

EXPLANATORY NOTES ON CHAPTER 2: THE DISCIPLINARY AND JUDICIAL PROCEDURES

These notes are provided to be helpful with the interpretation of the disciplinary process and are explanatory in nature only and do not have constitutional authority.

Part I

¹ Article 1 provides a definition of “discipline.” The authority exercised by any judicatory is given only by God. The judicatory is responsible to the accuser, the accused, the church, and Jesus Christ.

The exercise of discipline may begin informally. The body exercising informal discipline may never have to resort to Chapter 2 of the *Book of Church Order*. Many times an assembly addresses discipline issues through its executive committee, pastoral relations committee, or judicial business committee. However, only admonition and rebuke may be imposed without implementing the provisions of Chapter 2, Part I of the *BCO* as a formal judicatory. (A body is an “assembly” for non-judicial proceedings. An “assembly” becomes a “judicatory” when it enters into judicial proceedings.)

When a judicatory conducts a trial, Robert’s Rules of Order do not apply. The administrative rules established in Chapter 2, Part I, Article 5, Section 11a and the other rules throughout Chapter 2, Part I govern the proceeding.

The deletion of the words “and trial” allows for an issue to be settled short of a formal trial.

² Article 2 defines offenses requiring discipline. Because the distinction between “public” and “private” is open to interpretation and “public” or “private” offenses do not necessarily require different discipline the terms are deleted. It is the responsibility of the judicatory to define “notorious” or “scandalous.” Some “notorious” or “scandalous” situations may require immediate attention such as closing the pulpit (see endnote #5 for Chapter 2, Part I, Article 3, Section 3b), and formal proceedings addressing these situations occur later. In such situations, it is assumed the judicatory will appoint a committee to investigate the situation(s) and under appropriate circumstances file a charge.

The procedure outlined in Matthew 18:15-17 does not always apply for all offenses. Under certain circumstances, it may be difficult or impossible for the offended party to face the offender (see also endnote #21 for Chapter 2, Part I, Article 5, Section 7). In the case of such an offense, as well as with other offenses not lending themselves to the procedures outlined in Matthew 18:15-17, Article 2 applies.

Because the phrase “dishonorable in reputation before the world” is difficult to define and is subject to varied interpretation, the phrase is deleted. A situation that violates Holy Scriptures or the Constitution of the Reformed Church in America is sufficient for a judicatory to take action.

³ The word “rebukes” is added to make it consistent with Chapter 2, Article 1, Section 2. The requirement of notification is not new (see endnote #29 for Chapter 2, Part I, Article 5, Section 14). The civil courts generally are in agreement not to interfere with ecclesiastical courts, provided these ecclesiastical courts follow their respective church orders. This Section 1 assumes that a Board of Elders is concerned for both the welfare of the member and of the congregation.

⁴ The discipline of an elder or deacon in this Section 2 refers to the “office” of elder or deacon. If

a minister is serving as an elder or deacon, the minister (serving as elder or deacon) may be disciplined only by the classis (see Chapter 2, Part I, Article 3, Section 3a and endnote #6 for Chapter 2, Part I, Article 3, Section 3c).

- ⁵ The terms “public sin or gross” are deleted and the terms “notorious or scandalous” are added in order to be consistent with the definition of offenses in Chapter 2, Part I, Article 2.

When a consistory “closes a pulpit,” this is an immediate and short-term action only (see endnote #1 for Chapter 2, Part I, Article 1).

- ⁶ The word “exclusive” is added to make it very clear that only the classis has authority to discipline a minister (see Chapter 2, Part I, Article 3, Section 3a). Also, as noted in endnote #4 for Chapter 2, Part I, Article 3, Section 2, only classis may administer discipline to a minister who is serving as an elder or deacon.

A minister may apply for demission (see Chapter 1, Part II, Article 12, Section 13). However, demission is not the exercise of discipline. When demission occurs, the classis must keep a record of the facts and circumstances surrounding demission (see endnote #14 for Chapter 2, Part I, Article 4, Section 4c).

- ⁷ Although a minister is amenable to classis (Chapter 1, Part II, Article 13, Section 2), a General Synod professor of theology is amenable to the General Synod (Chapter 1, Part IV, Article 8). As stated in this Section 4, the General Synod may suspend or depose a General Synod professor of theology from the Office of General Synod Professor of Theology and/or the Office of Minister of Word and Sacrament.

- ⁸ The deletion of the words “due process” is an attempt of the task force to forego (throughout Chapter 2) the usage of common civil law phrases or legalisms. This deletion also makes this Section 5 consistent with the other sections 1-4 in this Article 3 (see also endnote #25 for Chapter 2, Part I, Article 5, Section 11e).

The classis has authority only to suspend a consistory and not to depose a consistory since a “consistory” is not an office.

- ⁹ This Article 4 outlines the procedure for handling a charge. A new Formulary 12 (see Formulary 12) is the form to use for the charge. An accusation or an allegation becomes a charge upon compliance with this Article 4.

- ¹⁰ “Provide” means reasonable efforts to deliver, such as hand delivery or certified mail.

- ¹¹ Either an individual or a committee of the judicatory (see Chapter 2, Part I, Article 4, Section 3) may begin the process of bringing a charge(s). If a charge(s) is brought by an individual, the individual accuser must be subject to the discipline of the judicatory or a lower judicatory within its bounds. This restriction holds the individual accuser to the same standards of discipline as the individual accused and thereby minimizes the possibility of a frivolous or malicious charge(s). The individual accuser is responsible for supporting and proving the charge(s). If the individual accuser is not within the jurisdiction of the judicatory, lacks capacity to bring the charge(s), or chooses not to bring the charge(s), then the matter may be referred to a committee of the judicatory (standing committee, ad hoc committee, or committee of one), and this committee may bring the charge(s).

The factual foundation for the charge(s) must be the same whether the charge(s) is brought by

an individual or by a committee of the judicatory.

- ¹² The members of the committee will not be part of the deliberations at trial (see Chapter 2, Part I, Article 5, Section 6). The committee may be a standing committee, ad hoc committee, or committee of one.

This Section 4 outlines the criteria for determining sufficient merit to a charge(s). The committee of the judicatory may determine that even if a charge(s) is true, there should not be discipline.

- ¹³ In considering the dismissal of charges because of failure to bring the charge(s) within two years of occurrence, the burden is on the accuser to show what circumstances prevented the accuser from bringing the charge(s) earlier.

- ¹⁴ Mediation must include the accuser and the accused.

If the investigation of a charge(s) results in demission from office, the record must reflect the nature of the charge(s) in order to provide some history of why the demission occurred (see endnote #6 for Chapter 1, Part I, Article 3, Section 3c).

- ¹⁵ Section 6 gives the committee of the judicatory great authority, including the authority to dismiss a charge(s) or to arrive at a negotiated agreement or to determine sufficient merit to have the judicatory proceed to trial.

This committee of the judicatory is necessary to preserve the objectivity of the judicatory in the trial process. By having a committee of the judicatory (instead of the entire judicatory) determine whether there is sufficient merit for proceeding to trial, the judicatory that later must weigh the evidence at trial is shielded from early knowledge of this evidence. Hearing this evidence prior to the trial could prejudice the judicatory's decision at trial. The members of the committee of the judicatory at the trial do not participate in the deliberation or decision (see Chapter 2, Part I, Article 5, Section 6). This separation of functions between the committee of the judicatory and the judicatory as a whole is essential to the appearance of fundamental fairness in the process.

If a member of the judicatory or the accuser is dissatisfied with the decision of the committee of the judicatory, a new charge(s) may be filed.

- ¹⁶ It is sufficient for the committee of the judicatory to report to the judicatory that a charge(s) was investigated and found to be without merit without reporting the details of the charge(s).

- ¹⁷ At all times during the trial the parties are to act with fundamental fairness.

- ¹⁸ The clerk of the judicatory issues the citation and provides a copy of the citation to the accused by whatever means is fair.

- ¹⁹ This Section 2 gives the accused twenty days to respond rather than ten days. Also, the accused may wish to end the process and accept the discipline of the judicatory. There is no need then to proceed to trial.

- ²⁰ The persons listed in this Section 6 are not allowed to participate in the deliberation or in the decision of the judicatory at trial. However, these persons may participate in the imposition of discipline (see endnote #12 for Chapter 2, Part I, Article 4, Section 4 and endnote #28 for Chapter 2, Part I, Article 5, Section 13).

- ²¹ Fairness requires witnesses to be examined in the presence of the accused. The new Section 8 allows the taking of testimony outside of trial. There is a particular concern when minor children are witnesses. In these instances, the judicatory must determine the appropriate means of protecting both the accused and the witnesses. “In the presence” may include the use of screens, video testimony, or other means fair to both the accused and the witnesses (see endnote #2 for Chapter 2, Part I, Article 2).
- ²² (See endnote #21 for Chapter 2, Part I, Article 5, Section 7 and endnote #2 for Chapter 2, Part I, Article 2.)
- ²³ Counsel does not need to be an attorney. Counsel does not make decisions, but gives advice. Allowing confessing members of the Reformed Church in America to be counsel rather than limiting counsel only to ministers or elders increases the availability of counsel to all parties. Authorization for counsel to be reimbursed for expenses is added to reduce the burden on counsel.
- ²⁴ This Section 11 provides direction for procedures to follow at trial. Even if the accused pleads guilty, the judicatory must still render a decision and impose discipline (see Chapter 2, Part I, Article 5, Sections 12 and 13). (This Section 11 and Sections 12-13 clarify the steps of discipline.)
- A sample trial format procedure is available upon request to the Office of the General Synod.
- ²⁵ Currently, the *Book of Church Order* sets no standard of proof. The “high degree of probability” gives definition and uniformity to the standard of proof. This standard was deliberately chosen by the task force so as to avoid the use of “legal terms” since the trial under Chapter 2, Part I, Article 5 is an ecclesiastical proceeding and not a criminal or civil proceeding (see also endnote #8 for Chapter 2, Part I, Article 3, Section 5). “High degree of probability” is the standard definition of the legal term “clear and convincing evidence.”
- ²⁶ “Such other persons” may include the counsel for the judicatory.
- ²⁷ Counsel for the judicatory acts as an advisor and does not represent either the accused or the accuser.
- ²⁸ (See endnote #20 for Chapter 2, Part I, Article 5, Section 6.)
- ²⁹ This Section 14 is added to clarify distribution of the decision by the judicatory. Without this Section 14, a judicatory may be concerned about liability in the civil courts for damage to reputation of the individual disciplined. To conceal the decision may cause further harm to the church at large. Under this Section 14, the judicatory must take whatever action is necessary in order to honor the Lord Jesus Christ and to help heal all those involved (see also Chapter 2, Part I, Article 3, Section 1 and endnotes that follow).
- ³⁰ Restoration and reinstatement occur only through the judicatory which imposed the discipline.

Part II

- ³¹ A standard of review “preponderance of the evidence” is added to provide uniformity and clarity. This is the standard which has been used by the General Synod Commission on Judicial Business.

Part III

³² A standard of review, “substantial evidence,” is added to provide uniformity and clarity. This is the standard which has been used by the General Synod Commission on Judicial Business.