

**A GUIDE TO UNDERSTANDING**

# **DUE PROCESS**

**FOR**

**PASTORS AND ELDERS**



**KNOW YOUR CIVIL AND ECCLESIASTICAL RIGHTS**

**BY**

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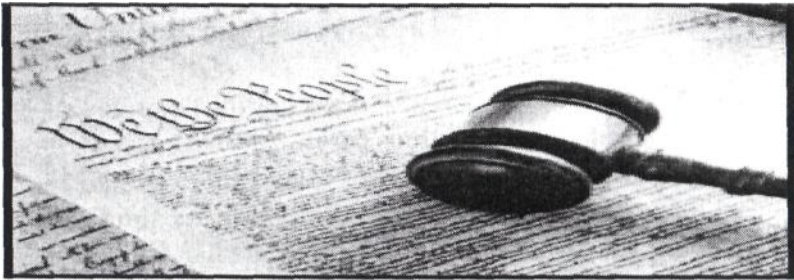
A Guide to Understanding

# Due Process

FOR

## Pastors and Elders

**KNOW YOUR CIVIL AND ECCLESIASTICAL RIGHTS  
OR YOU WILL LOOSE THEM!**



Revision of the 2005 Handbook on Due Process for Pastors Elders and  
Ministers

By

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# PREFACE

This book is intended primarily for Pastors and local church leaders. Some of the issues presented and or discussed in this book are handled in more detail and legal terms in Richard R. Hammar's *Pastor, Church & Law*. This book is not intended to be a substitute for Hammar's work or the Judicial Code of Conduct, nor the Official Manual for our Church or any similar writings. Through *The Pastors Rights to Due Process*, local Pastors may gain some perspective in dealing with current ecclesiastical problems facing the church today and thus avoiding many legal and ecclesiastical minefields, as well as acquiring general familiarity with the relationship between the church and the laws as it relates to your rights to fairness and justice.

The laws of our country as well as the policies and practices of our church, requires careful study and consideration the issues discussed in this book could be an aid in that effort. Remember that, there is no substitution for consultation with competent legal counsel when legal matters arise.

A word of explanation should be given as to how this book was written. Several of the sections are written (to varying degrees) in cooperation with recognized experts in particular areas of law, while others were written solely by me born out of the experience of having gone through the process. Sections in which I share authorship have those sources listed in the Source page, and some at the bottom of the page.

I also ask the reader's indulgence for any typos or similar kinds of errors and I will gladly correct these if anyone will be so kind as to point them out to me.

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## **FORWARD**

Today we live in an unrestrained, unruly, unashamed, and undisciplined world. Even in the church, members defiantly break biblically based rules of conduct. If the church tries to discipline a disobedient member, he is often unrepentant and outraged. Instead of crying out for forgiveness, he may cry out, "See you in court."

Church discipline is a potential litigation nightmare for churches, pastors, church officers, and other church leaders. Historically, our courts had little to do with cases involving the church. Times have changed and civil courts today are not hesitant to invoke jurisdiction in church-related controversies. In the past decade, civil courts, including the U.S. Supreme Court, have carried jurisdiction of the courts one-step further by hearing and ruling on religious doctrine.

From a practical standpoint, disgruntled church members and other individuals have sued churches since the advent of insurance. Many churches now have insurance covering claims for personal injury / liability and clergy malpractice. In any type of dispute, aggressive lawyers will spend the time and money necessary to "hit" the insurance funds. Churches and clergy are not exempt from the litigation game. Litigation involving churches is increasing mainly because the First Amendment to the U. S. constitution is becoming less respected by civil courts.

With the number of civil suits against churches and church leaders on a dramatic increase, church pastors, officers and leaders must be cautious when they discipline church members to avoid subjecting the church, themselves, and quite possibly their religious doctrine from being put on trial.

When approached by The Rev. Dr. Frederick D. Jenkins to write a forward for this handbook, I was some what apprehensive at first, for you see our paths have crossed on more than one occasion in civil court, and it is my opinion that Dr. Jenkins is one of the foremost authority and expert on Ecclesiastical Law and Church Procedure in particularly on

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The Church Of God In Christ, his understanding of church law and the inner workings of the church is unsurpassed and for churches a reservoir to draw from.

I am, however honored to write this forward because over the years I have come to know Dr. Jenkins to be a man of immense commitment, integrity and honor. In this handbook he has through countless hours of study, practice and research compiled an extremely comprehensive and authoritative overview of the law, the rules of the church, due process and the appeal process, a handbook that pastors, church leaders and officers particularly in the Church Of God In Christ should find useful in understanding your general church policies and procedures and its relationship to civil court procedures. This handbook in my view is a comprehensive guide to understanding church discipline procedure, if used this book can aid church member, pastors, officers and leaders in understanding the dynamics of church laws and discipline. I highly recommend this handbook for your reference library it would be an excellent addition.

*Jeffrey L. Stein*

Tulsa County District Court Judge

## Elements of Due Process

- *The opportunity to be heard at a reasonable time and place*
- *Timely and adequate notice giving details of the reason for the proposed suspension or dismissal*
- *An effective opportunity to defend oneself, including oral presentation of evidence and arguments.*
- *Confront and cross-examine witnesses.*
- *Right to retain an attorney.*
- *Decision resting solely on the legal rules and evidence adduced at the hearing.*
- *A statement of the reasons for the determination and the evidence relied on.*
- *An impartial decision-maker.*

## Introduction

Law is the formal codification of customs, which have achieved such acceptance as become the enforced norm. The process of acceptance is accelerated by the existence of legislative bodies, which seek to impose laws.

Law involves the legislation and regulation of statutes, as well as the resolution of disputes. *In the civil law system codification is also an attempt to structure the law according to fundamental ethical principles to create a sense of order and simplicity that all members of society can comprehend*, not merely university trained jurists. Stating the law in simple, precise terms, understandable to the layperson without a specialized legal education, is the only way they can reasonably obey it or be fairly sanctioned for not obeying it, *this concept if followed could bring peace and harmony in the fellowship of believers as well.*

In the context of most legal systems, laws are enacted through the processes of constitutional charter, constitutional amendment, legislation, executive order, rulemaking, and adjudication; within Common law jurisdictions, rulings by judges are an important additional source of legal rules. However, *de facto* laws also come into existence through custom and tradition.

Law has an anthropological dimension. In order to have a culture of law, people must dwell in a society where a government exists whose authority is hard to evade and generally recognized as legitimate. People forego personal revenge or self-help and choose instead to take their grievances before the government and its agents, who arbitrate disputes and enforce penalties.

This behavior is contrasted with the culture of honor, where respect for persons and groups stems from fear of the disproportionate revenge they may exact if their person, property, or prerogatives are not respected. Cultures of law must

be maintained. They can be eroded by declining respect for the law, achieved either by weak government unable to wield its authority, or by burdensome restrictions that attempt to forbid behaviors prevalent in the culture or in some subculture of the society. When a culture of law declines, there is a possibility that an undesirable culture of honor will arise in its place.

A particular society or community adopts a specific set of laws to regulate the behavior of its own members, to order life in its political territory, to grant or acknowledge the rights and privileges of its citizens and other people who may come under the jurisdiction of its courts, and to resolve disputes.

There are several distinct laws and legal traditions, and each jurisdiction has its own set of laws and its own legal system. Individually codified laws are known as statutes, and the collective body of laws relating to one subject or emanating from one source is usually identified by specific reference. (E.g., Roman law. Common law and Criminal law.)

Moreover, the several different levels of government each produce their own laws, though the extent to which law is centralized varies. Thus, at any one place there can be conflicting laws in force at the local, regional, state, national, or international levels.

**Administrative law** refers to the body of law, which regulates bureaucratic managerial procedures and is administered by the executive branch of a government, rather than the judicial or legislative branches.

**Canon law** comprises the laws of the Anglican, Eastern Orthodox, Roman Catholic churches, many of which are adopted today as Ecclesiastical Law for most Protestant Churches.

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**Case law** (precedential law) regulates, via precedents, how laws are to be understood. **Case law**, also called common law or judge-made law, is derived from the body of rulings made by a country's courts.

**Civil law**, not to be confused with the civil legal system, has several meanings:

**Secular law** is the legal system of a non-theocratic government, such as that which developed in England, especially during the reign of Henry II

**Private law** regulates relationships between persons and organizations including contracts and responsible behavior such as through liability through negligence.

**Commercial law**, often considered to be part of civil law, covers business and commerce relations including sales and business entities.

**Common law** is derived from Anglo-Saxon customary law, also referred to as judge-made law, as it developed over the course of many centuries in the English courts.

**Criminal law** (penal law) is the body of laws, which regulate governmental sanctions (such as imprisonment and/or fines) as retaliation for crimes against the social order.

**International law** governs the relations between states, or between citizens of different states, or international organizations. Its two primary sources are customary law and treaties.

**Natural law** is the law, which is immanent in Nature.

Procedural law are rules and regulations found in a legal system that regulate access to legal institutions such as the courts, including the filing of private lawsuits and regulating the treatment of defendants and convicts by the public criminal justice system.

**Space law** regulates events occurring outside Earth's atmosphere. This field is in its infancy

# Due process Defined

Due process of law is a legal concept that ensures that all of a person's legal rights instead of just some or most of those legal rights will be respected and afforded, when there is an effort to deprive a person of life, liberty, or property. Due process has also been interpreted as placing limitations on laws and legal proceedings in order to guarantee fundamental fairness, justice, and liberty.

## Due Process in the United States

The Fifth Amendment contains a guarantee of basic due process applicable only to actions of the Federal Government—*"No person shall be...deprived of life, liberty, or property, without due process of law..."* The Fourteenth Amendment contains the same phrase, but expressly applied to the States. The Supreme Court has interpreted the two clauses identically, so under the federal Constitution, there is no substantial difference in protection from federal or State action. However, State constitutions also have their own guarantees of due process that may, by their own terms or by the interpretation of that State's judiciary, extend even more protection to individuals than under federal law.

The Due Process Clause of the U.S. Constitution is descended from a similar clause of the Magna Carta in which the King of England agreed (in the year 1215 A.D.) that *"No Freeman shall be taken, or imprisoned, or be disseized of his Freehold, or liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed: nor will we pass upon him, nor condemn him, but by lawful Judgment of his peers, or by the Law of the Land."* Thus, the core historical meaning of the **Due Process Clause** is that *"the government cannot deprive anyone if the Law of the Land forbids it"*. In other words, neither the King nor an American President may take away your life, liberty, or property if the law denies him

that power.

The Due Process Clause has been interpreted by the majority of the Supreme Court to have both procedural and substantive components, meaning that it imposes restrictions on legal procedures--the ways in which laws may operate-- and on legal substance--what laws may attempt to do or prohibit. The distinction between substance and procedure is difficult in both theory and practice to establish. Moreover, the substantive component of due process has proven to be very controversial, because it gives the U.S. Supreme Court considerable power to strike down state and federal statutes in order to legalize activities that majorities of the judges do not think should have been criminalized in the first place.

### **Procedural Due Process**

Procedural due process is essentially based on the concept of procedural fairness. As a bare minimum, it includes an individual's right to be adequately notified of charges or proceedings involving him, and the opportunity to be heard at these proceedings. In any case, fair procedures help to ensure that an accused person will not be subjected to cruel and unusual punishment, which occurs when an innocent person is wrongly convicted.

### **Substantive Due Process**

Though on its face, the idea that due process is not only procedural but also substantive seems paradoxical, the Court has endorsed that view. Note that the boundary between substance and procedure is far from exact. The Supreme Court has held for much of its history that due process must include limits not only on how people are put on trial (procedures), but also limits on what kind of control majorities can have over minorities and individuals (substance). The court has viewed the due process clause as embracing those fundamental rights that are "implicit in ordered liberty." Just what these rights are is not always clear.



Substantive due process has protected such rights as marriage and raising children and the extension of much of the Bill of Rights over the States. However, what are seen as past abuses and present excesses of this doctrine continue to spur debate over its use.

Substantive due process has a checkered past in the U.S., as it was first applied by the Supreme Court in the infamous Dred Scott v. Sandford which partly caused the Civil War. Dred Scott was a slave who claimed that passing into territory where slavery was prohibited destroyed his owner's property rights over him. However, the Supreme Court held that due process protections of property restricted certain types of laws that would take away property, not merely the procedure by which it was taken. After the Fourteenth Amendment applied due process restrictions to states, the Supreme Court used this same doctrine to protect a liberty of contract to routinely strike down economic and labor regulations, as in *Lochner v. New York*. Some believe this jurisprudence contributed to the unregulated economic policies that (some economists argue) may have spawned the Great Depression.

## **Explicit Procedural Guarantees In The U.S. Constitution**

### ***Article One, Section 9.***

The right to writs of habeas corpus (a petition filed with the court to insure one's constitutional rights are protected.), except during rebellion or invasion The prohibition of bills of attainder (conviction and sentencing for a crime, typically treason, by a legislative act) The prohibition of ex post facto laws (punishing acts not a crime at the time it was committed)

### ***Article Three, Section 2:***

The right to a jury trial regardless of whether the crime occurred in a state or in another location

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### **The 5th Amendment:**

The right to a grand jury indictment in federal court, in capital and other "infamous" cases, except for members of the armed forces

The prohibition of double jeopardy (prosecuting someone again for a crime of which they have already been acquitted)

The right to not commit self-incrimination

The right to due process of law for life, liberty, and property (as enforced against the federal government)

### **The 6th Amendment:**

In all criminal prosecutions:

The right to a speedy and public trial in the state where the crime occurred

The right to an impartial jury of one's peers

The right to know the charges and evidence

The right to confront and cross-examine opposing witnesses

The right to compel witnesses to appear

The right to counsel

### **The 7th Amendment:**

In civil trials in federal courts:

The right to a jury in civil trials The guarantee that issues determined by a jury will not be predetermined by other courts in a manner contrary to the common law

### ***The 14th Amendment, Section 1:***

The right to due process of law regarding life, liberty, and property (as enforced against State governments)

## Due Process Amendment

### ***Amendment I - Freedom of Religion, Press, Expression*** *Ratified] 2/15/1791. Note*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### ***Amendment IV- Search and seizure. Ratified 12/15/1791.***

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### ***Amendment V- Trial and Punishment, Compensation for Takings Ratified 12/15/1791.***

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### ***Amendment VI - Right to speedy trial, confrontation of witnesses Ratified 12/15/1791.***

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be

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informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

***Amendment VII - Trial by jury in civil cases. Ratified 12/15/1791.***

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

***Amendment VIII - Cruel and Unusual punishment. Ratified 12/15/1791.***

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

***Amendment XIV- Citizenship rights. Ratified 7/9/1868. Note History***

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## **UNFAIR and UNJUST**

It the understanding of the law community that "even under church law you are innocent until proven guilty,"

Yet, once a Pastor has been accused, the powers that be, want to, or will suspended him from his church before he is able to or has been given a chance to mount a defense.

Critics say that this amounts to punishment without a proof of guilt.

Then the accused Pastor has to wait months for an Investigation and or a trial this delay puts the accused Pastor in a state of "suspended animation."

the suspension or removal from you pulpit before proof of guilt boils down to the loss of reputation of the accused Pastor.

He is removed from his church and office. He may have to move from his home. This is a loss of his reputation as soon as he leaves the church.

Steps should be taken to protect the reputation of the accused Pastor during the preliminary investigation.

There seems to be an immediate presumption of guilt with the presentation of the accusation against a Pastor, even before the preliminary investigation has been conducted.

Many Pastors are being suspended from pulpits right after the accusation although the norms is to wait until after the investigation has been completed and charges are filed.

The thought is that suspension is applied "to protect the public trust in Church to do the right thing in the case. It is not an indication of guilt."

It is unfortunate that an accused Pastor during the preliminary investigation does not have the formal due process protection that he would have at a trial, but he retains basic rights, such as the right to his good name. He cannot be forced to admit to a crime, or offense.

Since Church officials with authority to terminate, the Pastor is in such a hurry they should be required to provide a church lawyer to an accused Pastor who is unable to secure one for himself.

## FAIRNESS

**Fair Process**—The following procedures are presented for the protection of the rights of individuals guaranteed under Official Manual and Constitution of our Church for the protection of the individual and our Church. The presumption of innocence shall be maintained until the conclusion of the trial process. At each step in the proceedings listed below, efforts for reconciliation shall continue, so long as these efforts are not used to hinder a Fail-Process.

1. In any involuntary administrative or judicial proceeding, the respondent (the person to whom the procedure is being applied) shall have a right to be heard before any final action is taken.
2. Notice of any hearing shall advise the respondent of the reason for the proposed procedures with sufficient detail to allow the respondent to prepare a response. Notice shall be given not less than twenty one (21) days prior to the hearing.
3. The respondent shall have a right to be accompanied by another person to any interview or hearing to which they are subject, in accordance with the Official Manual. The person accompanying them shall have the right of advocacy.
4. In any involuntary administrative or judicial proceeding, under no circumstances shall one party or counsel, in the absence of the other party or counsel, discuss substantive matters with members of the hearing, trial, or appellate body, while the case is pending. Questions of procedure may be raised with the presiding officer or secretary of

the hearing or appellate body.

5. A person shall not be subjected to administrative or judicial process a second time for the same alleged offense.
6. The respondent shall have access to all records relied upon in the determination of the outcome of any and all aspects of processes related to or which may culminate in a judicial proceeding.
7. Special attention should be given to ensuring the racial, ethnic, and gender diversity of The Church in the boards, committees, and courts of The Church.

## **Chargeable Offenses**

1. Any member of the clergy, with sufficient evidence against them may be charged with one or more of the following offenses:

- (a) Immorality;
- (b) Practices declared by The Church to be incompatible with Christian teachings;
- (c) Crime, violation of civil and criminal laws;
- (d) Failure to perform his or her prescribed work of the ministry;
- (e) Disobedience to the Order and Discipline of the Church;
- (f) Dissemination of doctrines contrary to the established standards of doctrine of the Church;
- (g) Relationships and/or behavior, which undermines the ministry of another Pastor;
- (h) Racial harassment;

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- (i) Sexual abuse or harassment;
- (j) Misrepresentation of credentials.

2. Any Pastor or clergy member may choose a trial when recommended for involuntary termination.

3. A lay member of a local Church may be charged with the following offenses and, if so, may choose a trial:

- (a) Immorality;
- (b) Crime;
- (c) Disobedience to the Order and Discipline of the Church;
- (d) Dissemination of doctrines contrary to the established standards of doctrine of the Church;
- (e) Racial harassment;
- (f) Sexual abuse or harassment.

**Charges**—Charges against any Pastor or clergy, and lay members shall be subject to the following guidelines:

1. A charge shall not allege more than one of the offenses set forth above. Each charge must be written with specifications containing facts such as time, place, and specific events alleged to have occurred. More than one charge against the same person may be presented and tried at the same time. A vote on each charge and each specification shall be taken separately.
2. Amendments may be made to a bill of charges at the discretion of the Jurisdictional Bishop; *provided that* they do not change the nature of the charges and specifications and do not introduce new matter of which the respondent has not had due notice. When



an amendment or amendments to a bill of charges is or are denied by the presiding officer, it or they shall not be introduced in the form of testimony in the Trial Court. Charges or specifications previously considered and dropped by the committee on investigation shall not be introduced in the Trial Court in the form of evidence or otherwise.

## **INVESTIGATION PROCEDURES**

### **1. General**

a) All charges shall be submitted in writing and signed by the person or persons making the charges. A copy of all charges, specifications, and documentary evidence under consideration shall be sent to the Jurisdictional Bishop, the Respondent, the Jurisdictional Secretary and the General Secretary. In the case of a lay member all charges against a layperson shall be submitted in writing, signed by the person(s) making the charge, and delivered to the Pastor of the local Church of which the respondent is a member and a copy sent to the Respondent.

b) If possible, the Respondent and the person(s) bringing the initial grievance shall be brought face to face, but the inability to do this shall not invalidate an investigation. Other supporting witnesses shall not be permitted at the investigation.

c) The committee on investigation may call such persons as it deems necessary to establish whether or not there are reasonable grounds for the charge or

charges.

d) The parties may be represented and or accompanied by counsel at an investigation. Basic procedural decisions shall be made in a preliminary meeting with the person charged and his/her counsel having the right to argue procedural points before the decision is made by the chair. All advance procedural decisions and such unanticipated decisions as may come in the course of the meeting of the committee on investigation shall be rendered in writing so as to be available for consideration in all further possible stages of the case.

e) Proceedings in the investigation shall be informal. No oaths shall be taken. All procedural decisions shall be made by the chairperson. Prior to the convening of the Trial Court, all appeals of procedure in prior judicial processes must be brought to and resolved by the presiding officer of the Trial Court.

f) The appropriate Committee on Investigation shall conduct the investigation, and if in the judgment of a majority of the committee there is reasonable ground for such charges, they shall sign and certify the charges as proper for a trial (the offense or offenses) and the specifications (the time, place, and specifics of events alleged to have taken place). They shall then forward a copy to the Bishop, secretary of the Jurisdiction, the National Church and to the person charged and to any other appropriate Church officials.

## SCRIPTUAL FOUNDATION FOR DUE PROCESS OF LAW

God has set forth HIS Laws in the Holy Scriptures for ALL Mankind to know-and obey (Proverbs 14:34 and Isaiah 60:12)!

**"THOU (you) SHALL NOT BEAR FALSE WITNESS (lie)! AGAINST THY (Your) NEIGHBOR..."**

(Exodus 20:16 - Deuteronomy 5:20)

*The Devil is known as the Father of Lies (John 8:44).*

*Consequently, his workers will sloop at nothing to lie and deceive to get their way! Correspondingly, God's People are to be known as People of the TRUTH. Thus lying, deceptions, and falsehoods should not be found among us. And, most especially to the point, lying MUST NOT be allowed to pervert justice and the correct administration of the Law (i.e. maintenance of Proper Due Process)!*

### **PROPER DUE PROCESS OF LAW:**

The Holy Scriptures set forth many rules that make up the Proper Due Process of the Law. These are presented in the following article.

#### **1 COMMON GREVIENCE PROCEEDURE:**

The Holy Scriptures set forth a very clear procedure to handle common problems between people and this should be pursued, before Court action is taken.

FIRST, confront the person who you think has wronged you, to see if just the two of you can settle the issue by yourselves (and to be sure that your perceptions of what you think they are doing are correct) (Proverbs 25:8-10; Matthew 18:15; Galatians 6:1). For, the Holy Scriptures admonish us to settle privately (and out of Court) as much as we can (Proverbs 25:8-10; Matthew 5:25-26).

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SECOND, if your opponent will not settle with you (or even listen to your complaint), then take a witness (preferably an official of the Church --or a Law Enforcement Officer) and confront them again to see if they will settle or if the officer can work out some kind of mediation, so that a peaceful solution or compromise can be found (Matthew 18:16; Galatians 6:1; James 5:20).

THIRD, if your opponent will not listen to the Church official or the Officer, then take the case before the Church (or Council) and have the matter decided there (Matthew 18:17; Acts 25:1-8).

FOURTH, if your opponent will not listen to the decision of the Church (or Council), then he is to be excommunicated and dis-fellowshipped (Matthew 18:17; I Corinthians 5:9-13; II Thessalonians 3:6-7, 14-15; Titus 3:10) (something we rarely if ever do.).

THEN, if your opponent repents and seeks restoration to Fellowship, allow it, so long as he changes his ways and makes amends for the wrong(s) he has done (II Corinthians 2:6-10).

ADDITIONALLY, the Holy Scriptures admonish us to be forgiving of our brother, and of the wrongs you may have felt that he did to you, so that we may show them God's Love and the human kindness befitting those of the Faith (Proverbs 30:10; Matthew 7:1-2; Romans 14:4, 13; I Corinthians 5:12; James 4:10-12). However, this does NOT mean allow them to get away with any evil that they may want to do to you or others (Matthew 16:23; James 4:7; I Peter 2:16)!

## **2 COMMON COURT PROCEEDURE:**

- **COURT EMPOWERMENT:**  
Every God ordained government has the God given Right to punish and correct its subjects for breaches of the Law (God's Law). Therefore, Our Realm (Holy Society) sets forth a variety of normal, local Courts (Congregational Courts, Community and Municipal Courts—State, District, Provincial Courts, etc.) to see to this Holy task. (Exodus 18:13-26 and 1 Samuel 8:11-13)
- **CHARGE TO JUSTICES (Specific Duties - Oath of Office):**  
(Exodus 18:21; Deuteronomy 1:16-17, 17:8-13; 1 Timothy 5:20-21)
- **LIMITATIONS TO JUSTICES (Checks and Balances):**  
Our Realm (Holy Society) is NOT to be a Totalitarian Society nor a Police State (where judges are gods—above the Law), but rather one where JUSTICE is regulated and held in its proper place by Godly checks and balances (Acts 22:24-29). Consequently, due consideration in the operations of the Courts 'MUST be undertaken to preserve the Liberties that God has given to Our People. Therefore, under the Authority of Our Throne, Justices are set forth with boundaries of operations and areas of jurisdiction to oversee and uphold the proper punishment of infractions of Our Law, under the supervision of their superiors (Exodus 18:21-22; Deuteronomy 4:2; 1 Samuel 8:11-12; Ecclesiastes 5:8; 1 Peter 5:2-3).

### **3 COMMON PUNISHMENT PROCEDURES:**

- **PUNISH WICKED - RELEASE INNOCENT:**  
(Exodus 22:6-9; Deuteronomy 24:16-18; 25:1; Matthew 12:7; John 7:44-46)
- **INVESTIGATE ACCUSATIONS FULLY:**  
(Numbers 32:14, 35:30; Deuteronomy 19:16-20; Proverbs 25:2; John 7:51; 1 Timothy 5:19)
- **EQUALITY OF JUSTICE:**  
No favoritism, bias, or prejudice (Exodus 21:23-25, 22:6-9; Leviticus 19:15; 1 Timothy 5:21)
- **HAVE A HEART - Mercy and Forgiveness:**  
(Leviticus 26:40-45; Numbers 5:6-7, 14:18; Matthew 5:45, 12:7, 23:23; Luke 1:50, 10:36-37; Galatians 6:3; Ephesians 2:4-5; James 2:1 3)

### **4 JUSTICE - ADMINISTRATION OF GOD'S LAW**

(General Duties of Judges - Officers):

- **KEEP THE LAW (God's Law):** (Leviticus 26:3-12; Deuteronomy 4:2, 30:16; Proverbs 3:1-4; John 7:24)
- **RESTRAIN THE MASSES IN THEIR FOLLY:** (Exodus 32:22; Leviticus 19:14; 1 Timothy 5:20)
- **OBSERVE GOLDEN RULE:** (Leviticus 19:18; Matthew 7:12)
- **COPE WITH BURDEN OF RULERSHIP – High Stress:**  
(Numbers 11:10-15, 14:1-4; James 3:1)

#### **\*\*\*WARNING\*\*\***

According to Scripture Members of the CHURCH should NOT take fellow members before the heathen justices or secular courts of non-believing lands (I Corinthians 6:1-6). Rather,

disputes between members are to be settled In-House by the above procedure (and according to the Laws of God, not heathen laws). In addition, it is strongly recommended that you get non-members to agree to the arbitration and mediation of Our Church Courts to help settle your disputes with them. However, non-members may have to be dealt with in such wicked settings, to get what little justice you may be able to receive.

## **HOW TO AVOID BEING PART OF A LAWSUIT**

Churches, Pastors and Church Leaders can avoid becoming participants in the litigations process by following some very basic steps and guidelines. By no means is the following meant to be an all-inclusive list of things to do and things not to do.

1. Consult an Attorney. The pastor or church leader whose legal standing is ever in doubt should always consult someone who knows the law, preferably a practicing attorney. Be sure that the attorney is provided with all relevant documents such as bylaws, doctrinal creeds, and any documents outlining disciplinary procedures.
2. Be Consistent. Consistency is the most important factor in disciplining member of a religious body. If member A has committed the same sin as member B, then the discipline for A and B should be the same. If it is not, one can expect member A to complain of inconsistency, arbitrariness, and unfairness, and these are the types of allegations that will usually support a lawsuit.
3. The Bylaws of the Church and its Religious Tenets

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(Doctrine) should be Clear and Understandable to the Average Member. The documents, by which the church is governed, including procedures for disciplining a member, should be clear and understandable so that the disciplined member cannot later plead ignorance.

4. Signed Documents. All documents by which the church is governed, including disciplinary procedures, bylaws, doctrinal statements, etc., should be in writing and given to the members. Additionally, new members should sign a statement that they have been taught the basic doctrinal creed of the church, and that they are fully understood by them.
5. Membership classes. As part of the membership procedure, require classes or seminar that teaches the soon-to-be member the doctrines and tenets of the church. If the church is based upon the Bible, reading of the entire Old and New Testament should be mandatory, with a signed statement of completion.
6. The tenets and doctrines as expressed by the Church should be practiced by the Church members. This prevents an argument that the church's lack of enforcement of a particular tenet was an implied waiver of some kind.
7. Church tribunals, mediation, and binding arbitration. If consistent with the doctrine of the church, adopt a procedure that allows disputes to be settled only in the church through binding mediation or arbitration.
8. Be up front and honest. Never compromise your



position by attempting to cover up a mistake. If a mistake is made, correct it. Always be candid with church members who may be potential plaintiffs against the church, and if a mistake is made explain what happened.

## **CHURCH DISCIPLINE**

### ***THEOLOGY OF CHURCH DISCIPLINE***

The basis of all church discipline is the love of God in Christ expressed in both mercy and judgment. The purpose of Church Discipline is to bring about the reconciliation of man to God and man to man and to engage the people of God in the ministry of reconciliation, and to promote the peace, purity, and edification of the Church. Church Discipline is discipleship; it is the response of loving commitment to God in Christ as Lord that we learn from Him how to obediently seek to carry on His mission in the world.

Church Discipline is never to be perverted into a source of pride or the nourishing of the life of Church Authority as an end in itself; as this may prove to be an impossible and unnecessary effort.

In this context of Church Discipline, the Church, under the authority of the Lord, disciplines or guides, instructs, and controls its members and Ecclesiastical Courts to enable them to serve God more effectively.

The exercise of Church Discipline is made necessary by the need to more fully reconcile Believers individually or in groups to God and one another, to prevent mercy from

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becoming a soft and finally cruel indulgence, and to control those whose words and actions may seriously hinder the witness of the whole body of Christ (the Church).

The constant effort of any Church Court toward any situation calling for discipline is contrition by the parties involved. The court will evaluate the actions of the parties that may have contributed to the problem requiring discipline. True contrition leads to repentance, which will cause the offending party to confess his own sin and need for forgiveness and to be more responsible.

In all things, Church Court shall seek the repentance and restoration of the individual or group involved; with the higher responsibility of the court being to see to it that the work of Christ is carried on more effectively.

### ***THE NATURE OF OFFENSES***

An offense is anything in the principles or practice of a church member in the Church Of God In Christ which is contrary to the Holy Scriptures, the Charter, Doctrine (Articles of Faith and/or Religion), Constitution, By-laws, Rules and Regulations, Policies and Procedures of the Church Of God In Christ, as now is or may be amended from time to time.

Offenses are either ***personal*** or ***general, private*** or ***public***. A personal offense is a violation of policies, procedures, rules and/or regulations, customs and law in the way of wrong done to some particular person or persons, including one's own self. A general offense is a violation of policies, procedures, rules and/or regulations, customs and law not directed against any particular person. Private offenses are those known only to an

individual or, at most, to a few persons. Public offenses are those which are generally known. However all offenses, being sins against God, are grounds for Church Discipline.

## DEGREES OF DISCIPLINE

1. There are five ascending degrees of Church Discipline: admonition, rebuke, suspension, deposition, and expulsion. When a lesser discipline fails to reconcile and reclaim the offender, Church Court can consider the enforcement of a higher degree of discipline:

- a. **Admonition** is kindly reproving an offender, warning him of his guilt and danger, and exhorting him to refrain from such conduct in the future.
- b. **Rebuke** is a reprimand, a strong, authoritative expression of disapproval by a Church Court and officers of the church.
- c. **Suspension** is conditional exclusion from performing and/or receiving consideration from a church office held. This discipline becomes necessary when offenses that are more serious have been committed or when, admonition or rebuke have not yielded positive result, and an offense is persistently repeated.
- d. **Deposition** is depriving an officer of the Church of his office.
- e. Expulsion is the Judicial and Episcopal dismissal of an offender from membership in the church. This fearful discipline is to be passed only for such errors or

violations of the law of God as are grossly inconsistent with the Christian faith, or for obstinate persistence in grave offenses in the face of milder discipline.

**2. The Discipline of the Church is in no case to be employed for any selfish or vindictive purpose.**

**APPLICATION OF CHURCH DISCIPLINE**

When a Church Court shall have completed its deliberation concerning an accused offender and shall have found him guilty, the court, unless it has received a written notice of appeal within Thirty Days after the decision has been rendered, shall proceed with the appropriate process for the proper application of the determined discipline. All discipline may be administered or announced in the absence of the offender, but not without due notice having been given the offender. As in previous judicial proceedings, the Church court shall, in the application of discipline, remind itself that the purpose of Church Discipline is the redemption of the offender

**Admonition:** this discipline is to be administered in private.

**Rebuke:** where the offense is private, the rebuke shall be in private. However, where the offense is public, the rebuke shall ordinarily be pronounced in public, so long as the witness of the church will not be injured thereby. In either case, a statement of the offense shall accompany any rebuke.

**Suspension:** this discipline should generally be conditional in its duration, continuing until the person suspended gives such evidence of repentance as may warrant its repeal. The good of the offender and/or the Church may require that the offender be suspended for a definite length of time, even though he confesses

his sin and gives evidence of repentance. A representative of the Church Court, and/or the Episcopal Administration should as a rule, announce this discipline in the Church. If in the judgment of the Church Court and the Episcopal Administration, however, the good of the offender and/or the Church requires, this discipline may be administered privately.

**Deposition:** the discipline of deposition is to be announced in the Church by a representative of the Church Court, and the Episcopal Administration. A representative of the Church Court accompanied by the Episcopal Administration, who shall then declare the pulpit vacant, shall publicly read the discipline of deposition passed on a pastor to his congregation. Only in rare cases of gross offense, the good of the offender and/or the Church may require that the offender, even though he confesses his sin and manifests repentance, be deposed from office. Except in such cases, deposition is to proceed by suspension to give time for careful consideration before deposition is imposed.

**Expulsion:** While this discipline is an option to the Church it is one rarely used and will not be discussed further here, but again is discussed at length in the book on ***CHURCH JUSTICE, DISCIPLINE OR PUNISHMENT!*** by Dr. Frederick D. Jenkins.

## **ECCLESIASTICAL COURT PROCEDURE**

### **PROCEDURE FOR JUDICIAL PROCESS**

1. Ecclesiastical Judicial procedure is the orderly succession of Ecclesiastical legal proceedings in accordance with those principles and rules set forth in the Judicial Code of Conduct, the Charter, Doctrine, Constitution By-laws, Policies and Procedures of the Church Of God In Christ as now is or may be amended from time to time.
2. Offenses, which are brought before Church Courts, are those of a public and general nature or it can be personal and private offenses that cannot be settled in a private way.

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3. Whenever any charge of offense is referred to a Church Courts for decision, the Court shall, before even hearing the charge, determine whether every reasonable and appropriate effort has been made to settle the matter in a more private way.
4. Ecclesiastical Judicial process against an alleged offender shall not be instituted unless some reliable person or persons make the charge and undertake to substantiate it, or unless the Court finds it necessary for the good of the persons involved and/or the Church to investigate the alleged offense.
5. If there is any doubt in the minds of two or more members of the court regarding whether the alleged offender is censurable or whether there is sufficient evidence to substantiate the charge, a committee shall be appointed by the Court to ascertain whether all required preliminary steps have been taken, whether there are probable grounds for an accusation, and whether, if charges are proved, they will constitute a censurable offense.
  - (a) In its investigation, the **committee** (or the court) is to exercise great caution when charges rest chiefly on the testimony of persons who are or have been at enmity with the accused, who have the reputation of being untruthful or quarrelsome, or who have prospect of some temporal advantage from the charges.
  - (b) Anyone who brings charges shall be previously warned that if there is a failure to show reasonable grounds for the charges, the accuser may himself be censured for slander. The committee (or the court) will drop any charges based on rumors or other common report unless some particular offense is specified, is widely believed, and raises a strong possibility of the guilt of the accused.
  - (c) If the committee finds that the case does not require judicial process or that there is insufficient evidence to

substantiate the charge, the committee will recommend that the matter be dropped. If the investigation indicates that charges should be made, the committee shall prepare the charges for presentation to the court.

6. Before proceeding with any judicial process, the court, or a committee appointed by the court, should seek by private conference with the accused to avoid, if possible, the need for actual judicial process.

7. If the offender confesses, the way is clear for the court either to restore him or to impose such discipline as the welfare of the offender and/or the Church may require.

8. The accused person may appear on his own behalf, or if he prefers, he may be represented by any member or members of the Church subject to the jurisdiction of the court. Any counsel appearing before the court must sign a statement that he has not and will not accept any fee or other emolument beyond necessary expense for any service rendered as counsel for defense or prosecution

9. If the accused is absent and not represented by counsel, the court shall appoint as counsel one or more members of the Church subject to the jurisdiction of the court.

10. It is incumbent on every member of a court engaged in the trial of offenders to bear in mind the injunction: "if a man is overtaken in any trespass, you who are spiritual should restore him in a spirit of gentleness. Look to yourself, lest you too be tempted" (Galatians 6:1)

11. Every charge must be presented to the court in writing and must state the alleged offense with the specifications of the facts relied upon to sustain the charge. Each specification shall declare, as far as possible, the time, place, and circumstances of the commission of the alleged offense, and shall be accompanied with the names of the witnesses and the titles of records and

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documents to be cited for its support.



# **ECCLESIASTICAL TRIAL PROCEDURE**

## **PRETRIAL PROCEDURE**

1. All, the provisions and conditions of Article **VIII, Section B** of the Constitution, of the Church of God In Christ, Inc., must be complied with in its entirety.
2. Upon receipt of a Formal written referral from the Jurisdictional Bishop for action by the Jurisdictional Council of Pastors and Elders, the case becomes the sole responsibility of the Jurisdictional Council to conduct the trial.
3. The Chairman, upon receipt of the referral from the Jurisdictional Bishop, should communicate with the Jurisdictional Bishop, to insure that the Jurisdictional Council has all of the pertinent information pertaining to the matter referred *and* the names of all parties involved with the matter, this must include but not limited to all documented evidence and witnesses.
4. The Chairman shall then assign the File a Case Number.
5. The Chairman should call a meeting of the Executive Committee of the Council, to inform them of the referral and to establish the ground rules for the trial should there be a need, that set the date, time and place where the trial will be held.
6. The Chairman, in compliance with Article VIII Section B, Para (d) will instruct the Secretary of the Council to send certified notice to all principal parties, with copies to the Jurisdictional Secretary and the office of the General Secretary of the Church Of God In Christ, Inc. Memphis Tennessee. This notice should be sent at least twenty (20) days prior to the date the Council has set the matter for trial.
7. Pursuant to Article VIII, Section A, Para 2-(e), of the

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Constitution, the accused has the right to be represented by counsel. The Chairman shall instruct the Secretary of the Council to send certified communication to the accused requesting the name(s) of Counsel who will represent the accused if the accused will be represented by Counsel.

8. The Jurisdictional Bishop shall appoint one (1) or more Pastors and or Elders to prosecute the case, (to present the evidence against the accused).
9. Upon notice from the accused of representation by Counsel, the Chairman will instruct the Secretary of the Council to supply the accused Counsel with copies of the documented evidence and necessary witness list to be used at trial before the trial.
10. In Jurisdictions where there are large numbers of Pastors and Elders, it may be advisable for the Chairman of the Council to appoint a **Judicial Review Committee** of not less than nine (9) nor more than fifteen (15) members, who shall serve as jurors in the conduct of the trial.
11. At the date, time and place scheduled, the Council shall proceed to hold the trial.

## **THE TRIAL PROCEDURE**

When it is clear that all interested parties are present, and the Council Chamber or the designated place for the hearing has been secured and certified:

1. The Chairman / Presider shall call the chamber to order with:
  - a. Prayer
  - b. Scripture
2. The Chairman / Presider shall identify the jury though not by names.
3. The Chairman / Presider shall identify the transcriber though not by name.

4. The Chairman / Presider shall identify the accuser and accuser's counsel should there be any, and then the accused and the accused counsel should there be any.
5. The Chairman / Presider shall then state the purpose for the Jurisdictional Council assembly.
6. The Chairman / Presider shall then state the accusation/charges against the accused.
7. The Chairman / Presider shall then ask the accused to enter a plea.
8. The Chairman / Presider shall then give the accuser and/or Counsel Time to make an opening statement.
9. The Chairman / Presider shall then give the accused and/or Counsel Time to make an opening statement.
10. The Chairman / Presider shall then give the accuser and/or Counsel Time to present their case and any evidence, witnesses or relevant materials to conclusion in the case before the Jurisdictional Council, allowing for cross-examination by the accused and/or Counsel.
11. The Chairman / Presider shall then give time to the accused and/or Counsel to present its defense to include evidence, witnesses or relevant materials to conclusion, allowing for cross-examination by accuser and/or Counsel.
12. The Chairman / Presider shall then allow for rebuttal witness should there be any.
13. The Chairman / Presider shall then allow for closing statements by the accused and/or Counsel for the accused, then the accuser and/or Counsel for the accuser.
14. The Chairman / Presider shall then give instruction to the Jury before deliberation begins.
15. The Chairman / Presider shall then dismiss the accuser, the accused and their counsel from the Council Chamber while the

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deliberation takes place.

16. When a decision has been reached, the Chairman/Presider shall call all interested parties and their counsel back to the Council Chamber to hear the decision/decreed.
17. When the decision/decreed has been read the Chairman /Presider shall inform both the accused and the accuser, if either is dissatisfied with the decision/decreed of the Jurisdictional' Council they have the right to appeal which must be filed within thirty (30) days of receipt of the decision/decreed of the Jurisdictional Council.
18. The Chairman / Presider shall thank all parties for their cooperation and respect for the process, and dismiss the Jurisdictional Council.
19. If the Council finds the accused guilty, it shall set the penalty as provided in **Article VIII, Section B, Para 2, g-1, 2, 3, and 4.**
20. If the accused is found guilty or innocent, the Jurisdictional Bishop shall execute the orders and decrees of the Jurisdictional Council of Pastors and Elders.
21. After completing its work, the Chairman shall inform the Jurisdictional Council of its findings, decision / decreed.
22. In the event the Jurisdictional Council uses a Judicial Review Committee to conduct the trial, the committee shall make its decision by majority vote of the members present and who participated in the trial. The matter shall then be put to a Full vote before the Jurisdictional Council for confirmation of the decision / decreed.
23. The Council shall approve or disapprove the report by majority vote of those members present and voting.
24. Any member of the Jurisdictional Council of Pastors and Elders who serves on the investigating committee or as a prosecutor shall not have the right to vote on the guilt or

innocence of the accused.

25. If the accused is found guilty and the penalty imposed removes him from his office as Pastor or otherwise adversely affects his livelihood, he shall have the right to a stay of execution pending appeal.

## **APPEAL PROCESS**

1. An appeal in the case of an accused is a legal proceeding by which a case is brought from a lower to a higher court for rehearing. The effect of an appeal is to **SUSPEND ALL** further proceedings in the case, including the **SENTENCE**, until the case has been finally decided in a higher court. If a sentence of suspension or deposition be appealed from, however, it shall be considered in force until the matter is decided.
2. An appeal can normally be made only by an accused party, called the appellant, who has submitted to a trial. An appellant who has not submitted to a trial is not entitled to an appeal.
3. An appeal can be made only to the next higher court, except with the express consent of that court.
4. An appeal may be made either from a definite sentence or from any particular part of the proceedings. The grounds for an appeal include matters such as any irregularity in the proceedings of the lower court; hindrance of procedural rights; refusal of reasonable indulgence to a party on trial; receiving improper or declining to receive proper evidence; rendering a decision before all testimony is taken; evidence for bias or prejudice in the case; and an unjust or mistaken sentence.
5. The appellant must make his appeal, together with the reasons for it, in writing, either to the court hearing his case before it adjourns or to the moderator or the clerk of that

court within ten days after the judgment appealed from is pronounced. The appeal, however, should not be refused if reasons for unavoidable delay can be demonstrated.

6. The appellant shall lodge his appeal, with the reasons for it, with the clerk of the higher court prior to the beginning of its next regular meeting. The clerk of the lower court appealed from shall send the full record of the case or a certified copy to the higher court by the same time.
7. . Evidence that has come to light at the first trial may be presented by either the appellant or appellee in an appeal.

## **APPEAL PROCEDURE:**

### **The Importance of an Appeal:**

The final judgment at the end of a trial or arbitration proceeding may not be the final determination of the matter. Many judgments are modified, removed or overturned in the appellate courts. If the accused sincerely believe that the matter deserves the attention of the appellate court, then the accused should seek such counsel immediately. The case may come to a different conclusion in the higher courts.

### **Analyzing an Appeal: from the accused Perspective**

An attorney, particularly an appellate practitioner, is the best person to analyze the merits of an appeal. However, the pursuits of most appeals in the church are often, if not most times, decided by the accused. That often places the accused in a difficult position. That is, how does the accused know if he or she has a meritorious, winnable appeal? This is a difficult question to answer, but it is one that can be answered. In order for the accused to understand and decide whether they have a legitimate appeal, they should resolve the following questions:

- 1) **Judicial Error-** This term is a legal term, however in layman's terms or in the church, it should be applied in

the following way: **Did the Tribunal (Council) fail to understand any important issues in or related to the case?** If the answer to this question is yes, the accused may have an appealable issue. The problem however for the accused that may not be trained in the law, how to comprehend if a Tribunal (Council) failed to understand important issues in the case? Well, simply ask yourself was the Tribunal (Council's) decision fair or reasonable? If it strikes the accused as unfair or unjustified, the accused may have a legitimate appeal.

- 2) **Attorney Failings-** Most appeals are often analyzed whether the court created a prejudicial error that may be the basis for an appeal. However, in the church, many appeals may come under a far different analysis. That is, **was the accused allowed to have an attorney or representative present at the trial, and were they allowed to present persuasive arguments on critical issue in the case?** If the answer is no, once again, the accused may have a strong case for an appeal.

If the accused believe judicial error or your attorney failing has occurred in the lower courts, perhaps the accused should consider the pursuit of an appeal to the next higher courts. The next higher courts may render a far different verdict. However, the accused should answer one final question before considering an appeal, that is: **Do you have the will** for an appeal? In short, can you deal with the costs, time and personal drive that is required for any successful appeal? If you can, then perhaps you should be preparing for your appeal. If you cannot, simply lick your wounds, and move on. A successful appeal, even more so than legal skill or strategy, requires strong determination. You must have a forceful, determined spirit to be successful on an appeal.

## **The Handling of an Ecclesiastical Appeal**

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A successful appeal is often a difficult endeavor, but with the correct mindset and proper strategy a case that has been lost in the lower ecclesiastical courts, may come to a far different conclusion in the ecclesiastical appellate courts. That is why a losing party should not lose hope. A successful appeal can often put a smile on the party's face that did do so well in the lower courts. However, how does one become successful in an ecclesiastical appeal? Well, there are no guarantees in this matter, but most successful ecclesiastical appeals have the following ingredients. They are:

### **1) Fresh set of eyes**

When one appeals to a higher ecclesiastical court, that party does so because of an adverse ruling in a lower ecclesiastical court. That is, they did not get what they want. It also means that the party, the party's attorney or the person / persons who represented the party in the lower ecclesiastical courts was unable to obtain the result that the accused desired.

**Perhaps** they was unable to persuade the court with their arguments,

**Perhaps** they had miscalculated the courts implementation of the law, or

**Perhaps** they the lacked the professional skills needed to win.

Whatever the reason, it is simply foolish to pursue an appeal with the same team or approach that lost your case in the lower ecclesiastical courts. **Why?**

In most instances, those who lost the case in the lower ecclesiastical courts will simply rehash the same arguments to the higher ecclesiastical court. Perhaps the higher ecclesiastical court will take a different approach than the lower ecclesiastical courts and render a different ruling, but in most cases, that is not the case. Some estimates claim that only 10% of all ecclesiastical appeals are ultimately successful. The reason, many parties and their



representatives simply rehash the same losing argument. That is no way to win an appeal. The argument that failed you in the lower ecclesiastical courts will often meet a similar fate in the higher ecclesiastical courts. Your case, and /or your cause, may have victory within its reach, but clinging to a losing argument is no way to win. That is why any party who seeks to appeal a lower ecclesiastical court ruling should look to a new team and approach to handle his or her appeal. A fresh new set of eyes will be able to identify compelling arguments in your case, and also, and most importantly, objectively analyze the failings of your case in the lower ecclesiastical courts. It is wise that a new team or new approach if not both be brought in to handle the appeal.

## **2) Show the power of your Reason and the folly of the lower court**

The legal justice system, for all of its complexities, serves two purposes.

*"To do what is right, and To do what is reasonable."* Many lower ecclesiastical courts like many civil and criminal courts render decisions that may be simply unreasonable. Do not simply pinpoint how the lower ecclesiastical courts ruled in an unreasonable manner, but also show the error of their ways. Like For example, the infamous civil case of *Plessy v. Ferguson* set the irrational rule of law that black people and white people could live in a "separate but equal society" That ruling, which was thankfully overturned over half a century later, was patently an unconstitutional ruling by the Supreme Court. However, if one were to argue this case today most lawyers instinctively would argue this case on its legal merits. Rather than exposing the real-life absurdity of the law. If a ruling is absurd or ridiculous, explain to the ecclesiastical court, if implemented, how it could have negative effects upon the church and why justice requires that such a ruling be overturned.

## **3) The Law is in Constant Flux and use this to your**

## **advantage**

As mentioned above in the, *Plessy v. Ferguson* case, as irrational and unconstitutional as it was, it was the law of this land for approximately 55 years. The law was unreasonable, its effects deplorable, its ruling against common decency, but for over half a century I assure you many lawyers were probably convinced this law was set in stone with absolutely no chance for a reversal, and "*many of our Episcopal Leaders today feel the same about positions that they have taken simply because it is the way it was done before by their predecessors.*" However, they were wrong. The Supreme Court, in *Brown v. Board of Education*, overturned the *Plessy* decision and rejected its absurd holding, and "*today our Episcopal Leaders are finding the same is true in the church*". That is why you cannot be afraid to argue that a new view is merited or that the current practices may be unreasonable or outdated. Ecclesiastical Appellate courts often seek to maintain precedent, but they will not uphold a ruling or law that is no longer reasonable. Matters of fact, most ecclesiastical appellate courts are actively seeking to change abhorrent rulings and laws that are not a reflection of the current conviction of the church. If your case involves such a ruling or law, duly note precedent, but do not let it affect the thrust of your case. Your appellate argument may just be the one that establishes a new precedent.

## **4) Focus your argument**

Many when appealing their case are simply appealing to "win at any cost". There is nothing wrong with trying to win your case fairly. The adversarial system has its winners and losers. However, the higher ecclesiastical courts do not necessarily care who wins and who loses, as long as your approach is fair and ethical. To use unethical tactics is the wrong approach. Ecclesiastical Courts view this as a sign of weakness, not strength, in your case. Focus your efforts on the basic thrust of your appeal. Flush out the issue or issues, and craft your

argument with professionalism and passion. This will merit the ecclesiastical courts attention, and will offer you the best shot at winning an appeal

## **ECCLESIASTICAL APPEAL**

1. An ecclesiastical appeal in the case of an accused and/or accuser is an ecclesiastical proceeding by which a case is brought from a lower ecclesiastical to a higher ecclesiastical court for rehearing. The effect of an appeal is to suspend all further proceedings in the case, including the sentence, until the case has been finally decided in a higher ecclesiastical court.
2. Only an accused party, called the appellant, and/or accuser, called the Appellee who has submitted to a trial, can normally make an appeal. An appellant and/or Appellee that has not submitted to a trial is not entitled to an appeal.
3. An appeal can be made only to the next higher ecclesiastical court, except with the express consent of that court.
4. An appeal may be made either from a definite sentence or from any particular part of the ecclesiastical proceedings. The grounds for an appeal include matters such as:
  - a. Any irregularity in the proceedings of the lower ecclesiastical court;
  - b. Hindrance of procedural rights;
  - c. Refusal of reasonable indulgences to a party on trial;
  - d. Receiving improper or declining to receive proper evidence;
  - e. Rendering a decision before all testimony is taken.
  - f. Evidence for bias or prejudice in the case; and

- g. An unjust or mistaken sentence.
- 5. The appellant must make his appeal, or give notice of his intent to appeal together with the reasons for it, in writing within thirty- (30) days of the final decision. The appeal, however, should not be refused if reasons for unavoidable delay can be demonstrated.

## **THE ECCLESIASTICAL APPEALS PROCESS**

1. In the event the accused is dissatisfied with the decision or decree of the lower ecclesiastical court (Jurisdictional Pastors and Elders Council), the Trial Court he/she may file a " Notice Of Appeal" within thirty (30) days of the final decision or decree to the General Council of Pastors and Elders (the Appellate Court) with notice to:
  - a. The Jurisdictional Bishop
  - b. The Jurisdictional Secretary
  - c. The Jurisdictional Pastors and Elders Council
  - d. The General Secretary of the Church Of God In Christ
2. The Notice of Appeal shall be written in a formal manner, stating the reasons for the appeal along with all supporting documents to include but not limited to;
  - a. Transcript of Jurisdictional Trial
  - b. All documents presented at the Jurisdictional Trial
  - c. Witness list
  - d. Discovery documents
3. The process is the same for the accuser should the accuser be dissatisfied with the decision or decree of the lower ecclesiastical court.

## **FINAL ECCLESIASTICAL JUDICIAL APPEAL**

1. The final ecclesiastical judicial appeal is to the Judiciary

Board (our Supreme Ecclesiastical Court) in the event there remains dissatisfaction with the decision or decree of the General Council of Pastors and Elders (our first level Ecclesiastical Appellate Court) the appellant and/or respondent may file Notice Of Final Ecclesiastical Appeal to the Judiciary Board following the procedure as set forth above with proper formal notice to all parties to include but not limited to:

- a. Jurisdiction Bishop
  - b. Jurisdictional Secretary
  - c. Jurisdictional Pastors and Elders Council
  - d. General Council of Pastors and Elders
  - e. General Secretary
  - f. All Parties to the matter
2. The Notice of Final Ecclesiastical Appeal shall be written in a formal manner, stating the reasons for the appeal along with all supporting documents to include but not limited to:
  - a. Transcript of Jurisdictional Trial
  - b. All documents presented at the Jurisdictional Trial
  - c. Witness list
  - d. Discovery documents
  - e. Transcript of the Appeal Hearing
  - f. All documents presented at the Appeal Hearing
  - g. Appeal Hearing Witness list
  - h. Discovery Documents
3. **All parties are subject to the decision or decree of the Judiciary Board.**

*Disclaimer*

This book is not intended to be and does not constitute the giving of legal advice. Particular court decisions discussed herein may not apply to your specific factual situation, or may not be legally binding in the particular jurisdiction where you reside. This book is not intended to substitute for individual reliance on privately retained legal counsel.