

AIC Recommendations for a GLG Presbytery Appeals Process on October 6, 2023

The following is provided to suggest and point out the steps of an appeals process drawn from our *Book of Discipline*. The AIC is not seeking to overstep its remit, but to help bear the court's burden. Therefore, any or none of the following recommended procedural steps may be used by the court.

Reminders for the Court (see *Book of Discipline*, II.4)

- An appeal may be made (and thus sustained) on the following grounds: “*irregularity in the proceedings; injustice or undue severity in the censure imposed; manifest prejudice or unfairness to the party on trial; admission of improper testimony or refusal to hear testimony that is important; or undue haste in reaching a decision before all the testimony has been heard*” (4.10).
- “*An appeal shall be prosecuted by the appellant in person, unless, for reasons satisfactory to the court, he cannot be present. In this case, he may request a member of the court to act as his counsel, or request the court to appoint one of its members. If an appellant fails to prosecute his appeal at the next meeting of the higher court, or at such time as the court may designate, the decision of the lower court shall stand. He may, however, appear at a later meeting, due notice having been given to the court from which he appealed, & present proof that his failure to appear was due to unavoidable circumstances. If the court is satisfied, it may proceed at once to hear the appeal, or appoint a later date for the hearing.*” (4.13)
- “*The decision of the higher court must be based solely on the records of the lower court*” (4.15).
- Presbytery may decide the appeal in the following ways (see 4.15): “*The higher court may confirm. or reverse. in whole or in part, the decision of the lower court. If the appeal is sustained, the judgment of the lower court is reversed. If an appeal is not sustained, the judgment of the lower court is affirmed. If the lower court has not followed the prescribed order in the conduct of the case, the higher court may, at its discretion, return the whole case to the lower for a new trial. If the decision of the lower court appears unjust & unwarranted, the higher court may itself try the case.*”

Recommendation #1: That the appellant, his advisor, and the members of session be recognized as the parties in the case and not be permitted to participate in deciding the appeal (BoD, II.1.7; II.4.12).

Recommendation #2: That if the whole Presbytery hear and decide the appeal, a committee of three men appointed by the moderator be formed at the beginning of the proceedings to write the reasons of the court's decision. The committee will give its report before the end of this meeting.

Rationale: *The Book of Discipline, II.4.15 says: “A full record shall be kept of all the proceedings with the reasons for each decision.” Recording the reasons for each decision from the floor of Presbytery is not practical.*

Recommendation #3: that the following suggested preliminary steps be approved and enacted.

1. That the clerk ensure that a full record is kept of all the proceedings (BoD, II.4.10, 15).
2. That the moderator request everyone in the room to turn off non-essential electronic devices so that there are no unnecessary interruptions and that members of the court may give their full attention to the hearing of the appeal.
3. That the moderator lead or appoint at least one member of the court to lead in prayer for the proceedings.
4. That any parliamentarians who determine that they have a conflict of interest in the matter be given opportunity to recuse themselves and replaced with *pro tem* parliamentarians during the hearing of the appeal.
5. That the moderator restrict the discussion of the case to the written record (BoD, II.4.15).
6. That the moderator, in consultation with a clerk of GLGP, confirm that the appeal is in accord with the *Book of Discipline*, II.4.10,11,14:
 - a. That the appellant filed with session's clerk a written notice of appeal & a summary statement of the reasons for appeal within thirty days after the accused was informed of the action;
 - b. That the appellant had at least sixty days for preparing the appeal (along with a full statement of the reasons for the appeal & providing all relevant documents) and transmitting the same to the AIC clerk;
 - c. That Presbytery has had thirty days to read and process the appeal;
 - d. That the material records & papers pertaining to the case are present for considering the appeal;
 - e. That the reasons assigned by the appellant in the appeal are the same as those presented to the lower court.
7. That the moderator remind the members of the court of the solemn duty in which they are about to engage, and of their responsibilities as judges in the Lord's house, and enjoin them to dismiss from their minds all prejudice or personal considerations, and to concern themselves with the spiritual welfare of the church (cf. BoD, II.3.2).

Recommendation #4: that the following procedural steps be approved and enacted (based on *Book of Discipline*, II.4.14a-g, 15).

1. The clerk shall read the sentence appealed from.
2. The clerk shall read the appeal and reasons assigned by the appellant, which must be the same as those presented to the lower court.
3. The moderator shall remind the court of the grounds for appeal (BoD, II.4.10, E-17).

4. The Presbytery shall waive the reading of the record based on the court having “sufficient opportunity to review the record and papers” (BoD, II.4.14.c, E-17), with the qualification that “Either party may request the reading of specific portions of the record important to the case if the reading of the full record is waived.”
5. The Presbytery grant the parties up to twelve minutes each to present their opening speeches (appellant first, then session), then the appellant up to seven minutes for his closing speech including any rebuttal comments.
6. Members of the court shall be permitted to respectfully ask, by addressing the moderator, clarifying questions of both parties for up to five minutes.
7. Opportunity shall be given for discussion of the case by the members of the court for up to fifteen minutes.

Suggested prior to general discussion of the case:

- a. That if either party objects, no member of the court who has not been present during the whole appeal shall be allowed to vote in the final decision.
 - b. That the moderator remind the court who is not permitted to participate in deciding the appeal.
 - c. That the moderator ask those who are not participating in deciding the appeal to withdraw from the room, while the court deliberates.
 - d. That the court begin its deliberation with prayer for Divine guidance in weighing the evidence and in reaching a just decision.
8. When the deliberation is finished, a vote shall be taken on sustaining or not sustaining the appeal, each specification of error being voted on separately.

Suggested:

- a. That the moderator remind the court that its decision must be based solely on the records of the lower court.
- b. That the moderator again remind the court of the grounds for appeal (BoD, II.4.10, E-17).
- c. That the clerk of Presbytery read each specification of error and ask: *“Shall this specification of error be sustained?”* A standing vote should be taken on each specification of error separately and with no further discussion. The clerks shall count the votes and the moderator announce the decision. A record of the aye’s and nay’s should be recorded. A simple majority vote is required to sustain a specification of error.
 - (1) If none of the specifications of the appeal is sustained, then the appeal is not sustained, and the court has upheld the decision of the lower court.

- (2) If at least one of the specifications of the appeal is sustained, the moderator will call for a fifteen-minute recess to give time for motions to be carefully formulated and written down.
- (3) After the fifteen-minute recess, the moderator will entertain a motion on whether:
 - i.) the lower court has not followed the prescribed order in the conduct of the case. The court may, at its discretion, return the whole case to the lower for a new trial.
 - ii.) the decision of the lower court appears unjust and unwarranted. The higher court may determine to have the Presbytery try the case itself.
- (4) If the case is not retried, the moderator shall entertain a motion that will either:
 - i.) not sustain the appeal.
 - ii.) reverse in whole or in part the decision of the lower court.
- d. When the court has reached its decision, the parties are to be recalled and the result announced.
- e. That the clerk of Presbytery, or its Commission, notify the parties, in writing, of its decision.
- f. That Presbytery conclude the hearing of the appeal with prayer.