

1 **OVERTURE** 14 from Northern California Presbytery (to CCB, SJC, OC)
2 “Amend *BCO* 32-19 Regarding Use of Professional Counsel in Cases of Process”
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4 **Be it resolved** that *Book of Church Order* 32-19 be amended by deleting the current language
5 (indicated by ~~strikethrough~~) and replacing it with new paragraphs (indicated by
6 underline):
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8 **Current Language:**

9 ~~**32-19.** No professional counsel shall be permitted as such to appear and plead
10 in cases of process in any court; but an accused person may, if he desires it, be
11 represented before the Session by any communing member of the same
12 particular church, or before any other court, by any member of that court. A
13 member of the court so employed shall not be allowed to sit in judgment in the
14 ease.~~

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16 **Proposed:**

17 **32-19.** a. No professional representative (attorney admitted to the bar or
18 employee of a law firm), in cases before any church court, shall
19 be permitted to appear on behalf of any party, nor assist with oral
20 or written arguments, nor engage in communications regarding
21 the case, when
22 i. the representative is functioning in an attorney/client
23 relationship; or
24 ii. the representative is remunerated in any form, including
25 but not limited to: fees, billings, reimbursement, or any
26 other non-monetary compensation; or
27 iii. the representative is engaged as a “pro bono” case; or
28 iv. the representative is otherwise utilizing corporate
29 resources.
30 b. The Accused may be represented by counsel. Representatives
31 for either party shall be in good standing, and may continue
32 through appeal until the conclusion of the case.
33 i. In cases before a Session, a party may be represented by
34 any communing member of that church. If the Session
35 judges that a party will not be well-served by representation
36 from that body, the session may request a representative
37 from its presbytery. The presbytery shall not approve
38 such a representative without concurrence from both the
39 party and the Session.
40 ii. In cases before any other court, a party may be
41 represented by any member of that court.
42 A member of the Court so employed shall not be allowed to sit
43 in judgment on the case.

- 1 c. Representatives for either party may appoint assistants
2 according to these same requirements. Assistants so appointed
3 shall not be allowed to argue the case before the Court.
4 d. Representatives shall not be permitted in cases of complaint
5 before a higher Court (BCO 43); however, a complainant may
6 be assisted by any person according to these same requirements.

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8 **Rationale:**

- 9 1. Much of the current wording has resulted in significant confusion and needs
10 clarification:
11 a. “Counsel” and “representative” are used interchangeably.
12 b. The phrase “as such” is subject to differing interpretations.
13 c. “Professional counsel” remains without a codified definition in the *BCO*.
14 2. The courts of the Church are comprised of volunteers offering their Christian
15 service to the Lord Jesus Christ, the Head of the church.
16 3. It is a principle of ecclesiastical process, and justice in general, that process be
17 conducted equitably between respective parties, and not give advantage to one
18 party over another (*BCO* 32-13, “In order that the trial may be fair and impartial”).
19 4. As currently adopted, *BCO* 32-19 dates (with minor changes) from the 1858 PCUSA
20 Revised Book of Discipline.¹ It places restrictions on representation for both
21 parties (though a portion refers specifically to the Accused), but takes no account
22 of the massive changes in “professional representation” in the last 165 years.
23 5. The Committee on Constitutional Business of the 27th General Assembly advised
24 the Stated Clerk that “*BCO* 32-19 forbids professional counsel from formal
25 involvement (that is, acting in an attorney/client relationship)” and otherwise being
26 compensated for their assistance in ecclesiastical cases.²
27 6. Professional attorneys today may engage in ecclesiastical cases “pro bono,” which
28 can unlock firm-wide resources, including the possibility of access to associates
29 for assistance, significant reimbursement for expenses, billable hours accounted
30 toward the attorney’s annual requirement, and may have other potential non-
31 monetary benefits or compensation.
32 7. By virtue of these corporate resources, a professional attorney may gain significant
33 advantage over the other party in the prosecution or defense of a case of process.
34 8. The proposed changes provide standardized language that delineates:
35 a. what is forbidden of professional representation and what constitutes such;
36 b. who may represent respective parties and how; and
37 c. who may assist representatives of said parties and how such assistants are
38 employed.

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40 *Adopted by the Northern California Presbytery at its stated meeting, February 3, 2023*
41 *Attested by /s/ RE Marcel Weiland, stated clerk.*

¹ As presented by the *BCO* History Project, part of the PCA Historical Center:
<https://pcahistory.org/bco/rod/32/19.html> (accessed 9 January 2023).

² *Minutes of the 27th General Assembly of the Presbyterian Church in America*, 1999: 148