

Judicial Code Review Team Report

I. Introduction

A. Background and mandate

In recent years the church worldwide has been growing more aware of how some of its leaders have, at times, abused their power. The growing awareness of various abuses has led to ongoing synodical discussions about how to address and curtail abuse situations in the CRCNA. In connection with these matters Synod 2019 considered how widely the Judicial Code functions and how it also functions more particularly in cases where abuse has been alleged. From that discussion Synod 2019 adopted the following recommendation:

That synod instruct the Council of Delegates to review the Judicial Code every five years, seeking input from the Judicial Code Committee, the Office of Safe Church Ministry, and Church Order experts, to ensure that the Judicial Code continues to function as intended and to assess whether updates and/or modifications are needed.

Grounds:

- a. This allows the Judicial Code Committee and others who work with the Judicial Code to be involved in the review process.
- b. Reviewing policy is a helpful practice.

(Acts of Synod 2019, p. 763)

The COVID-19 pandemic and a review of the appeals process in Church Order delayed the implementation of the first review, but in 2022 the COD reported to synod that it would initiate a review. The result was the appointment of the Judicial Code Review Team, which began its work in January 2023. We have met a total of twelve times, all online, and at the time of this writing the team included the following members:

- three former members of the Judicial Code Committee (JCC), all with legal background and with JCC case experience: Charles Adams, Joel Vos, and Roberta Vriesema
- two ordained ministers of the Word: Rebecca Jordan Heys and Johannes Schouten
- a former commissioned pastor and staff member of the denominational Office of Race Relations: Rudy Gonzalez
- the professor of church polity at Calvin Theological Seminary as an adviser: Kathy Smith
- the director of synodical services as staff support: Scott DeVries

To achieve our mandate, the team read each paragraph and section of the Judicial Code aloud together and made notes on any sections of the code that raised questions about clarity, process, or how they contributed to the goals of the Judicial Code. The members who had JCC case experience also

reflected on how the sections of the code had been interpreted and applied in prior proceedings. The proposed changes stemming from those notes were reviewed by the full team and are now ready for review by the COD and synod. Where it seems advantageous, this report provides brief explanations of some of the changes we recommend.

It is worth noting that along with including past members of the JCC and Church Order experts, the team reached out to Thrive staff (formerly Safe Church Ministry staff) to discuss some of the changes, particularly those dealing with the Safe Church Advisory Panel Process.

B. Additional mandate: Use of the Judicial Code in matters of church discipline

After the committee began working on its initial mandate, it was also tasked with an additional matter. Synod 2023 gave instructions to clarify how the Judicial Code can or cannot be used with matters of church discipline, adopting the following recommendation:

That synod direct the Office of General Secretary to assemble a task force (or similar body) to design and/or clarify an appeals process for church members under discipline. This body shall address processes for members under general discipline.

Grounds:

- a. Neither Church Order nor the Judicial Code seem to provide clear provisions for members under discipline to appeal a decision regarding their discipline.
- b. While the authority for discipline and its implementation is given to the local consistory, there should be a clearly defined process for members and officebearers to appeal a decision regarding discipline.

(Acts of Synod 2023, p. 1013)

II. Proposed changes to the Judicial Code

A. Rationale and process

The preamble to the Judicial Code includes a helpful discussion of the rationale for the Judicial Code:

The belief is that this Code “will help to insure just treatment of those who are involved in the judgment and decisions of the church” and that providing “impartial judgments among God’s people” is required by Scripture (Deut. 1:16-17; Deut. 16:18-20; Lev. 19:15; 1 Tim. 5:19-21). “Procedural guidelines” are needed to deal with substantive issues in an appropriate and “ecclesiastical manner” (Church Order, Article 28), and, according to synod, the Judicial Code provides this “procedural pattern within which the law of love may be fulfilled (cf. James 2:1, 8-9).”

Fundamentally, we believe that God is a God of justice and that he also commands his followers to act justly (Mic. 6:8). When disputes arise within

the body of believers, as they do in this fallen world, justice requires a forum in which the dispute can be properly framed, evidence can be received by the parties, and an impartial determination can be made regarding the merits of the dispute. Our review of the Judicial Code, in light of the experience of the committee members who have been involved in recent Judicial Code hearings, resulted in suggested revisions that we believe will facilitate the process of judging justly in proceedings under the Judicial Code.

B. Significant recommendations

The changes that are proposed are not voluminous. The work of a former Task Force to Review the Judicial Code, which reported to Synod 2014, made many good revisions to the Judicial Code, and those were followed up by a few more revisions in 2015 (*Agenda for Synod 2014*, pp. 72-84; *Acts of Synod 2014*, pp. 569-70; *Agenda for Synod 2015*, pp. 107-11; *Acts of Synod 2015*, p. 627) and in 2019 (*Acts of Synod 2019*, pp. 717-18). In that sense, our work has involved tuning rather than an overhaul. This report does not discuss every revision but calls attention to the more significant recommendations made by the committee.

1. The first significant revision is found in section 3 of the Judicial Code. The proposed addition to the text deals with the supplemental mandate “to design and/or clarify an appeals process for church members under . . . general discipline.”

In the view of the committee, because the Judicial Code deals with decisions of assemblies, it does not clearly apply at present to church members who have been suspended by a consistory. This is due to the fact that the council is defined as an assembly within the Church Order (Art. 26), while the consistory by itself is not an assembly. It was our conclusion that, if synod desires to have suspension by a consistory be subject to an appeal process, the Judicial Code would need to be amended to provide for that result.

This would thus involve a change to our existing church governance. The proposed addition to section 3 of the Judicial Code which would make that change (adding a subsection vii to section 3, a) would read as follows:

vii) a member who has been suspended by a consistory, or a person who has been excluded from membership by a consistory. Such persons may file written charges in order to obtain a review by classis of the suspension or exclusion. In the Judicial Code proceeding, the role of classis shall be as follows (cf. Supplement, Art. 78-81, d):

- 1) To judge whether proper procedure has been followed.
- 2) To assure that adequate pastoral care has been extended to the person.

3) To determine that the consistory has advanced adequate reasons for proceeding with discipline.

This language would make a suspension decision reviewable by a classis, conducting an original hearing that is limited to the criteria set forth in Supplement, Articles 78-81, d.

2. The next significant proposed change is in section 4 of the Judicial Code. The experience of the committee is that the Judicial Code contains procedures and requirements that are familiar to persons with legal training but not to persons without such legal training. This may include both the complaining party and the officers of the assembly who are tasked with responding to the complainant and implementing the rules contained in the Judicial Code. In order to bridge this gap in experience and training, we recommend the creation of a roster of volunteers to provide procedural advice and technical recommendations to the parties to a Judicial Code proceeding. We therefore recommend that a new subsection b be added to section 4:

b. The Office of General Secretary will maintain a roster of volunteers who are willing to provide assistance to complainants and respondents with respect to prehearing procedures. The roster will be provided to any complainant or respondent upon request. The role of these volunteer advisers is to advise a party regarding preparation of witness and exhibit lists, and any other advance disclosures or written submissions that a party may be required or choose to make in advance of a hearing. The party remains responsible for preparing all pre-hearing submissions; the volunteer is not required to do so. A volunteer is not required to give substantive advice regarding the merits of any charges. A party is not required to make use of such a volunteer, and the unavailability of a volunteer shall not be grounds for appeal of any decision rendered following a judicial hearing.

The closing sentences of this proposed change are intended to protect the volunteer so that their role remains one of providing technical advice. They are not to do the job of the party for that party.

3. The third significant change is in section 5, a, vi. This proposed addition deals with how witnesses may be questioned. It is designed to increase the flexibility of the person presiding over a Judicial Code proceeding. There may be instances in which neither party has asked a relevant question, or there may be situations where a witness is being questioned directly by a person who is accused of abusing the witness. In such situations, this revision would give the presiding officer flexibility to change the manner in which the questioning takes place:

The presiding officer shall have discretion to determine the manner in which witnesses will be questioned. As an example, the presiding officer may determine that questions will be submitted in advance of

the hearing, and that the questioning of a witness will be done by a person other than the complainant or respondent.

4. In section 5, c, we propose that additional clarity be given regarding the burden of proof that applies in a Judicial Code proceeding. This language is adapted from the intermediate standard of proof in legal proceedings. It replaces the “high degree of probability” standard in the current Judicial Code. In the view of the committee, this standard was not clear to those with legal training or to those without it. The committee sensed that the use of a familiar legal standard would better quantify the burden of proof that is applicable. This intermediate standard requires more than a preponderance of the evidence but less than the criminal standard of proof beyond a reasonable doubt:

c. . . . Written charges must be proven by evidence that is clear, satisfactory, and convincing, to a reasonable certainty. Clear, satisfactory, and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof.

5. The fifth proposed change is in section 6, f. It clarifies that the recusal requirements apply equally to participants in prior Judicial Code proceedings and Safe Church proceedings, when appeals from decisions of assemblies acting in their judicial capacity are filed:

f. Persons that have voted on a matter in an assembly shall recuse themselves from participating in the appeal. In the event that the appeal is from a decision of an assembly related to a Safe Church proceeding, participants in the Safe Church panel process shall recuse themselves from participating in the appeal.

6. The sixth major change is in section 9, e. Section 9 addresses how synod processes a Judicial Code determination. The revision in this section addresses confidentiality. The Judicial Code calls for confidentiality. The revision in section 9, e clarifies what that means. In the report to synod, names of participants, other than the classis and the complainant, will be redacted:

e. . . . These written findings of fact and recommendations shall include the names of the parties to the appeal, but shall otherwise omit any disclosure of names in cases where such disclosure is judged to be potentially damaging to their reputation.

7. The last significant revision is in section 9, where we propose the addition of a new subsection i to address how synod receives and considers a judicial matter. There is an inherent difficulty in concluding a Judicial Code proceeding by having synod decide the matter. Synod is a broad assembly that is well suited for ecclesiastical decisions. Practically, it does not have the time to do a particularized review of the facts of a Judicial Code dispute.

It is also difficult to have synod deliberate in a judicial manner rather than an ecclesiastical manner. In the legal context the record of the proceedings (testimony and exhibits that are admitted into evidence) is critical, and the court is limited to considering only properly admitted evidence. The members of synod will typically not have the time or opportunity to review what may be a record of hundreds of pages of transcript of testimony and written exhibits, which are entrusted to the Judicial Code Committee as synod's advisory committee.

Recognizing this difficulty, the new paragraph 9, i does not remove synod from its role as the ultimate decision maker regarding the recommendations of the Judicial Code Committee, but it does require a degree of deference to the prior factfinder:

- i. Unless synod conducts its own original judicial or appeal hearing, synod shall give deference to the factual findings made by the Judicial Code Committee.

III. Recommendations to Synod 2024

A. That synod grant the privilege of the floor to Charles Adams (chair), Joel Vos (vice chair), and Kathy Smith (adviser) when the report of the Judicial Code Review Team is discussed.

B. That synod adopt the following changes to Church Order Supplement, Article 30-c, Judicial Code of Rights and Procedures (additions underlined, deletions in ~~strikethrough~~):

Supplement, Article 30-c

JUDICIAL CODE OF RIGHTS AND PROCEDURES

Preamble to the Judicial Code

Synod 1977 adopted the first edition of the Judicial Code of Rights and Procedures. It did so to "encourage greater uniformity of procedure throughout our denomination when charges must be adjudicated." The belief is that this Code "will help to insure just treatment of those who are involved in the judgment and decisions of the church" and that providing "impartial judgments among God's people" is required by Scripture (Deut. 1:16-17; Deut. 16:18-20; Lev. 19:15; 1 Tim. 5:19-21). "Procedural guidelines" are needed to deal with substantive issues in an appropriate and "ecclesiastical manner" (Church Order, Article 28), and, according to synod, the Judicial Code provides this "procedural pattern within which the law of love may be fulfilled (cf. James 2:1, 8-9)."

However, the Judicial Code should not be considered as providing a means of broad applicability for resolving disputes. Rather, the Judicial Code is intended to be a dispute-resolution mechanism of last resort because judicial hearings and subsequent decisions of assemblies will likely never fully satisfy the parties involved. Thus, complete reconciliation may not be

achieved. Rather, the focus of Judicial Code hearings and of the resultant decisions made by the assemblies is not primarily on reconciliation but on some kind of final resolution. While the Judicial Code does provide rights for all parties and a fair process toward resolution, it does not purport to restore the mutual trust that may have been lost as any given dispute may have raged and festered.

Before invoking the rights afforded under the Judicial Code, brothers and sisters in Christ should make every effort to resolve issues between them amicably, according to the teachings of Scripture. If they require external assistance to reach agreement, they should, where appropriate, seek trained facilitators or mediators to help them reach agreement. A process of mediation led by neutral parties may facilitate a more satisfactory resolution.

One of the ways in which issues can be resolved more amicably is to use restorative justice practices. Synod 2005 encouraged “the active participation of churches and church members in restorative justice efforts in order to restore and reconcile victims and offenders where possible, and to effect, as far as possible, the establishment of justice for all members of our societies.” It also urged “congregations, schools, denominational offices, other Christian institutions, and homes to employ restorative justice practices” (*Acts of Synod 2005*, pp. 761-62). These practices bring with them greater potential for true reconciliation.

On the other hand, mediation or restorative justice practices are not necessarily appropriate for charges involving physical, emotional, or sexual abuse. Such charges should be dealt with in the first instance by way of the Advisory Panel Process approved by synod and associated with the denomination’s Safe Church Ministry (see *Acts of Synod 2010*, p. 866; *Agenda for Synod 2010*, pp. 497-502).

Thus, even if written charges have been filed and a formal hearing has been requested, the assembly must still make a determination as to whether or not sufficient means for resolution, formal or informal, have or have not been exhausted. If such means have not been exhausted, the assembly should seriously consider postponing the judicial hearing while further efforts are undertaken. Only after the assembly determines that sufficient means have been exhausted or that such means do not resolve the matter, should the assembly proceed to conduct a judicial hearing as set forth below.

The scope of the Judicial Code is limited to “disputes arising from allegations of offenses against the Word of God, doctrinal standards, or Church Order are subject to resolution under the Judicial Code.” While these issues may have civil or criminal legal aspects, the Judicial Code is not intended to supplant or displace the civil or criminal legal processes that may apply in these situations. Rather, the purpose of the Judicial Code is to provide a fair process for determining and adjudicating the ecclesiastical consequences of

disputes which fall within its scope. Assemblies should obtain qualified legal counsel to address questions of civil or criminal liability.

Section 1: Scope of the Judicial Code

[no changes]

Section 2: Judicial Rights

- a. Both the complainant and the respondent shall have the right to be represented or counseled by ~~a member~~ one or two members of the CRC in any judicial hearing. The requirement of church membership may be waived at the reasonable discretion of the assembly that is hearing the case.
- b. Except when the assembly withdraws to decide the issues raised in the judicial hearing, the complainant and the respondent shall have the right to be present at the judicial hearing and at the judicial hearing considering an appeal from a judicial hearing.
- c. Except as limited in Section 5, a, both the complainant and the respondent shall have the right to have witnesses examined in their presence.
- d. Both the complainant and the respondent may appeal by right the decision of the assembly to the assembly next in order.
- e. The provisions of the Judicial Code shall apply to all appeals from decisions resulting from the judicial hearing on a complaint.
- f. No member or group of the CRC, nor any person connected with the matter, shall circulate, or cause to be circulated, any written or printed arguments or briefs upon any complaints before the final disposition of same, including appeals, if any.
- g. Assuring due process and natural justice shall be the guiding principle in the interpretation and application of the Judicial Code.
- h. All judicial hearings shall be conducted in a considerate and Christian manner.

Section 3: Procedures for Filing Written Charges

- a. Written charges may be filed by
 - i) a member of the CRC against another member or against an assembly;
 - ii) an assembly against another assembly or against a member;
 - iii) a person who is not a member of the CRC against a member or assembly of the CRC, provided such person has been directly affected as an individual by the charged offense;
 - iv) a member of the CRC against an agency, board, or committee;
 - v) an assembly against an agency, board, or committee;

- vi) an employee of an agency, board, or committee against an agency, board, or committee, excluding challenges to termination of employment;
 - vii) a member who has been suspended by a consistory, or a person who has been excluded from membership by a consistory. Such persons may file written charges in order to obtain a review by classis of the suspension or exclusion. In the Judicial Code proceeding, the role of classis shall be as follows (cf. Supplement, Art. 78-81, d):
 - 1) To judge whether proper procedure has been followed.
 - 2) To assure that adequate pastoral care has been extended to the person.
 - 3) To determine that the consistory has advanced adequate reasons for proceeding with discipline.
- b. Prerequisites:
- i) If the allegation is abuse on the part of a church leader as defined by the CRC's Safe Church Ministry's Advisory Panel Process, the complainant shall first have exhausted that process in accordance with the procedures and standards of confidentiality outlined therein and in lieu of the procedures under Sections 2-5 of this Code, to the point of obtaining a decision by the council of the church leader. Both parties have the right of appeal to classis as provided in Sections 6-7.
 - ii) No written charges against an agency, board, or committee may be filed until the complainant shall first have exhausted all reasonable and direct efforts according to procedures prescribed by such agency, board, or committee to resolve the appellant's complaint or grievance internally.
- c. Time limits:
- i) There is no time limit for filing a written charge of sexual abuse. Allegations of sexual abuse against a church leader shall first be made in accord with the Advisory Panel Process associated with the CRC's Safe Church Ministry.
 - ii) An allegation of non-sexual abuse of a minor may be filed at any time before the complainant reaches age twenty-five (25). However, allegations of non-sexual abuse of a minor shall first be made in accord with the Advisory Panel Process associated with the CRC's Safe Church Ministry.
 - iii) All other written charges must be filed within three (3) years of the date on which the offense is alleged to have occurred.
- d. A person or an assembly filing a written charge shall be called the complainant, and the person or assembly against whom the written charge is filed shall be called the respondent.

- e. A written charge must be filed with an assembly, must set forth the alleged offense, must specify the facts relied upon to support the written charge, including, as far as possible, the time and place of the offense, and must state whether a judicial hearing is requested.
- f. A written charge shall not allege more than one offense. Several written charges against the same respondent may be presented and decided jointly, but a decision on each written charge must be made separately.
- g. The complainant shall mail or otherwise deliver a copy of the written charge to the respondent at the same time as it is filed with the assembly.
- h. Within sixty (60) days after the written charge is filed, the respondent shall file an answer with the assembly and shall mail or otherwise deliver a copy to the complainant. If the complainant did not request a judicial hearing, the respondent shall indicate in the answer whether a judicial hearing is requested.
- i. Jurisdiction of assemblies
 - i) A written charge against a member of the CRC shall be filed by the complainant with the council of the local church of which the respondent is a member.
 - ii) A written charge against an assembly, or against a consistory as provided in Section 3 a, vii shall be filed by the complainant with the assembly next in order (the order being council, classis, and synod).
 - iii) A written charge against an agency, board, or committee, including its agent or employees, shall be filed by the complainant with the assembly to which the agency, board, or committee is responsible.
 - iv) If a council or an agency, board, or committee of classis is the respondent, the judicial hearing shall be before the classis and in accordance with the hearing procedures set forth in Sections 2-5.
 - v) If a classis or an agency, board, or committee of synod is the respondent, the judicial hearing shall be before the Judicial Code Committee in accordance with the procedures set forth in Sections 2-5.

Section 4: Pre-hearing Procedures

- a. Except for good cause, the judicial hearing shall commence within six (6) months of the filing of written charges.
- b. The Office of General Secretary will maintain a roster of volunteers who are willing to provide assistance to complainants and respondents with respect to prehearing procedures. The roster will be provided to any complainant or respondent upon request. The role of these volunteer advisers is to advise a party regarding preparation of witness and exhibit lists, and any other advance disclosures or written submissions that a party may be required or choose to make in advance of a hearing.

The party remains responsible for preparing all pre-hearing submissions; the volunteer is not required to do so. A volunteer is not required to give substantive advice regarding the merits of any charges. A party is not required to make use of such a volunteer, and the unavailability of a volunteer shall not be grounds for appeal of any decision rendered following a judicial hearing.

- bc. After consulting with the complainant and the respondent, the assembly shall set the time and place for the judicial hearing on the written charge. At least forty-five (45) days before the judicial hearing, the date must be fixed and the parties notified.
- ed. No later than thirty (30) days before the judicial hearing, the parties shall cause to be delivered to the other party and the assembly a list of witnesses to be called to testify and a copy of the exhibits to be offered at the judicial hearing. At the judicial hearing, each party shall be limited to the witnesses and the exhibits disclosed, unless the party can establish that the witness or exhibit was not discovered until after the deadline.
- de. The assembly may, in its discretion, require further advance disclosures by the parties concerning the witnesses, documents, evidence, and arguments that they intend to present at the hearing.
- ef. When a written charge is filed with a council or classis, that council or classis shall serve as the judicial body, which shall include all members of the assembly except those who have a conflict of interest. Any members having a conflict of interest shall recuse themselves.
- fg. Either the complainant or the respondent may challenge the impartiality of a member on grounds of self-interest or that member's relationship with or responsibility to a participant in the judicial hearing. If the assembly decides by majority vote that the challenge has merit, the member shall be recused from the judicial hearing.
- gh. Before the hearing, the assembly may ~~shall~~ determine whether the written charges are substantial enough to warrant a hearing. This may be done by the assembly on the basis of the written charge, the answer, the proposed exhibits, and, if the assembly so desires, an informal conference with the parties and their representatives. The assembly may delegate the review of information and the informal conference to a committee, but after receiving a report from the committee, the assembly must make the determination with written grounds. This determination shall be conducted in a confidential manner to protect the reputations of the people involved and to protect the impartiality of the judicial assembly if the charge moves forward. A decision by a council or a classis that a charge is not substantial may be appealed.
- hi. If requested by either the complainant or the respondent, or in the discretion of the assembly, the assembly may direct that the proceeding

shall be kept confidential and shall not be published by any participant. All participants shall be notified on the record of the no-publication directive.

Section 5: Judicial Hearing Procedures

- a. A judicial hearing, if ordered, shall proceed as follows:
 - i) Each party may make an opening statement summarizing what that party expects to prove.
 - ii) The complainant shall proceed first with proofs, including witnesses and exhibits, and may be permitted by the assembly in its discretion to present rebuttal proofs.
 - iii) The respondent shall then proceed with proofs, including witnesses and exhibits.
 - iv) The receipt of evidence shall not be controlled by formal rules of evidence. The administration of oaths shall not be required.
 - v) At the request of either party, the presiding officer may exclude any evidence if the presiding officer determines that admitting such evidence would be irrelevant, untrustworthy, or fundamentally unfair.
 - vi) Both parties are permitted to question witnesses that testify at a judicial hearing unless the parties agree in writing at least fifteen (15) days before the hearing to admit a written statement of a witness. The presiding officer shall have discretion to determine the manner in which witnesses will be questioned. As an example, the presiding officer may determine that questions will be submitted in advance of the hearing, and that the questioning of a witness will be done by a person other than the complainant or respondent.
 - vii) After all evidence has been presented to the assembly, the complainant and the respondent shall summarize their cases either orally or in writing. The complainant may be afforded the opportunity for rebuttal.
 - viii) If either party objects to irregularity in the proceedings, the objection must be entered into the record. The presiding officer may sustain or disallow the objection. If the chair's ruling is challenged, the assembly must vote on the question of sustaining the chair.
- b. The testimony shall be recorded verbatim.
- c. The complainant has the burden to prove the written charge. Written charges must be proven by evidence that is clear, satisfactory, and convincing, to a reasonable certainty. Clear, satisfactory, and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence.

Absolute certainty is not required, but a guess is not enough to meet the burden of proof with a high degree of probability.

- d. If a complainant other than an employee or an assembly has filed written charges against an agency, board, or committee, he or she must allege—and the burden remains on him or her to show in any hearing—that the decision, act, or course of conduct being challenged substantially affects him or her directly, either materially or personally, and as an individual apart from other members of the church.
- e. If a complainant is an employee who has filed written charges against an agency, board, or committee, he or she must allege—and the burden remains on him or her to show in any hearing—that the decision, act, or course of conduct being challenged substantially affects him or her directly, either materially or personally, in his or her capacity as an employee.
- f. If a respondent fails to appear and the assembly determines that the respondent has been notified of the time and place of the judicial hearing and has had sufficient time to appear, the assembly may proceed in the respondent's absence.
- g. During the hearing, the presiding officer shall not comment on the merits of the case. This restriction does not apply when the assembly enters its final deliberations.
- h. The final decision on any case shall be by majority vote of the assembly of the members hearing the case. Any member that has not attended all the sessions or heard the case in its entirety may not vote unless that member reads or listens to the record before a vote is taken.
- i. The record of all proceedings including the testimony, the exhibits, papers, evidence, and findings in the case shall be certified by the presiding officer and shall be the basis of any appeal. The parties may have reasonable access to the record.

Section 6: Appeals

- a. Appeals shall be filed with the assembly next in order.
- b. The grounds for an appeal include irregularities in the proceedings of the lower assembly; decisions on the admission or exclusion of evidence; bias or prejudice in the case; manifest injustice in the judgment; or incorrect interpretation or application of the Word of God, doctrinal standards, or Church Order; and shall be based on the record of the judicial hearing.
- c. No decision resulting from a judicial hearing shall be amended or overturned except on a showing that the procedures were manifestly unfair; that the evidence obviously did not support the decision; or that an incorrect interpretation or application of the Word of God, doctrinal standards, or Church Order was made.

- d. The reviewing assembly shall not reassess the credibility of the witnesses that testified at the hearing.
- e. Appeals to synod from decisions of assemblies of the CRC acting in their judicial capacity and appeals from a board, agency, or committee of synod when the Judicial Code has been invoked shall be referred to the Judicial Code Committee.
- f. Persons that have voted on a matter in an assembly shall recuse themselves from participating in the appeal. In the event that the appeal is from a decision of an assembly related to a Safe Church proceeding, participants in the Safe Church panel process shall recuse themselves from participating in the appeal.
- g. A losing party that failed to appear at the judicial hearing either personally or by a representative shall not be permitted to file a claim of appeal.

Section 7: Appeal Procedures before a Classis following a Judicial Hearing before a Council

- a. Within ninety (90) days of the certification of the record, the losing party from a decision of a council following a judicial hearing, including a decision in a Safe Church proceeding, may file a written claim of appeal that states the grounds for the appeal with the stated clerk of classis. A copy of the claim of appeal shall also be delivered to the opposing party, the opposing party's representative, if any, and the clerk of the council that decided the case. Upon receipt of the claim of appeal, the clerk of council shall forthwith transfer the certified record to classis. If the appeal is from a Safe Church proceeding, the record produced in referenced in step 12 of the Advisory Panel Process shall be the record on appeal.
- b. The appeal hearing in classis shall be limited to the grounds set forth in the claim of appeal.
- c. With the claim of appeal, the losing party ~~shall~~ may file a written submission in support of the claim of appeal. Portions of certified record and any other authority that supports the grounds of appeal must be clearly cited. A copy of the submission shall also be delivered to the opposing party. Except if permission is granted by classis, the written submission shall not exceed thirty (30) pages double spaced.
- d. Within sixty (60) days, the opposing party ~~shall~~ may file a written response to the claim of appeal with the stated clerk of classis and also a written submission that cites from the record and any authority that supports the response. Copies of the response and submission shall also be delivered to the losing party. Except if permission is granted by classis, the written submission shall not exceed thirty (30) pages double spaced.

- e. In the event of the appellant's death, the assembly may proceed with and decide the appeal if it is deemed significant for the denomination, or if the appellant's representative provides proof of reasonable necessity for deciding the appeal.
- f. Classis shall schedule an appellate hearing no sooner than ninety (90) days and no later than one hundred and eighty (180) days after the date the appeal was filed and send notice of the time and date of the hearing to the parties.
- g. At the appellate hearing, each party shall have the opportunity to address classis to explain their position and to answer questions of classis. The losing party shall proceed first and may reserve time to respond after the prevailing party addresses classis. Unless permission is granted, the oral presentation for each party shall be limited to thirty (30) minutes.
- h. After the parties' presentations are concluded, classis shall go into strict executive session, review the record, and shall immediately consider and decide the issues of the case. The final decision on any appeal shall be by majority vote of the classis as constituted.
- i. Classis may affirm or reverse in whole or in part the decision of the council, or it may return the case to the council with instructions for a new partial or complete rehearing. A decision of classis that amends or overturns the decision of the council shall be written, shall state the grounds for amending or overturning, and shall be delivered to the parties. Written decisions should be sent to the parties as soon as practicable, but not later than forty-five (45) days after the appellate hearing.
- j. Within ninety (90) days of the issuance of the written decision, claims of appeal from a decision of classis may be filed with synod according to procedures for filing claims of appeal with classis.

Section 8: The Judicial Code Committee of Synod

- a. Original hearings and appellate hearings before synod shall be referred to a Judicial Code Committee appointed by synod. This committee meets between synods as frequently as its business requires and presents its recommendations to synod in writing. Although there are some separate regulations regarding this committee in the Rules for Synodical Procedure, the committee largely functions as a normal advisory committee of synod.
- b. The Judicial Code Committee shall be composed of twelve (12) members and shall reflect the diversity of the denomination, preferably with at least 25 percent of the members reflecting ethnic diversity and an equal balance of men and women. Each year four (4) persons shall be elected for terms of three (3) years. At least one (1) of these four (4) persons shall be a minister of the Word or a commissioned pastor; at least

one (1) shall be a person trained in the law; at least one (1) shall not be a minister of the Word or a commissioned pastor nor one trained in the law. Synod shall elect members from nominations presented by the Council of Delegates of the CRCNA. The Judicial Code Committee may recommend nominees to the Council of Delegates of the CRCNA. The terms of members shall commence July 1 following their election by synod. In the event of a vacancy on the committee because of resignation or death, the Council of Delegates of the CRCNA shall appoint a person to fill the balance of that term. Members may be reelected but shall not serve more than six consecutive years. A former member who has been off the committee for two or more years shall be eligible for election to the committee as a new member. The Judicial Code Committee shall select a chairperson and reporter from among its membership. In addition, the general secretary serves as a procedural adviser to the Judicial Code Committee chairperson. Any member of the Judicial Code Committee advising a given synod may be, but need not be, a delegate to that synod.

Section 9: Hearing and Appeal Procedures before the Synod Acting in Its Judicial Capacity

- a. Written charges filed with synod shall be referred to the Judicial Code Committee by the general secretary of the CRC to conduct an original hearing according to the procedures of the Judicial Code.
- b. Claims of appeal from decisions of classis following a judicial hearing shall also be referred to the Judicial Code Committee by the general secretary of the CRC to conduct an appeal hearing according to the procedures of the Judicial Code.
- c. Written charges brought against an agency, board, or committee of synod and any other matters requiring formal adjudication that synod undertakes shall also be referred by the general secretary of the CRC to the Judicial Code Committee for conducting a judicial hearing according to the procedures of the Judicial Code.
- d. Claims of appeal filed with synod following an appeal hearing before classis shall also be referred to the Judicial Code Committee by the general secretary of the CRC. The Judicial Code Committee shall review the claim of appeal and make a recommendation to the Council of Delegates whether the application has sufficient merit to warrant further review. No further appeal proceedings shall be conducted unless the Council of Delegates approves. If approved, the Judicial Code Committee shall conduct an appeal hearing according to the procedures of the Judicial Code.
- e. The Judicial Code Committee shall present its findings of fact and recommendations, along with grounds for its recommendations to synod in writing, and they shall be openly discussed in a plenary session of

synod. These written findings of fact and recommendations shall include the names of the parties to the appeal, but shall otherwise omit any disclosure of names in cases where such disclosure is judged to be potentially damaging to their reputation.

Normally the report is provided to synod delegates at such time that the matter is before synod (therefore time to read the report must be provided as well). However, the Judicial Code Committee may recommend to the officers of synod release of the written report to the delegates while synod is in session, one or two days before the matter is on the schedule; rationale should relate to the degree of confidentiality needed.

Not more than 15 business days and not less than 10 business days before the convening of synod shall be the time parameters within which the complainant and respondent shall receive the written report (sent by the Office of General Secretary). Providing the written report to the complainant and respondent includes a required commitment not to share the report with any party other than the representative of each.

- f. Upon receipt of the written report or prior to, both the complainant and respondent may request the opportunity to address synod. The Judicial Code Committee shall make a recommendation to the officers of synod as soon as possible based on ensuring due process (Church Order Supplement, Article 30-c, section 2, g) and on the benefit synod would derive from such an address, and communicate the decision immediately to both parties (even if only one has made such a request).
- g. The Judicial Code Committee may provide the officers of synod appropriate written advice on Judicial Code matters.
- h. Synod may dispose of a judicial matter in one of the following ways:
 - i) by deciding the matter;
 - ii) by deferring it to one of its committees for settlement or reconciliation;
 - iii) by remanding it with advice to the appropriate classis or council; or
 - iv) by conducting its own original judicial or appeal hearing.
- i. Unless synod conducts its own original judicial or appeal hearing, synod shall give deference to the factual findings made by the Judicial Code Committee.
- j. If synod conducts its own judicial or appeal hearing, it shall follow Judicial Code procedures set forth herein.

(Acts of Synod 1977, pp. 48-54)
(Amended Acts of Synod 1993, p. 499)
(Amended Acts of Synod 1996, pp. 484-88)
(Amended Acts of Synod 2003, pp. 688-91)

(Amended *Acts of Synod* 2013, p. 549)
(Amended *Acts of Synod* 2014, p. 569)
(Amended *Acts of Synod* 2015, p. 627)
(Amended *Acts of Synod* 2019, pp. 717-18)
(Amended *Acts of Synod* 2024, pp. ____)

- C. That synod instruct the COD to conduct another review to begin after Synod 2027 and report to Synod 2029, per Synod 2019's instructions to review the Judicial Code every five years.
- D. That synod accept this report as fulfilling the mandate of the Judicial Code Review Team and dismiss the team with gratitude for its work.

Charles Adams (chair)
Scott DeVries (staff)
Rudy Gonzalez
Rebecca Jordan Heys
Johannes Schouten
Kathy Smith (adviser)
Roberta Vriesema
Joel Vos (vice chair)