

1 **OVERTURE 19** from Pacific Northwest Presbytery (to CCB, OC)
2 “Amend *BCO* 38-1 and 42-2 to Allow Appealing a Censure in a
3 Case without Process”
4

5 **Be it resolved** that *BCO* 38-1 and 42-2 be amended as follows (strike-through for deletions,
6 underlining for new wording):
7

8 ***BCO* 38-1.** When any person shall come forward and make his offense known
9 to the court, a full statement of the facts shall be recorded and judgment
10 rendered without process. In handling a confession of guilt, it is essential that
11 the person intends to confess and permit the court to render judgment without
12 process. Statements made by him in the presence of the court must not be taken
13 as a basis of a judgment without process except by his consent. In the event a
14 confession is intended, a full statement of the facts should be approved by the
15 accused, and by the court, before the court proceeds to a judgment. ~~The accused~~
16 A censured person has the right of ~~complaint against the judgment to appeal the~~
17 censure (*BCO* 42).
18

19 ***BCO* 42-2.** Only those who have submitted to a regular trial are entitled to an
20 appeal, and those appealing a censure in a *BCO* 38-1 “case without process.”
21

22 **Background and Rationale:**

- 23 1. This change will align with *BCO* Chapter 42 (“Appeals”), which allows a man to appeal
24 his censure after being judged guilty at trial, even if he does not appeal his conviction. It
25 is only fair that this same right to appeal a censure should be given to someone who
26 confesses per *BCO* 38-1.
27
- 28 2. *BCO* 42-3 gives examples of grounds for appeals. It is possible that some of these grounds
29 could also exist in a *BCO* 38-1 case-without-process, particularly “irregularity in the
30 proceedings” and “injustice in the censure.”
31

32 *BCO* 42-3. The grounds of appeal are such as the following:

- 33 – any irregularity in the proceedings of the lower court;
34 – refusal of reasonable indulgence to a party on trial;
35 – receiving improper or declining to receive proper evidence;
36 – hurrying to a decision before all the testimony is taken;
37 – manifestation of prejudice in the case; and
38 – mistake or injustice in the judgment and censure.
39

- 40 3. Confusion from Multiple Complaints – Unless *BCO* 38-1 is revised, there could be
41 multiple complaints filed against the same censure. This complicates higher court
42 adjudication in several ways.¹ If this amendment is adopted, however, a censured person

¹ See SJC's 2020 Decision in Cases 2019-10 *Complaint of TE Evans v. Arizona* and 2019-12 *Complaint of RE Pitts, et al, v. Arizona*.

1 could *appeal* a *BCO* 38-1 censure, and his Appeal would be considered *before* any
2 Complaint against the same action, per the current final clause of *BCO* 43-1.

3
4 *BCO* 43-1. A complaint is a written representation made against some act or decision
5 of a court of the Church. It is the right of any communing member of the Church in
6 good standing to make complaint against any action of a court to whose jurisdiction he
7 is subject, except that *no complaint is allowable in a judicial case in which an appeal*
8 *is pending*. (Emphasis added.)
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10 4. Suspension of Censure - In a post-trial Appeal, the censure is suspended until the higher
11 court(s) have reviewed and rendered a decision. But a censure is not suspended in a
12 Complaint. So, if a minister is disciplined after a clearly flawed *BCO* 38-1 procedure, or
13 if the censure is clearly unjust, he can only file a *BCO* 43 Complaint. And his censure
14 would remain in effect throughout the entire course of Presbytery and SJC review of his
15 Complaint, and could take a year or more for a final decision to be rendered by the SJC.²
16 And if the SJC *sustains* the Complaint against the censure, the vindicated minister would
17 have been suspended from office for the entire time, he would probably have lost his job,
18 and his church would likely have called another pastor.

19
20 5. At the same time, another provision in the *BCO* (42-6) allows the censuring court to
21 *maintain* the suspension even during an Appeal “for sufficient reasons duly recorded.”
22

23 *BCO* 42-6. Notice of appeal shall have the effect of suspending the judgment of
24 the lower court until the case has been finally decided in the higher court.
25 However, the court of original jurisdiction may, for sufficient reasons duly
26 recorded, prevent the appellant from approaching the Lord’s Table, and if an
27 officer, prevent him from exercising some or all his official functions, until the
28 case is finally decided (cf. *BCO* 31-10; 33-4). This shall never be done in the
29 way of censure.
30

31 6. *BCO* 38-1 History - The first sentence of our *BCO* 38-1 dates back 140 years to the PCUS
32 Book of 1879. The remainder was added by amendment in 2000 after the final three
33 sentences were proposed in 1999 in Overture 11 from Pittsburgh Presbytery. That
34 Overture proposed the word “appeal,” in the final sentence, but the 30-member Bills and
35 Overtures Committee amended to “complaint.” No grounds were offered in the B&O
36 report or in the M27GA. ([M27GA](#), Louisville 1999, p. 163 and [M28GA](#), Tampa 2000,
37 p. 59)
38

39 7. Procedurally, this might be akin to a minister “appealing” being divested without censure.

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41 *BCO* 34-10.In such a case, the clerk shall under the order of the Presbytery
42 forthwith deliver to the minister concerned a written note that, at the next stated
43 meeting, the question of his being so dealt with is to be considered. This notice shall
44 distinctly state the grounds for this proceeding. The party thus notified shall be heard

² In *SJC Case 2019-04*, over seventeen months elapsed between when the minister filed his Complaint to Presbytery against his *BCO* 38-1 censure and when the SJC finally rendered a Decision.

1 in his own defense; and *if the decision pass against him he may appeal*, as if he had
2 been tried after the usual forms. This principle may apply, with any necessary changes,
3 to ruling elders and deacons. (Emphasis added.)
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- 5 8. With our present Complaint-only avenue for higher court review of a censure in *BCO* 38-1
6 cases, people might be less likely to proffer confessions. We expect this revision will
7 encourage confessions, thereby avoiding lengthy judicial process. But if this revision is
8 *not* adopted, any person considering a *BCO* 38-1 confession — especially a minister —
9 should be aware that unless he knows what censure will be imposed by the court (or at
10 least what censure will be recommended by the investigative committee or commission)
11 signing a confession (“full statement of the facts”) will result in a censure that will take
12 effect immediately, and remain in effect throughout any Complaint process, because he
13 cannot Appeal the censure.
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15 *Proposed to the Pacific Northwest Presbytery at its stated meeting on January 24, 2020*
16 *Final version adopted by an Administrative Commission of Presbytery on April 13, 2020*
17 *Attested by /s/ TE Nathan Chambers, interim stated clerk*