

1 **OVERTURE 29** from Philadelphia Metro West Presbytery
2 “Add *BCO* Appendix of Investigation Suggestions”
3
4

(to CCB, OC)

5 Amend the *Book of Church Order* by the addition of a new Appendix (K), as follows (new
6 text underlined).

7 **APPENDIX K**

8
9 **SUGGESTIONS FOR INVESTIGATIONS BY COURTS BEFORE PROCESS**

10
11 **Introduction**

12 1. When reports of wrongdoing are brought to a court, *BCO* 31-2 requires an “investigation”
13 by the court to be performed “with due diligence and great discretion.” This Appendix
14 offers practical suggestions for courts in how to conduct the steps of a *BCO* 31-2
15 investigation before process and judgment. Reference is made to relevant *BCO* passages
16 to be considered and followed in each step of their investigation as they are applicable in
17 any given case.

18
19 2. Please note: many churches have special policies for sexual abuse and molestation
20 prevention and reporting. States also have certain required reporting regulations and, as a
21 result, a separate civil investigation may be conducted which could coincide with an
22 ecclesiastical investigation because of their separate spheres of authority.

23
24 **Step I - Decide which Court Investigates and Which Members of the Court Participate:**

25
26 **A. Which Court Investigates?**

- 27 1. Ordinarily and preferably the court of original jurisdiction - the Session for church
28 members and the Presbytery for teaching elders (*BCO* 31-1; 15-1; 41-5);
29
30 2. The next higher court – when a lower court asks for a final disposition of a judicial
31 matter referred (*BCO* 41-1, 3, 5);
32
33 3. The court within whose bounds an alleged offense was committed – when an alleged
34 offense occurred at a distance, such court can investigate and determine if there are
35 probable grounds for accusation, if necessary (*BCO* 32-9);
36
37 4. Presbytery – when a church Session refuses to act in doctrinal cases or instances of
38 public scandal and two other Sessions of churches in the same Presbytery request the
39 Presbytery of which the church is a member to assume original jurisdiction (*BCO*
40 33-1); or,
41
42 5. General Assembly – when a Presbytery refuses to act in doctrinal cases or cases of
43 public scandal and two other Presbyteries request General Assembly to assume
44 original jurisdiction (*BCO* 34-1; OMSJC 16.1-5).

1 **B. Which Members Participate?**

2 1. Court as a Whole (BCO 15-3): A Session or Presbytery as a whole, may conduct
3 investigation Steps II and III below. This is especially appropriate with smaller
4 Sessions or Presbyteries.

5
6 2. Committee (BCO 15-1): The court may appoint a committee to conduct Investigation
7 Steps II and III below on behalf of the court. According to BCO 15-1, “a committee
8 is appointed to examine, consider and report” back to the court, where there can be
9 discussion, debate and a final decision.

10
11 In more sensitive situations, there may be advantages to using a committee limited to
12 two or three members. It protects the innocent or bruised and prevents unnecessary
13 antagonizing of the accused and unnecessary division, anxiety and confusion in the
14 court. This more careful approach would not necessarily apply to allegations of public
15 offenses.

16
17 3. Judicial Commission (BCO 15-3): A Presbytery may appoint a judicial commission to
18 conduct investigation Steps II and III. Each commission shall have a minimum
19 quorum of two teaching and two ruling elders (BCO 15-2). The Commission shall
20 submit to Presbytery a full statement of its investigation and judgments rendered. “The
21 Presbytery without debate shall approve or disapprove of the judgment, or may refer,
22 (a debatable motion), any strictly constitutional issue(s) to a study committee. If
23 Presbytery approves, the judgment of the commission shall be final and shall be
24 entered on the minutes of Presbytery as the action. If Presbytery disapproves, it shall
25 hear the case as a whole, or appoint a new commission to hear the case again.” (BCO
26 15-3).

27
28 When BCO 15-3 refers to “committing any judicial case to a commission” which shall
29 “try the case”, the word “try” does not refer to just “trials,” (i.e. formal process as
30 described in BCO 32-2ff.) It can refer to other types of judicial cases as well. In the
31 legal context, “try” can mean more broadly “to examine judicially” [from *Black’s Law*
32 *Dictionary Edition 2*].

33
34 Although investigations can be done by the court as a whole or by committee, in most
35 cases it is better for Presbyteries to delegate this task to an ad hoc judicial commission,
36 or preferably to a Standing Judicial Commission that could be established by the
37 Presbytery to receive and investigate cases arising between Presbytery meetings.
38 Standing Judicial Commissions may be empowered to investigate only or may also be
39 authorized to conduct trials, appeals and complaints. Proposed reasons whether to
40 institute process with possible trial are usually the result of an involved investigation
41 where voluminous testimony and sensitive evidence must be weighed, discussed, and
42 debated carefully over time. Such effort can more readily, and more appropriately, be
43 delegated to a judicial commission appointed to do such work and to make its reports
44 to Presbytery without debate (BCO 15-3). Not allowing debate is important because
45 it: (1) protects against statements and objections that have not been informed by

1 careful investigation and review; (2) saves time on the floor of Presbytery; and, (3)
2 presumes trust in its commissioners to adjudicate wisely and justly, unless there is a
3 clear error in its proposal, in which case the proposal could be voted down by
4 Presbytery as a whole, or a complaint could be made.

5
6 **Step II – Conduct Initial Inquiry/Action**

7
8 **A. Initial Inquiry:**

- 9 1. List reported alleged offenses and determine whether the alleged offenses are:
10 a. Personal or general (BCO 29-2, 3), and if personal, “whether in the interest of
11 religion” it should be dealt with as general (BCO 31-5).
12 b. Private or public (BCO 29-4).
- 13
14 2. Aim to uphold the purposes of discipline (BCO 27-3) and to exhibit a Christ-like
15 attitude of seriousness toward wrongdoing with humility and gentleness and seek to
16 promote the same attitude in those investigated (Matt. 5:23-26; 7:1-5; Gal. 6:1; BCO
17 32-1; 27-3,4).
- 18
19 3. Determine whether a humble and adequate attempt was made, by private means, to
20 remedy a personal or general and private offense following the steps of Matt. 18:15-
21 16, Lk. 17:3 or Gal. 6:1 (BCO 27-5 b and c; 31-5, 7; 32-1, 34-3). If the prior steps in
22 BCO 27-5 b and c required before admitting an allegation to court have not been
23 followed in proper sequence, the court cannot admit the alleged offense for any further
24 investigation until they are performed (BCO 27-5) nor proceed with process as in BCO
25 32-2ff. In a way similar to BCO 27-5 b and c, BCO 34-3, says: “If anyone knows a
26 minister to be guilty of a private offense, he should warn him in private. But if the
27 offense be persisted in, or become public, he should bring the case to the attention of
28 some other minister in the Presbytery. If it has not become “public,” i.e. “notorious”
29 (BCO 29-4), then the “some other minister (singular) in the Presbytery” should also
30 attempt to see that BCO 27-5 c is followed (i.e. taking it to one or two others) before
31 taking it to the court.
- 32
33 4. Consider appointing advisors (not necessarily court members) for both the defendant
34 and the accuser(s) to be present when meeting with the parties involved (BCO 32-19).
- 35
36 5. Meet separately, when possible, with those making the allegation(s), the injured, any
37 witnesses and the alleged offender(s) to obtain direct testimony regarding the
38 allegations being made (BCO 31-2; 35-1, 2).
- 39
40 6. Determine whether an alleged offense, if assumed to be true and accurate in every
41 respect, constitutes a chargeable offense:
42 a. Shown to be an offense from Scripture according to the standards of the
43 Constitution of the PCA (BCO Preface III; 29-1 to 4; 39-3, 3.1).
44 b. Serious enough to warrant process or censure (BCO 34-5 to 7; BCO 21-4.e, f; 21-5
45 Q 2; 24-6 Q 2) to maintain the ends of discipline (BCO 27-3). WLC Q151 lists

1 numerous factors of seriousness under the general categories of: (i) persons
2 offending, (ii) parties offended, (iii) the nature and quality of the offense, and (iv)
3 circumstances of time and place.

4 c. Whether in dealing with a more complex doctrinal or moral issue of a
5 Constitutional nature, it should form a study committee or refer the matter to a
6 higher court (BCO 15-3; 41-1ff).

7
8 7. Determine whether someone has come forward voluntarily and confessed a chargeable
9 offense or has made such confession after initial inquiry into allegations (BCO 38-1;
10 31-7).

11
12 **B. Initial Action**

13 1. After initial inquiry, when deemed appropriate or necessary, investigators should
14 inform the Session or Presbytery of its findings and recommendations, before taking
15 the initial action in this section IIB, unless the Session or Presbytery empowers the
16 investigation committee or judicial commission to take such initial action or to proceed
17 to Step III on its own. As stated in Step I.A.3, having a judicial commission investigate
18 is usually better for a Presbytery in most cases and will be indicated by the reference
19 “Presbytery judicial commission” in what follows below. In either case, final approval
20 for any actions must be given by the Session or Presbytery as a whole (BCO 15-1 or
21 3).

22
23 2. Non-chargeable offenses are to be dismissed by the court without prejudice.

24
25 3. If the conciliatory steps in II.A.3 above have not been followed and one or both parties
26 refuses or fails to take such steps after a reasonable time, unless the allegations have
27 been otherwise appropriately withdrawn, the court should consider whether to bring
28 accusations against them for:

29 a. Disobeying Matt. 18:15-16; Lk. 17:3; and Gal. 6:1 by refusing to meet with the
30 party, remaining unrepentant, or failing to guard against gossip or slander which
31 undermines the honor of Christ, the peace, unity and purity of the church, and the
32 reputation of the accused (WLC 143-145); or

33 b. Showing lack of forgiveness to the accused who has confessed fully and has
34 adequately shown repentance (Matt. 18:21-35; Lk. 17:3-4; Col. 3:13; Matt. 5:22-
35 26).

36
37 4. In light of testimony received, determine:

38 a. Whether to encourage a confession (BCO 31-7[b]) and/or;

39 b. In case of someone who has confessed to a chargeable offense, the following steps
40 should be taken:

41 (i) Discern if the confessor will permit the court (or Presbytery judicial
42 commission) to use their confession to render judgment without formal
43 process. If so, a full statement of the facts shall be approved by both the accused
44 and the court before the court proceeds to judgment (BCO 38-1). It would be
45 appropriate to suggest to the confessor that he obtain an advisor (BCO 32-19)

1 to help guide him in this and the following steps ii.a-c [below]. The court shall
2 explain to the alleged offender (and his counsel) any special rules it has for
3 how voluntary testimony given by the alleged offender can or will be used in
4 a trial if process is initiated. The counsel can advise the alleged offender
5 whether giving testimony during investigation is advisable, especially if it
6 might result in the dismissal of the allegations. This may be particularly
7 attractive if the alleged wrongdoer is seeking to vindicate his/her name before
8 being subjected to trial (BCO 31-2).

9 (ii) To approve a statement of facts, a court or Presbytery Commission should:

10 (a) Meet with witnesses and/or injured parties to determine if there is any
11 discrepancy between the confessor's statement of facts and the testimony
12 of witnesses and/or those injured.

13 (b) After determining what changes might need to be made to have a more
14 complete and accurate report, discuss this with the confessor and try to
15 come to final agreement on the statement of facts. If mutual agreement is
16 found on a statement of facts, the Session or Presbytery Commission shall
17 meet in closed session. There it shall determine its judgment without
18 process for the confessed offense along with any censure (BCO 38-1).

19 (c) If there is not mutual agreement on the statement of facts, meet in closed
20 session to determine if they should proceed to Step III below to determine
21 if there is a strong presumption of guilt for any chargeable offenses the
22 confessor refuses to include in his/her statement of facts.

23
24 5. Determine whether Step III of determining if strong presumption of guilt is warranted.
25 If the conciliatory steps in Step II.A.3 (including BCO 27-5.b and c and the others
26 listed) above were taken but without resulting in reconciliation, confession or
27 repentance, and the offenses were chargeable, and the one-year deadline for scandal
28 has not passed, then the Session or Presbytery Judicial Commission shall consider:

29 a. Whether to proceed to Step III (see below) and whether the ends of discipline will
30 be promoted by doing so (BCO 27-3), especially when "those who deem
31 themselves aggrieved by injurious reports shall ask for an investigation" (BCO
32 31-2);

33 b. Whether an alternative course should be taken. For instance:

34 (i) whether further mediation, possibly with advisory opinion, should be
35 recommended to the parties (not required in the BCO but see recommendations
36 in BCO Appendix I). Although following Matt. 18:16 involves mediation,
37 there are times when further mediation should be considered, especially if the
38 case is complex; or,

39 (ii) whether binding arbitration should be recommended (again, not required in the
40 BCO but see recommendations in BCO Appendix I), which is most appropriate
41 with property disputes and similar matters (1 Cor. 6:1 ff). Such arbitration is
42 not appropriate for suspending or deposing officers or exercising church
43 discipline leading to censure in relational, moral, doctrinal, or constitutional
44 matters.

1 Further mediation or arbitration are not required in the BCO but, if both parties are
2 agreeable, it might bear good fruit where issues with both parties can be properly
3 covered and an adversarial trial can be avoided.
4

- 5 6. There is no BCO requirement for a time period for Step II of Investigation, but it would
6 be prudent to try to limit it to two months from when it began, unless additional time
7 is needed for further mediation or arbitration. A good goal for mediation or arbitration
8 to be completed might be 60 days after its commencement.
9

10 **Step III – If Warranted, Determine if Strong Presumption of Guilt Exists**

11
12 If there is no dismissal or a delay in consideration of the allegation(s), no confession by the
13 accused, and if a party chooses against participation in further mediation or in binding
14 arbitration (if either is recommended) or either party is dissatisfied with any portion of any
15 mediation or an advisory opinion of mediation, the court or Presbytery judicial commission
16 shall enter into Investigation Step III to determine if there is strong presumption of guilt for
17 the allegations brought forward, lasting hopefully no longer than a two-month period, and
18 which will include the following:
19

- 20 1. Investigators will prepare a statement of the allegations brought to their attention. Each
21 allegation will set forth the particular offense alleged, with Scriptural and
22 Constitutional references or citations, together with a specification of the witnesses,
23 facts or evidence relied upon to sustain the allegation (times, places and circumstances
24 –similar to charges in an indictment (see BCO 32-5). This could include allegations a
25 confessor would not agree to in their statement of facts.
26
27 2. Allow, but not compel, the alleged offender to give complete, preferably written
28 responses to the written allegations (BCO 35-1). Explain how the court might or might
29 not use such voluntary testimony if there is a subsequent trial (see section II B.4.b.i).
30
31 3. Determine whether caution should be exercised regarding the character, partiality
32 and/or standing of an alleger, or allegers, of wrongdoing (BCO 31-8);
33
34 4. Determine whether a voluntary alleger of wrongdoing (and later possible voluntary
35 prosecutor) has been previously warned that if he later becomes a prosecutor and fails
36 to show probable cause of the charges, he may himself be censored as a slanderer of
37 the brethren (BCO 31-9);
38
39 5. Evaluate whether there is a strong presumption of guilt on the part of the alleged
40 offender and possible reasons why or why not (BCO 31-2; 32-9; 34-2; 35-3). A
41 “strong presumption of guilt” requires the court to find sufficient and “credible”
42 evidence from witnesses, materials, and/or documents to support the allegations at a
43 trial (BCO 35-1, 35-3), not necessarily the strongest possible evidence. BCO 32-9 uses
44 the synonymous term: “probable grounds for accusation.” Ramsay’s definition is
45 helpful: “A strong presumption means a belief by the members of the court that

1 evidence as then known to them would indicate that guilt probably exists, unless
2 evidence to the contrary can be produced not then known to them.” [F.P. Ramsay,
3 Exposition of the Book of Church Order (1898, pp. 185-6, on RoD, V-2)].
4

5 6. A court or Presbytery judicial commission, in closed session, shall review and discuss
6 its findings in Step III of the investigation and determine, by majority vote, whether
7 or not there exists a strong presumption of guilt requiring the institution of formal
8 process (BCO 31-2). The court or Presbytery judicial commission will make a report
9 about its initial inquiry and initial action. If Step III was decided not to be warranted,
10 the reasons why not shall be included. A Presbytery Commission shall report its
11 conclusions to the Presbytery and the Presbytery will decide by majority vote without
12 debate whether to accept the conclusions of the Commission (BCO 15-3).
13

14 7. If strong presumption of guilt is not found, process is not warranted and should not be
15 initiated (BCO 34-2).
16

17 8. Written notice of the final decision of the Session or Presbytery regarding whether or
18 not to proceed to process should be communicated in a timely fashion to both parties,
19 preferably within one week’s time after the court’s final decision.
20

21 [*9. Though not required in the BCO, it would be very helpful to have a Written
22 Investigation Report if the court rules to institute formal process. Such a Report could
23 be used by the prosecutor and defense to prepare for trial and could include in it all
24 supporting documents of testimony, summary of testimonies, and any other evidence
25 received or collected during the investigation. It might also prove useful in case of an
26 appeal or complaint. Such a Report might take this form:
27

28 Written Investigation Report and Judgment shall include (with a-d parts in this order):

29 a. List of reported alleged offenses received by court.

30 b. Findings and actions in Step 2 of the investigation for each of the allegations; if a
31 confession and an agreed upon Statement of Facts were made, provide that
32 Statement; and, the judgment and censure proposed and adopted by the court, with
33 the reasons given for such judgment and censure. If court decided there was no
34 warrant for proceeding to Step 3 for any of the allegations, state the reasons for
35 this conclusion.

36 c. If Step 3 was taken, state the court’s proposal and judgment for each allegation as
37 to whether there was strong presumption of guilt.

38 d. Provide the reasons given for proposed judgments and for adopted judgments
39 regarding strong presumption of guilt for each allegation, including evaluation of
40 specific witness testimony and any other evidence.]

41 Include this Section 9 only if the PMWP’s BCO 31-2 Overture Step 4 is not
42 approved.
43

44 [See next page for Rationale for Appendix]

1 **Rationale for Appendix:**

2 *BCO* 31-2 speaks of the need for a court to judicially investigate allegations of wrongdoing
3 that come before it. This Appendix provides practical suggestions about how investigation
4 steps can be followed by the court and the order in which to follow them. Relevant *BCO*
5 passages to be considered are listed for each step to aid in the court's mandate in *BCO* 31-2
6 to investigate with "due diligence and great discretion."
7

8 Specific practical suggestions given include matters such as: 1) when it is best to investigate
9 with a small committee of two or three; 2) the advantages of a judicial commission over a
10 committee when Presbytery investigates (including the value of a Standing Judicial
11 Commission); 3) the important reasons for confirming the required prior steps of *BCO* 27-5
12 b. and c. were followed; 4) the need early on for appointing a representative for the alleged
13 wrongdoer; 5) how to determine if an offense is chargeable (warranting censure); 6) important
14 steps in handling a confession; 7) how to decide if determining strong presumption of guilt is
15 necessary; 8) the importance of listing and describing each allegation for evaluation and
16 giving reasons from witness testimony and other evidence as to why there is or is not strong
17 presumption of guilt; the importance of a written Investigation Report and a sample outline
18 for one with the proper order of its parts.
19

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

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