

What is involved in a Petition? (Code II 3.78-3.84)

A petition is a written and signed request made to a court relating to the affairs of the petitioners. It may ask only for something that cannot be obtained by other proper means.

Any individual person or group of people, or a lower court or committee of management, may present a petition. It is not possible to use a petition as an alternative to lodging an appeal or complaint.

The Code instructs Sessions and Presbyteries to assist communicants and adherents in preparing petitions. but petitioners must present their own cases.

In presenting a petition, the petitioner is obliged in reasonable time to inform any other involved parties either by personal delivery or registered mail.

A petition stands or falls by the quality of the proceedings at the bar. No attempt should be made to influence members of the court in the decision outside the due processes or the petition may be regarded as incompetent.

What are the Procedures for Hearing Petitions

At the hearing, petitioners are called to the bar of the house. This means that, although they are non-members, they are given a status in which they can conduct their business before the court but they are unable to take part in the normal processes of debate.

Following a reading of the petition, the court usually hears the petitioner's case but the court is not obliged to do so if it sees good reason. If it chooses not to receive the petition the matter stops there.

Following the presentation of the petitioner's case, questions are asked.

After the parties are removed from the bar, the matter is considered by the court which decides whether to "grant the prayer of the petition".

A *no* vote results in a motion to dismiss the petition. A *yes* vote is followed by a motion to give effect in some way to the request in the petition.

What is involved in a Reference? (Code II 3.85-91)

A reference is a document containing matters of difficulty or importance which is sent to a higher court from a lower court for advice or opinion.

It is sent in the form of an extract minute from the records of the lower court. All persons having a direct interest in the matter contained in the reference must be informed by the lower court.

A member of the court forwarding the reference speaks to the matter before the higher court. Apart from the moderator, no-one may interrupt until the speaker has finished.

If the court votes to sustain the reference, the matter is then considered by the court on its merits.

Any members of the referring court in the house have the right to take part in the debate and vote.

Options available to the court include determining the issue directly or advising the lower court to deal with the matter according to the laws of the church.

What is involved in an Overture? (Code II 3.61-77)

An overture is a formal, written proposal either to enact a new church law, to change an existing law or to have something done which will benefit the church. Although included here, an overture is not a judicial process of the church and, apart from ensuring a fair hearing, courts should not be greatly concerned that departing from formal procedures will prejudice the case.

Overtures may be presented by lower courts or by any two members of the church. In the case of the Assembly, it requires seven members but overtures may also be presented by committees of the church. Except in cases of urgency, overtures from sessions are forwarded through Presbyteries which are obligated to pass it on but may do so with or without comment.

A overture requires notice either at a previous sitting of the court or by circular to all members.

What are the Procedures for Hearing Overtures?

As overtures are not judicial proceedings, all parties are able to take part in the debate, but only if they are members of the court.

Lower courts appoint two persons to state the case for the overture. After they have been heard, questions may be asked.

The overtureists have prior rights to move that the overture be sustained. If this is approved a further motion from the overtureists that some kind of action be taken is considered. If it is not approved the overture is dismissed

The Assembly may sustain an overture in its original or amended form, but it has the right to send proposals that may result from an overture down to lower courts for consideration. However any proposal that will result in a change to the Code of the church must go down to presbyteries under the Barrier Act.

<p>Some Questions for Discussion</p> <ol style="list-style-type: none"> 1. What might a member of our church petition about? 2. What attitudes do elders bring to the court when faced with a member's petition? 3. What is the value of the overture process to the ongoing life of the church?

**Elders
Association**



The Elder and the Judicial Responsibility of Church Courts

Petitions, Overtures and References

In this study:

- What is involved in a petition?
- What are the procedures for hearing petitions?
- What is involved in a reference?
- What is involved in an overture?
- What are the procedures for hearing overtures?