority of the presiding officer shall be limited to ruling upon proper representation of the Church and the person charged, admissibility of evidence, recessing, adjourning, and reconvening sessions of the trial, charging the members of the trial court as to the Church law involved in the case at the beginning of the trial and just before they retire to make up their verdict, and such other authority as is normally vested in a civil court judge sitting with a jury, but he or she shall not have authority to pronounce any judgment in favor of or against the person charged other than such verdict as may be returned by the trial court, which body shall have the exclusive right to determine the innocence or guilt of the person charged.

2. *Order of Trial*—After selection of the trial court, each counsel may make an opening statement to inform the trial court of what the evidence is expected to be. Evidence shall then be offered by questioning of witnesses and by documents shown to be reliable. Each counsel shall have opportunity to make closing arguments before the trial court begins deliberations. Deliberations of the trial court and receiving of the verdict shall follow.

3. *Oaths*—The administration of oaths shall not be required. At the beginning of the trial, the presiding officer shall remind all parties of the duties and responsibilities of Church membership (¶ 218) and/or the clergy covenant (¶¶ 311.3 f and 334).

4. *Entering of the Plea*—At the beginning of the trial, the respondent shall be called upon by the presiding officer to plead to the charge, and the pleas shall be recorded. If the respondent pleads “guilty” to the charges preferred, no trial shall be necessary, but evidence may be taken with respect to the appropriate penalty, which shall thereupon be imposed. If the respondent pleads “not guilty” or if the respondent should neglect or refuse to plead, the plea of “not guilty” shall be entered, and the trial shall proceed. The respondent shall at all times during the trial, except as hereinafter provided, have the right to produce testimony and that of witnesses and to make defense.

5. *Recess and Trial Procedures*—The court may recess from time to time as convenience or necessity may require. During the time of recess, the members of the trial court shall be instructed that under no circumstance will they speak to one another or to others about the trial or observe media reports regarding the case. When, in consultation with counsel for both parties, the presiding officer finds it advisable, the members and reserves shall be sequestered. Threatening or tampering with the trial court or officers of the trial court shall be considered disobedience to the Order and Discipline of The United Methodist Church. The presiding officer shall remain and preside until the decision is rendered and the findings are completed and shall thereupon sign and certify them.

6. *Objections*—Objections of any party to the proceedings shall be entered on the record.

7. *Exclusion of Witnesses*—No witness afterward to be examined shall be present during the examination of another witness if the opposing party objects. Witnesses shall be examined

first by the party producing them, then cross-examined by the opposite party and may be questioned by members of the trial court, with the approval of the presiding officer. The presiding officer of the court shall determine all questions of relevancy and competency of evidence.

8. *Recording of Proceedings*—A verbatim record of all proceedings of the trial shall be by stenograph or other appropriate means and reduced to writing and certified by the presiding officer or secretary. The record, including all exhibits, papers and evidence in the case, shall be the basis of any appeal that may be taken.

9. *Evidence*—The introduction of any material relating to events happening before the six-year statute of limitation period as evidence, as preface to evidence, or as build-up for evidence in the procedures of the trial proceedings may be permitted when the presiding officer, after consultation with counsel for both parties, rules that such material is relevant and reliable. Documentary evidence deemed by the presiding officer to be relevant and reliable may be in the physical possession of the trial court during deliberations.

10. *Instructions and Charges*—The presiding officer shall not deliver a charge reviewing or explaining the evidence or setting forth the merits of the case. The presiding officer shall express no opinion on the law or the facts while the court is deliberating. If requested by either party's counsel, the presiding officer shall instruct the trial court on Church law applicable to the case. Instructions may be given at the beginning of the trial, during the trial, before the trial court begins deliberations or a combination of any of these. If requested by the trial court, instructions may be given during deliberations. The presiding officer shall not review or explain the evidence or comment on the merits of the case.

#### ¶ 2711. *Power of the Trial Court*

1. *Instruction, Disqualification, Voting, and Verdicts*—The trial court shall have full power to try the respondent. The trial court shall be a continuing body until the final disposition of the charge. If any regular or alternate member of the trial court fails to attend any part of any session at which evidence is received or oral argument is made to the trial court by counsel, that person shall not thereafter be a member of the trial court, but the rest of the trial court may proceed to judgment.

2. *Votes*—It shall require a vote of at least nine members of the trial court to sustain the charge(s) and nine votes also shall be required for conviction. Fewer than nine votes for conviction shall be considered an acquittal. The burden of proof for a vote to convict shall be clear and convincing. The trial court shall present to the presiding officer a decision on each charge and each individual specification under each charge. Its findings shall be final, subject to appeal to the committee on appeals of the jurisdictional conference or the central conference, as the case may be.

3. *Penalties—If the Trial Results in Conviction*. Further testimony may be heard and arguments by counsel presented regarding what the penalty should be. The trial court shall determine the penalty, which shall require a vote of at least seven members. The trial court shall have the power to remove the respondent from professing membership, terminate the conference membership and/or revoke the credentials of conference membership and/or ordination or consecration of the respondent, suspend the respondent from the exercise of the functions of office, or to fix a lesser penalty. The penalty fixed by the trial court shall take effect immediately unless otherwise indicated by the trial court.

**¶ 2712. Trial of a Bishop**

1. The president of the College of Bishops of the jurisdictional or central conference-or in case the person charged is the president, the secretary of the college-shall proceed to convene the court under the provisions of ¶ 2709.

2. The president of the College of Bishops (or in the case the person charged is the president, the secretary) may preside or designate another bishop to serve as presiding officer.

3. The trial shall be convened as provided in ¶ 2709 with the pool of thirty-five or more persons to consist of clergy in full connection named by the College of Bishops in approximately equal numbers from each episcopal area within the jurisdictional or central conference. Special consideration should be given so that the pool includes persons representative of racial, age, ethnic, and gender diversity.

4. Counsel for the Church shall be a bishop or another clergyperson in full connection.

5. The secretary of the court shall at the conclusion of the proceedings send all trial documents to the secretary of the jurisdictional or central conference, who shall keep them in custody. If an appeal is taken, the secretary shall forward the materials forthwith to the secretary of the Judicial Council. After the appeal has been heard, the records shall be returned to the secretary of the jurisdictional or central conference.

6. A bishop suspended from office shall have claim on the Episcopal Fund for salary, dwelling, pension, and other related benefits. A bishop removed from office shall have no claim upon the Episcopal Fund for salary, dwelling, pension and other related benefits from the date of such removal.

7. For the purpose of this paragraph, the United Methodist bishops outside of the United States shall constitute one College of Bishops.

**¶ 2713. Trial of a Clergy Member of an Annual Conference, Local Pastor, Clergy on Honorable or Administrative Location, or Diaconal Minister**

1. The resident bishop of the respondent shall proceed to convene the court under the provisions of ¶ 2709.

2. The resident bishop shall designate another bishop to be presiding officer.

3. a) The trial for a clergy member or a local pastor shall be convened as provided in ¶ 2709 with the pool of thirty-five or more persons to consist of clergy in full connection. If there are not enough persons in appropriate categories in an annual conference to complete the pool, additional persons may be appointed from other annual conferences. All appointments to the pool shall be made by the district superintendents. Special consideration should be given so that the pool includes persons representative of racial, age, ethnic, and gender diversity.

b) The trial for a diaconal minister shall be convened as provided in ¶ 2709 and shall consist of a pool of thirty-five or more persons who shall be diaconal ministers or, when necessary, members of the Church. Special consideration should be given so that the pool includes persons representative of racial, ethnic, and gender diversity.

4. Counsel for the Church shall be a clergyperson in full connection.

5. The secretary of the court shall at the conclusion of the proceedings send all trial documents to the secretary of the annual conference, who shall keep them in custody. Such documents are to be held in a confidential file and shall not be released for other than appeal or new trial purposes without a signed release from both the clergyperson charged and the presiding officer of the trial that tried the case. If an appeal is taken, the secretary shall forward the materials forthwith to the president of the court of appeals of the jurisdictional or central conference. If a president has not been elected, the secretary shall send the materials to such

members of the court of appeals as the president of the College of Bishops shall designate. After the appeal has been heard, the records shall be returned to the secretary of the annual conference unless a further appeal on a question of law has been made to the Judicial Council, in which case the relevant documents shall be forwarded to the secretary of that body.

**¶ 2714. *Trial of Lay Member of a Local Church***

1. The district superintendent of the person charged shall proceed to convene the court under the provisions of ¶ 2709.

2. The district superintendent may be the presiding officer or may designate another clergyperson in full connection to preside.

3. The trial shall be convened as provided in ¶ 2709, with the pool of thirty-five or more persons to consist of professing members of local churches other than the local church of the charged layperson within the same district. Appointments to the pool shall be made by the district superintendent, who may consult with the district lay leader. Special consideration should be given so that the pool includes persons representative of racial, age, ethnic, and gender diversity.

4. Counsel for the Church shall be a professing member or clergyperson of The United Methodist Church.

5. The person charged may request a change of venue. This shall be a written request to the officers of the court within ten days of receipt of notice to appear for trial. The presiding officer shall rule upon the request after hearing argument for the defense and the Church. If the motion is approved, the presiding officer shall name another district wherein the trial shall be held and shall notify the district superintendent, who shall convene the court. The thirty-five-member pool shall consist of professing members from that district. The cost of prosecution shall be borne by the annual conference.

6. If the trial court finds that the charges are proven by clear and convincing evidence, then it may impose such penalties as it may determine, including that the professing membership of the charged layperson in The United Methodist Church be terminated; provided that the trial court shall first consider other remedies that would fulfill the provisions of ¶ 221.

7. The appropriate officer of the trial shall, at the conclusion of the proceeding, deposit all trial documents with the secretary of the charge conference. If an appeal is taken, the secretary shall deliver all documents to the district superintendent. After the appeal has been heard, the records shall be returned to the custody of the secretary of the charge conference.

**¶ 2715. *Appeal Procedures—General***

1. In all cases of appeal, the appellant shall within thirty days give written notice of appeal and at the same time shall furnish to the officer receiving such notice (¶¶ 2716.2, 2717.1, 2718.2) and to the counsel a written statement of the grounds of the appeal, and the hearing in the appellate body shall be limited to the grounds set forth in such statement.<sup>69</sup>

2. When any appellate body shall reverse in whole or in part the findings of a committee on investigation or trial court, or remand the case for a new hearing or trial, or change the penalty imposed by the trial court, it shall return to the convening officer a statement of the grounds of its action.

3. An appeal shall not be allowed in any case in which the respondent has failed or refused to be present in person or by counsel at the investigation and the trial. Appeals shall be heard by the proper appellate body unless it shall appear to the said body that the appellant has

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<sup>69</sup> See Judicial Council Memorandum 826.

forfeited the right to appeal by misconduct, such as refusal to abide by the findings of the trial court; or by withdrawal from the Church; or by failure to appear in person or by counsel to prosecute the appeal; or, prior to the final decision on appeal from conviction, by resorting to suit in the civil courts against the complainant or any of the parties connected with the ecclesiastical court in which the appellant was tried.<sup>70</sup>

4. The right of appeal, when once forfeited by neglect or otherwise, cannot be revived by any subsequent appellate body.

5. The right to prosecute an appeal shall not be affected by the death of the person entitled to such right. Heirs or legal representatives may prosecute such appeal as the appellant would be entitled to do if living.

6. The records and documents of the trial, including the evidence, and these only, shall be used in the hearing of any appeal.

7. The appellate body shall determine two questions only: (a) Does the weight of the evidence sustain the charge or charges? (b) Were there such errors of Church law as to vitiate the verdict and/or the penalty? These questions shall be determined by the records of the trial and the argument of counsel for the Church and for the respondent. The appellate body shall in no case hear witnesses. It may have legal counsel present, who shall not be the conference chancellor for the conference from which the appeal is taken, for the sole purpose of providing advice to the appellate body.

8. In all cases where an appeal is made and admitted by the appellate committee, after the charges, findings, and evidence have been read and the arguments conclude, the parties shall withdraw, and the appellate committee shall consider and decide the case. It may reverse in whole or in part the findings of the committee on investigation or the trial court, or it may remand the case for a new trial to determine verdict and/or penalty. It may determine what penalty, not higher than that affixed at the hearing or trial, may be imposed. If it neither reverses in whole or in part the judgment of the trial court, nor remands the case for a new trial, nor modifies the penalty, that judgment shall stand. The appellate committee shall not reverse the judgment nor remand the case for a new hearing or trial on account of errors plainly not affecting the result. All decisions of the appellate committee shall require a majority vote.

9. In all cases, the right to present evidence shall be exhausted when the case has been heard once on its merits in the proper court, but questions of Church law may be carried on appeal, step by step, to the Judicial Council.

10. The Church shall have no right of appeal from findings of the trial court. In regard to cases where there is an investigation under ¶ 2702, but no trial is held, egregious errors of Church law or administration may be appealed to the jurisdictional committee on appeals by counsel for the Church. The committee on investigation's decision not to certify a bill of charges does not alone constitute an egregious error of Church law or administration. When the committee on appeals shall find egregious errors of Church law or administration under this part, it may remand the case for a new hearing, in which event it shall return to the chair of the committee on investigation a statement of the grounds of its action. This is not to be double jeopardy.<sup>71</sup>

11. Questions of procedure may be raised with the presiding officer or secretary of the appellate body. Under no circumstances shall one party in the absence of the other party discuss

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<sup>70</sup> See Judicial Council Decision 3.

<sup>71</sup> See Judicial Council Decision 985.

substantive matters with members of any appellate body while the case is pending (cf. ¶¶ 2607, 2701.4).

12. In all matters of judicial administration, the rights, duties, and responsibilities of clergy members and diaconal ministers of missionary conferences and provisional annual conferences are the same as those in annual conferences, and the procedure is the same.

13. Contacts with members of any appellate body shall be limited to matters of procedure and shall be directed only to the presiding officer or secretary of the appellate body. Under no circumstances shall matters of substance be discussed.

¶ 2716. *Appeal of a Bishop, Clergy Member of an Annual Conference, Clergy on Honorable or Administrative Location, Local Pastor, or Diaconal Minister*

1. Each jurisdictional and central conference, upon nomination of the College of Bishops, shall elect a committee on appeals composed of four clergy, one diaconal minister, one full-time local pastor, and three laypersons who have been at least six years successively members of The United Methodist Church, and an equal number of corresponding alternates. This committee shall serve until its successors have been elected. No member shall participate in the hearing of an appeal who is a member of a conference in the episcopal area of the appellant. Any vacancy shall be filled by the College of Bishops. The committee on appeals shall have full power to hear and determine appeals of bishops, clergy members, clergy members on honorable or administrative location, local pastors, and diaconal ministers from any annual conference, provisional or missionary conference within the jurisdiction or central conference. The committee shall elect its own president and secretary and shall adopt its own rules of procedure, and its decisions shall be final, except that an appeal may be taken to the Judicial Council only upon questions of law related to procedures of the jurisdictional committee on appeals, central conference committee on appeals, or under the provisions of ¶ 2609.8. A bishop designated by the College of Bishops shall convene the committee at the site of jurisdictional or central conference for the purpose of electing officers.

2. In case of conviction by a trial court, a bishop, clergy member, local pastor, clergy on honorable or administrative location, or diaconal minister shall have the right of appeal to the jurisdictional or central conference committee on appeals above constituted, provided that within thirty days after the conviction, the appellant shall notify the presiding bishop of the conference (or, when the appellant is a bishop, the president and secretary of the College of Bishops) and the presiding officer of the court in writing of the intention to appeal.

3. When notice of an appeal has been given to the presiding officer of the court, the presiding officer shall give notice of the same to the secretary of the committee on appeals of the jurisdictional or central conference and submit the documents in the case, or in case the documents have been sent to the secretary of the annual conference, instruct the secretary to send the documents to the president of the committee on appeals. The jurisdictional or central conference committee on appeals shall within thirty days give notice to the presiding bishop of the conference from which the appeal is taken (or to the president and secretary of the College of Bishops when the appellant is a bishop) and to the appellant of the time and place where the appeal will be heard. Such hearing shall occur within 180 days following receipt of notice to the committee on appeals. Both the annual conference, missionary conference, or provisional conference and the appellant may be represented by counsel as specified in ¶ 2708.7. The presiding bishop of the conference or, in the appeal of a bishop, the president or secretary of the College of Bishops, shall appoint counsel for the Church.

4. All necessary traveling and sustenance expense incurred by the committee on appeals, including any cost for legal counsel retained to advise the committee, in the hearing of an appeal case coming from an annual conference and appearing before any jurisdictional or central conference committee on appeals, shall be paid out of the administrative fund of the central or jurisdictional conference in which the proceedings arise. The president of the committee on appeals shall approve all expenses. Expenses for counsel for the Church shall be paid by the annual conference. Such expenses for counsel for the respondent shall be paid by the respondent, unless in the interest of fairness, the committee on appeals orders the annual conference to reimburse the respondent.

¶ 2717. *Appeal of a Lay Member*

1. A lay member convicted by a trial court shall have the right of appeal and shall serve written notice of appeal with the pastor and the district superintendent within thirty days of conviction.

2. The district superintendent shall, on receipt of notice of appeal, give written notice to all concerned of the time and place of the convening of a committee on appeals not less than ten nor more than thirty days after such notice has been delivered.

3. The committee on appeals shall be constituted in the following manner: The district superintendent shall appoint eleven professing members of United Methodist churches within the annual conference other than the appellant's local church, none of whom shall have been members of the trial court, and who hold office either as lay leader or lay member of the annual conference. At the convening of the committee on appeals, from seven to eleven of these shall be selected to serve on the committee. The counsel for the appellant and the counsel for the Church shall have the right to challenge for cause, and the decisions on the validity of such challenges shall be made by the presiding officer, who shall be the district superintendent.

4. The findings of the committee on appeals shall be certified by the district superintendent to the pastor of the church of which the accused is a member.

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¶ 2719. 1. Any clergy members residing beyond the bounds of the conference in which membership is held shall be subject to the procedures of ¶¶ 2701-2718 exercised by the appropriate officers of the conference in which he or she is a member, unless the presiding bishops of the two annual conferences and the clergy member subject to the procedures agree that fairness will be better served by having the procedures carried out by the appropriate officers of the annual conference in which he or she is serving under appointment, or if retired, currently residing.

2. When a bishop, clergy member, local pastor, or diaconal minister is the respondent to a complaint under ¶ 361.1(d) and desires to withdraw from the Church, the jurisdictional or central conference in the case of a bishop, the annual conference in the case of a clergy member, or the district conference (where there is no district conference, the charge conference) in the case of a local pastor or diaconal minister will ask him or her to surrender his or her credentials and will remove his or her name from professing membership; in which case the record shall be "Withdrawn under complaints" or "withdrawn under charges," whichever is appropriate.

3. When a professing member of the Church is charged with an offense and desires to withdraw from the Church, the charge conference may permit such member to withdraw his or her name from the roll of professing members, in which case the record shall be "Withdrawn under complaints." If formal charges have been presented, such member may be permitted to withdraw, in which case the record shall be "Withdrawn under charges."

4. In all matters of judicial administration, the rights, duties, and responsibilities of clergy members, local pastors, clergy on honorable or administrative location, and diaconal ministers of missions, missionary conferences, and provisional annual conferences are the same as those in annual conferences, and the procedure is the same.

5. For procedural purposes, the judicial process shall be governed by the *Discipline* in effect on the date a Bill of Charges and Specifications is received by the chair of the committee on investigation.

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## ADDITIONAL RESOURCES

### General Council on Finance and Administration - Legal Services Department

**Richard J. Rettberg** [legal@gcfa.org](mailto:legal@gcfa.org)

**J. Daniel Gary**

**Bryan L. Mills**

Supervisory response, judicial process, mediated resolution

### General Commission on the Status and Role of Women

**Garlinda M. Burton, General Secretary** [gburton@gcsrw.org](mailto:gburton@gcsrw.org)

Complaints of sexual harassment or misconduct

### General Board of Higher Education and Ministry– Division of Ordained Ministry

**Mary Ann Moman** [dom@gbhem.org](mailto:dom@gbhem.org)

Administrative process, Board of Ordained Ministry, leaves and location

### JUSTPEACE Center for Conflict Resolution and Transformation

**Thomas W. Porter** [tporter@justpeaceumc.org](mailto:tporter@justpeaceumc.org)

**Stephanie A. Hixon** [sahixon@justpeaceumc.org](mailto:sahixon@justpeaceumc.org)

Just resolution, mediated resolution

### Judicial Council of The United Methodist Church

**F. Belton Joyner, Secretary** [judicialcouncil@umc.org](mailto:judicialcouncil@umc.org)

### Associates in Advocacy

Resource for respondents and others involved in judicial processes

### United Methodist Communications

**Diane Degnan** [ddegnan@umcom.org](mailto:ddegnan@umcom.org)

Dealing with the media

### United Methodist Property and Casualty Trust

**Rev. Joy T. Melton, Chief Resource Officer** [jmelton@umcpact.org](mailto:jmelton@umcpact.org)

Insurance