



FINANCE & ADMINISTRATION

General Council on Finance and Administration

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.

GCFA is grateful for the contributions made to earlier iterations of this Handbook by the General Board of Higher Education and Ministry and JustPeace.

© Copyright 2017 by the General Council on Finance and Administration of The United Methodist Church. All rights reserved.

| | |
|--|-----------|
| INTRODUCTION..... | 1 |
| I. Distribution and Copying..... | 1 |
| II. History of the Handbook..... | 1 |
| III. Reflections on Restorative Justice and the Complaint Process. | 2 |
| IV. Reference Citations..... | 3 |
| V. Revisions..... | 4 |
| VI. Request for Comments..... | 4 |
| | |
| CHAPTER 1 – PROCESS OVERVIEW..... | 5 |
| I. Administrative Fair Process..... | 5 |
| II. Complaints..... | 5 |
| III. Fair Process Charts. | 6 |
| | |
| CHAPTER 2 – CONFIDENTIALITY..... | 10 |
| | |
| CHAPTER 3 – PROCEDURES FOR DISCONTINUANCE..... | 13 |
| I. Discontinuance of Provisional Membership (¶ 327.6). | 13 |
| II. Discontinuance of Local Pastors (¶¶ 320.1-.2). | 14 |
| | |
| CHAPTER 4 – PROCEDURES FOR CHANGES OF CONFERENCE RELATIONS FOR CLERGY MEMBERS OF THE ANNUAL CONFERENCE..... | 16 |
| I. Voluntary Leave of Absence (¶ 353). | 16 |
| A. Personal Leave..... | 18 |
| B. Family Leave. | 18 |
| C. Transitional Leave. | 18 |

| | | |
|---|--|-----------|
| D. | Maternity/Paternity Leave (¶ 355)..... | 19 |
| II. | Involuntary Leave of Absence (¶ 354)..... | 19 |
| III. | Medical Leave (¶ 356)..... | 22 |
| IV. | Retirement (¶ 357)..... | 23 |
| A. | Mandatory Retirement (¶ 357.1)..... | 24 |
| B. | Voluntary Retirement (¶ 357.2)..... | 24 |
| C. | Involuntary Retirement (¶ 357.3)..... | 24 |
| V. | Honorable Location (¶ 358)..... | 25 |
| VI. | Administrative Location (¶ 359)..... | 26 |
| VII. | Withdrawal (¶ 360)..... | 26 |
| A. | To Unite With Another Denomination (¶ 360.1)..... | 26 |
| B. | Withdrawal from the Ordained Ministerial Office (¶ 360.2)..... | 27 |
| C. | Withdrawal Under Complaints or Charges (¶ 360.3)..... | 27 |
| D. | Between Conference Sessions (¶ 360.4)..... | 27 |
| CHAPTER 5 – COMPLAINTS (SUPERVISORY PROCEDURES)..... | | 28 |
| I. | Complaints and Supervision..... | 28 |
| II. | Supervisory Response (¶ 362.1 <i>b</i>)..... | 29 |
| III. | Suspension (¶ 362.1 <i>d</i>)..... | 30 |
| IV. | Referral of a Complaint (¶ 362.1 <i>e</i>)..... | 31 |
| V. | Complaints Against Bishops (¶ 413)..... | 31 |
| VI. | Administrative Fair Process (¶ 361)..... | 34 |
| A. | General..... | 34 |
| B. | Right To Be Heard (¶ 361.2 <i>a</i>)..... | 35 |

| | | |
|---|---|-----------|
| C. | Notice (§ 361.2b). | 35 |
| D. | Representative Present (§ 361.2c). | 35 |
| E. | No <i>Ex Parte</i> Communications (§ 361.2d). | 35 |
| F. | Right To Records Relied Upon (§ 361.2e). | 36 |
| G. | Failure to Respond/Appear (§ 361.2f). | 37 |
| CHAPTER 6 – READMISSION TO CONFERENCE RELATIONSHIP | | 38 |
| I. | Readmission to Provisional Membership (§ 364). | 38 |
| II. | Readmission after Honorable or Administrative Location (§ 365). | 38 |
| III. | Readmission after Leaving the Ordained Ministerial Office (§ 366). | 38 |
| IV. | Readmission after Termination by Action of the Annual Conference (§ 367). | 39 |
| V. | Readmission after Involuntary Retirement (§ 368). | 39 |
| CHAPTER 7 – ADMINISTRATIVE REVIEW COMMITTEE | | 40 |
| I. | General (§ 636). | 40 |
| II. | Suggested Steps for Review. | 40 |
| CHAPTER 8 – FAIR PROCESS IN JUDICIAL PROCEEDINGS | | 42 |
| I. | Introduction. | 42 |
| II. | Rights of the Complainant (§ 2701.1). | 43 |
| A. | Right to Be Heard (§ 2701.1a). | 43 |
| B. | Right to Notice of Hearings (§ 2701.1b). | 43 |
| C. | Right to Be Accompanied (§ 2701.1c). | 44 |
| D. | Right to Be Informed of Resolution (§ 2701.1d). | 44 |
| III. | Rights of the Respondent (§ 2701.2). | 44 |
| A. | Right to Be Heard (§ 2701.2a). | 44 |

| | | |
|-----|--|----|
| B. | Right to Notice of Hearings (¶ 2701.2b)..... | 45 |
| C. | Right to Be Accompanied (¶ 2701.2c)..... | 45 |
| D. | Right Against Double Jeopardy (¶ 2701.2d). | 46 |
| E. | Right of Access to Records (¶ 2701.2e)..... | 47 |
| IV. | Rights of the Church. | 48 |
| A. | Right to Be Heard (¶ 2701.3a)..... | 48 |
| B. | Right to Counsel (¶¶ 2704, 2706.2a, 2708.7, 2712-14)..... | 48 |
| V. | Process and Procedure (¶ 2701.4)..... | 49 |
| A. | Failure to Appear or Respond (¶ 2701.4a). | 49 |
| B. | Communications (¶ 2701.4b)..... | 50 |
| C. | Healing (¶ 2701.4c)..... | 50 |
| D. | Immunity of Participants (¶ 2701.4d). | 52 |
| E. | A Just Resolution in Judicial Proceedings (¶ 2701.5). | 53 |

CHAPTER 9 – CHARGEABLE OFFENSES AND STATUTE OF LIMITATIONS 55

| | | |
|------|---|----|
| I. | General..... | 55 |
| II. | Chargeable Offenses Added by General Conferences..... | 55 |
| A. | Clergy Charges (¶ 2702.1)..... | 55 |
| B. | Lay Charges (¶ 2702.3)..... | 56 |
| III. | Statute of Limitations (¶ 2702.4). | 56 |
| A. | The Statute of Limitations and Relevant and Reliable Evidence. | 57 |
| IV. | Time of the Offense (¶ 2702.5)..... | 58 |

CHAPTER 10 – COMMITTEE ON INVESTIGATION..... 59

| | | |
|-----|--|----|
| I. | Introduction..... | 59 |
| A. | The Committee and Just Resolutions – Commentary..... | 60 |
| II. | Composition of the Committee on Investigation (¶ 2703). | 61 |

| | | |
|------|---|----|
| III. | Form and Referral of the Complaint; Suspension (¶¶ 2704-5)..... | 62 |
| A. | Summary Table..... | 62 |
| B. | The Form of the Judicial Complaint (¶ 2705)..... | 62 |
| C. | The Role of Counsel for the Church..... | 63 |
| D. | Forwarding the Judicial Complaint..... | 64 |
| E. | Suspension..... | 66 |
| IV. | Procedures (¶ 2706)..... | 66 |
| A. | Standard of Proof..... | 66 |
| B. | Parties and Counsel (¶ 2706.2)..... | 67 |
| C. | Preliminary Meeting (¶ 2706.3)..... | 67 |
| D. | Hearing Before the Committee on Investigation (¶ 2706.4)..... | 68 |
| E. | Bill of Charges and Specifications (¶ 2706.5a)..... | 70 |
| F. | Example Charge and Specifications..... | 71 |
| G. | Voting and Finding of Reasonable Grounds (¶ 2706.5b)..... | 72 |
| H. | Findings of Other than Reasonable Grounds (¶ 2706.5c)..... | 73 |
| V. | Special Investigations (¶ 2706.6)..... | 74 |

CHAPTER 11 – TRIAL PROCEDURES..... 75

| | | |
|-----|---|----|
| I. | General Observations - Church/State Separation..... | 75 |
| II. | General Organization and Pre-Trial Procedures (¶ 2708)..... | 76 |
| A. | Officers of the Court (¶ 2708.1)..... | 76 |
| B. | Time and Place of Trial (¶ 2708.2)..... | 76 |
| C. | Pre-Trial Motions and Referrals (¶ 2708.3)..... | 77 |
| D. | Change of Venue (¶ 2708.4)..... | 78 |
| E. | Notice (¶ 2708.5)..... | 79 |
| F. | Trial Scheduling and Continuances (¶ 2708.6)..... | 79 |
| G. | Counsel (¶ 2708.7)..... | 80 |
| H. | Witnesses and Witness Qualifications (¶¶ 2708.8-9)..... | 80 |
| I. | Commissioned Out-of-Court Testimony (¶ 2708.10)..... | 81 |

| | | |
|------|---|-----------|
| J. | Amendments to Bill of Charges and Specifications (¶ 2708.11)..... | 82 |
| K. | Open or Closed Trials (¶ 2708.12)..... | 82 |
| L. | Combined Trials of Multiple Persons (¶ 2708.13). | 82 |
| III. | Trial Convening and Organization (¶ 2709). | 83 |
| A. | Convening the Trial (¶ 2709.1)..... | 83 |
| B. | Trial Pool (¶ 2709.2). | 83 |
| C. | Selection of the Trial Court (¶ 2709.3). | 84 |
| D. | Alternates (¶ 2709.4)..... | 84 |
| E. | Trial Court Questions (¶ 2709.5). | 85 |
| IV. | Trial Guidelines and Rules (¶ 2710). | 85 |
| A. | Authority of Presiding Officer (¶ 2710.1)..... | 85 |
| B. | Order of Trial (¶ 2710.2)..... | 86 |
| C. | Oaths (¶ 2710.3)..... | 86 |
| D. | Entering of the Plea (¶ 2710.4). | 86 |
| E. | Recess and Trial Procedures (¶ 2710.5)..... | 86 |
| F. | Objections and Rulings (¶ 2710.6). | 87 |
| G. | Exclusion of Witnesses (¶ 2710.7). | 87 |
| H. | Recording of Proceedings (¶ 2710.8). | 88 |
| I. | Evidence (¶ 2710.9). | 88 |
| J. | Instructions and Charges (¶ 2710.10). | 88 |
| V. | Power of the Trial Court (¶ 2711)..... | 89 |
| A. | Votes (¶ 2711.2)..... | 89 |
| B. | Penalties – If the Trial Results in Conviction (¶ 2711.3)..... | 90 |
| VI. | Trial Process (¶¶ 2712-14)..... | 91 |
| A. | Preservation of Trial Court Records. | 91 |
| | CHAPTER 12 – APPEAL PROCEDURES | 93 |
| I. | Appeal Procedures – General (¶ 2715). | 93 |

| | | |
|---|---|------------|
| II. | The Appeal Hearing..... | 94 |
| A. | Weight of the Evidence..... | 95 |
| B. | Errors of Law..... | 95 |
| III. | Limited Appeal by the Church from the Committee on Investigation (§ 2715.10)..... | 96 |
| A. | Appeals by the Church from the Jurisdictional Committee on Appeals..... | 96 |
| IV. | Appeals by Bishops, Clergy, Local Pastors, and Diaconal Ministers (§ 2716). | 96 |
| A. | Expenses (§ 2716.4)..... | 97 |
| B. | Makeup of the Committee on Appeals (§ 2716.1)..... | 97 |
| V. | Appeals by Lay Members (§ 2717)..... | 98 |
| A. | Makeup of the Committee on Appeals (§ 2717.3)..... | 98 |
| VI. | Administrative Process Appeals (§§ 2718.3-.4)..... | 98 |
| CHAPTER 13 – JUDICIAL COUNCIL..... | | 101 |
| I. | Description and Duties of the Judicial Council. | 101 |
| II. | Judicial Council Jurisdiction (§§ 2609-10). | 102 |
| A. | Jurisdiction Other Than Appeals from Administrative or Judicial Processes. ... | 102 |
| B. | Jurisdiction over Appeals from Judicial Processes..... | 104 |
| APPENDIX..... | | 105 |
| SUMMARY TABLE OF JUDICIAL PROCESS REQUIREMENTS | | 106 |
| SAMPLE FORMS | | 109 |
| | Sample Notice of Hearing Form..... | 110 |
| | Sample Certificate of Service Forms | 111 |
| | Sample Form to Witness at a Committee on Investigation..... | 112 |

| | |
|---|------------|
| SAMPLE JUDICIAL COMPLAINT/BILL OF CHARGES AND SPECIFICATIONS AND SUPPORTING DOCUMENTS | 113 |
| THE ABC ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH..... | 113 |
| LIST OF WRITTEN DOCUMENTS AND EXHIBITS | 116 |
| LIST OF SUGGESTED WITNESSES..... | 117 |
| SAMPLE LETTER FROM RESIDENT BISHOP TO DISTRICT SUPERINTENDENTS FOR APPOINTMENTS TO THE TRIAL POOL..... | 118 |
| SAMPLE LETTER FROM DEAN OF CABINET TO APPOINTEES OF TRIAL COURT POOL | 119 |
| SAMPLE CONFIDENTIAL TRIAL COURT QUESTIONNAIRE..... | 120 |
| SAMPLE WITNESS AT TRIAL FORM | 123 |
| SAMPLE TRIAL COURT VERDICT FORM | 124 |
| SAMPLE TRIAL COURT PENALTY FORM | 125 |
| SAMPLE ACCOUNTABILITY AGREEMENT | 126 |
| DISPOSITION OF RECOMMENDATIONS OF INVOLUNTARY STATUS CHANGE & FAIR PROCESS HEARINGS | 130 |
| CHECKLIST FOR PROCESSING COMPLAINTS | 136 |
| AGAINST CLERGYPERSONS..... | 136 |
| CHECKLIST FOR TRIAL..... | 143 |

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 – 2016* (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 will be updated on an ongoing basis, as needed. 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.

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 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* (§§ 362, 413, 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 – 2016*, 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, unless otherwise specified. In this Handbook, they are generally referenced as “*Decision _____*.”

All websites were verified accurate as of February 1, 2017.

V. Revisions.

Revisions to this Handbook will be made on an as needed basis. 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. Request for Comments.

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

CHAPTER 1 – PROCESS OVERVIEW

The *Discipline* contains two separate sets of fair process procedures – one for administrative issues (§§ 361, 363) and one for complaints (§§ 362, 413, 2701-17). These two processes, and other related matters, are discussed in 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.

While this Handbook is intended to provide insight into the Church’s fair process procedures, any examination of the issues contained herein should start with the language of the *Discipline*.

I. Administrative Fair Process.

Administrative fair process, the nature and procedures of which were changed substantially by the 2012 General Conference, involves allegations against clergy in relation to the performance, or lack thereof, of their ministerial duties. A conference relations committee is established to review matters relating to discontinuance of provisional membership, involuntary leave of absence, administrative location, and involuntary retirement. This process is started by a “complaint” and is not subject to the supervisory response process.

II. Complaints.

In contrast to administrative matters, 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, therefore, is much more involved. When a complaint is brought, counsel for the Church drafts and signs a judicial complaint and forwards it to the committee on investigation, which will conduct a review and determine if reasonable grounds exist to bring a bill of charges and specifications to trial. If the committee on investigation so determines, 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 is required for conviction.

If the clergy person 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 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 based on procedural errors.

III. Fair Process Charts.

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

DISCIPLINE PROCESSES OVERVIEW (Clergy)

INVOLUNTARY STATUS CHANGE (Administrative Fair Process)

↓

RECOMMENDATION
OF INVOLUNTARY
STATUS CHANGE

↓

CONFERENCE
RELATIONS
COMMITTEE
HEARING

↓

BOOM AFFIRMS OR
REVERSES CRC
DECISION

↓

CLERGY SESSION
OF ANNUAL
CONFERENCE
VOTES

CHARGEABLE OFFENSES (Complaints)

↓

SUPERVISORY
RESPONSE

↓

REFERRAL TO
COUNSEL FOR
THE CHURCH

↓

REVIEW BY
COMMITTEE ON
INVESTIGATION

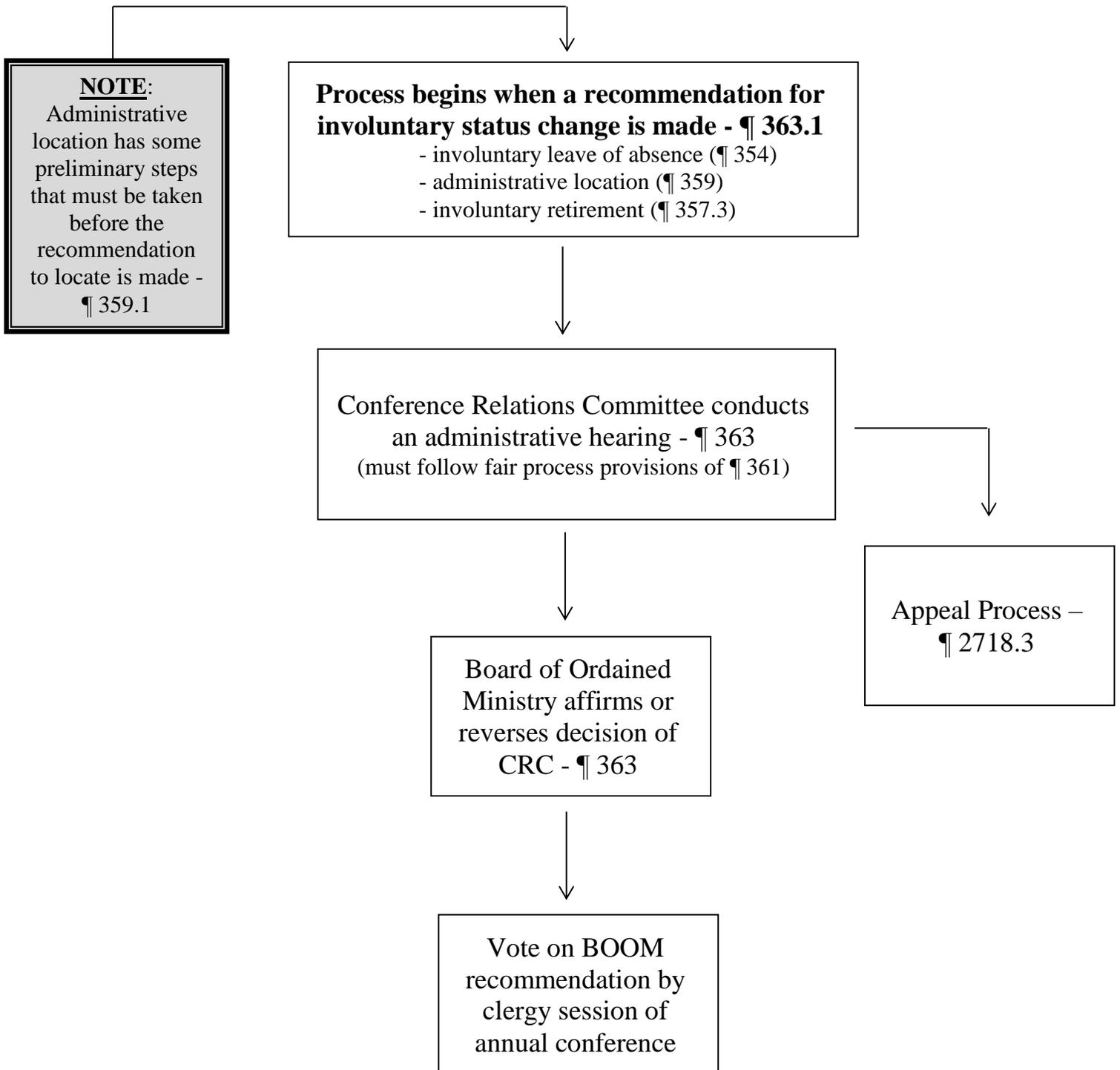
↓

TRIAL

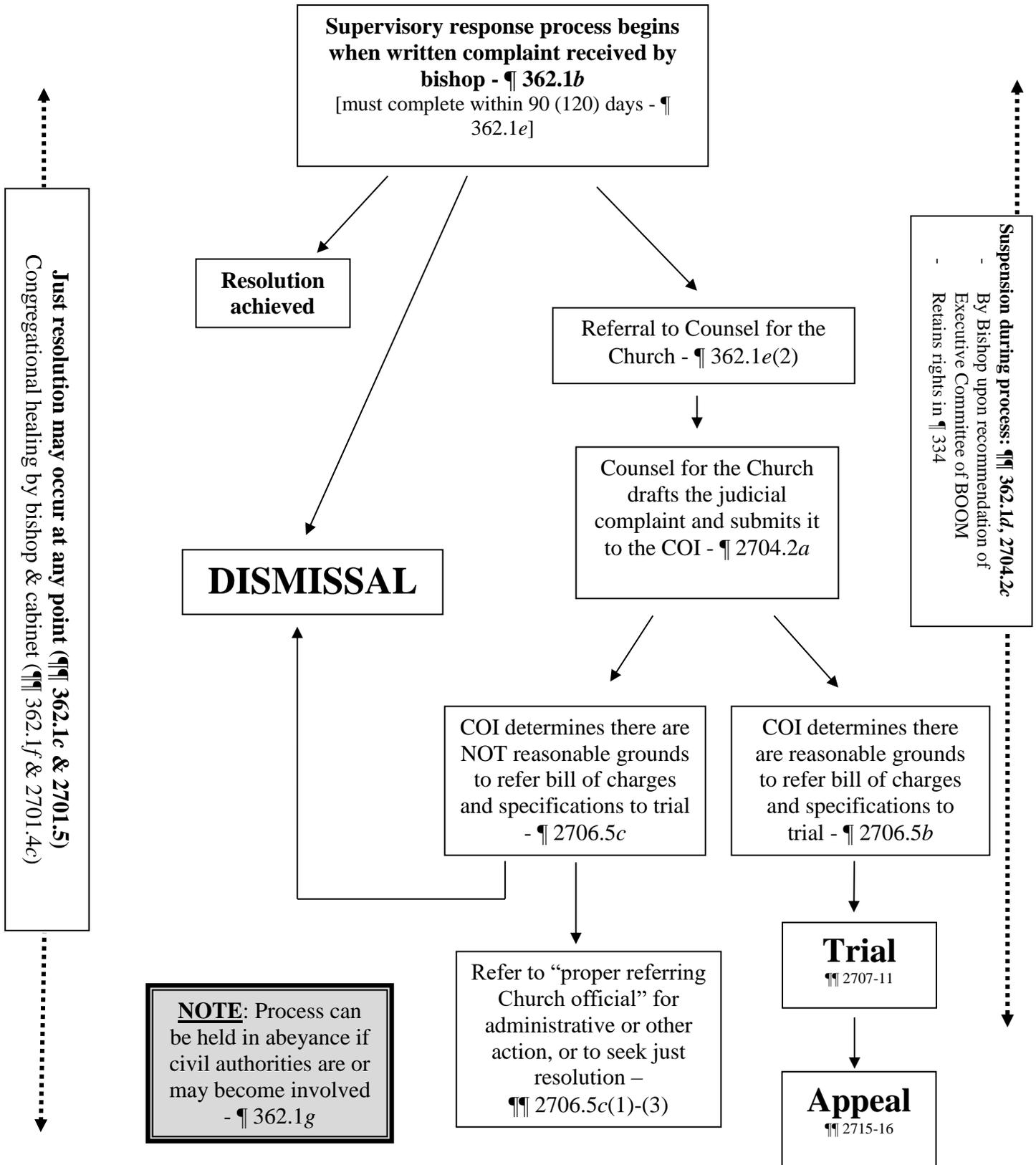
↓

APPEAL

PROCESS FOR INVOLUNTARY STATUS CHANGE (Clergy)



COMPLAINT PROCESS FOR CHARGEABLE OFFENSES (CLERGY)



CHAPTER 2 – CONFIDENTIALITY

There has been much discussion and speculation about what is and what is not required by ¶¶ 362 and 2713 as to confidentiality. Paragraph 362.1*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 be maintained in a confidential manner.

These paragraphs protect the privacy interests of the respondent and the complainant and 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 362.1*f* 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 clergyperson 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 clergyperson alleging 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."¹

In summary, the *Discipline* calls for the confidentiality of complaints filed against clergy and of trial records.² 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.

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

¹ See *Decision* 1094.

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

mandatory reporting requirements for clergy in this area. The federal government's [Child Welfare Information Gateway](#) provides more in depth information on this subject.

[THIS SPACE INTENTIONALLY LEFT BLANK]

CHAPTER 3 – PROCEDURES FOR DISCONTINUANCE³

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.⁴ The administrative review committee must review the process for procedural correctness.⁵ The provisional member shall be supplied with relevant documents and advised of the right to a hearing.⁶ Provisional members do not have a right to a trial unless the bishop refers a complaint to counsel for the Church under the provisions of ¶ 362.1e.⁷ When a complaint is referred to the committee on investigation, the fair process provisions of ¶ 2701 must be followed.

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 clergy person.⁸

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

³ See also [Board of Ordained Ministry Handbook](#), Chapter 26.

⁴ See ¶ 361.2.

⁵ See *Decision* 921.

⁶ ¶ 327.6.

⁷ See *Decision* 852 (affirming that a provisional member has no right to a trial when being involuntarily discontinued).

⁸ *Decision* 917.

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 confirming their absence and outlining 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.⁹

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 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 must surrender their license to the District Superintendent for deposit with the secretary of the annual conference. The only exception to this rule relates to local pastors licensed prior to the 1968 union of the Methodist and Evangelical United Brethren Churches. Persons licensed prior to this union may retain the license and perform ministerial service within the charge conference where they hold their local church membership. A notation

⁹ ¶ 2719.2.

on the receipt of credentials and their forwarding to the conference secretary should 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.¹⁰

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.¹¹ If a complaint is referred, the fair process provisions of ¶2701 shall be followed.¹²

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.¹³ 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 the local pastor is being considered for reappointment.

A discontinued local pastor may only be reinstated by the annual conference that previously approved the local pastor, that conference's legal successor, or a conference of which that former conference is now a part.¹⁴ After a local pastor has been discontinued from an annual conference, if the local pastor is being considered for an appointment in another annual conference, that conference's Board of Ordained Ministry must obtain “verification” of qualifications and “information” on circumstances relating to termination.¹⁵

¹⁰ ¶¶ 320.2, 2719.2.

¹¹ *Decision* 982.

¹² *Id.*

¹³ ¶ 320.1.

¹⁴ ¶ 320.4.

¹⁵ *Id.*

CHAPTER 4 – PROCEDURES FOR CHANGES OF CONFERENCE RELATIONS FOR CLERGY MEMBERS OF THE ANNUAL CONFERENCE¹⁶

I. Voluntary Leave of Absence (¶ 353).

When provisional, associate, or members in full connection choose to cease temporarily he duties of full-time ministry, they may request a voluntary leave of absence through the Board of Ordained Ministry.¹⁷ Voluntary leave may be the result of personal, familial, or transitional needs.¹⁸

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.¹⁹ Upon receiving a request, Bboard of Ordained Ministry representatives may interview the clergy to determine whether there is sufficient cause. Voluntary leave must be counted as part of the eight (8) year limit for provisional members.²⁰ Between annual conference sessions, leaves may be granted by the executive committee of the Board of Ordained Ministry, with the approval of the bishop and district superintendents.²¹ If there are any pending complaints or charges against the clergyperson requesting leave, permission shall not be given until those complaints or charges have been resolved.²²

While on voluntary leave, clergy members:

- Have no claim on conference funds, unless the conference has benefit plans that require continued participation;²³
- May participate in the conference's health plan, through their own contributions;²⁴
- May, in exceptional circumstances, receive other benefits or compensation;²⁵

¹⁶ See also [Board of Ordained Ministry Handbook](#), Chapter 26.

¹⁷ ¶ 353.1.

¹⁸ ¶ 353.2.

¹⁹ ¶¶ 353.1, .3.

²⁰ ¶¶ 327, 353.3.

²¹ ¶ 353.4. Interim grants of leave are subject to approval by the annual conference.

²² ¶ 353.5.

²³ ¶ 353.6.

²⁴ *Id.*

²⁵ See *id.*

- 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);²⁶
- Must designate a charge conference within the annual conference to which they shall relate and submit an annual report;²⁷
- Must report all ministerial activities (marriages, baptisms, funerals, or other services.) to the charge conference, pastor in charge, and to the Board of Ordained Ministry;²⁸
- 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;²⁹ and
- May not voluntarily serve on extended active duty.³⁰

Clergy remain amenable to the annual conference while on voluntary leave and failure to report to the Board of Ordained Ministry can invoke the provisions for administrative location.³¹

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.³² The Board of Ordained Ministry must review these requests. If the board determines 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 using the fair process other appropriate actions.³³ 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 that 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 ¶ 361.2 must be followed when a request for involuntary leave of absence is initiated as the option when a clergyperson's request to come off voluntary leave is denied.³⁴ Failure to follow these procedures may result in restitution

²⁶ ¶ 353.7.

²⁷ ¶ 353.8.

²⁸ *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.

²⁹ ¶ 353.10.

³⁰ *Id.*

³¹ ¶ 353.9.

³² ¶ 353.11.

³³ *Id.*

³⁴ See e.g., *Decision 782*.

of clergy status with retroactive salary and benefits.³⁵

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 administrative location under the provisions of ¶ 359.³⁶

A. Personal Leave.

Personal leave is granted when clergy determine that, for personal reasons, they are temporarily unable or unwilling to continue in a ministry appointment. This leave cannot be granted for more than five (5) successive years, unless permitted by a two-thirds vote of clergy members in full connection of the annual conference³⁷

B. Family Leave.

Family leave 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 cannot be granted for more than five (5) successive years, unless permitted by a two-thirds vote of clergy members in full connection of the annual conference³⁸

C. Transitional Leave.

Transitional 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 leave 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 non-salaried.

(2) A provisional member, associate member, or full member elder needs to transition to or from an extension ministry.³⁹

While on transitional leave, clergy must provide quarterly reports on their efforts to obtain an

³⁵ *Id.*

³⁶ ¶ 353.12.

³⁷ ¶ 353.3.

³⁸ *Id.*

³⁹ ¶ 353.2c.

appointable position to the bishop and the executive committee of the Board of Ordained Ministry.

D. Maternity/Paternity Leave (¶ 355).

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 must be provided for at least the first eight (8) weeks of the leave.⁴⁰ 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 will be made on a case-by-case basis.⁴¹

II. Involuntary Leave of Absence (¶ 354).

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, involuntary leave is subject to the fair process provisions of ¶ 361.2.⁴² The Judicial Council has affirmed the right of the clergy members in full connection in an

⁴⁰ Churches should review any applicable federal or state law requirements.

⁴¹ ¶ 355.6.

⁴² ¶ 354.1.

annual conference to place a person on involuntary leave of absence.⁴³ The Judicial Council has also stated that careful attention must be given to the details of the process.⁴⁴

Involuntary leave may be requested by the bishops or the district superintendent, for one of the following reasons:

a) A written or signed complaint is not resolved through the supervisory (§ 363.1*b, c*), complaint (§ 363.1*e*), or trial process within 90 days, or clearly cannot be resolved within 90 days.

b) Action pursuant to § 364 (Involuntary Status Change) is required to address allegations of incompetence, ineffectiveness, or inability to perform ministerial duties.⁴⁵

Clergy and the Board of Ordained Ministry must both receive written explanations of the request.⁴⁶ Involuntary leave requests are approved by a two-thirds vote of the clergy session of members in full connection.⁴⁷ It shall be approved annually and for not more than three (3) successive years.⁴⁸ If there are any pending complaints or charges at the time of the request, they should be placed in the clergyperson's personnel file.⁴⁹

Between sessions of the annual conference, the executive committee of the Board of Ordained Ministry grants or terminates involuntary leave, upon the request of the bishop and the cabinet.⁵⁰ 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.⁵¹ 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

⁴³ *Decision 524.*

⁴⁴ *See e.g., Decision 721.*

⁴⁵ § 354.2; *see also Decision 973* (stating that a written request to place clergy on involuntary leave does not constitute a complaint).

⁴⁶ *Id.*

⁴⁷ § 354.4.

⁴⁸ *Id.*

⁴⁹ § 354.3.

⁵⁰ § 354.5.

⁵¹ § 354.1.

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 process⁵²

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 has 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.⁵³

Careful attention should be given to the administrative review committee's role. 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 conference relations committee and the Board of Ordained Ministry.

The annual conference assumes no financial responsibility for salary, pension, or other benefits for clergy on involuntary leave.⁵⁴ While on involuntary leave, clergy members:

- Have no claim on conference funds, unless the conference has benefit plans that

⁵² *Decision* 950.

⁵³ ¶ 354.11.

⁵⁴ ¶ 354.6.

- require continued participation;⁵⁵
- May participate in the conference’s health plan, through their own contributions;⁵⁶
- May, in exceptional circumstances, receive other benefits or compensation;⁵⁷
- 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;⁵⁸
- Must designate a charge conference within the annual conference to which they shall relate;⁵⁹ 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.⁶⁰

A request by the bishop or district superintendents to end an involuntary leave must be in writing and made at least six (6) months prior to the annual conference session.⁶¹ The Board of Ordained Ministry shall review these requests. If the board determines that the circumstances necessitating the leave are still unresolved, it may continue involuntary leave up to the three (3) year limit or pursue administrative location. 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 clergy person at least six (6) months prior to the annual conference session and either pursue administrative location or initiate the complaint process.⁶²

III. Medical Leave (¶ 356).

Medical leave may be granted or required of clergy when they are unable to perform their ministerial work because of medical and disabling conditions. Medical 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.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See id.*

⁵⁸ ¶ 354.8.

⁵⁹ ¶ 354.7

⁶⁰ *Id.*

⁶¹ ¶ 354.9.

⁶² ¶ 354.10.

Medical leave should only be granted or renewed after the matter has been appropriately and reasonably investigated by the annual conference's joint committee on clergy medical leave (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 medical leave has the right to appear before the joint committee or to designate someone to appear on the member's behalf.

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

Medical 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.⁶³ This action must have been recommended by the joint committee on clergy medical leave or the conference relations committee, in consultation with the appointive cabinet, and must have been approved by the executive committee of the Board of Ordained Ministry.⁶⁴ Such termination must be reported to the conference board of pensions and to the General Board of Pensions and Health Benefits and must be recorded in the next annual conference session's minutes.

A clergyperson eligible to be appointed by the bishop and capable of performing ministerial duties cannot be involuntarily placed on medical leave solely because of a medical condition.⁶⁵

IV. Retirement (§ 357).

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.

⁶³ ¶ 356.3.

⁶⁴ *Id.*

⁶⁵ ¶ 356.5.

A. Mandatory Retirement (§ 357.1).

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 (§ 357.2).

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 the ability to make an annuity claim for an actuarially reduced pension.

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 the privilege of making an annuity claim.

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 (§ 357.3).

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.⁶⁶

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 ¶ 361.2 must be followed. Additionally, the administrative review committee must review the entire process and report its findings to the annual conference.

V. Honorable Location (¶ 358).

The board of ordained ministry must 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. The Board of Ordained Ministry must 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 and said permission being documented and filed with the Board of Ordained Ministry of the annual conference that granted the location. 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

⁶⁶ *Decision 917*.

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.”⁶⁷

VI. Administrative Location (§ 359).

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.⁶⁸ The cabinet may not participate in this deliberation.⁶⁹ When received by the board, the request of the cabinet is referred to the conference relations committee. The fair process provisions of § 361.2 must be followed in any administrative location procedure.⁷⁰

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.

⁶⁷ See *Decision 717* (discussing benefits and pensions that may be provided to clergy granted the status of honorable location, retired).

⁶⁸ Before making the request, the bishop must complete the steps outlined in § 359.1.

⁶⁹ *Decisions* 689, 917, 950.

⁷⁰ § 360.2.

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 a clergy member is named in a complaint under § 361.1 and desires to withdraw from the membership of the annual conference, that body may allow the withdrawal, pursuant to § 2719.2 (making the proper notification on the credentials). The 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.⁷¹

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 or .3,⁷² 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 under §§ 360.1 or .3, that withdrawal becomes effective immediately.

⁷¹ *Decision 691.*

⁷² EDITOR'S NOTE: Paragraph 360.4 in the 2016 *Discipline* (and several prior *Disciplines*) appears to contain an oversight or typo. 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 § 361.2). The inclusion of "withdrawal from the ordained ministerial office" (§ 361.2) by name would appear to be a mistake, as that must happen at an annual conference session, and thus cannot happen between sessions.

CHAPTER 5 – COMPLAINTS (SUPERVISORY PROCEDURES)

I. Complaints and Supervision.

Whenever a clergy member of an annual conference is accused of violating the sacred trust granted in licensing, ordination, commissioning, or conference membership, 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 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.⁷³ 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.⁷⁴ It is also at this time that the fair process procedures take effect.⁷⁵

A complaint may be held in abeyance, when approved by the Board of Ordained Ministry, if civil authorities are or will be involved in matters relating to the complaint.⁷⁶ The bishop and the executive committee of the Board of Ordained Ministry must review the abeyance at least every ninety (90) days. Any abeyance period does not count towards the statute of limitations.

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 clergyperson of the complaint process and its

⁷³ ¶ 362.1a.

⁷⁴ ¶ 362.1; *see also Decision 974* (stating that confidentiality “cannot be used as a reason to keep the complaint and supporting documentation from the respondent).

⁷⁵ *Memorandum 1053*.

⁷⁶ ¶ 362.1g.

purpose.⁷⁷ An initial complaint must 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.

II. Supervisory Response (¶ 362.1b).

Bishops and district superintendents are always expected to supervise clergy and their ministry. This general supervisory oversight of the shepherds (¶ 143) 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 judicial process. 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 annual conference policies. The supervisory response process must be carried out by the bishop or the bishop’s designee within ninety (90) days of receiving the complaint.⁷⁸ Whenever the process is initiated, the respondent has the right to review the complaint and its supporting documentation.⁷⁹ At the conclusion of the process, the bishop must either dismiss the complaint (in writing and with the consent of the cabinet) or refer it to counsel for the church.⁸⁰

Complaints may be dismissed when no one is willing to put the complaint in writing, and when it is the bishop’s judgment that the complaint is without sufficient evidence. A written complaint should 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 must be placed in the personnel records of the annual conference and the supervisory files of the bishop and cabinet.

⁷⁷ ¶362.1

⁷⁸ ¶ 362.1e. Per ¶ 362.1, the complainant and respondent may consent to extend this time period for up to thirty (30) days.

⁷⁹ *Decisions* 974, 1094.

⁸⁰ *Id.*

The complainant and respondent must be kept informed of the process and the status of the complaint.

Whenever a supervisory response is initiated, the bishop must notify the board of ordained ministry's chairperson of the complaint's filing, the respondent's name, the complaint's general nature, and, when concluded, the ultimate disposition.⁸¹

The supervisory response to any serious allegations should be weighed carefully by the bishop and cabinet. 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.

Ministers from other denominations 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 ¶ 362, with the exception of those provisions that apply specifically to termination of conference membership or surrender of United Methodist credentials.⁸²

III. Suspension (¶ 362.1d).

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

⁸¹ ¶ 362.1b.

⁸² See *Decision 676*.

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 of Ordained Ministry, this does not mean that the matter must wait until the next meeting of the executive committee. The bishop and the cabinet may request that the executive committee take immediate action through a telephone conference when there is a matter of urgency.

The suspension may be extended by the bishop (with the agreement of the executive committee of the Board of Ordained Ministry) for no more than thirty (30) days, and may be followed by a judicial suspension (§ 2704.2c).

IV. Referral of a Complaint (§ 362.1e).

If the supervisory response process has not produced a resolution within 90 days (or up to 120 days with the consent of the complainant and respondent), the bishop must either:

- Dismiss the complaint, with the consent of the cabinet and with reasons for the dismissal given in writing (a copy of these reasons must be placed in the respondent's file); or
- Refer the matter to counsel for the church as a judicial complaint.

V. Complaints Against Bishops (§ 413).

The *Discipline* contains separate procedures for complaints against bishops, including administrative complaints. It is important to read these procedures in concert with the other paragraphs discussed in this Chapter. Much of the provisions of the paragraphs dealing generally with fair process apply to such complaints against bishops.

Like other clergy, whenever bishops are accused of violating the sacred trust granted to them in their ordination and consecration as bishops, 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.⁸³ 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.⁸⁴ Two members of the committee will then be appointed to participate in the supervisory response. 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 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.⁸⁵

As with other complaints, there is an initial supervisory response process. The process must be completed in 120 days.⁸⁶ It may be extended for another 120 days no more than twice.⁸⁷ The first extension must be approved by the supervising bishop and the two appointees from the committee on episcopacy, while the second extension must be approved by those individuals, plus

⁸³ If the respondent is the president, the complaint is to be submitted to the secretary of the College.

⁸⁴ If the respondent is either the president or the secretary, another member of the College will fill that role.

⁸⁵ See ¶ 2704.1c.

⁸⁶ ¶ 413.3b.

⁸⁷ *Id.*

the complainant and the respondent.⁸⁸ 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 confidentiality. 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 just resolution agreement is fulfilled.

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.⁸⁹

If a complaint is not resolved through the supervisory process, the matter may either be dismissed, referred as an administrative complaint to the jurisdictional/central conference committee on episcopacy, or referred to counsel for the Church pursuant to ¶ 2704.1. Paragraph 413.3*d*(ii) provides that a panel of bishops shall take over the supervisory response process for a complaint that has not been resolved or acted upon within 180 days. Additionally, the Council of

⁸⁸ *Id.*

⁸⁹ ¶ 413.3*d*(i).

Bishops may, via a two-thirds vote and at any time in the process, remove the complaint from the College.⁹⁰

Any action taken on the complaint by the jurisdictional or central conference committee shall be reported to the subsequent session of the jurisdictional/central conference.⁹¹

VI. Administrative Fair Process (¶ 361).

A. General.

The procedures presented in ¶ 361 are for the protection of the rights of individuals and the Church in administrative hearings. This paragraph applies whenever there is a request for discontinuance of provisional membership, involuntary leave of absence, administrative location, or involuntary retirement.⁹² 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 personnel matters relating to clergy. The *Discipline* cannot anticipate 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.

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

⁹⁰ ¶ 413.3d(iv).

⁹¹ ¶ 413.4.

⁹² For more in-depth information on each of these involuntary status changes, see Chapter 26 of the [Board of Ordained Ministry Handbook](#).

B. Right To Be Heard (§ 361.2a).

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 (§ 361.2b).

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.

D. Representative Present (§ 361.2c).

The respondent has the right to be accompanied and supported by another clergyperson at any administrative hearing. The clergyperson accompanying the respondent shall have the right to speak and present the respondent's viewpoint. The representative must be a clergyperson in full connection of the respondent's annual conference.

Where administrative or judicial proceedings are pending, a clergyperson 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.⁹³

E. No Ex Parte Communications (§ 361.2d).

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*

⁹³ *Decision 972*; see also [Chapter 2](#) of this Handbook.

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 always 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.

F. Right To Records Relied Upon (§ 361.2e).

When the board reviews and uses written records in making its determination, the respondent is to be allowed to access those records. Access must be provided at least seven (7) days prior to the hearing. 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.⁹⁴

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 of Ordained Ministry to protect both the respondent and the conference from any charges or

⁹⁴ *Decision 974.*

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 wants copies of materials, the documents should be marked or identified as copies and then provided by the Church's representative.

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

G. Failure to Respond/Appear (§ 361.2f).

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 give 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 361.2b 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 should then weigh the medical concerns against the need to proceed and have the matter heard in a timely and expeditious manner.

CHAPTER 6 – READMISSION TO CONFERENCE RELATIONSHIP⁹⁵

I. Readmission to Provisional Membership (¶ 364).

The readmission of provisional members requires: a request for readmission to the conference from which the provisional member was discontinued; the recommendation of the district committee on ordained ministry, the Board of Ordained Ministry, and the cabinet; a review of the former provisional member's 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 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 seeking readmission under this paragraph must have served as a local pastor for at least two (2) years.⁹⁶

⁹⁵ See also [Board of Ordained Ministry Handbook](#), Chapter 26.

⁹⁶ 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.

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).

A former clergy member desiring to return to effective relationship after having been involuntarily retired (§ 357.3) must: 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 former member’s qualifications and the circumstances relating to the retirement; present the 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.⁹⁷ 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.

⁹⁷ ¶ 368.5.

CHAPTER 7 – ADMINISTRATIVE REVIEW COMMITTEE

I. General (¶ 636).

This committee reviews involuntary leaves of absence (¶ 354), administrative location (¶ 359), involuntary retirement (¶ 357.3), the involuntary discontinuance of provisional members of the annual conference (¶ 327.6), and any fair process hearing which occurs regarding unresolved issues related to medical leave (¶ 356.4). It is highly recommended that the chair of the Board of Ordained Ministry notify the chair of the administrative review committee of the commencement and completion of those actions.

The administrative review committee 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 chair.

The administrative review committee does not assess the merits of a recommendation or action. It simply ensures that the relevant provisions of the *Discipline* have been followed, including the fair process provisions of ¶ 361.2.⁹⁸

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.⁹⁹ 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.

II. Suggested Steps for Review.

⁹⁸ See *Decision* 921.

⁹⁹ See *Decisions* 724, 748.

Whenever there is a recommendation for involuntary status change presented to the clergy session of members in full connection, the administrative review committee must 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 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 the involuntary status change;
- Date of any communication of cabinet recommendation to the board of ordained ministry;
- Date of board recommendation for involuntary status change;
- 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;
- Date of any executive committee/cabinet notification of hearing, at least twenty (20) days prior to the joint hearing; and
- Date of any hearings.

At any point in the process, the committee also may wish to voice any concerns it may have that the required steps have not been followed and recommend remedial action to the bishop or chair of the Board of Ordained Ministry. The committee has the right to retain, in confidence, a complete record of the matters it reviews.

[THIS SPACE INTENTIONALLY LEFT BLANK]

CHAPTER 8 – FAIR PROCESS IN JUDICIAL PROCEEDINGS

I. Introduction.

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 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 innocence until guilt is proven 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.

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. 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. 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.¹⁰⁰

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

¹⁰⁰ ¶ 2701.

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.¹⁰¹ 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 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.

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.

B. Right to Notice of Hearings (¶ 2701.1b).

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

¹⁰¹ See sample [Judicial Complaint/Bill of Charges](#) in the Appendix to this Handbook.

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 will 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.

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.”¹⁰²

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.

¹⁰² ¶ 2708.7.

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

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

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. Paragraph 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.

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.¹⁰³

A clergy in full connection serving as respondent's counsel may not be one "who earlier considered the case."¹⁰⁴ 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, 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.

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, 2015, contains a specification of adultery that occurred on March 1, 2015, 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 2017 (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 2015 (i.e., a different adulterous act) could be brought without resulting in double jeopardy.

Because "jeopardy" does not attach until the committee on investigations issues a bill of charges, a supervisory response could be initiated, dismissed, and then later re-initiated without implicating double jeopardy. The process may also be put on hold while a just resolution is

¹⁰³ ¶ 2708.7.

¹⁰⁴ *Id.*

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 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, the documents 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.¹⁰⁵ Who shall serve as counsel is dependent upon the status of the respondent:

| Respondent | Counsel for the Church | Who appoints counsel for the Church |
|---|---|--|
| Bishop ¹⁰⁶ | 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 ¹⁰⁷ | A clergy person in full connection | The bishop |
| Diaconal minister ¹⁰⁸ | A clergy person in full connection <u>or</u> a diaconal minister | The respondent’s district superintendent |
| Layperson ¹⁰⁹ | 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 |

¹⁰⁵ See generally § 2704.

¹⁰⁶ § 2704.1a. Paragraph 2712.4 further states that counsel must be “a bishop or another clergy person in full connection.”

¹⁰⁷ § 2704.2a.

¹⁰⁸ § 2704.3a; but see § 2713.4 (stating that counsel only may be “a clergy person in full connection”).

¹⁰⁹ § 2704.4a.

Counsel for the Church is entitled to choose one assistant counsel, who may be an attorney but who will not have voice.¹¹⁰ The Church's counsel cannot be an individual who earlier considered the case.¹¹¹

If for some reason counsel for the Church has not been appointed, the official charged with convening the court shall appoint such counsel.¹¹²

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.¹¹³ 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,

¹¹⁰ ¶ 2706.2a; see also ¶ 2708.7.

¹¹¹ ¶ 2708.7.

¹¹² *Id.*

¹¹³ The same would be true if an important witness requested a continuance.

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 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.¹¹⁴ There is to be consultation with the chair/presiding officer regarding what may be communicated.

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 ¶ 362.1f, 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” 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.

¹¹⁴ *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.

D. Immunity of Participants (§ 2701.4d).

This provision prohibits a person from bringing a complaint against a participant in a particular judicial process, based on 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 2016, 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 Staff Parish Relations Committee 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 Staff Parish Relations Committee, the chair should also be a signer.

CHAPTER 9 – 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 against a clergyperson 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. In more difficult cases, or where 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.

II. Chargeable Offenses Added by General Conferences.

A. Clergy Charges (¶ 2702.1).

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 that 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.”¹¹⁵ 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.

The 2016 General Conference added the chargeable offense of “fiscal malfeasance.”

B. Lay Charges (§ 2702.3).

The 2004 General Conference added racial and gender discrimination and undermining the ministry of persons serving within an appointment. The 2016 General Conference added the chargeable offense of “fiscal malfeasance.”

III. 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.¹¹⁶ Similar offenses are time barred for bishops prior to

¹¹⁵ *Decision* 691.

¹¹⁶ The Judicial Council has ruled that the change made on the statute of limitations by the 1992 General Conference

April 26, 1996.¹¹⁷ 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. Civil rules of evidence on topics such 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.

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*.

¹¹⁷ The 1996 *Discipline* was the first time the unlimited statute of limitations was applied to bishops.

IV. Time of the Offense (§ 2702.5).

This provision (effective January 1, 2001) codified Judicial Council decisions which found it impermissible for a charge 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.¹¹⁸ For example, a clergyperson 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 clergyperson 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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

¹¹⁸ *Decision 691, Memorandum 704.*

CHAPTER 10 – 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 on the committee will occur, in which event the *Discipline* mandates how the alternates are to step in.

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.¹¹⁹ 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 ¶ 2706.5b. 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.

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

¹¹⁹ ¶ 2706.1.

arrangement ahead of time (with the bishop's blessing). The attorney should be familiar with the Church's process. The conference chancellor must not serve as counsel to the committee.¹²⁰

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 – Commentary.

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

¹²⁰ ¶ 2706.2b.

II. Composition of the Committee on Investigation (§ 2703).

The following chart outlines the composition of the committee for each type of respondent. The judicial process relating to an individual complaint must be governed by the version of the *Discipline* that is in effect on the date the complaint is forwarded to the counsel for the Church.¹²¹

| Respondent | Nomination and election of committee members | Committee composition |
|--|---|---|
| Bishop ¹²² | 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) |
| Clergy member of the annual conference, clergy member on honorable or administrative location, local pastor, or diaconal minister ¹²³ | Nominated by the presiding bishop; elected quadrennially by the annual conference | 4 clergy in full connection (3 alternates), 3 professing members (3 alternates, 3 of whom shall be diaconal ministers, if possible) |
| Layperson ¹²⁴ | The pastor in charge, or co-pastors, of the local church, <u>appoints</u> the committee ¹²⁵ | 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.

¹²¹ § 2719.5.

¹²² § 2703.1.

¹²³ § 2703.2. For a respondent who is a diaconal minister, two professing members, who shall be diaconal ministers if possible, are added to the committee’s membership.

¹²⁴ § 2703.4.

¹²⁵ 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 ¹²⁶ | 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 ¹²⁷ | Bishop | Clergyperson in full connection | | At least 5 committee members |
| Diaconal minister ¹²⁸ | District superintendent | Clergyperson in full connection <u>or</u> diaconal minister | | At least 2/3 of the committee |
| Layperson ¹²⁹ | The pastor in charge, or co-pastors, of the local church | United Methodist member | | No deadline given |

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 for each

¹²⁶ § 2704.1.

¹²⁷ § 2704.2.

¹²⁸ § 2704.3.

¹²⁹ § 2704.4.

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 (for example: an elder who is supervised by the respondent could be perceived as biased, or a bishop who is a close personal friend of the respondent could be perceived as biased.). 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.¹³⁰ If the cabinet recommended involuntary leave of absence and all district superintendents participated, no district superintendent could serve as counsel. Therefore, if the bishop has decided that one specific district superintendent is likely to be chosen as counsel

¹³⁰ See ¶ 2708.7.

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.¹³¹ 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 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. Although ineligible to serve as legal counsel to the committee on investigation, it may be appropriate for the 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 the Judicial Complaint.

The Judicial Complaint should be sent by certified mail, return receipt requested, 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 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.¹³²

¹³¹ ¶ 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.

¹³² See *Decision* 784.

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 that 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](#) that 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.¹³³ When forwarding the complaint to the respondent, counsel for the Church may wish to include a letter reiterating the right to submit this written response. Counsel for the Church should send the judicial complaint by certified mail, return receipt requested and verify the service.¹³⁴ Any verification should accompany the mailing to the

¹³³ 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." 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.

¹³⁴ See the sample [Certificate of Service](#) in the Appendix to this Handbook.

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.¹³⁵

IV. Procedures (¶ 2706).

A. Standard of Proof.

The committee's standard of proof is whether 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.

¹³⁵ See the [Summary Table](#) in the Appendix for more detail on who makes the recommendation of suspension for each category of respondent.

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 earlier in this Chapter and in [Chapter 8](#).

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 chair 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.

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, in advance, 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 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 any counsel. 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 no counsel or party dictates 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 must 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, no verbatim transcript needs to 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.

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. 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 must 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 must 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 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.

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?

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, 2016, Rev. Jones took approximately \$400 in cash offerings from the collections at Trinity United Methodist Church for his personal use.

2. On January 10, 2016, 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, 2016, Mrs. Edna Warehouser 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 it is known that Rev. Jones is the one who took the cash, how did he get the cash from the collection plate, 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 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:

| Respondent | Number of votes required | Who receives bill of charges and specifications |
|---|---------------------------------|--|
| Bishop ¹³⁶ | 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 ¹³⁷ | Five | Respondent, complainant, annual conference secretary, counsel for the Church, resident bishop ¹³⁸ |
| Diaconal minister ¹³⁹ | Two | Respondent, annual conference secretary, Board of Ordained Ministry chairperson, respondent's district superintendent, counsel for the Church, resident bishop ¹⁴⁰ |
| Layperson ¹⁴¹ | Five | Respondent, charge conference recording secretary, counsel for the Church, pastor(s), district superintendent |

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

¹³⁶ § 2706.5b[1].

¹³⁷ § 2706.5b[2].

¹³⁸ *Id.* This must be done within five (5) days.

¹³⁹ § 2706.5b[3].

¹⁴⁰ 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.

¹⁴¹ § 2706.5b[4].

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 for Administrative Action (§ 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:

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. A referral pursuant to this provision is not a dismissal and does not produce a double jeopardy situation.

If a resolution is reached, the committee retains jurisdiction during the implementation of the resolution. It is to certify when the terms of the resolution have been completed. If the process does not result in such a resolution, it must be referred back to the committee.

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.

CHAPTER 11 – 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.”¹⁴² 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.”¹⁴³ 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.¹⁴⁴ 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 connection or other denomination, those decisions should not be subject to review or reversal in the secular courts.

¹⁴² ¶ 2707.

¹⁴³ *Id.*

¹⁴⁴ See e.g., *Serbian Eastern Orthodox Diocese v. Milivojevic*, [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.

Milivojevic 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.3rd 184 (7th 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.¹⁴⁵ 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.¹⁴⁶ If the respondent is a layperson, that person’s district superintendent is the presiding officer, unless the district superintendent has designated another clergy person in full connection to the role.¹⁴⁷ In order to minimize scheduling issues, it is important that the presiding officer be selected as early as possible.

Some presiding officers choose to appoint a bailiff or “sergeant-at-arms” to assist with such tasks as keeping order, seating arrangements, witness protection, or timekeeping. The presiding officer may also use legal counsel for advice regarding Disciplinary and procedural issues. This legal counsel cannot be the annual conference’s chancellor. 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.¹⁴⁸ These notices must be provided at least twenty (20) days prior to the start of the trial.

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

¹⁴⁵ § 2712.2. If the respondent is the president of the College of Bishops, then the secretary shall be the presiding officer.

¹⁴⁶ § 2713.2. Thus, the resident bishop cannot be the presiding officer.

¹⁴⁷ § 2714.2.

¹⁴⁸ The person who appoints (or is named as) the presiding officer is the person who convenes the trial court.

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.

Counsel 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).¹⁴⁹ If these matters are not appealed before the trial is convened, the right to appeal is waived.¹⁵⁰

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 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.¹⁵¹

¹⁴⁹ See *Decision* 1094.

¹⁵⁰ ¶ 2708.3.

¹⁵¹ *Id.*

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 must 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.¹⁵²

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.¹⁵³ Because jeopardy has already attached, a charge dismissed by the presiding officer may not be raised again.¹⁵⁴

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

D. Change of Venue (§ 2708.4).

The *Discipline* permits the respondent to request a venue change – meaning a change in the location where the trial will be held. 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. Counsel for the Church and for the respondent 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.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *See* § 2701.2d. If a bill of charges has made it to the presiding officer, it was certified by the committee on investigation, which is the time at which double jeopardy attaches.

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).¹⁵⁵

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 must appoint one, even if the respondent has not requested counsel.

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.

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 person. Many presiding officers prefer to have their own counsel (§ 2708.1) who can coordinate many of the administrative matters.

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 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

¹⁵⁵ For additional discussion of the various counsels, see [Chapter 8](#) and [Chapter 10, Section III-C](#).

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. 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 facts and circumstances will typically control and need to be viewed carefully.

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 to appear 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 why it is necessary and bears the cost of conducting it. If the presiding officer deems such testimony necessary, a commissioner(s) will be appointed. The commissioner can be clergy or lay, or if there are more than one, both. 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 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. .

K. Open or Closed Trials (§ 2708.12).

The *Discipline* starts with the presumption that trials are to be open. At the request of either party, or on the presiding officer's own initiative, the presiding officer may close particular sessions of the trial. 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 itself 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 offense(s), in relation to the same set of facts. The presiding officer evaluates and decides whether to combine the trials, and will need to consider such issues as fairness, expediency, and whether the evidence is the same for all respondents.

III. Trial Convening and Organization (¶ 2709).

A. Convening 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 must be selected from the trial pool. The selection must 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 given to making the trial pool representative racially, ethnically, and gender diverse.¹⁵⁶ The respondent's status dictates the makeup of the trial pool:

| Respondent | Makeup of the trial pool (at least 35) |
|---|---|
| Bishop ¹⁵⁷ | 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 ¹⁵⁸ | Clergy in full connection, appointed by the district superintendent; clergy in full connection from other annual conferences may be included to ensure diversity ¹⁵⁹ |
| Diaconal minister ¹⁶⁰ | Diaconal ministers and, if necessary, Church members |
| Layperson ¹⁶¹ | Professing members from local churches other than the respondent's, appointed by the district superintendent |

¹⁵⁶ 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.

¹⁵⁷ ¶ 2712.3.

¹⁵⁸ ¶ 2713.3a.

¹⁵⁹ 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.

¹⁶⁰ ¶ 2713.3b.

¹⁶¹ ¶ 2714.3.

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 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, due to these challenges, the number in the trial pool is reduced below fifteen (15), additional members must 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 counsel for the Church and counsel for the respondent, and the presiding officer. This questionnaire should be completed by each trial pool member and then distributed to counsel 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 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 the trial is over and 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.¹⁶²

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. 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

¹⁶² § 2711.2.

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.

B. Order of Trial (§ 2710.2).

The order of the trial shall be as follows:

- Opening statements by counsel;
- Offering of documentary evidence and questioning of witnesses;
- Closing statements by counsel;
- 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 regarding 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 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 among themselves, or with family, friends, the presiding officer, parties, counsel, 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 and Rulings (§ 2710.6).

If any party objects to any aspect of the proceeding, that objection must be noted in the record. All rulings made by the presiding officer must be entered into the record. During the trial, all objections and motions must be made in an open session and recorded 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 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 that relates closely to the chargeable offense. “Competent” testimony is typically believable, credible, first-hand information from a witness.¹⁶³ Third-hand evidence may be found not competent in many instances. Testimony of a person who has a reputation for 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.

I. Evidence (¶ 2710.9).¹⁶⁴

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 regarding the relevant Church law. The presiding officer may be requested by counsel to instruct on Church law.¹⁶⁵ 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

¹⁶³ EDITOR’S NOTE: Other provisions of the *Discipline* refer to the “relevancy and reliability” of evidence, not “relevancy and competency.” Presumably, these concepts are similar.

¹⁶⁴ See also [Chapter 10, Section IV-D](#).

¹⁶⁵ 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*.

- Interpret Church law to the trial court.

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.”¹⁶⁶ The *Discipline* requires that at least nine (9) members of the trial court vote to sustain a charge and to convict.¹⁶⁷ Therefore, if eight (8) members vote in favor of conviction and five (5) do not, the respondent shall be acquitted. 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., the trial

¹⁶⁶ 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.

¹⁶⁷ 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.”

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. The committee on investigation shall monitor and certify the completion of any terms or conditions included in any penalty imposed by the trial court that calls for such certification.¹⁶⁸

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.¹⁶⁹ 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 arrange with

¹⁶⁸ § 2706.5c[3]. If the committee finds that the respondent has failed to meet the terms imposed by the trial court, the committee must notify the presiding officer.

¹⁶⁹ 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.*

The General Board of Pensions and Health Benefits or other health care provider, to continue providing health benefits.

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 for the counselor? Who supervises the counseling? Does anyone receive reports? What happens if the clergyperson refuses to attend?

If any penalty imposed by the trial court is lessened on appeal, the respondent shall be restored and/or compensated “as appropriate.”

VI. Trial Process (§§ 2712-14).

Much of the information contained in §§ 2712-14 is discussed earlier in this Chapter, and in other Chapters issues such as (who convenes the court, who appoints, and serves as, counsel for the Church, and the makeup of the trial pool.) 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 concerning 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.

| Respondent | Convener | Presiding Officer | Trial pool | Counsel for the Church | Who receives trial court records |
|---|--|--|--|--|--|
| Bishop ¹⁷⁰ | 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 ¹⁷¹ | 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 ¹⁷² | 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 ¹⁷³ | 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 |

[THIS SPACE INTENTIONALLY LEFT BLANK]

¹⁷⁰ ¶ 2712. If the president is the respondent, the secretary of the college of bishops is the convener and presiding officer.

¹⁷¹ ¶ 2713.

¹⁷² *Id.*

¹⁷³ ¶ 2714.

CHAPTER 12 – APPEAL PROCEDURES

I. Appeal Procedures – General (§ 2715).

Anyone seeking to appeal the trial court’s decision must give written notice within thirty (30) days¹⁷⁴ and must give to the “officer receiving such notice” and to “the counsel”¹⁷⁵ a written explanation of the grounds for the appeal.¹⁷⁶ The Church does not have the right to appeal the trial court’s decision.¹⁷⁷ The “officer receiving such notice” depends upon the respondent’s status:

| Respondent | “Officer receiving such notice” |
|---|---|
| Bishop ¹⁷⁸ | 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 ¹⁷⁹ | Presiding bishop of the conference and the presiding officer |
| Diaconal minister ¹⁸⁰ | Presiding bishop of the conference and the presiding officer |
| Layperson ¹⁸¹ | Pastor and district superintendent |

The appellate body’s hearing must 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.¹⁸² However, if the respondent failed or refused to appear at trial, either in person or through counsel, the appellate body may determine if the right to appeal is forfeited.¹⁸³ Additionally, should the appellate body determine that the respondent has engaged in misconduct, including bringing a civil

¹⁷⁴ 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.”

¹⁷⁵ 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.

¹⁷⁶ § 2715.1.

¹⁷⁷ § 2715.10.

¹⁷⁸ § 2716.2.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ § 2717.1

¹⁸² *See* § 2715.3.

¹⁸³ § 2715.3.

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.¹⁸⁴ The respondent's death does not forfeit the right to appeal.¹⁸⁵ 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.¹⁸⁶

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?¹⁸⁷

In answering these questions, the appellate body may only consider the trial court record and the arguments of the parties' counsel.¹⁸⁸ 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.¹⁸⁹ Although the parties may not present evidence in an appeal from a trial court decision, questions of Church law may be raised.¹⁹⁰

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.¹⁹¹ If any of these actions are taken, the appellate body must provide the convening officer of the trial court with a statement explaining the grounds for such action.¹⁹² A reversal or remand of a conviction or penalty should not be based on harmless errors.¹⁹³ If the body does not reverse, remand, or modify the trial

¹⁸⁴ *Id.*

¹⁸⁵ ¶ 2715.5.

¹⁸⁶ ¶ 2715.4.

¹⁸⁷ ¶ 2715.7.

¹⁸⁸ *Id.*, ¶ 2715.6.

¹⁸⁹ ¶ 2715.7.

¹⁹⁰ ¶ 2715.9.

¹⁹¹ ¶ 2715.8.

¹⁹² ¶ 2715.2.

¹⁹³ ¶ 2715.8.

court's decision, that judgment shall stand. Actions by the appellate body require a majority vote.¹⁹⁴ 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.¹⁹⁵ As with other steps in the judicial process, the *Discipline* prohibits all other *ex parte* communications with the appellate body.¹⁹⁶

The appellate body may retain legal counsel, which may not be the conference chancellor from the annual conference from which the appeal comes.¹⁹⁷

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.

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

¹⁹⁴ *Id.*

¹⁹⁵ ¶ 2715.11.

¹⁹⁶ *Id.*, ¶ 2715.13.

¹⁹⁷ ¶ 2715.7.

were harmless errors of law,¹⁹⁸ 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.

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

¹⁹⁸ See e.g., *Decision 1094*.

that person (or instruct the annual conference secretary to do so).¹⁹⁹ 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.²⁰⁰ At the hearing, the respondent, the Church, and the annual/missionary/provisional conference may be represented by counsel.²⁰¹ The committee itself may also retain counsel as an adviser.²⁰²

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.

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

¹⁹⁹ § 2716.3.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *See* § 2716.4.

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.”²⁰³ This hearing must occur at least ten (10) days, but not more than thirty (30) days, after the district superintendent has given notice.²⁰⁴ 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.²⁰⁵

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

VI. Administrative Process Appeals (¶¶ 2718.3-.4).

The 2016 General Conference added Disciplinary provisions regarding the order of appeals on questions of procedure in an administrative process. The following rules apply to these appeals:

- The appellant must give written notice of the appeal within thirty (30) days and must include a statement of the grounds for the appeal;²⁰⁶
- The appellate body must provide a written statement of the grounds for its action to the appellant and the convening officer of the underlying administrative hearing;²⁰⁷

²⁰³ ¶ 2717.2.

²⁰⁴ *Id.*

²⁰⁵ ¶ 2717.4.

²⁰⁶ ¶ 2718.4a. The appellant bodies review is limited to what is set forth in the statement.

²⁰⁷ ¶ 2718.4b.

- A respondent cannot appeal from a hearing at which neither the respondent or respondent’s counsel was present;²⁰⁸
- The appeal must be considered by the appellate body unless the appellate body concludes the appellant has forfeited the right to appeal by:
 - Misconduct;
 - Withdrawal from the Church;
 - Failure to appear to prosecute the appeal; or
 - Before the appellate body has ruled on the appeal, bringing a civil suit against any of the individuals involved in the administrative process;²⁰⁹
- Any forfeited right to appeal cannot be revived by a subsequent appellant body;²¹⁰
- An appeal may continue after an appellant’s death;²¹¹
- The appellate body’s review is limited to the records and documents used during the administrative process;²¹²
- The only question the appellate body may answer is whether there were sufficient errors of Church law to vitiate the action of the administrative body;²¹³
- The appellate body shall not hear witness testimony;²¹⁴
- The appellate body may seek the advice of legal counsel;²¹⁵
- The presiding officer or secretary of the appellate body may address procedural questions;²¹⁶
- Ex parte communications are prohibited;²¹⁷ and
- The right to present evidence is exhausted after the matter has been heard on the merits in an administrative hearing.²¹⁸

After hearing the appeal and determining an error has been made, the appellate body may decide the error is harmless (in which case it shall not reverse or remand the matter), recommend that action be taken to remedy the error, or take some other action.²¹⁹ Decisions of the appellate body require a majority vote.²²⁰ Paragraph 2718.3 sets forth the order of appeals:

. . . from the decision of the conference relations committee to the administrative review committee who has original jurisdiction over the administrative matter, and

²⁰⁸ ¶ 2718.4c.

²⁰⁹ *Id.*

²¹⁰ ¶ 2718.4d.

²¹¹ ¶ 2718.4e.

²¹² ¶ 2718.4f.

²¹³ ¶ 2718.4g.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ ¶¶ 2718.4j, .4k.

²¹⁷ *Id.*

²¹⁸ ¶ 2718.4i.

²¹⁹ ¶ 2718.4h.

²²⁰ *Id.*

from the administrative review committee to the central conference or jurisdictional appeals committee in which the appellant holds membership, and from the jurisdictional appeals committee to the Judicial Council.²²¹

[THIS SPACE INTENTIONALLY LEFT BLANK]

²²¹ EDITOR’S NOTE: The exact interaction between these new appellate procedures, ¶ 363, and the duties of the administrative review committee are unclear. Per ¶ 636, the administrative review committee is to review the “entire administrative process leading to action for change in conference relationship.” And, as stated in ¶ 363, the conference relations committee sends its recommendation to the board of ordained ministry, for its own review and action. Yet, ¶ 2718.3 seems to only provide an appeal at the conference relations committee stage of the process. That appeal goes to the administrative review committee, which ¶ 636 already says must review the (whole) process, regardless of whether an appeal has been made.

CHAPTER 13 – 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.²²²

All Judicial Council decisions and memoranda are published on the internet²²³ and are searchable. They can be accessed through the Judicial Council [section](#) of the denomination’s website. At least ninety (90) days before each meeting of the Judicial Council, its docket is available on the website. 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.²²⁴ 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.²²⁵

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 2017-2020 quadrennium is N. Oswald Tweh. The Vice President is Ruben Reyes. The Secretary is Luan-Vu Tran, to whom

²²² § 57.

²²³ § 2612.1.

²²⁴ 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).

²²⁵ *Id.*

communications with the Judicial Council should be addressed (5556 N. Sheridan Road, #610, Chicago, IL 60640; secretaryjudicialcouncil@gmail.com).

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.²²⁶ Any member of the body can request a ruling. Such a request, if properly submitted in writing, and which is germane to the business then before the conference and not ruled out of order,²²⁷ should be answered by the bishop during the conference, and must be answered within thirty (30) days after the close of the conference session.²²⁸ 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.²²⁹ 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 not required to provide substantive answers to moot or hypothetical questions, even though that exception no longer appears in the *Discipline*.²³⁰

²²⁶ ¶ 2609.6; *see also* Decision 969, Memorandums 763, 1064 (stating that a bishop has no authority to make substantive rulings on judicial/administrative processes).

²²⁷ 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.

²²⁸ ¶ 2609.6.

²²⁹ ¶ 2609.7.

²³⁰ *See* the Appendices to the Judicial Council's *Rules*; *see also* Decisions 33, 651, 750, 816, 820, 846, Memorandums 747, 799.

Parties seeking review by the Judicial Council should pay careful attention to the jurisdictional requirements in ¶ 2609.²³¹

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.”²³² Numerous entities, listed in ¶ 2610.2, may seek a declaratory decision. The Judicial Council has strictly construed the requirements to seek a declaratory decision.²³³

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.²³⁴

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.²³⁵ When General Conference is in session, any Judicial Council decision finding an action unconstitutional must be reported to General Conference immediately.²³⁶

²³¹ See e.g., *Decision* 153 (strict adherence to process for invoking Judicial Council jurisdiction); see also *Memorandums* 569, 799.

²³² ¶ 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.

²³³ See e.g., *Decision* 1114:

Our lodestar principle has been that we may not assume jurisdiction to render a declaratory decision unless jurisdiction has been clearly vested in the Judicial Council. Our long-standing policy is to construe our jurisdiction strictly and with restraint.

(internal citations omitted)

²³⁴ See *Memorandum* 785; but see *Memorandum* 996.

²³⁵ ¶¶ 2609.1-.5.

²³⁶ ¶ 2609.10. The only exception to the 30-day notice requirement of ¶ 2610.3 is a request made at General Conference concerning legality or constitutionality.

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.²³⁷ 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.²³⁸

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*.²³⁹ 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 of the decision, unless the Judicial Council decides otherwise.²⁴⁰

[THIS SPACE INTENTIONALLY LEFT BLANK]

²³⁷ ¶ 2609.4.

²³⁸ ¶ 2609.5.

²³⁹ ¶ 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.

²⁴⁰ ¶ 2609.8d.

APPENDIX

SUMMARY TABLE OF JUDICIAL PROCESS REQUIREMENTS²⁴¹

| | Bishops | Clergy of an annual conference or on location and local pastors | Diaconal ministers | Lay members | |
|---|--|--|--|--|------------------------------------|
| Who receives original complaint: | COB president (and secretary) | Presiding bishop | District Superintendent (DS) | Pastor/co-pastors in charge | |
| Counsel for the Church: | 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 | |
| Committee on Investigation | Nomination of members: | By the COB and from the floor of the jurisdictional/central conference | N/A | By the presiding bishop | N/A |
| | Election/appointment of members: | By the jurisdictional/central conference | N/A | Quadrennially by the annual conference | By the pastor/co-pastors in charge |
| | Composition | 7 CIFC (5 alternates), 2 lay observers (1 alternate) | N/A | At least 4 diaconal ministers <u>or</u> professing members (5 alternates), 3 CIFC (5 alternates) | 4 professing members, 3 CIFC |

²⁴¹ 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.

| | | Bishops | Clergy of an annual conference or on location and local pastors | Diaconal ministers | Lay members |
|-----------------------------------|--|--|---|--|--|
| Committee on Investigation | Convening of the committee: | Within 60 days of the committee chair receiving the complaint | | | No deadline given |
| | Suspension is recommended by: | At least 5 committee members | N/A | At least 2/3 of the committee | At least 5 committee members |
| | No. of votes required to forward bill of charges: | 5 | N/A | 2 | 5 |
| | Who receives bill of charges (in addition to respondent): | 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 |
| Trial Court | Makeup of the trial pool (at least 35): | 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 |
| | Convenor of the court: | Jurisdictional/central conference COB president | Resident bishop | Resident bishop | DS |
| | Presiding officer: | 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 |
| | Who receives trial court records: | Jurisdictional/central conference secretary | Annual conference secretary | Annual conference secretary | Charge conference secretary |

| | | Bishops | Clergy of an annual conference or on location and local pastors | Diaconal ministers | Lay members |
|----------------|--|--|--|--|---|
| Appeals | Notice of appeal must be given to: | COB president and secretary and presiding officer | Presiding bishop and presiding officer | Presiding bishop and presiding officer | Pastor and DS |
| | Makeup of committee: | 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 |
| | No. of votes required to take action: | A majority | | | |

[THIS SPACE INTENTIONALLY LEFT BLANK]

SAMPLE FORMS

When hearings are held, §§ 361.2*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, private carrier, 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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Sample Notice of Hearing Form

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]²⁴²

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.*

²⁴² 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/with {private carrier name}] 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 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.

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 2006.

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 2005 to 2016. Ms. Smith is 32 years old, married and has one child.

Ms. Wanda Jones is 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, 2015, 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, 2015, 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, 2015, around 3:00 p.m.
- d. Sexual contact of kissing, hugging and touching in Doe's office on or about August 22, 2015 at 3:00 p.m. during a counseling session.
- e. Statements by Doe after mid July 2015, 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 ¶ 2702.1i 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, 2015, 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, 2015, 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, 2015, around 3:00 p.m.
- i. Sexual contact of kissing, hugging and touching in Doe's office on or about August 22, 2015, at 3:00 p.m. during a counseling session.

- j. Statements by Doe after mid July 2015, 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 ¶ 2702.1d 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, 2016.

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, 2016.
2. Copy of Wanda Jones statement as written by District Superintendent June Cook and initialed by Ms. Jones, dated December 3, 2015.
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 2015.
4. Notes of conversation on March 1, 2016, 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 2016, 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, 2016, of a conversation with Ms. Ouska.
7. Notes of Rev. Cook of a meeting on February 12, 2016, with Rev. Doe.
8. Copy of the statement of Rev. Doe dated March 6, 2016, addressed to Bishop Washington.
9. Copy of Petition for Dissolution of Marriage of Phyllis Doe and Rev. Phillip Doe dated November, 2015.

[THIS SPACE INTENTIONALLY LEFT BLANK]

LIST OF SUGGESTED WITNESSES²⁴³

| 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]

²⁴³ 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 POOL²⁴⁴

[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]

²⁴⁴ 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?

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?

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?

11. Is there any other information that you want to share on your ability to serve as a member of the Trial Court?

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 _____, 2016, 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 ¶ 362 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 _____ 2017;

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 1st 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 ¶¶ 360.3-

.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 ¶ 2702.1d) 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

[THIS SPACE LEFT INTENTIONALLY BLANK]

Disposition of Recommendations of Involuntary Status Change & Fair Process Hearings

As defined in ¶ 361 and ¶ 363 in the 2016 *Book of Discipline*

Purpose: For use in the disposition of a request for Administrative Location, Involuntary Discontinuance of Provisional Membership, Involuntary Leave of Absence, Involuntary Medical Leave, or Involuntary Retirement.

Name of clergy recommended for involuntary status change:

First: _____ Middle: _____ Last: _____

Birthdate (MM/DD/YYYY): _____ Annual Conference Membership: _____

Disposition of Recommendations of Involuntary Status Change (¶ 363)

A. The Board of Ordained Ministry (BOM) receives a request for an involuntary status change (¶ 361.1). The bishop typically makes the request. In the case of an end to Involuntary Leave of Absence, the BOM may make a request for Administrative Location (¶ 354.8). The BOM may make a recommendation for Involuntary Retirement (¶ 357.3).

Date request received by the BOM: _____

Request status change to:

- _____ Administrative Location
- _____ Involuntary Leave of Absence
- _____ Involuntary Medical Leave
- _____ Involuntary Retirement
- _____ Involuntary Discontinuance of Provisional Membership

Person/Group making request: _____

Nature of request: _____

B. The BOM shall refer any request for an involuntary status change to the Conference Relations Committee (CRC) (§ 361.1, § 363). The procedures for a Fair Process Hearing shall be followed whenever there is a request for administrative location, involuntary leave of absence, involuntary medical leave, involuntary retirement, or discontinuance of provisional membership (when appealed by the provisional member) (§ 361.2, § 356.4).

C. Procedure for a Fair Process Hearing (§ 361.2):

NOTE: See pp. 6 and 7 of this document for details regarding different involuntary status changes.

1. The bishop or the bishop's designee and the respondent shall have a right to be heard before any final action is taken (§ 361.2a).
2. Notice of any hearing for an involuntary status change shall advise 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 (§ 361.2b). Notice should be sent receipt able mail.

Date mailed: _____ Date received: _____

3. A hearing will be held with the members of the CRC (§ 361.1, § 363).

Date hearing held: _____

4. The respondent may choose a deacon or elder who is a member in full connection of the respondent's annual conference to accompany him/her to any hearing and give voice (§ 361.2c, § 363.1).

Name of ordained clergy member accompanying the respondent: _____

5. The bishop or the BOM, as appropriate, shall designate the person to present the request to the CRC (§ 363.1).

Who presented: _____

6. Others may be invited to present as determined by the CRC Chair (§ 363.1).

Other presenter(s): _____

7. One party shall not discuss substantive issues with members of the pending hearing body, without the other party being present (§ 361.2d).
8. Questions of procedure may be raised with the presiding officer of the hearing body (§ 361.2d).
9. The respondent shall have access, at least seven days prior to the hearing, to all records relied upon in the determination of the outcome of the process (§ 362.1e).

Date of respondent's access to all records: _____

10. 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 (§ 361.2f).

11. Agenda for a Fair Process Hearing (§ 363.1)

- a. Presentation by the bishop, or the bishop's designee, or BOM's designee
- b. Questions by the CRC
- c. Presentation of the clergy person in question, with assistance by accompanying full member deacon or elder
- d. Questions by the CRC
- e. Presentation(s) by others as determined by the chair of the CRC
- f. Questions by the CRC
- g. All except CRC members depart

12. The CRC will make a recommendation to the BOM (§ 363).

Date of CRC report to the BOM: _____

CRC Decision:

_____ Affirms the request identified in Step A, p. 1 to: _____

_____ Dismisses request (no status change recommended)

13. The BOM may affirm or reverse the decision of the CRC (§ 363).

Date of BOM action: _____

_____ Affirms CRC's decision in Step 12 above

_____ Reverses CRC's decision in Step 12 above

Final recommendation of BOM:

_____ Involuntary Status Change as identified in Step A, p. 1

_____ Dismissal of recommendation (no status change recommended)

14. Respondent is to be notified in writing of BOM decision and recommendation BOM will make to the Clergy Session.

Date written notification mailed: _____ Received: _____

15. Administrative Review Committee

The purpose of the Administrative Review Committee is to ensure that the disciplinary procedures for discontinuance of provisional membership, involuntary leave of absence, involuntary medical leave, involuntary retirement, or administrative location are properly followed. The entire administrative process leading to the action will be reviewed prior to any action of the annual conference (§ 636).

The Administrative Review Committee will notify the parties of the review process (§ 636).

Who was notified:

| | |
|-------|-------------|
| _____ | Date: _____ |

Prior to its report, if the 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).

The Administrative Review Committee will report its findings to the Clergy Session of members in full connection before a vote is taken (§ 636).

Date of report: _____

Committee members present: _____

16. A vote must be made by the Clergy Session before any recommendation for a status change is final. The BOM presents the recommendation to the Clergy Session.

The required approvals are as follows:

Administrative Location – majority approval (§ 359)

Involuntary Medical Leave – majority approval (§ 356)

Involuntary Leave of Absence – 2/3 majority approval (§ 354.3)

Involuntary Retirement – 2/3 majority approval (§ 357.3)

Involuntary Discontinuance of Provisional Membership – majority approval (§ 327.6)

Date of Clergy Session Vote: _____

Status voted on by Clergy Session: _____

Approval by required percentage: _____ Yes _____ No

Details regarding different involuntary status changes:

Administrative Location (§ 359) – Requires majority vote of Clergy Session

- Before making a request to the BOM for Administrative Location, the bishop shall complete the procedure outlined in §§ 334.3 and § 359.1.
- Upon the bishop and district superintendent’s request for Administrative Location, the provisions of § 361.2 shall be followed.
- For ad interim action, see § 359.2.

Involuntary Discontinuance of Provisional Membership (§ 327.6) – Requires majority vote of Clergy Session

- Upon request for Involuntary Discontinuance, the provisions of § 327.6 shall be followed.
- The provisional member shall be advised of the right to a Fair Process Hearing and upon his/her request, the proceedings for a Fair Process Hearing (§ 361.2) shall be followed.

- Ministerial functions cease when the relationship is discontinued and credentials shall be returned to the district superintendent for deposit with the secretary of the conference.
- The BOM may approve the provisional member to continue as a local pastor after discontinuance of provisional membership (§ 327.6).

Involuntary Leave of Absence (§ 354) – Requires 2/3 vote of Clergy Session

- Upon the bishop and district superintendent’s request to the BOM for Involuntary Leave, the provisions of § 354 shall be followed.
- The procedures for a Fair Process Hearing shall be followed (§ 354.1, § 354.2).
- For ad interim action, see § 354.4.

Involuntary Medical Leave (§ 356) – Requires majority vote of Clergy Session

- Upon request of the cabinet to the BOM, the provisions of § 356 shall be followed.
- If there are unresolved issues, the procedures for a Fair Process Hearing shall be followed (§ 356.4).
- For ad interim action, see § 356.2.

Involuntary Retirement (§ 357.3) – Requires 2/3 vote of Clergy Session

- Upon the cabinet or BOM’s request for Involuntary Retirement, the provisions of § 357.3 shall be followed.
- The proceedings for a Fair Process Hearing (§ 361.2) shall be followed.
- The cabinet may make a request to the BOM for the involuntary retirement of the clergy member, or the BOM may make the recommendation upon its own motion.
- 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.

Any clergy member 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.

CHECKLIST FOR PROCESSING COMPLAINTS AGAINST CLERGYPERSONS

This Checklist may be a helpful tool for keeping track of complaints against clergypersons, as they move through the complaint process. It probably will be most useful overall to the bishop, district superintendent, counsels for the Church and the respondent, and presiding officer.

This checklist is based on *The Book of Discipline* (2016). 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 by the respondent. ¶ 362.1a.

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. ¶ 362.1a.

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. ¶ 362.1b. (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 ¶ 362.1d: _____

Supervisory follow-up with local church congregation under ¶ 362.1f:

Supervisory follow up with respondent's family: _____

_____ **4. Referral of a Matter for Just Resolution Process (¶ 362.1c, 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.)

_____ **6. 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):

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)

7. Trial – Judicial (See also more detailed Trial Checklist)

The bishop of the respondent names another bishop to be the presiding officer when counsel for the Church concludes there are grounds for a trial. The respondent may select counsel, who would typically be the same person who served as respondent’s counsel up until this point. 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:

_____ **8. 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.)

[THIS SPACE INTENTIONALLY LEFT BLANK]

CHECKLIST FOR TRIAL²⁴⁵

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.

GENERAL INFORMATION

Check when completed

_____ Name, address, email, and phone and fax numbers of respondent.

_____ Name, address, phone and fax numbers of the presiding officer.

_____ 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.

²⁴⁵ 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).

_____ 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.

_____ 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.)

_____ Name, address, email, and phone and fax numbers of legal counsel to the presiding officer.

_____ Name, address, email, and phone and fax numbers of complainant’s advocate.

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 counsel for the Church.

_____ 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.

_____ 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).

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.

_____ 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.

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.

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.

_____ 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.

_____ 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.

_____ Date of receipt by presiding officer of witness list from counsels.

_____ 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.

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.

_____ 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.

_____ 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.

_____ 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.

_____ 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.

_____ 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.

_____ Review of need for healing at the local church by resident bishop and cabinet, in consultation with presiding officer. ¶ 2701.4c.

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.

_____ 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

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.

Date of certification of written trial record by presiding officer and secretary. ¶ 2710.8.

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.

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.

Date notice of appeal sent by presiding officer to secretary of committee on appeals.

Date for committee on appeals hearing.

_____ 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).

_____ Date notice put in personnel record if the credentials are not surrendered (if terminated by trial court).

_____ 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.

[THIS SPACE INTENTIONALLY LEFT BLANK]