

1 **OVERTURE 28** from Philadelphia Metro West Presbytery (to CCB, OC)
2 “Amend *BCO* 31-2 to Describe Sequence of Discipline Investigation”
3

4 Amend *BCO* 31-2 by addition, as follows (new wording underlined):
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6 *BCO* 31-2. It is the duty of all church Sessions and Presbyteries to exercise care
7 over those subject to their authority. They shall with due diligence and great
8 discretion demand from such persons satisfactory explanations concerning
9 reports affecting their Christian character. This duty is more imperative when
10 those who deem themselves aggrieved by injurious reports shall ask an
11 investigation.
12

13 The court shall follow this four-step investigation procedure in the order given
14 and applicable *BCO* guidelines included with each step.

- 15 1. Decide which court investigates (*BCO* 31-1; 41-1 to 6; 32-9; 33-1; 34-1)
16 and which members of the court participate (*BCO* 15-1 to 3).
- 17 2. Conduct initial inquiry/action:
 - 18 a. List reported alleged offenses and what type of offense they are
19 (*BCO* 29-2 to 4; 31-5);
 - 20 b. Seek the ends of discipline with proper motivation (*BCO* 27-3, 4);
 - 21 c. Confirm prior required pre-court actions have occurred (*BCO* 27-5.b
22 and c; 31-5; 34-3); and, if so, decide whether to recommend further
23 voluntary mediation or arbitration (Appendix I);
 - 24 d. Appoint a representative for the alleged offender (*BCO* 32-19).
 - 25 e. Obtain response from the alleged offender; direct testimony of
26 witnesses; and, any corroborative evidence offered (*BCO* 31-2; 35-
27 1 to 3);
 - 28 f. Determine if the alleged offense(s), in whole or in part, if true and
29 accurate, constitute a chargeable offense, i.e. shown to be an offense
30 from Scripture (*BCO* Preface III; 29-1; 39-3; 39-3.1) and weighty
31 enough for censure (*BCO*; 34-5 to 7; 21-4.e, f; 21-5 Q2; 24-6 Q2);
 - 32 g. Encourage confession (*BCO* 31-7) and/or determine if “statement of
33 facts” of a confession are accurate and complete enough for court to
34 render judgment and censure without process (*BCO* 38-1);
 - 35 h. Assess whether process can be commenced within one-year
36 deadline (*BCO* 32-20).
 - 37 i. Decide whether Step 3 is warranted by the court’s findings in Step
38 2.b, c, e-h, and/or by when those who deem themselves aggrieved
39 by injurious reports request it.
- 40 3. If warranted, determine if a strong presumption of guilt exists:
 - 41 a. Prepare a summary of each allegation(s) including times, places,
42 circumstances, witnesses, testimony from the alleged offender or
43 spouse (allowed but not compelled, *BCO* 35-1, 2) and any other
44 corroborating evidence (*BCO* 35-3) then known, as in an indictment
45 (*BCO* 32-5);

- 46 b. Evaluate the evidence for each allegation (BCO 35-1 to 3; 31-8, 9;
47 34-2) and determine if there is a strong presumption of guilt for each
48 allegation and the reasons why or why not (BCO 31-2). A strong
49 presumption of guilt requires the court to find sufficient and credible
50 evidence, not necessarily the strongest possible evidence. (BCO 32-
51 9 uses the synonymous wording, “probable ground for accusation.”)
52 4. Prepare a written investigation report and judgment (with a–d parts in this
53 order):
54 a. List the reported alleged offense(s) received by court.
55 b. State the findings and actions in Step 2 of investigation for each
56 allegation. If a confession and an agreed-upon Statement of Facts
57 were made, provide that Statement, the judgment and censure
58 proposed and adopted by the court and the reasons given for such
59 judgment and censure. If the court decided there was no warrant for
60 proceeding to Step 3 for any of the allegations, provide the reasons
61 given for this conclusion.
62 c. If Step 3 was taken, state the court’s proposal and judgment for each
63 allegation as to whether there was a strong presumption of guilt.
64 d. State the reasons given for judgments proposed and for judgments
65 adopted regarding strong presumption of guilt for each allegation,
66 including evaluation of specific witness testimony and any other
67 relied-upon evidence.

68
69 If such investigation, however originating, should result in raising a strong
70 presumption of the guilt of the party involved, the court shall institute process,
71 and shall appoint a prosecutor to prepare the indictment and to conduct the case.
72 This prosecutor shall be a member of the court, except that in a case before the
73 Session, he may be any communing member of the same congregation with the
74 accused.

75
76 **Rationale:**

77 *BCO* 31-2 speaks of the need for a court to investigate allegations brought to it. It does not,
78 however, provide sequential steps for how to conduct such an investigation. Relevant *BCO*
79 passages are scattered throughout the *BCO* and may be applied in an improper sequence, be
80 misunderstood or overlooked entirely. For instance, a court might jump to the proposed Step 3, to
81 determine if there is strong presumption of guilt, before checking if the required prior actions
82 in *BCO* 27- 5.b and c in Step 2.c were followed.

83
84 This *BCO* 31-2 addition provides a unified and coherent four-step investigation procedure
85 guided by relevant *BCO* passages. This well-defined procedure required of courts will surely
86 aid them to investigate with “due diligence and great discretion” (*BCO* 31-2). Although this
87 may appear to be a very large addition, it gives needed critical guidance as to whether to
88 institute process, and should be perceived as miniscule in comparison to the size of process
89 itself, which is a vastly larger body of prescribed judicial procedures taking up much of the

90 remaining portion of *BCO* 31:3-11 and most of the following chapters or sections of *BCO* 32-
91 46.

92
93 Step 2 of this proposed procedure is part of what is required in a *BCO* 31-2 investigation and
94 determines whether Step 3 is warranted. A court can have a *BCO* 31-2 investigation, therefore,
95 without determining if there is strong presumption of guilt. This is part of what discretion
96 means when it says the court is to investigate with “due diligence and great discretion.”
97 Ramsay in his Exposition of the Book of Church Order, 1898, pp. 185-6, qualifies, to some
98 extent at least, what it means to investigate with “due diligence and great discretion” in this
99 way: “The phrase, ‘with due diligence and great discretion,’ qualifies the imperative ‘shall
100 demand’ that the Court may, for satisfactory reasons, omit such demand in some cases when
101 there are injurious reports; but only for extreme reasons would a Court be justified in refusing
102 a request for an investigation, if made by a party claiming to be aggrieved by injurious
103 reports.” Various parts of Step 2, Initial Inquiry and Action, therefore may preclude the need
104 for determining strong presumption of guilt if, for instance: prior steps need to be taken and
105 there is reconciliation; it is determined that the alleged offense is not chargeable (or weighty
106 enough for censure); initial inquiry leads to a confession with a Statement of Facts approved
107 resulting in judgment and censure given; or, the one-year deadline has passed for commencing
108 process if strong presumption of guilt were to be found in Step 3.

109
110 We have added in Step 2.c, if personal offenses are involved, the *voluntary* consideration of
111 further mediation or arbitration, if the required initial attempts at mediation in *BCO* 27-5.b
112 and c fall short of adequate reconciliation. Such an effort could possibly help avoid an eventual
113 adversarial trial.

114
115 Also, *BCO* 34-3 referenced in Step 2.c does not imply a “one-witness” principle because it
116 does not say, bring the case to “the court” but rather “some other minister” in the singular.
117 This may be a way to involve a member of Presbytery who shares equal status as a fellow-
118 Presbyter, but this “some other minister” is still required by *BCO* 27-5.c to bring in one or two
119 others, since the biblical references in 27-5.b can include not just personal offenses (as in Mt.
120 18:15) but also more broadly private offenses, as in Gal. 6:1. This is also shown in *BCO* 31-5
121 where, in the case of “private offenses”, removing the scandal “by private means” means “by
122 a few” since “private” is so defined in *BCO* 29-4.

123
124 *BCO* 31-5 does allow a court to investigate *personal* offenses “as if general when the interest
125 of religion seem to demand it,” e.g. if a child is molested, it should not be expected that the
126 child would go to the offender in private to seek reconciliation, or a court is not necessarily
127 bound to have to wait for the offended party to bring allegations if it is a pressing matter. But
128 a general offense, if private, still requires following *BCO* 27-5.c (as explained in the case of
129 *BCO* 31-5-above).

130
131 Appointing a representative to help guide the accused is important and necessary early on in
132 Step 2.d after the prior, pre-court steps of *BCO* 27-5.b and c in Step 2.c have been taken. The
133 alleged offender’s testimony may be subject to review and judgment if he makes a confession

134 or later if Step 3 is taken and strong presumption of guilt is found that requires process and
135 trial.

136

137 Step 4 “Report and Judgment” may serve the purpose of providing a standard outline to be
138 followed for proposed *BCO* 31-2 judgments made *to* the court as well as the actual judgments
139 subsequently made *by* the court. Upon hearing or considering the parts of the report and its
140 reasoning, the court can adopt or reject the judgments proposed based on the reasoning given
141 or new reasoning given by the court. Having a standard outline helps assure the following
142 beneficial results:

- 143 a. It reminds the court of the required Steps of an investigation and its various parts as it
144 investigates and prepares a report.
- 145 b. It provides a sufficiently complete record of inquiry, actions taken and reasons given
146 for the judgments that are proposed before the court makes its decisions and
147 judgments.
- 148 c. If strong presumption of guilt is found, the various parts of the Report will be valuable
149 for both prosecution and defense in the court’s ensuing required process and trial.
- 150 d. In an appeal or complaint, when the original court’s decisions are under review by a
151 higher court, this detailed Report will help clarify to the reviewing court whether or
152 not there was clear error involved in the lower court’s decision.

153 The General Assembly’s Standing Judicial Commission in some cases has stated the
154 importance of greater specificity in a lower court’s reporting. Here is one statement of that
155 need:

156 When a Court conducts a *BCO* 31-2 investigation and fails to find a ‘strong
157 presumption of guilt,’ one who desires to bring a Complaint to the next Higher
158 Court must make sure that the Court of Original Jurisdiction not only
159 considered all the evidence (i.e. in a Case such as the one before the Standing
160 Judicial Commission, all the statements or views considered to be
161 objectionable), but also that said statements or views are clearly and specifically
162 set out in the Record. This is a difficult, but necessary burden and one must
163 undertake it, without knowing what the Court’s Final Decision might be.
164 [pcahistory.org, Minutes for 39th General Assembly, Case 2011-04, Concurring
165 Opinion, pp. 583-4]

166 The specificity of Step 4’s investigation report and judgment should satisfy this expressed
167 need for greater specificity and remove the burden from a complainant or respondent to
168 provide it as in Case 2011-04 (or an appellant or appellee in the case of an appeal). It would
169 already be a part of the Record of the Case with its inclusion of the Written Report and
170 Judgment of the lower court.

171

172 *Adopted by Philadelphia Metro West Presbytery at its stated meeting, November 17, 2020*

173 *Attested by /s/ RE Paul A. Rich, stated clerk*