

Proposed Amendments to the Constitution—Part 3 of 3

Amendments to the *Book of Order*

Approved by the 219th General Assembly (2010) and recommended to the
presbyteries for their vote.



NOTE FROM THE STATED CLERK

The 219th General Assembly (2010) of the Presbyterian Church (U.S.A.) approved and recommended to the presbyteries for their affirmative or negative votes proposed changes in the language of the *Book of Order* that, if approved, will amend the Constitution. Please be sure that a separate vote is taken on each PROPOSED AMENDMENT. A presbytery may vote on the amendments, upon the recommendation of a presbytery committee, by putting some, or even all, in a consent agenda or omnibus motion, that identifies each amendment separately.

You will note that reference is made to item numbers that indicate the assembly committee reports related to each proposed amendment. These item numbers also indicate where to find background information from various entities that was available electronically to the assembly commissioners prior to the General Assembly. That information may now be accessed at <http://www.pc-biz.org>, then click on Committees. The “Item Number” references are the same as will be found in the *Minutes of the 219th General Assembly (2010)*, Part I [*Minutes*], which are expected to be available to the presbyteries by the time they consider the amendments. The advice of the Advisory Committee on the Constitution (ACC) can be found immediately following the item in the *Minutes* for which the advice is given.

Unless otherwise indicated, new language to be added to the *Book of Order* is in italics and any language to be stricken will have a line through it. In providing background material, we have attempted wherever possible to use quotations from the various groups that presented or commented on these materials as they went to the General Assembly. Within those quotations, bracketed material [] has been inserted editorially. If there are no numbers recorded for votes made by the General Assembly, those motions were approved either by voice or a show of hands, which would not have been counted.

This year there are two other amendments being proposed to the Constitution: the addition of the Belhar Confession to *The Book of Confessions*, and a revised Form of Government to the *Book of Order*. These have been sent as separate documents (Parts 3 and 1 respectively) to the presbyteries for their vote.

Thank you for your time and careful attention as you prepare to vote on these proposed amendments.

Gradye Parsons
Stated Clerk of the General Assembly

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10-A. Gifts and Requirements On Amending G-6.0106b (Item 06-09)

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall G-6.0106b be amended by striking the current text and inserting new text in its place as follows: [Text to be deleted is shown with a strike-through; text to be added is shown as italic.]

~~“b. Those who are called to office in the church are to lead a life in obedience to Scripture and in conformity to the historic confessional standards of the church. Among these standards is the requirement to live either in fidelity within the covenant of marriage between a man and a woman (W-4.9001), or chastity in singleness. Persons refusing to repent of any self-acknowledged practice which the confessions call sin shall not be ordained and/or installed as deacons, elders, or ministers of the Word and Sacrament. Standards for ordained service reflect the church’s desire to submit joyfully to the Lordship of Jesus Christ in all aspects of life (G-1.0000). The governing body responsible for ordination and/or installation (G.14.0240; G-14.0450) shall examine each candidate’s calling, gifts, preparation, and suitability for the responsibilities of office. The examination shall include, but not be limited to, a determination of the candidate’s ability and commitment to fulfill all requirements as expressed in the constitutional questions for ordination and installation (W-4.4003). Governing bodies shall be guided by Scripture and the confessions in applying standards to individual candidates.”~~

Background and Rationale

The Presbytery of the Western Reserve proposed this amendment to G-6.0106b; three other presbyteries concurred with this overture. The General Assembly Church Orders and Ministry Committee (06), after reviewing more than a dozen overtures related to this subject, sent this recommendation to the General Assembly, which approved this amendment. The presbytery’s rationale included these words:

The integrity of the church demands that those who serve in ordained office meet high standards—always seeking to live according to the life and teaching of our Lord and Savior Jesus Christ. As we affirm in the words of the Theological Declaration of Barmen: ‘Jesus Christ, as he is attested for us in Holy Scripture, is the one Word of God which we have to ... trust and obey in life and in death’ (*The Book of Confessions*, 8.11).

And yet no person follows perfectly; each of us is entirely dependent for our salvation, and for our growth in faith and obedience, on the grace of Christ:

For there is no distinction, since all have sinned and fall short of the glory of God; they are now justified by his grace as a gift, through the redemption that is in Christ Jesus, whom God put forward as a sacrifice of atonement by his blood, effective through faith. He did this to show his righteousness, because in his divine forbearance he had passed over the sins previously committed; it was to prove at the present time that he himself is righteous and that he justifies the one who has faith in Jesus. (Rom. 3:22b–26)

The current text of G-6.0106b was added to the *Book of Order* in an attempt to bring closure to the issue of the ordination of persons in same-sex relationships; instead, it has brought continual contention to the Presbyterian Church (U.S.A.). It purports to apply even-handedly to all candidates, but is overwhelmingly used only to exclude gay, lesbian, bisexual, and transgendered persons—many of whom exhibit abundant gifts and strong calls to ministry. With its reference to any self-acknowledged practice which the confessions call sin, it has rarely or never been honestly applied to any candidate ordained or installed since its adoption.

The PC(USA) has no consensus in the interpretation of Scripture on issues of same-sex practice. When convictions about important issues are so different, and so firmly-held, our long-standing Presbyterian commitment to freedom of conscience and mutual forbearance is vital to maintaining our fellowship:

That, while under the conviction of the above principle we think it necessary to make effectual provision that all who are admitted as teachers be sound in the faith, we also believe that there are truths and forms with respect to which men of good characters and principles may differ. And in all these we think it the duty both of private Christians and societies to exercise mutual forbearance toward each other. (*Book of Order*, G-1.0305)

The proposed amendment would maintain high standards for ordination and installation by renewed focus on the questions candidates must answer, but without imposing a single, highly contested interpretation of Scripture on the whole church. (*Minutes*, 2010, Part I, p. 454–455)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the 219th General Assembly (2010) that the “... proposed language is clear and not inconsistent with any other provision of the *Book of Order*” (*Minutes*, 2010, Part I, p. 456). Their advice also included this rationale:

... This overture seeks to restore the ordination practice and principles affirmed in the Adopting Act of 1729, the paradigm through which the tension between the differing points of view and the unity of the church have been maintained through much of our denomination’s history. Examining bodies are required not only to examine “... *each candidate’s calling, gifts, preparation, and suitability for the responsibilities of office*” but are also required to judge the candidate’s “... *ability and commitment to fulfill all requirements as expressed in the constitutional questions for ordination and installation (W-4.4003)*” (Item 06-09, emphasis added). These questions require that the candidate affirm the authority of scripture, adopt the essential tenets of the Reformed faith as contained in our confessions, and submit to the polity and discipline of the church. Moreover, the overture specifically states, consistent with the Adopting Act, that the examining bodies “... *shall be guided by Scripture and the confessions in applying standards to individual candidates...*” (Item 06-09, emphasis added). (*Minutes*, 2010, Part I, p. 456)

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-A is also approved by a majority of the presbyteries, the new language of G-6.0106b will become the language in the new Form of Government at G-2.0104b.

The vote of the Church Order and Ministry Committee on the proposed amendment was 36/16/1. The 219th General Assembly (2010), after considering and defeating a substitute motion, approved the committee’s recommendation by a vote of 373/323/4. (*Minutes*, 2010, Part I, pp. 33–34, 47, 454–456) For the full report, go to <http://www.pc-biz.org/Explorer.aspx?id=2309>.

10-B. Removing Stated Clerk or Clerk of Session On Amending G-9.0203b (Item 05-14)

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall G-9.0203b be amended by adding new text as a final sentence as follows: [Text to be added is shown as italic.]

“b. The clerk of the session shall be an elder elected by the session for such term as it may determine. The clerk of a presbytery, a synod, and the General Assembly shall be called stated clerk, shall be elected by the governing body for a definite term as it may determine, and must be eligible for membership in the governing body. *A stated clerk may be removed from office prior to completion of his or her term of service through the use of the process outlined in G-9.0705.*”

Background and Rationale

This amendment comes in response to a question asked of the Advisory Committee on the Constitution (ACC) by a member of the Presbytery of New York City, asking what recourse a governing body has if an officer, moderator or stated clerk, is alleged to have failed to carry out the duties and responsibilities of their office.

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the 219th General Assembly (2010) “... that the request points to a deficiency in the current language of G-9.0203b in the *Book of Order*, best addressed by constitutional amendment” (*Minutes*, 2010, Part I, p. Item 05-14). The ACC suggested language that the Church Polity Committee (05) amended and then approved for recommendation to the 219th GA. The ACC advice also included this rationale:

The Presbyterian Church (U.S.A.) has established as an historic principle of church order that “the election of ... persons to the exercise of ... authority, in any particular society, is in that society” (G-1.0306). Except where otherwise stated in the Constitution, it is within the right of every governing body to elect its officers, and to see that those officers faithfully discharge the duties of the offices to which they are elected. However, governing bodies also have an obligation to assure an officer of the same fundamental fairness in responding to allegations of dereliction of the responsibilities of office that it would otherwise accord any member of the body.

Robert’s Rules [of Order Newly Revised] is helpful in outlining various means of recourse against the failure of a moderator to perform the duties of office:

- In the case of a simple failure of the moderator to perform the duties appropriate to handling a motion, the maker of the motion may raise a point of order, and from the moderator’s decision may raise an appeal [(*RRONR*, 10th ed., p. 642, lines 14–15)].
- In the event of culpable failure of the moderator to perform the duties of the office, a motion can also be made to censure him or her (*RRONR*, 10th ed., p. 642, line 21).
- The process for termination of a moderator or stated clerk of a governing body higher than the session is not specified in the *Book of Order*. Sections G-9.0202b and G-9.0203b indicate only that a moderator or stated clerk “serves for such term as the presbytery may determine,” adding in the case of the moderator of a presbytery that the term shall not exceed one year, and of a synod two years. *Robert’s Rules of Order [Newly Revised]* provides that a body may rescind on majority vote the election of an officer who is elected for a specific term or until their successors are elected. However, if the officer’s term is specified only in terms of length of time (e.g., “for two years”), that officer may only be removed from office following an investigation and trial (*RRONR*, 10th ed., p. 643, lines 6–14). The committee notes that the investigating committee required in this section of *Robert’s Rules* is not the investigating committee required by disciplinary procedures in D-10.0200.

The committee further notes that in many presbyteries stated clerks carry responsibilities that go beyond ecclesiastical duties and include various administrative tasks. In regard to the latter, the stated clerk is subject to the

provisions of G-9.0705 regarding the termination of administrative staff. In its interpretation of G-9.0705 in 2004 (*Minutes*, 2004, Part I, pp. 86, 331, Item 04-15), the 216th General Assembly (2004) noted that an officer who performs non-ecclesiastical functions “is entitled to the protections of G-9.0705 only as related to the non-ecclesiastical portion of the position.” In light of this interpretation, a hearing under the provisions of G-9.0705 would be required to terminate the officer for failure to discharge such non-ecclesiastical responsibilities as the position description may entail. The scope of such a hearing would be limited to non-ecclesiastical functions.

Robert’s Rules and the language of the 2004 interpretation have the effect of requiring two separate hearing processes for removing a stated clerk whose job description specifies non-ecclesiastical functions. Since the content of both hearing processes is likely to be similar, having separate hearings for removal from ecclesiastical and non-ecclesiastical responsibilities seems unnecessarily burdensome. This situation can be remedied by the addition of the language proposed in the amendment. (*Minutes*, 2010, Part I, p. 334–335)

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-B is also approved by a majority of the presbyteries, new language will be added in the new Form of Government at G-3.0104 and G-3.0110.

The vote of the Church Polity Committee (05) on the proposed amendment was 42/0/1. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes*, 2010, Part I, pp. 57, 59, 333–335) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3369&promoID=182>.

**10-C. Requiring Sexual Misconduct Policy
On Amending G-9.0404 (Item 03-26)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall G-9.0404 be amended by adding a new paragraph “e.” as follows: [Text to be added is shown as italic.]

“G-9.0404 In order to give meaning to the interdependent nature of Presbyterian polity: ...

“e. *All governing bodies shall adopt and implement a sexual misconduct policy.*”

Additionally, the General Assembly “strongly recommends that prior to vote on this amendment, presbyteries take time to educate the presbytery on the reasons for and value of a sexual misconduct policy. Resources are available on the PC(USA) Web site” (*Minutes, 2010, Part I, p. 227*).

Background and Rationale

This amendment comes as part of the response to a recommendation from the Committee on the Office of the General Assembly (COGA) and the General Assembly Mission Council (GAMC) that the 219th General Assembly (2010) approve a Sexual Misconduct Policy and Procedures for employees and committee members of the COGA and the GAMC. The policy was approved and the 219th General Assembly (2010) also approved strongly urging all employers of governing bodies and related entities to update or establish policies, procedures, and practices related to sexual misconduct using the guidelines set out in the Sexual Misconduct Manual published by the Office of the General Assembly.

Advice from the Advisory Committee on the Constitution

The General Assembly Procedures Committee (03), appreciated the revised model policy of the General Assembly, and wanted to emphasize the importance of each governing body having a policy that states the prohibited behavior and includes prevention, reporting, and response procedures. The committee asked the Advisory Committee on the Constitution (ACC) to assist it by providing appropriate language for an amendment to the Form of Government. The ACC advised that the proposed wording is not contrary to any other provision in the *Book of Order* and is a better option than mandating any particular policy.

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-C is also approved by a majority of the presbyteries, new language will be added in the new Form of Government at G-3.0106.

The vote of the General Assembly Procedures Committee (03) on the proposed amendment was 52/1/0. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes, 2010, Part I, pp. 56, 79, 227–239*) For the full report go to <http://www.pc-biz.org/IOBView.aspx?m=ro&id=3277&promoid=155>.

10-D. Nominating Committees
On Amending G-9.0801a (Item 05-06)

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall G-9.0801a be amended as follows: [Text to be deleted is shown with a strike-through; text to be added or inserted is shown as italic.]

“a. Each presbytery and synod shall elect a nominating committee broadly representative of the member churches of the presbytery or presbyteries, with a membership of ~~one-third~~ ministers of the Word and Sacrament, ~~one-third laywomen, and one-third laymen and elders, women and men in numbers as nearly equal as possible.~~ The nominating committee shall consist of three classes, each serving for a three-year term except where initial classes of one- and two-year terms are necessary to establish regular rotation.

Background and Rationale

This amendment was first suggested as one of a group of four proposed changes by the General Assembly Committee on Representation (GACOR). The GACOR’s rationale said, in part,

The representational formula of one-third male lay, one-third female lay and one-third clergy is outdated and un-Presbyterian. It was put in place at reunion (in 1983) when there were fewer ordained women ministers. It was designed to honor women’s leadership and decision-making. In the years since, increasing proportions of women have come to graduate from seminaries and be ordained to ministry in significant (though still lesser) numbers. The one-third/one-third/one-third ratio sets up a significant majority presence of elders when theologically we claim to aim at equal representation and shared leadership. Women are frequently a majority among elders in terms of participation levels, though not in every presbytery. Thus, as a compensatory measure for the balance of elders women to men, that formula is no longer needed.

Presbyterians pride themselves in the theological and constitutional concept of shared power. The reality of participation and representation in General Assembly entities is not reaching this standard.

The current measure is un-Presbyterian in its discounting the value of theological education, ministry experience, and understanding of church operation. While elders rightly predominate on sessions, Presbyterians honor minister/elder parity in every other council, including the General Assembly. This parity signifies shared ministry and mutuality between ministers and other servants of Christ, between women and men. It is also about sharing power, general wisdom, and knowledge of the church itself—which should be equitably represented.

In their General Assembly commissioner selections, many presbyteries already show themselves capable of balancing their numbers of men and women elders and are improving in their balance of ministers, women and men (in recent assemblies, women minister commissioner numbers hover at 30 percent of minister commissioners). This change will bring our leadership structure a bit more up-to-date. Should imbalances occur after this change, we would expect the normal representational process to recommend corrective measures. (*Minutes*, 2010, Part I, p. 321)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the 219th General Assembly through the Church Polity Committee (05) “that the proposed language is clear and consistent ...” but the ACC suggested alternate language that was not adopted (*Minutes*, 2010, Part I, p. 322). The ACC drew attention to its advice on a related item (Item 05-05) [see proposed amendment 10-H] in which it said “... The parity of ministers and elders is an important principle within our polity, but it does not require near equality of numbers of ministers and elders on committees that are only advisory, having only the power to make recommendations that their electing bodies may approve” (*Minutes*, 2010, Part I, p. 319). The ACC advice on Item 05-06 continued, “... this item concerns presbytery and synod nominating committees. We note that presbytery and synod nominating committees perform an essential function in our church’s governance, but that the act of making nominations is ultimately one in the form of making

recommendations. Nominations from the floor are possible, and the presbytery or synod has the ability to choose which persons to elect” (*Minutes*, 2010, Part I, p. 322).

The opinion of the Office of the General Assembly, after consultation with the ACC, regarding the effect of adoption of this amendment on the proposed Form of Government, is as follows:

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-D is also approved by a majority of the presbyteries, the change to G-9.0801 will be superseded by the new Form of Government at G-3.0111.

The vote of the Church Polity Committee (05) on the proposed amendment was 41/1/1. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes*, 2010, Part I, pp. 57, 58, 320–322.) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3175&promoID=124>.

**10-E. Presbytery Rolls and Registers
On Amending G-11.0407 (Item 05-04)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall G-11.0407 be amended as follows: [Text to be deleted is shown with a strike-through; text to be added or inserted is shown as italic.]

“The stated clerk shall maintain four rolls, one listing the names of all of the ministers of the Word and Sacrament who are continuing members of the presbytery and who are active members, one listing the names of all of the ministers of the Word and Sacrament who are continuing members of the presbytery and who are members-at-large, one listing the names of all of the ministers of the Word and Sacrament who are continuing members of the presbytery and who are inactive members, *and one listing all Certified Christian Educators and Certified Associate Christian Educators within the bounds of the presbytery who are entitled to the privilege of the floor with voice at all presbytery meetings during the term of service in an educational ministry under the jurisdiction of the presbytery, and a fifth roll listing those who have been deleted from the other rolls. On or before December 31 of each year, the presbytery shall determine the category of membership of each continuing member in accordance with the relevant sections of this chapter and cause appropriate record of such determination to be made. The stated clerk shall also maintain two registers, one listing all Certified Christian Educators and Certified Associate Christian Educators within the bounds of the presbytery who are entitled to the privilege of the floor with voice at all presbytery meetings during the term of service in an educational ministry under the jurisdiction of the presbytery, and one listing all Commissioned Lay Pastors within the bounds of the presbytery who are entitled to the privilege of the floor with voice and vote at all presbytery meetings during the term of service in a church or other validated ministry.*”

Background and Rationale

This amendment originated as an overture from the Presbytery of Hudson River as Item 05-04, in which there were two other *Book of Order* provisions also included for revision. The General Assembly Church Polity Committee (05) chose to recommend changes only to G-11.0407. The original overture requested five rolls to be kept by presbyteries, one of which would list all commissioned lay pastors (CLPs) entitled to voice and vote during their term of service. The advice of the Advisory Committee on the Constitution suggested that keeping four rolls and adding the language about two registers was preferable. The Church Polity Committee followed that advice. The overture included this rationale for the changes proposed to G-11.0407:

The amended and new language proposed in G-11.0407 appropriately sets forth commissioned lay pastors as a distinct classification of ministry and assures that the Office of the General Assembly has a complete and accurate accounting of all commissioned lay pastors. This includes adding a new and separate roll and introduces language that is specific to commissioned lay pastors but is identical in form to the language in G-11.0407 regarding certified Christian educators and certified associate Christian educators. (*Minutes*, 2010, Part I, p. 316–317).

The committee and the General Assembly approved a comment that honors the intent of the overture: “That the Office of the General Assembly be instructed to devise a means of discovery and reporting the work of all commissioned lay pastors in the presbyteries and that all references in the *Book of Order* be updated to reflect this” (*Ibid.*, pp. 315).

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the 219th General Assembly (2010) that the proposed language could be made clearer with the words ultimately approved by the Church Polity Committee (05) and the assembly. The ACC said:

The Advisory Committee on the Constitution ... notes that, as the term is otherwise used in our polity, a roll names the members of a congregation or presbytery. Properly speaking, therefore, the rolls of the presbytery should contain only the names of those ministers who are continuing members of the presbytery, in the categories of active, at-large, or inactive membership, and the names of those deleted from these rolls. Certified Christian Educators, Certified Associate Christian Educators, and commissioned lay pastors are either members or elders of congregations; their names thus belong on the rolls of the congregations of their membership.

The presbytery does, however, need a way of keeping track of those to whom, by virtue of their service, the presbytery has granted the privileges of voice and vote. Properly speaking, these lists are registers, lists of persons whose status and levels of authorized participation are a matter of ongoing record.

Currently, the language of G-11.0407 does not require the keeping of such registers. (*Ibid.*, p. 317)

Editor's Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-E is also approved by a majority of the presbyteries, new language will be added in the new Form of Government at G-3.0104.

The vote of the Church Polity Committee (05) on the proposed amendment was 35/3/2. The 219th General Assembly (2010) approved the committee's recommendation by consensus. (*Minutes*, 2010, Part I, pp. 57, 60–61, 315–318) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=2291>.

[Editor's Note: Proposed Amendments 10-E and 10-F both deal with changes to G-11.0407. The Advisory Committee on the Constitution has advised the General Assembly and the Stated Clerk that if both proposed amendments are passed by a majority of the presbyteries, the combined wording could be handled editorially.]

**10-F. Certified Christian Educators
On Amending G-11.0407 and G-14.0730 (Item 06-01)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall G-11.0407 be amended as follows: [Text to be added or inserted is shown as italic.]

“The stated clerk shall maintain four rolls, one listing the names of all the ministers of the Word and Sacrament who are continuing members of the presbytery and who are active members, one listing the names of all the ministers of the Word and Sacrament who are continuing members of the presbytery and who are members-at-large, one listing the names of all the ministers of Word and Sacrament who are continuing members of the presbytery and who are inactive members, one listing all Certified Christian Educators and Certified Associate Christian Educators within the bounds of the presbytery who are entitled to the privilege of the floor with voice only, and, in the case of Certified Christian Educators who are ordained elders, voice and vote, at all presbytery meetings, during the term of service in an educational ministry under the jurisdiction of the presbytery, and a fifth roll listing those who have been deleted from the other rolls. On or before December 31 of each year, the presbytery shall determine the category of membership of each continuing member in accordance with the relevant sections of this chapter and cause appropriate record of such determination to be made.”

And shall G-14.0730b be amended as follows: [Text to be deleted is shown with a strike-through and text to be added or inserted is shown as italic.]

“b. provide the following support to the ~~e~~Certified Christian ~~e~~Educators: service of recognition that shall include the constitutional questions at W-4.4003 (G-11.0103n); establish minimum requirements for compensation and benefits (G-11.0103n); and access to the committee on ministry (G-11.0503). ~~The presbytery may grant the privilege of the floor to the Certified Christian Educator at all its meetings with voice only, and in the case of Certified Christian Educators who are ordained elders, voice and vote under the provisions of G-11.0101b, during the term of service in an educational ministry under the jurisdiction of the presbytery. (G-11.0407) In accordance with G-11.0407, Certified Christian Educators are entitled to the privilege of the floor with voice only at all presbytery meetings, and in the case of Certified Christian Educators who are ordained elders, voice and vote during the term of service in an educational ministry under the jurisdiction of the presbytery.~~

Background and Rationale

This amendment originated from the Presbytery of Mission as Item 06-01 and concurrence was received from three other presbyteries. The original wording of the overture would have allowed any certified Christian educator, including those who are retired, to have voice, and vote if an elder, during a presbytery meeting, whether their work was under the jurisdiction of the presbytery or not. The Church Orders and Ministry Committee (06) decided to follow the advice of the Advisory Committee on the Constitution and substituted new language into the two *Book of Order* provisions to clarify their intent.

The rationale accompanying the original overture said, “Chapter 14 of the *Book of Order* was re-written and approved by the 217th General Assembly (2006), it created an inconsistency between G-11.0407 and G-14.0730b of the *Book of Order*. This overture seeks to bring the two references concerning the privileges granted to Certified Christian Educators into consistency” (*Minutes*, 2010, Part I, p. 423).

The 218th General Assembly (2008) amended these two portions of the *Book of Order* with language that limits these privileges to only those certified Christian educators who are serving in an educational ministry under the jurisdiction of the presbytery, there are certified Christian educators who have faithfully served the church in other

educational ministries not under the jurisdiction of the presbytery (synods, church-related colleges, other institutions, etc).

Ministers of the Word and Sacrament, who are honorably retired, continue to serve the church in many forms of ministry and remain on the active roll of the presbytery. Certified Christian Educators, who have retired, also continue to serve the church in many forms of ministry and should remain on the presbytery's roll with the privilege of voice and vote (when an elder). (*Ibid.*, p. 423)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the 219th General Assembly through the Church Orders and Ministry Committee (06) to disapprove the original wording of Item 06-01 because “[t]he proposed amendments would remove from G-11.0407 and G-14.0730b the phrase adopted by the church at the recommendation of the 218th General Assembly (2008) limiting the privilege of voice (and, in certain cases, vote) to the period of service under presbytery’s jurisdiction” (*Ibid.*, p. 424).

A foundational principle of our polity is that “[t]his church shall be governed by presbyters (elders and ministers of the Word and Sacrament, traditionally called ruling and teaching elders)” (*Book of Order*, G-4.0301b). The adoption of this amendment would appear to compromise this principle. In those cases where an educator is not an elder and is also not engaged in a work under the supervision of the presbytery, the proposed amendment would have the effect of entitling a person who is neither an elder nor in service under its supervision to participate in the presbytery’s deliberations. If the educator is not a member of the PC(USA), the effect of this amendment would be to invite persons who are not members of the Presbyterian Church (U.S.A) to take part in its governance.

By its adoption of the amendments to G-11.0407 and G-14.0730b in 2008, the church placed limits on the tenure of the participation of educators in the deliberations of the presbytery....

The rationale offered in support of the overture notes that the language of current G-11.0407 does not provide for keeping a roll of Certified Christian Educators who, by virtue of being elders, are entitled to voice and vote in meetings of presbytery; such privilege is provided in G-14.0730. (*Minutes*, 2010, Part I, p. 424)

The ACC advised the adoption of alternative language that was approved by the Committee on Church Orders and Ministry and recommended to and approved by the 219th General Assembly (2010).

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-F is also approved by a majority of the presbyteries, new language will be added in the new Form of Government at G-2.1103b.

The vote of the Church Orders and Ministry Committee (06) on the proposed amendment was 53/0/0. The 219th General Assembly (2010) approved the committee’s recommendation by a vote of 570/67/10. (*Minutes*, 2010, Part I, pp. 33, 47, 423–424) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=2301>.

[Editor’s Note: Proposed Amendments 10-E and 10-F both deal with changes to G-11.0407. The Advisory Committee on the Constitution has advised the General Assembly and the Stated Clerk that if both proposed amendments are passed by a majority of the presbyteries, the combined wording could be handled editorially.]

**10-G. Synod Function
On Amending G-12.0100 (Item 04-01)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall G-12.0100 be amended as follows: [Text to be added or inserted is shown as italic.]

Shall a new section, G-12.0103, be added to the Form of Government to read as follows:

“A synod may decide, with the approval of a two-thirds majority of its presbyteries, to reduce its function. In no case shall synod function be less than the provision of judicial process and administrative review of the work of the presbyteries. Such a synod shall meet at least every two years for the purposes of setting budget, electing members to its permanent judicial commission, and admitting to record the actions of its permanent judicial commission and administrative commissions. Presbyteries of such a synod shall assume for themselves, by mutual agreement, such other synod functions as may be deemed necessary by the presbyteries for the fulfillment of their missions.”

And shall a new section, G-12.0104, be added to the Form of Government to read as follows:

“Two or more synods sharing common boundaries, with the approval of a two-thirds majority of the presbyteries in each of the synods, may share administrative services.”

Background and Rationale

This amendment was sent by the Synod of Rocky Mountains; two presbyteries and another synod sent concurrences. The original overture included wording that would have allowed two adjacent synods to share a permanent judicial commission. This part of the overture was not approved by the Assembly Committee on Middle Governing Body Issues (04), but the committee did agree to send the suggestions raised by the overture about this concept to the Office of the General Assembly for revision, to be reported back to the 220th General Assembly in 2012. The overture’s rationale said:

In the various conversations that have occurred across the church during the consideration of various drafts proposing revision of the Form of Government, the function of synods has been a recurring topic. While one option under consideration was the elimination of synods as one of the governing bodies or councils of the church, the practical solution seems to be to allow each synod to meet the needs of its region.

It seems clear that emerging practice has led to sixteen very different operating styles in the current synods. With synods having presbyteries in number from three to twenty-two, the current extensive list of functions for synods is unlikely to fit more than a few of the synods well.

The wording in the first requested change (new section G-12.0103) is taken directly from the Draft for Study (October 2008) produced by the current Form of Government Task Force, with a small addition. Whether or not the FOG project is approved by the 219th General Assembly (2010) and a majority of presbyteries, it will be helpful to have the language about reduced function in Chapter XII of the Form of Government.

The second requested change (new section G-12.0104) follows the logic proposed by the FOG Task Force. If it is reasonable for the presbyteries within a synod to decide cooperatively which functions to assume, two or more synods can also decide cooperatively (with the consent of their presbyteries) which administrative or judicial functions to share. The other changes are proposed so that the Rules of Discipline are consistent with the language proposed for Chapter XII of the Form of Government. (*Minutes*, 2010, Part I, p. 257)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the 219th General Assembly (2010) through the Middle Governing Body Issues Committee (04) that a number of issues were raised by the original wording of the overture, especially concerning sharing permanent judicial commissions. Their advice said, “The Advisory Committee on the Constitution considered the proposal of the Task Force on

the Form of Government in G-3.0404 that ‘A synod may decide ... to reduce its function’ ... The Advisory Committee on the Constitution found that ... [t]he proposed Foundations of Presbyterian Polity and Form of Government are coherent from a constitutional perspective to function as a replacement for the existing Form of Government” (*Ibid.*, p. 258). The Advice continued:

The proposal in this overture for synods with reduced function is virtually identical to the provision in the proposed Form of Government. As a distinct proposal for inserting a new section G-12.0103, this language is clear and coherent from a constitutional perspective, and maintains appropriate constitutional limitations on the reduction of function, if the General Assembly wishes to propose an amendment that would allow synods to reduce their functions.

The part of the overture that would allow contiguous synods to share administrative services also does not raise constitutional issues. (*Minutes*, 2010, Part I, p. 258)

The rest of the ACC’s advice dealt with portions of the overture that are not being recommended in this amendment.

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-G is also approved by a majority of the presbyteries, new language will be added in the new Form of Government at G-3.0404.

The vote of the Committee on Middle Governing Body Issues (04) on the proposed amendment was 36/0/0. The 219th General Assembly (2010) approved the committee’s recommendation by a voice vote. (*Minutes*, 2010, Part I, pp. 28–29, 257.) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=2243>.

10-H. Nominations Process
On Amending G-13.0108, G-13.0111a, and G-13.0202b (Item 05-05)

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

1. Shall G-13.0108 be amended as follows: [Text to be deleted is shown with a strike-through; text to be inserted is shown in italic.]

“The General Assembly shall establish a permanent Committee on Representation as required by G-9.0105, which shall advise the General Assembly Nominating Committee of any need for nominations in particular categories needing increased representation. The Committee on Representation shall report to each meeting of the General Assembly (other than special or adjourned meetings) regarding progress toward fair representation of the categories of persons listed in G-4.0403. The committee shall consist of members equal in number to the synods of the church, each member resident in a different synod, and members distributed so that there are ~~one third ministers (both women and men), one third laymen, and one third laywomen~~ *ministers and elders (both women and men) in numbers nearly as equal as possible.*”

2. Shall G-13.0111a be amended as follows: [Text to be deleted is shown with a strike-through; text to be inserted is shown in italic.]

“a. To ensure careful nomination of members of such boards, agencies, and committees as the General Assembly shall from time to time designate, the General Assembly Nominating Committee shall propose nominees to the General Assembly for such bodies. Consideration shall be given to the nomination of equal numbers of ministers *and church members* (both women and men), ~~laymen, and laywomen~~. The committee shall consist of members equal in number to the synods of the church, each member resident in a different synod, and members distributed so that there are ~~one third ministers (both women and men), one third laymen, and one third laywomen~~ *ministers and elders (both women and men) in numbers nearly as equal as possible.* (G-9.0801, G-11.0501, G-12.0102d, G-13.0202) [The rest of the paragraph remains unchanged.]”

3. Shall G-13.0202b be amended as follows: [Text to be deleted is shown with a strike-through; text to be inserted is shown in italic.]

“b. In the nominating process, the General Assembly Nominating Committee shall consult with the General Assembly Mission Council to identify needed skills, and shall provide for diversity and inclusiveness in accordance with G-4.0403. It will maintain a goal of at least twenty percent racial ethnic membership for the General Assembly Mission Council. It will also follow the provisions of G-9.0104, G-9.0105, and G-13.0111 and shall ensure that, exclusive of the Moderator and predecessor Moderators, ~~one third of the members are ministers of the Word and Sacrament (both women and men), one third laymen, and one third laywomen~~ *ministers and elders (both women and men) are in numbers nearly as equal as possible.* The committee will also provide that members be nominated in such a manner as to provide three classes of approximately equal size. Any vacancy occurring during a term shall be filled pursuant to General Assembly policies.”

Background and Rationale

This amendment was offered by the General Assembly Nominating Committee. Their rationale said,

As part of its preparation for review by [the] 219th General Assembly (2010), the General Assembly Nominating Committee engaged in a self-study process that has led to some recommendations for change in the General Assembly nominations process, including the proposals for amendments to the *Book of Order*.

A longstanding Presbyterian pattern of governance has been equal representation of elders and ministers in the governing bodies of the church. This pattern continues in the presbyteries, synods, and General Assembly. The General

Assembly Nominating Committee's proposed amendment to require elders and ministers in numbers as equal as possible brings the membership of *Book of Order* committees in conformance with this pattern.

The General Assembly Nominating Committee believes that for specialized programmatic committees, which may need specific skills and expertise, this pattern be altered to enable church members to serve on non-*Book of Order* entities. (*Minutes*, 2010, Part I, p. 319)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the Committee on Church Polity (05):

This proposal recommends amendments to provisions that describe the composition of the General Assembly Committee on Representation, the General Assembly Nominating Committee, and the General Assembly Mission Council. A similar proposal from the General Assembly Committee on Representation [see Proposed Amendment 10-D] makes related proposals for presbytery and synod nominating committees.... These proposals are intended to implement the historic principle of minister/elder parity. ... The parity of ministers and elders is an important principle within our polity, but it does not require near equality of numbers of ministers and elders on committees that are only advisory, having only the power to make recommendations that their electing bodies may approve. ...

Accordingly, the ACC advises the assembly that the proposed changes to the composition of the General Assembly Committee on Representation and the General Assembly Nominating Committee are not strictly necessary in order to maintain the parity of ministers and elders. Requiring nearly equal numbers of ministers and elders on bodies where it is not necessary runs the risk of reducing the participation of members of congregations on a committee where it would be possible to increase their participation. (*Minutes*, 2010, Part I, p. 319)

Editor's Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-H is also approved by a majority of the presbyteries, the changes to G-13.0108, G-13.0111a, and G-13.0202b will be superseded by the new Form of Government at G-3.0109 and G-3.0111.

The vote of the Committee on Church Polity (05) on the proposed amendment was 42/1/0. The 219th General Assembly (2010) approved the committee's recommendation by consensus. (*Minutes*, 2010, Part I, p. 57) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3155&promoID=117>.

**10-I. Prayer Added to Ordination and Installation Services
On Amending W-4.4003h, W-4.4004a(2) and W-4.4006(b)2 (Item 16-02)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

1. Shall W-4.4003h be amended as follows: [Text to be added or inserted is shown as italic.]

“h. Will you *pray for and* seek to serve the people with energy, intelligence, imagination, and love?”

2. Shall W-4.4004a(2) be amended as follows: [Text to be added or inserted is shown as italic.]

“(2) Do we agree to *pray for them*, to encourage them, to respect their decisions, and to follow as they guide us, serving Jesus Christ, who alone is Head of the Church?”

3. Shall W-4.4006b(2) be amended as follows: [Text to be added or inserted is shown as italic.]

“(2) Do we agree to *pray for him (her)*, to encourage him (her), to respect his (her) decisions, and to follow as he (she) guides us, serving Jesus Christ, who alone is Head of the Church?”

Background and Rationale

This amendment came from the Presbytery of Western New York. Their rationale said:

God invites us to seek His favor and help for ourselves and others through prayer.

The Bible is replete with examples of godly people praying for themselves and others.

Jesus taught His disciples to pray.

Jesus prayed for His disciples, including those who would believe through their witness.

The early Church was devoted to prayer, and prayed for each other.

The members and officers of the Church of Jesus Christ are repeatedly urged by the Holy Spirit in Scripture to pray for one another (Ex. 8:9; 1 Sam. 12:23; 2 Kings 19:4; Ezra 6:9f; Ps. 72; Mt. 5:44; Jn. 17; Acts 4:23–31; Rom. 15:31f; Eph. 1:15–21, 3:14–19, 6:18–20; Col. 1:3, 4:3; 1Thess. 5:25; Heb. 13:18; Jas. 5:16).

Yet nowhere in our services of ordination and/or installation do either members or officers commit to do so.

By including these few words in our services of ordination and/or installation, the members and officers of the church remind themselves of the importance of the ministry of prayer and commit themselves faithfully to discharge this precious stewardship. (*Minutes*, 2010, Part I, p. 1192)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution (ACC) advised the 219th General Assembly through the Committee on Theological Issues and Institutions (16):

The language of this proposal is clear and consistent with its intent, although it is unclear why this provision and not others would be amended with the admonition of prayer.

The language is consistent with the teaching of the Bible and with other provisions of the Constitution. Thus, the importance of the ministry of prayer might be emphasized as the questions are asked at services of ordination and installation.

As all members of the church are to be involved in prayer as part of corporate and personal worship as well as in fulfilling their membership as ministry (G-5.0102c), it is not necessary to amend the constitutional questions for new officers and for congregations so as to include the promise that they will pray for one another.

Given the importance of the constitutional questions for ordination and installation, the Advisory Committee on the Constitution advises that the General Assembly only amend them when there is a clear, broadly supported, and necessary rationale. (*Ibid.*, p. 1193)

Editor's Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-I affecting the Directory for Worship is also approved by a majority of the presbyteries, there will be no change to the new Form of Government.

The vote of the Theological Issues and Institutions Committee (16) on the proposed amendment was 54/0/0. The 219th General Assembly (2010) approved the committee's recommendation by consensus. (*Minutes*, 2010, Part I, pp. 1192–1193) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=2349>.

**10-J. Stay of Enforcement
On Amending D-6.0103 (Item 05-26)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall D-6.0103 be amended as follows: [Text to be deleted is shown with a strike-through; text to be added or inserted is shown as italic.]

~~“D-6.0103 Stay of Enforcement~~

~~“The action or decision of a governing body, of its permanent judicial commission, or of a respondent named in D-6.0202b may be suspended by a stay of enforcement. A stay of enforcement is a written instruction, obtained in the manner described in D-6.0103a, that orders the implementation of a decision or action be delayed until a complaint or appeal is finally determined.~~

~~“a. A stay may be entered in any of the following manners after the filing of a complaint or notice of appeal, but no later than forty five days after the decision or action:~~

~~“(1) From an action of a governing body, by delivering to the stated clerk of the governing body whose action the complainant seeks to stay, and the stated clerk of the governing body whose permanent judicial commission has jurisdiction, (a) a complaint concerning the irregularity signed by one or more persons or governing bodies having standing to challenge the action taken, and (b) a request for a stay of enforcement signed by at least one third of the members recorded as present when the decision or action was made by the governing body; or~~

~~“(2) From a decision of a permanent judicial commission, by a stay of enforcement signed by at least one third of the members of the permanent judicial commission who decided the case, obtained by means of a request directed to the commission through the clerk of the permanent judicial commission or the stated clerk of the permanent judicial commission’s governing body; or~~

~~“(3) From an action of a governing body or a decision of a permanent judicial commission, by a stay of enforcement signed by at least three of the members of the permanent judicial commission having jurisdiction to hear the complaint or appeal on the decision or action, submitted to such members of the permanent judicial commission through the stated clerk of the governing body of that permanent judicial commission. The following procedure shall be followed for seeking a stay under this subsection:~~

~~“(a) The complainant or appellant shall deliver to the stated clerk either in person or by certified mail directed to the stated clerk’s office address a copy of the complaint or notice of appeal and a request for stay containing a short statement of the basis for challenging the decision or action, a short statement of the harm that will occur if the decision or action is not stayed, and a list of telephone numbers and addresses for the complainant or appellant and the opposing party or governing body;~~

~~“(b) The stated clerk shall promptly transmit the request for stay by the most expeditious means available to all members of the permanent judicial commission eligible to participate in consideration of the complaint or appeal;~~

~~“(c) Any member who determines that entry of a stay is appropriate shall sign and return to the stated clerk a certification stating that in her or his judgment probable grounds exist for finding the decision or action erroneous and for finding that harm will occur if the decision or action is not stayed;~~

~~“(d) Upon receipt of certifications finding a stay is appropriate from three or more members of the permanent judicial commission, the stated clerk shall immediately advise the parties that a stay has been entered.~~

~~“b. A copy of the stay of enforcement must also be provided to the permanent judicial commission that will hear the complaint or appeal.~~

“A stay of enforcement is a written instruction from the permanent judicial commission having jurisdiction that orders the suspension of a decision or an action until a complaint or appeal is finally determined.

“a. No later than thirty (30) days after the alleged irregular action of the governing body or the remedial decision of a permanent judicial commission being appealed, a person having standing to file a complaint or appeal may simultaneously file either a complaint or an appeal, and a request for a stay of enforcement with the stated clerk of the governing body having jurisdiction to hear the case. The request may be made in the following manner:

“(1) A request signed by one third of the members recorded as present when the decision or action was made by the governing body;

“(2) A request signed by one third of the members of the permanent judicial commission that decided the remedial case; or

“(3) A request signed by the complainant or appellant requesting that at least three members of the permanent judicial commission having jurisdiction to hear the complaint or appeal sign the stay of enforcement.

“b. The complaint or appeal shall be promptly transmitted by the most expeditious means available by the stated clerk along with the request for a stay of enforcement to the permanent judicial commission moderator and clerk for their determination as to:

“(1) whether the complaint or appeal meets the preliminary issues in D-6.0305 or D- 8.0301, and

“(2) if the request is made under D-6.0103a(1) or D-6.0103a(2), either:

“(a) whether the request made under D-6.0103a(1) is complete and timely, including validation of the signatures and intent of those who signed; or

“(b) whether the request made under D-6.0103a(2) is complete and timely.

“c. The moderator and clerk of the permanent judicial commission within seven (7) days after their receipt of the request shall report their findings to the permanent judicial commission and the parties.

“d. The permanent judicial commission may enter a stay of enforcement within ten (10) days of the moderator and clerk’s findings in the following manner:

“(1) By the moderator and the clerk in determining that the request made under D-6.0103a(1) or D-6.0103a(2) is complete and timely and the preliminary issues are met for the complaint or appeal.

“(2) If the request is made under D-6.0103(a)(3), by three members of the permanent judicial commission filing with the stated clerk of the governing body that has jurisdiction to hear the case a statement that in his or her judgment substantial harm will occur if the action or decision is not stayed and that in her or his judgment probable grounds exist for finding the decision or action erroneous. Each permanent judicial commission member must include a summary of the specific governing body action or decision being stayed.

“e. The stated clerk shall send a copy of the stay of enforcement to the parties and to the permanent judicial commission members.

~~“e. f.~~ *The stay of enforcement shall be effective until the time for filing a complaint or notice of appeal shall have expired or, if timely filed, until the decision of the permanent judicial commission having jurisdiction over the case, except as hereafter provided.*

“d. g. The respondent may, within forty-five days of the filing of a stay of enforcement, file with the permanent judicial commission having jurisdiction over the case an objection to the stay of enforcement, whereupon no fewer than three members of such permanent judicial commission shall conduct a hearing on all of the issues relating to the stay of enforcement. The parties may be present or represented at such hearing. At such hearing, the stay of enforcement may be modified, terminated, or continued until the decision on the merits of the case by the permanent judicial commission.”

Background and Rationale

This recommendation is in response to the following referral: *2006 Referral. Item 05-29. Request 06-13. Interpretation of D-6.0103 Re Stay of Enforcement—From the Manager of Judicial Process and Social Witness, Office of the General Assembly (Minutes, 2006, Part I, pp. 40, 445)*. In 2006 the Advisory Committee on the Constitution recommended that the 217th General Assembly (2006) answer Item 05-29 (Request 06-13) with the following response: “The present wording of D-6.0103 provides no basis for a challenge. If the assembly wishes to provide for a challenge, D-6.0103 must be amended to make this provision” (*Ibid.*, p. 445). The 2006 recommendation was referred to the Office of the General Assembly for consultation with the ACC to develop an appropriate response to this issue.

The original 2006 request for interpretation of D-6.0103 said:

D-6.0103d provides that the respondent governing body in a remedial case in which a stay of enforcement has been entered may object to the stay of enforcement whereupon members of the PJC having jurisdiction to hear the remedial case shall hold a hearing on all of the issues relating to the stay of enforcement.

D-6.0103a delineates the process by which a stay of enforcement may be entered.

Due to the recent changes in D-6.0103a, actions taken by or actions failed to be taken by the Stated Clerk of a governing body having jurisdiction over the remedial case may result in a failure to enter the stay of enforcement by the 45 day deadline. An unintended consequence of the changes D-6.0103a has been to place more decision making power into the hands of the Stated Clerk that will affect the remedial case in substance.

Is there a mechanism in D-6.0103 that allows entities requesting a Stay of Enforcement to challenge any action taken by or actions failed to be taken by the Stated Clerk?

Is this challenge limited to a motion to be considered by the PJC or may it be a hearing? If the challenge may be a hearing, D-6.0103 will need to be amended to give the requesting complainant standing to challenge the failure to enter a stay of enforcement. If the challenge may be in the form of a motion, D-6.0103 may not need to be amended, but merely interpreted by General Assembly through an authoritative interpretation. (*Minutes, 2006, Part I, p. 447*)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution advised the 219th General Assembly (2010) to approve Item 05-26. Their rationale said:

Upon referral from the 217th General Assembly (2006), the manager of Judicial Process, in consultation with the General Assembly Permanent Judicial Commission, recommended amendments to D-6.0103, D-6.0103a, and D-6.0103b clarifying procedures for obtaining a stay of enforcement.

The Advisory Committee on the Constitution finds that the recommended language is clear and consistent with the stated intent.

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-J affecting the Rules of Discipline is also approved by a majority of the presbyteries, there will be no change to the new Form of Government.

The vote of the Church Polity Committee (05) on the proposed amendment was 41/0/2. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes, 2010, Part I, pp. 57, 59, 349*) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3433>.

**10-K. Preliminary Questions
On Amending D-6.0306, D-8.0302, and D-13.0302 (Item 05-25)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall D-6.0306, D-8.0302, and D-13.0302 be amended by adding a new section “d.” as follows: [Text to be added or inserted is shown as italic.]

“d. If no challenge is made to a finding of the moderator and clerk that one or more points listed in D-6.0305 (or D-8.0301, or D-13.0106, as applicable) has been answered in the negative, the case shall be dismissed without further action or order of the permanent judicial commission.”

Background and Rationale

This amendment came from the Office of the General Assembly upon recommendation of the Manager for Judicial Process. The rationale said, “In situations where there is no challenge made to the findings of the moderator and clerk, the proposed change makes dismissal automatic without any further action by a permanent judicial commission” (*Minutes*, 2010, Part I, p. 347).

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution advised the 219th General Assembly (2010) to approve this recommendation in Item 05-25. Their advice said, “... the Advisory Committee on the Constitution finds that the language is clear and consistent with the stated intent” (*Minutes*, 2010, Part I, p. 349).

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-K affecting the Rules of Discipline is also approved by a majority of the presbyteries, there will be no change to the new Form of Government.

The vote of the Church Polity Committee (05) on the proposed amendment was 41/2/0. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes*, 2010, Part I, pp. 57, 59, 347) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3415>.

**10-L. Reviewing Work of Investigating Committee
On Amending D-10.0202 (Item 05-20)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall D-10.0202 be amended by inserting a new “c” and renumbering the remaining paragraphs, “c.—j.” as “d.—k.”? The new section “c” shall read as follows [Text to be added is shown as italic.]

“c. determine whether the accusation repeats allegations previously made against the accused, and if so, report to the governing body having jurisdiction over the accused that it will not file charges (D-10.0202j) unless the accusation contains new information warranting investigation or is the subject of an investigation that has not been concluded.”

Background and Rationale

“This recommendation comes as the result of a request received by the Advisory Committee on the Constitution (ACC) from the stated clerk of the Presbytery of Seattle. The [ACC] does not initiate business before the assembly. However, pursuant to G-13.0112, the Stated Clerk must submit to the [ACC] all questions requiring an interpretation by the General Assembly of the *Book of Order*. The [ACC], in turn, must report its finding and any recommendations it has to the General Assembly. The assembly is free to approve, amend, or decline to approve the recommendations of the Advisory Committee on the Constitution...” (*Minutes*, 2010, Part I, p. 340). The rationale for this addition is that it clarifies the role of the investigating committee in preventing repetitive allegations against one person for the purpose of harassment.

1. *Questions Presented to the Advisory Committee on the Constitution*

- a. If a petition for review of the work of an investigating committee that has decided not to file charges is not sustained, is the matter concluded?
- b. What is the meaning of “the matter is concluded”?
- c. If additional information is found at a later date upon which the same or similar allegations are made, may a new investigating committee be appointed?
- d. If no additional information is found, may a new investigating committee be appointed if the same allegations are made at a later date?
- e. Who makes the decision whether to appoint a new investigating committee based on same or similar allegations filed at a later date?

2. *Findings*

Pursuant to G-13.0112d, the [ACC] makes the following finds with respect to the questions presented:

- a. With respect to the first question presented, the Advisory Committee on the Constitution finds that if a petition for review of the work of an investigating committee that has decided not to file charges is not sustained, the matter is concluded (D-10.0303e; GAPJC 2004, *Sohn v. Hanmi Presbytery*, *Minutes*, 2004, Part I, p. 371).
- b. With respect to the second question, the Advisory Committee on the Constitution advises that “the matter is concluded” means that there are no procedures in the Rules of Discipline providing for further review of the work of the original investigating committee, and that the outcome of the work of both the original and second investigating committees as resulting in no charges being filed stands as the response of the governing body to the original allegation. The session or permanent judicial commission dismisses the investigating committee and the governing body clerk is then to maintain the investigating committee’s records in accordance with session or presbytery policy (D-10.0304).
- c. With respect to the third question, the Advisory Committee on the Constitution advises that a new written statement of an alleged offense must be filed in order to open a new investigation. A new investigating committee may be formed on the basis of new information concerning the same or a similar alleged offense. Because additional time will have passed since the original alleged offense, if the offense alleged in the new filing is the one originally alleged, then the requirement that any charges be filed no later than three years from the time of the commission of the alleged offense

might have to be met well within a year rather than up to a year following appointment of the new investigating committee. (“No charges shall be filed later than three years from the time of the commission of the alleged offense, nor later than one year from the date the investigating committee was formed, whichever occurs first ...” D-10.0401, emphasis added.)

d. With respect to the fourth question, the Advisory Committee on the Constitution advises that upon the filing of an allegation with the clerk of the governing body an investigating committee shall be appointed in the usual manner. The presbytery may appoint persons who served on a previous investigating committee to serve on an investigating committee to investigate the same or similar accusations. There is no provision for screening allegations prior to appointment of an investigating committee; it is the duty of the governing body’s clerk to report the allegation “without undertaking further inquiry” in order that the accusation may be immediately referred to an investigating committee (D-10.0103). It then is the responsibility of the investigating committee to determine whether it has sufficient evidence on the basis of which the allegation(s) can be proved (D-10.0202g); it is a responsibility of the investigating committee to conduct an inquiry sufficient to determine whether to file one or more charges based on the previous investigation or upon a new investigation should further inquiry be determined needed.

If informed by the accused or by any papers, documents, records, testimony, or other evidence that the allegation against the accused was investigated by a previous investigating committee, the present committee may review the records of the earlier investigating committee that have been maintained by the governing body and it may make use of those records in its mandated responsibilities to investigate and to make its decision whether to file charges. The Advisory Committee on the Constitution also notes that if a person who is the victim of repeated accusations desires to stop the cycle of accusation and investigation, he or she could request vindication (D-9.0000). If he or she is vindicated, the report of the investigating committee would conclude the matter.

e. With respect to the fifth question, the Advisory Committee on the Constitution advises that it is answered by the response to the fourth question.

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-L affecting the Rules of Discipline is also approved by a majority of the presbyteries, there will be no change to the new Form of Government.

The vote of the Church Polity Committee (05) on the proposed amendment was 42/0/1. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes*, 2010, Part I, pp. 57, 59, 340–341) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3403&promoID=192>.

10-M. Time Limit
On Amending D-10.0401 (Item 05-25, Rec. 2)

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall the first paragraph of D-10.0401 be amended as follows: [Text to be deleted is shown with a strike-through; text to be added or inserted is shown as italic.]

“No charges shall be filed later than ~~three~~ *five* years from the time of the commission of the alleged offense, nor later than one year from the date the investigating committee was formed, whichever occurs first, except as noted below.”

Background and Rationale

This amendment came from the Office of the General Assembly upon recommendation of the Manager for Judicial Process. The rationale said, “This will allow more time for the governing body to gain notice that an offense has been committed” (*Minutes*, 2010, Part I, p. 347).

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution advised the 219th General Assembly (2010) to disapprove this recommendation in Item 05-25. Their advice said, “... the Advisory Committee on the Constitution finds that the referral provides insufficient justification for this change. The more time that elapses after an alleged offense, the less likely that the testimony of witnesses will be accurate and credible” (*Minutes*, 2010, Part I, p. 349).

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-M affecting the Rules of Discipline is also approved by a majority of the presbyteries, there will be no change to the new Form of Government.

The vote of the Church Polity Committee (05) on the proposed amendment was 38/5/1. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes*, 2010, Part I, pp. 347, 349) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3415>.

**10-N. Appeal of “Not Guilty” Verdict
On Amending D-13.0102 and D-13.0106 (Item 05-02)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

1. Shall the current text of D-13.0102 be deleted and new text inserted to read as follows: [Text to be deleted is shown with a strike-through; text to be added or inserted is shown as italic.]

**~~“Either party may initiate the first level of appeal by the filing of a written notice of appeal~~
*Only the person found guilty may initiate the first level of appeal by the filing of a written notice of appeal.”***

2. Shall D-13.0106 be amended as follows: [Text to be deleted is shown with a strike-through; text to be added or inserted is shown as italic.]

~~a. The grounds for appeal by the person found guilty are~~

~~“(1) a. irregularity in the proceedings;~~

~~“(2) b. refusing a party reasonable opportunity to be heard or to obtain or present evidence;~~

~~“(3) c. receiving improper, or declining to receive proper, evidence or testimony;~~

~~“(4) d. hastening to a decision before the evidence or testimony is fully received;~~

~~“(5) e. manifestation of prejudice in the conduct of the case;~~

~~“(6) f. injustice in the process or decision;~~

~~“(7) g. error in constitutional interpretation; and~~

~~“(8) h. undue severity of censure.~~

~~b. The grounds for appeal by the prosecuting committee are~~

~~“(1) —irregularity in the proceedings;~~

~~“(2) —refusing a party reasonable opportunity to be heard or to obtain or present evidence;~~

~~“(3) —receiving improper, or declining to receive proper evidence or testimony;~~

~~“(4) —hastening a decision before the evidence or testimony is fully received;~~

~~“(5) —manifestation of prejudice in the conduct of the case; and~~

~~“(6) —error in constitutional interpretation.”~~

Background and Rationale

This amendment came from the Presbytery of Arkansas. The rationale said:

The Rules of Discipline were amended in 2004–05 to include numerous changes that were intended to clarify and advance our judicial process. Of the changes made, one has emerged as both problematic in practice and contradictory to our tradition and theology. This change must be reversed.

Among the changes made in 2004–05 was a provision to allow for appeal by the prosecuting committee when an accused person in a disciplinary case is found not guilty. The amendment proposed by this overture would restore the provisions of D-13.0102 and D-13.0106 to the wording of those sections prior to the amendment, an experiment that has not served the Presbyterian Church (U.S.A.) well.

The General Assembly Permanent Judicial Commission has commented on several problems with the practice of appeal by a prosecuting committee in *Davis v Presbytery of San Francisco*....

The ability of prosecuting committees to appeal a verdict of “not guilty” does not serve the purpose of church discipline, which is at all times to be used “... for building up the body of Christ, not for destroying it, for redeeming, not for punishing...” (D-1.0102). Being accused and brought to trial is often enormously draining, spiritually and emotionally. Repeated prosecution of an individual after the prosecuting committee has failed to convince a permanent judicial commission of the guilt of the accused does not accomplish the purpose of repentance and restoration, but is more likely to contribute to anger and resentment, strife and distress.

Presbyterian process is supposed “... to secure the just, speedy, and economical determination of proceedings...” (D-1.0101). And yet, it is not just, speedy, or economical when an accused person is subject not just to “double jeopardy,” but potentially to multiple jeopardy involving trials and hearings before several judicial commissions, possibly including more than once at the same level, and—unlike a person found guilty who might choose to appeal—involuntarily. Accused persons face the possibility of having to defend themselves for months and years. For ministers of Word and Sacrament this includes the prohibition on accepting a new call while the cloud hangs over one’s head—even after being found “not guilty” by a judicial commission. The expenses of a defense necessary to protect one’s integrity, reputation, and livelihood can impose a severe financial strain.

The accused is not the only party affected financially. A presbytery may incur large expenses for the prosecuting committee. Furthermore, the presbytery is also responsible for securing counsel for the accused if the accused cannot afford it, which may place a further severe strain on its budget. In addition, judicial process expends an enormous number of hours—time that is not spent in other ministry.

The Rules of Discipline are clear that “... [i]n all respects, all participants are to be accorded procedural safeguards and due process, and it is the intention of these rules so to provide” (D-1.0101). “The accused in a disciplinary case is presumed to be innocent until the contrary is proved, and unless guilt is established beyond a reasonable doubt, the accused is entitled to be found not guilty” (D-11.0401).

A presbytery prosecuting committee is an investigating committee that has decided to file charges—generally, an appointed group. The right of a prosecuting committee to appeal the decision of its own presbytery’s permanent judicial commission sets up the situation of an *unelected* group complaining against the decision of its own presbytery’s *elected* body. The presbytery, in effect, ends up suing itself, without the consent of the body as a whole. The whole body is affected, and the not guilty party—also a member of the body—carries the greatest burden.

Under the current language of D-13-0102 and D-13.0106, an appellate body may potentially become a trier of fact effectively eliminating the right of the accused to the appellate process. One mark of the true church is “... ecclesiastical discipline uprightly [ad]ministered...” ([*The*] *Book of Confessions*, Scots Confession, 3.18). A fundamentally unfair process which interferes with the ability of the church to live out its calling as the true church of Jesus Christ is untenable.

The 218th General Assembly (2008), responding to a referral from the 217th General Assembly (2006), addressed the issue of “... inappropriate use of judicial process ...” with this statement: “The Office of the General Assembly recommends that the 218th General Assembly (2008) remind individuals that the Rules of Discipline cannot be used to mediate intrinsic differences of theology, policy, polity, power, or trust” (*Minutes*, 2008, Part I, p. 282).

Whatever gains were anticipated from the current language of D-13.0102 and D-13.0106 are overwhelmed by the fundamental unfairness of subjecting an accused person to multiple trials of the same facts. The potential erosion of confidence in the judicial system of the church far outweighs any perceived benefit of the current language. The pre-2005 language ensures both fair and just process while maintaining discipline within the church. (*Minutes*, 2010, Part I, P. 309–310)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution advised the 219th General Assembly (2010) to approve this recommendation. Their rationale said:

Item 05-02 would limit the right to initiate an appeal in a disciplinary case to the accused, a restriction in place prior to the 2004–2005 amendment of D-13.0102 allowing prosecuting committees to appeal for correction of alleged trial errors by sessions or permanent judicial commissions. The Advisory Committee on the Constitution notes that although it is rare for the Presbyterian Church (U.S.A.) to reverse a relatively recent amendment of its Constitution, Item 05-02 is not inconsistent with the faithful openness to institutional reform under the guidance of the Spirit of God, as expressed in G-18.0101.

When amendment to D-13.0102 was proposed in 2004, the Advisory Committee on the Constitution gave the following advice:

This provision would allow either the prosecuting committee or an accused convicted of an offense to initiate an appeal. Currently, only an accused may initiate such an appeal. Whether such appeals are desirable raises several questions. Such appeal rights would be broader than the secular judicial system allows. It also would perpetuate disciplinary cases in a manner that may discourage victims from seeking civil remedies. On the other hand, the amendment is consistent with the concern that the potential for error is greater in a voluntary judicial process than it is in the professional secular system. If the 216th General Assembly (2004) believes that it is desirable to allow prosecuting committees to pursue such appeals, the proposed amendment appears clear and adequate to accomplish that intent. (*Minutes*, 2004, Part I, p. 306, Item 04-08, ACC Advice on Recommendation 5)

The potential for error exists in any judicial system. Therefore appeal processes are in place for correction. Among the purposes of discipline in the church is to honor God and to preserve the purity of the church. The procedures in the Rules of Discipline can work well for individuals and for the church or can cause harm, including possible financial harm due to a session's or presbytery's obligation to cover the expenses of an investigation, original trial, and subsequent expenses of appeal, as well as reasonable expenses for defense of the accused if that person is unable to secure counsel (D-11.0302).

The rationale for Item 05-02 to the 219th General Assembly (2010) cites several reasons to reverse the subject provisions. The Advisory Committee on the Constitution believes that this rationale correctly summarizes the need for the proposed amendment.

The Advisory Committee on the Constitution advises that the language in Item 05-02 is clear and is consistent with the stated intent.

Editor's Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-N affecting the Rules of Discipline is also approved by a majority of the presbyteries, there will be no change to the new Form of Government.

The vote of the Church Polity Committee (05) on the proposed amendment was 40/1/1. The 219th General Assembly (2010) approved the committee's recommendation by consensus. (*Minutes*, 2010, Part I, pp. 57, 309–312) For the full report go to <http://www.pc-biz.org/Explorerer.aspx?id=3037>.

[Editor's Note: If proposed amendment 10-N is approved by a majority of the presbyteries, it will delete the power of a prosecuting committee to appeal a verdict of not guilty in a disciplinary case. Proposed amendment 10-O will then be moot since it limits the Permanent Judicial Commission response to an action that will no longer be allowed under the Rules of Discipline. However, if item 10-N is not approved by a majority of the presbyteries, then item 10-O, if approved by a majority of the presbyteries, will limit the response that a Permanent Judicial Commission may make in a judicial disciplinary case where the prosecuting committee has appealed a verdict of not guilty.]

**10-O. Decision of Permanent Judicial Commission
On Amending D-13.0404 (Item 05-25)**

The 219th General Assembly (2010) directed the Stated Clerk to send the following proposed amendment to the presbyteries for their affirmative or negative votes:

Shall the first paragraph of D-13.0404 be amended as follows: [Text to be added is shown as italic.]

“After the hearing and after deliberation, the permanent judicial commission shall vote separately on each specification of error alleged. The vote shall be on the question, ‘Shall the specification of error be sustained?’ The minutes shall record the numerical vote on each specification of error. *If the appeal was initiated by a prosecuting committee appealing a verdict of not guilty and the permanent judicial commission sustains that portion of the appeal, the permanent judicial commission shall remand the case for a new trial.*”

Background and Rationale

This amendment came from the Office of the General Assembly upon recommendation of the Manager for Judicial Process. The rationale states:

There is a problem when a prosecuting committee appeals a decision in a disciplinary case. A 2/3 majority vote is required for a judgment of guilt by the trial adjudicatory but a simple majority vote is required to sustain a specification of error on appeal. When an appellate permanent judicial commission reverses the trial court in a case in which the prosecuting committee has appealed a not guilty decision, the appellate permanent judicial commission’s remedies should be limited to remanding the case for a new trial. This would protect the integrity of the original super-majority vote by the trial court. It is the trial court who has the opportunity to hear witnesses and evaluate their credibility. (*Minutes*, 2010, Part I, p. 347)

Advice from the Advisory Committee on the Constitution

The Advisory Committee on the Constitution advised the 219th General Assembly (2010) to approve this recommendation in Item 05-25. Their advice said:

... the Advisory Committee on the Constitution notes that when the amendments allowing the prosecuting committee to appeal a decision of not guilty were proposed in 2004, it was not envisioned that the permanent judicial commission hearing the appeal would overturn a decision of the original court. The intent was stated ‘Under the current form of the Rules of Discipline there is no recourse at the first level of a disciplinary case for the prosecuting committee if a session or permanent judicial commission commits reversible error in the process leading to finding the accused not guilty’ (*Minutes*, 2004, Part 1, p. 306). Since the original session or permanent judicial commission was the trier of fact, it is appropriate for that body to retry the case when an appeal has been sustained. For this reason, requiring the remand of a case when the appellate permanent judicial commission has sustained a specification of error is advisable. (*Minutes*, 2010, Part I, p. 349).

Editor’s Note: If the new Form of Government is approved by a majority of the presbyteries and Amendment 10-O affecting the Rules of Discipline is also approved by a majority of the presbyteries, there will be no change to the new Form of Government.

The vote of the Church Polity Committee (05) on the proposed amendment was 39/1/4. The 219th General Assembly (2010) approved the committee’s recommendation by consensus. (*Minutes*, 2010, Part I, pp. 347, 349) For the full report go to <http://www.pc-biz.org/Explorer.aspx?id=3415>.

[Editor’s Note: If proposed amendment 10-N is approved by a majority of the presbyteries, it will delete the power of a prosecuting committee to appeal a verdict of not guilty in a disciplinary case. Proposed amendment 10-O will then be moot since it limits the Permanent Judicial Commission response to an action that will no longer be allowed under the Rules of Discipline. However, if item 10-N is not approved by a majority of the presbyteries, then item 10-O, if approved by a majority of the presbyteries, will limit the response that a Permanent Judicial Commission may make in a judicial disciplinary case where the prosecuting committee has appealed a verdict of not guilty.]

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The Proposed Amendments to the Constitution of the Presbyterian Church (U.S.A.) being sent out by the 219th General Assembly (2010) for vote by the presbyteries consist of three documents, each sent separately:

Amendment 10-1, Part 1 of 3, amending the Form of Government as a whole

Amendment 10-2, Part 2 of 3, adding the Confession of Belhar to *The Book of Confessions*

Amendments 10-A through 10-O, Part 3 of 3, amending various portions of the current *Book of Order*, found here