

**ITEM A.103
FOR ACTION**

Subject: Authorization to Engage and Hire Outside Counsel

Recommendation:

WHEREAS, the Presbyterian Church (U.S.A.), A Corporation (the “A Corporation”) is the principal corporation of the General Assembly of the Presbyterian Church (U.S.A.), established to facilitate the management of its corporate affairs; and

WHEREAS, all powers of the A Corporation are granted to its Board of Directors (the “Board”) by Section II.05 of its Bylaws; and

WHEREAS, the Board has delegated to the Audit, Legal, and Risk (“ALR”) Committee of the Board, in such Committee’s Charter, oversight of the A Corporation’s finance, legal, risk management, and reporting practices, including appropriate legal and compliance processes; and

WHEREAS, the Board has also delegated to the ALR Committee, in such Committee’s Charter, responsibility for serving as a liaison with equivalent committees of other Presbyterian Church (U.S.A.) agencies or organizations on legal issues; and

WHEREAS, the Board may, pursuant to Section VI.03 of its Bylaws, and otherwise, delegate authority to enter into contracts to officers or agents of the A Corporation; and

WHEREAS, it is important to have a clear policy concerning who is authorized to retain outside counsel, to review the billing of outside counsel, and to oversee the work of outside counsel once retained, in order to secure appropriate expertise for particular matters, to avoid conflicts of interest, and to preserve appropriate attorney-client and attorney work-product privileges and protections,

NOW THEREFORE, BE IT RESOLVED that:

- 1. The General Counsel (or if there none, the Acting General Counsel or most senior in tenure of any Associate or Deputy General Counsel) of the A Corporation, or her or his designees from time to time, shall be authorized to retain, oversee, and provide for payment of outside counsel for the following as clients of the Legal Services Office:**
 - a. The A Corporation and its individual directors, officers, and members acting within the scope of their duties;**
 - b. The General Assembly;**
 - c. All commissions, committees, task forces, and other bodies formally appointed or elected by or in the name of the General Assembly;**
 - d. All constituents of the General Assembly and the A Corporation, including, but not limited to:**

PRESBYTERIAN CHURCH (U.S.A.), A CORPORATION BOARD

March 28-29, 2019

Administrative Services Group

Over time as members and staff of various agencies, boards, committees, and other entities change, there may be a loss of institutional memory concerning the appropriate role and authority of the Legal Services Office of the A Corporation. This recommended action provides clarity to that role and authority with respect to the retention, oversight, and provision for payment of outside counsel. Absent such a role, there is an unacceptable risk of inconsistency and conflict developing in the legal positions of the A Corporation or developing in the legal positions of the PCUSA entities and persons served by the A Corporation.

With respect to paragraph 3.a of the proposed Action, under Section IV(B)(2)(c) of the Organization for Mission of the Presbyterian Church (U.S.A.), the Stated Clerk is, “[a]s an officer of the General Assembly,” directed to “preserve and defend the Constitution of the Presbyterian Church (U.S.A.), and support the decisions, actions, and programs of the General Assembly.” As part of this function, “[w]hen the Stated Clerk deems it necessary, after consulting with appropriate persons or bodies, the Stated Clerk may retain legal counsel and institute or participate in legal proceedings in civil and criminal courts.”

Because of the responsibilities of the A Corporation as the principal corporation of the General Assembly, it is an appropriate body with which the Stated Clerk should consult in seeking to institute or participate in legal proceedings in civil or criminal courts. This Action authorizes the Legal Services Office to act for the A Corporation in that consultation and to make such retentions as may be requested by and for the Stated Clerk. As provided in paragraph 4 of the proposed Action, the Stated Clerk would have the role of representative of the client in such matters. The client in such matters is the General Assembly.

This Action is also not intended to change the traditional role of the General Assembly’s Advisory Committee on Litigation. That committee advises the Stated Clerk on legal positions others request the Stated Clerk to take or that are taken by others, and in particular on whether the Stated Clerk should join in briefing by other persons or entities, including other denominations. See <http://oga.pcusa.org/section/mid-council-ministries/constitutional-services/amicus-curiae-briefs/>. The Advisory Committee evaluates such requests for participation (typically requests to participate in briefs *amicus curiae*) on the basis of sixteen long-established, published criteria. See <http://oga.pcusa.org/media/uploads/oga/pdf/am01.pdf>. When filing or joining in such briefing, the Stated Clerk speaks as an officer of the General Assembly, not as an individual, or as an officer of the A Corporation, or for the whole of the PCUSA, but only for the General Assembly. Since 1994, the Stated Clerk has participated in over 80 amicus briefs on this basis.