

1 **OVERTURE 13** from Northern California Presbytery (to CCB, SJC, OC)  
 2 “Amend *BCO* 35-1 and 35-7 to Allow All Persons as Witnesses in  
 3 Cases of Process”  
 4  
 5 **Whereas**, *BCO* 35-1 currently allows disqualification of persons testifying as witnesses in the  
 6 courts of the church who “do not believe in the existence of God, or a future state of  
 7 rewards and punishments;” and  
 8  
 9 **Whereas**, *BCO* 35-6 currently delineates the oath administered by the Moderator to every  
 10 witness in a case of process, which accords with the requirements of *BCO* 35-1; and  
 11  
 12 **Whereas**, the report of the Ad Interim Committee on Domestic Abuse and Sexual Assault  
 13 (DASA) Committee at the 49th General Assembly recommended that this prohibition  
 14 be modified to allow inclusion of medical professionals and other persons who may  
 15 not believe in the existence of God by may often provide testimony, especially in cases  
 16 of abuse; and  
 17  
 18 **Whereas**, the 49th General Assembly voted to postpone consideration of such an amendment  
 19 until the 50th General Assembly; and  
 20  
 21 **Whereas**, all persons are created in the image of God (Genesis 1:27), and by virtue of that  
 22 image and His common grace are generally competent to testify as witnesses; and  
 23  
 24 **Whereas**, the ARP already recognizes the competence of all persons created in the image of  
 25 God to stand as witnesses, “All persons generally are competent to testify as witnesses,  
 26 though the court shall make due allowance for age, intelligence, character, belief in  
 27 God, possible bias, relationship to the parties involved, and other like circumstances”  
 28 (Book of Discipline, 4.4J); and  
 29  
 30 **Whereas**, the OPC already recognizes the competence of all persons created in the image of  
 31 God to stand as witnesses, “Any person may be a witness in a judicial case if the trial  
 32 judicatory is satisfied that he has sufficient competence to make the affirmation  
 33 required of witnesses in this Chapter, Section A, 4, b.” (Book of Discipline, IV.A.4.a);  
 34 and  
 35  
 36 **Whereas**, courts of the church are already instructed to judge the relative weight and  
 37 credibility of all evidence including witness testimony (current *BCO* 35-1; 50th  
 38 General Assembly proposed *BCO* 35-5);  
 39  
 40 **Whereas**, the 49th General Assembly unanimously voted to approve proposed changes to  
 41 *BCO* 35 for the protection of witnesses in special cases, which may result in a  
 42 renumbering of existing *BCO* 35 paragraphs;  
 43  
 44 **Therefore, be it resolved** that *Book of Church Order* 35-1 and 35-6 (proposed 35-7) be  
 45 amended by deleting the current language (indicated by ~~striketrough~~) and replacing  
 46 it (indicated by underline), as shown below, comparing both currently approved *BCO*  
 47 language, as well as proposed language if the amendments from the 49th General  
 48 Assembly are ratified at the 50th General Assembly.

1 **Existing**

2  
3 **35-1.** All persons of proper age and intelligence are competent witnesses, except  
4 such as do not believe in the existence of God, or a future state of rewards and  
5 punishments. The accused party may be allowed, but shall not be compelled to  
6 testify; but the accuser shall be required to testify, on the demand of the accused.  
7 Either party has the right to challenge a witness whom he believes to be  
8 incompetent, and the court shall examine and decide upon his competency. It  
9 belongs to the court to judge the degree of credibility to be attached to all evidence.

10  
11 **35-6.** The oath or affirmation to a witness shall be administered by the Moderator  
12 in the following or like terms:

13  
14 **Do you solemnly promise, in the presence of God, that you will declare the**  
15 **truth, the whole truth, and nothing but the truth, according to the best of your**  
16 **knowledge in the matter in which you are called to witness, as you shall**  
17 **answer it to the great Judge of the living and the dead?**

18  
19 If, however, at any time a witness should present himself before a court, who for  
20 conscientious reasons prefers to swear or affirm in any other manner, he should be  
21 allowed to do so.

22  
23 **Proposed to the 49th General Assembly (Item 8; relevant portions only)**

24  
25 **35-1.** All persons of proper age and intelligence are competent witnesses, except  
26 such as do not believe in the existence of God, or a future state of rewards and  
27 punishments. ~~The accused party may be allowed, but shall not be compelled to~~  
28 ~~testify; but the accuser shall be required to testify, on the demand of the accused.~~  
29 Either party has the right to challenge a witness whom he believes to be  
30 incompetent, and the court shall examine and decide upon his competency. ~~It~~  
31 ~~belongs to the court to judge the degree of credibility to be attached to all evidence.~~

32  
33 Renumber *BCO* 35-6 (current) through *BCO* 35-14 (current) to read 35-7 through  
34 35-15.

35  
36 **Proposed to the 50th General Assembly** (additions approved by the 49th General Assembly  
37 singly underlined, deletions ~~singly struck through~~; additions proposed to the 50th  
38 doubly underlined, deletions ~~doubly struck through~~):

39  
40 **35-1.** All persons ~~of proper age and intelligence are competent witnesses~~  
41 generally are competent to testify as witnesses, except such as do not believe in  
42 the existence of God, or a future state of rewards and punishments though the court  
43 shall give consideration to age, intelligence, belief in God, relationship to the  
44 parties involved, and other like factors in judging testimony (*BCO* 35-5). ~~The~~  
45 ~~accused party may be allowed, but shall not be compelled to testify; but the accuser~~  
46 ~~shall be required to testify, on the demand of the accused.~~ Either party has the right

1 to challenge a witness whom he believes to be incompetent, and the court shall  
2 examine and decide upon his competency. ~~It belongs to the court to judge the~~  
3 ~~degree of credibility to be attached to all evidence.~~

4  
5 **35-67.** The oath or affirmation to a witness shall be administered by the Moderator  
6 in the following or like terms:

7  
8 **Do you solemnly promise, in the presence of God, that you will declare the**  
9 **truth, the whole truth, and nothing but the truth, according to the best of your**  
10 **knowledge in the matter in which you are called to witness, as you shall**  
11 **answer it to the great Judge of the living and the dead?**

12  
13 If, however, at any time a witness should present himself before a court, who for  
14 conscientious reasons prefers to swear or affirm in any other manner, or with other  
15 language, he ~~should~~ shall be allowed to do so, provided such oath or affirmation  
16 impresses the solemnity of this duty upon the witness's conscience.

17  
18 Renumber *BCO 35-7* (current) through *BCO 35-14* (current) to read 35-8 through  
19 35-15.

20  
21 So that the final text, if all amendments are approved, would read:

22  
23 **35-1.** All persons generally are competent to testify as witnesses, though the  
24 court shall give consideration to age, intelligence, belief in God, relationship to the  
25 parties involved, and other like factors in judging testimony (*BCO 35-5*). Either  
26 party has the right to challenge a witness whom he believes to be incompetent, and  
27 the court shall examine and decide upon his competency.

28  
29 **35-7.** The oath or affirmation to a witness shall be administered by the Moderator  
30 in the following or like terms:

31  
32 **Do you solemnly promise, in the presence of God, that you will declare the**  
33 **truth, the whole truth, and nothing but the truth, according to the best of your**  
34 **knowledge in the matter in which you are called to witness, as you shall**  
35 **answer it to the great Judge of the living and the dead?**

36  
37 If, however, at any time a witness should present himself before a court, who for  
38 conscientious reasons prefers to swear or affirm in any other manner, or with other  
39 language, he shall be allowed to do so, provided such oath or affirmation impresses  
40 the solemnity of this duty upon the witness's conscience.

41  
42 *Adopted by Northern California Presbytery at its stated meeting, February 3, 2023*

43 *Attested by /s/ RE Marcel Weiland, stated clerk*