

1 **OVERTURE 1** from Piedmont Triad Presbytery (to CCB, OC)

2 Original Overture #1: Vacated by the Presbytery

3 Current Overture #1: “Amend *BCO* 35-1 and 35-8 Regarding Witness Eligibility”

4
5 **Be it resolved:** That *BCO* 35-1 and 35-8 be amended by deleting some current language
6 (indicated below by ~~striketrough~~) and adding some new language (indicated below by
7 underlining).

8
9 35-1. All persons of proper age and intelligence are competent witnesses, except
10 such as do not believe in the existence of God, or a future state of rewards and
11 ~~punishments~~. Any person who swears or promises to testify truthfully (*BCO* 35-
12 8) can be called as a witness. Either party has the right to ~~challenge~~ object to a
13 witness ~~whom he believes to be incompetent~~, and the court shall consider and
14 rule on the objection ~~examine and decide upon his competency~~.

15
16 *No changes to *BCO* 35-2 through 35-7*

17
18 35-8. ~~The oath or affirmation to a witness shall then be administered by the~~
19 ~~Moderator in the following or like terms:~~ The court shall inform the witness that,
20 regardless of whether he believes in God or in a future state of rewards and
21 punishments, his oath or promise is made in the presence of God and God will
22 judge him on the truthfulness of his answers. The Moderator shall then ask the
23 witness the following:

24
25 Do you solemnly ~~swear promise~~, in the presence of God, that you will
26 declare the truth, the whole truth, and nothing but the truth, according
27 to the best of your knowledge in the matter in which you are called to
28 witness, as you shall answer it to the great Judge of the living and the
29 dead?

30
31 If, however, the witness cannot take an oath either for conscientious reasons
32 or because he is not a Christian and thus not able to take a lawful oath
33 invoking God, the Moderator shall then ask the witness the following: ~~at any~~
34 ~~time a witness should present himself before a court, who for conscientious~~
35 ~~reasons prefers to swear or affirm in any other manner, he should be allowed~~
36 ~~to do so.~~

37
38 Do you solemnly promise that you will declare the truth, the whole
39 truth, and nothing but the truth, according to the best of your
40 knowledge in the matter in which you are called to witness?

41
42 Such that the final text reads:

1 35-1. Any person who swears or promises to testify truthfully (*BCO* 35-8) can
2 be called as a witness. Either party has the right to object to a witness, and the
3 court shall consider and rule on the objection.
4

5 35-8. The court shall inform the witness that, regardless of whether he believes
6 in God or in a future state of rewards and punishments, his oath or promise is
7 made in the presence of God and God will judge him on the truthfulness of his
8 answers. The Moderator shall then ask the witness the following:
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10 Do you solemnly swear, in the presence of God, that you will
11 declare the truth, the whole truth, and nothing but the truth,
12 according to the best of your knowledge in the matter in which you
13 are called to witness, as you shall answer it to the great Judge of the
14 living and the dead?
15

16 If, however, the witness cannot take an oath either for conscientious reasons
17 or because he is not a Christian and thus not able to take a lawful oath
18 invoking God, the Moderator shall then ask the witness the following:
19

20 Do you solemnly promise that you will declare the truth, the
21 whole truth, and nothing but the truth, according to the best of
22 your knowledge in the matter in which you are called to witness?
23

24 **Proposed Text of *BCO* 35-1 through 35-8**
25

26 For context and clarity, the following is the full proposed text of *BCO* 35-1 through 35-8.
27 Note that this text includes the two changes to *BCO* 35 approved and enacted by the 50th
28 General Assembly.
29

30 35-1. (*If revised*) Any person who swears or promises to testify truthfully (*BCO*
31 35-8) can be called as a witness. Either party has the right to object to a witness,
32 and the court shall consider and rule on the objection.
33

34 35-2. (*No change*) The accused party is allowed, but shall not be compelled, to
35 testify; but the accuser shall be required to testify, on the demand of the accused.
36 A husband or wife shall not be compelled to bear testimony against one another in
37 any court.
38

39 35-3. (*No change*) A court may, at the request of either party, or at its own initiative,
40 make reasonable accommodation to prevent in-person contact with the accused:

- 41 a. The court may have testimony taken by videoconference. The
42 videoconference shall employ technical means that ensure that all
43 persons participating in the meeting can see and hear each other at the
44 same time, and which allows for live cross-examination by both parties.

- 1 b. The court may restrict the accused from appearing on the
2 videoconference screen, and when the accused is represented by counsel
3 (*BCO* 32-19), cross-examination shall be conducted by that counsel.
4 c. In all cases where such accommodation has been made, videoconference
5 testimony by witnesses under the age of 18 shall be taken by written
6 interrogatory to be read to the witness by a person appointed by the court
7 in accordance with the applicable provisions of *BCO* 35-11.
8 d. The court shall include in the record of the proceedings its reasons for
9 this accommodation and any objection from either party.

10
11 35-4. (*No change*) The testimony of more than one witness shall be necessary in
12 order to establish any charge; yet, if in addition to the testimony of one witness,
13 corroborative evidence be produced, the offense may be considered proved.

14
15 35-5. (*No change*) It belongs to the court to judge the degree of credibility to be
16 attached to all evidence.

17
18 35-6. (*No change*) No witness afterwards to be examined, unless a member of the
19 court, shall be present during the examination of another witness on the same case,
20 if either party object.

21
22 35-7. (*No change*) Witnesses shall be examined first by the party introducing them;
23 then cross-examined by the opposite party; after which a member of the court, or
24 either party, may put additional interrogatories. No question shall be put or
25 answered except by permission of the moderator, subject to an appeal to the court.
26 The court shall not permit questions frivolous or irrelevant to the charge at issue.

27
28 35-8. (*If revised*) The court shall inform the witness that, regardless of whether
29 he believes in God or in a future state of rewards and punishments, his oath or
30 promise is made in the presence of God and God will judge him on the
31 truthfulness of his answers. The Moderator shall then ask the witness the
32 following:

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

39
40 If, however, the witness cannot take an oath either for conscientious reasons
41 or because he is not a Christian and thus not able to take a lawful oath
42 invoking God, the Moderator shall then ask the witness the following:
43

1 Do you solemnly promise that you will declare the truth, the
2 whole truth, and nothing but the truth, according to the best of
3 your knowledge in the matter in which you are called to witness?
4

5 **Rationale**

6
7 This Overture proposes to amend Chapter 35 of the *Book of Church Order* by revising the
8 criteria for witness eligibility to allow persons professing no supernatural belief as witnesses
9 in cases of process. Currently, *BCO* 35-1 disqualifies as witnesses persons “who do not believe
10 in the existence of God, or a future state of rewards and punishments.” The proposed
11 amendments would expand witness eligibility such that persons who do not believe in God or
12 a future state of rewards and punishments are permitted to act as witnesses in cases of process
13 and to offer their testimony to the courts of the church. The Overture also revises the
14 instructions of *BCO* 35-8 regarding the oath or promise witnesses shall make.
15

16 Summary of what the proposed amendment does, and does not, do.

- 17
18 1. The amendment expands witness eligibility and permits church courts to hear the
19 testimony of persons who are willing to affirm the revised oath or promise in *BCO* 35-8.
20
- 21 2. The amendment retains a party’s right to object to the admittance of any witness.
22
- 23 3. The amendment requires the court to inform every witness, regardless of his individual
24 beliefs, that his oath or promise is made in the presence of God and that God will judge
25 him on the truthfulness of his answers.
26
- 27 4. The amendment retains and clarifies the exemplary oath for Christian witnesses while
28 introducing an exemplary promise that is applicable to Christians who for conscientious
29 reasons prefer not to swear an oath, non-Christian theists, and atheists.
30
- 31 5. The amendment *does not* require the court to permit any person to testify as a witness.
32 Only witnesses who swear or promise that they will testify truthfully are permitted to be
33 considered as witnesses. If either party objects to the admittance of a witness, the court
34 shall consider and rule on the objection.
35
- 36 6. The amendment *does not* require the court to attach the same degree of credibility to the
37 testimony of every witness (cf. *BCO* 31-8; 35-5).
38
- 39 7. The amendment *does not* require the court to administer an oath to any witness for
40 whom an oath to God would be unlawful (cf. *WCF* 22.2) or a violation of conscience.
41

42 **Further Explanation and Responses to Objections**

43
44 The current restriction of *BCO* 35-1 is properly understood as a product of the context of
45 Christendom that dominated for centuries in the West. There was an extended time in the West

1 when belief in God generally and belief in the Christian faith particularly were so widespread
2 that even those outside of the church could be presumed to be theists of some sort, and the
3 absence of such belief in an individual signaled an unusually significant philosophical and
4 moral deviation from societal norms. In this context of common theistic belief, restrictions
5 against non-theist witnesses did not severely curtail the church’s capacity to receive the
6 judicial testimony of outsiders in her courts. This is no longer the case in the rapidly
7 secularizing modern world. In our current post-Christendom cultural milieu, functional
8 naturalism is no longer an exceptional anomaly, and those outside of the church who might
9 possess valuable testimony for her courts are increasingly likely to formally profess no belief
10 in God or a future state of rewards and punishments. The proposed amendment revises witness
11 eligibility requirements in recognition of the sweeping and profound cultural shifts that have
12 taken place in recent decades in order that our courts are not unduly restrained in their pursuit
13 of truth and justice.

14

15 The Westminster Standards make abundantly clear that there are many ways that falsehood
16 may corrupt the life, witness, integrity, and justice of Christ’s church. Of course, overt lies
17 may come in from the outside. But falsehood may also take root if, internally, the church sets
18 up obstacles to her unfettered pursuit of the truth. *Westminster Larger Catechism* 144–145
19 state that, beyond merely avoiding bearing false testimony, the ninth commandment enjoins
20 Christians actively to “the preserving and promoting of truth” and that it prohibits “concealing
21 the truth, undue silence in a just cause, and holding our peace when iniquity calleth for either
22 a reproof from ourselves, or complaint to others” or otherwise acting “to the prejudice of truth
23 or justice.” What is more, the command calls us to “a charitable esteem of our neighbors,”
24 including our atheist neighbors, which at very least means that we ought to charitably entertain
25 the possibility that our neighbors who bear the image of God are by common grace capable
26 of telling the truth about grave matters. The notion that non-theists, in the absence of the threat
27 of immediate punishment, ought never to be trusted to offer truthful testimony posits a
28 perpetual hermeneutic of suspicion that fails both to conform to the Reformed doctrine of
29 common grace and to attain the heights of the “charitable esteem” required by the Decalogue
30 and our Standards.

31

32 The law of God binds not only the life of Christians individually but the life of the church
33 collectively and the conduct of her courts. Insofar as a provision of our *BCO* inhibits the
34 courts’ preservation and promotion of truth in a manner that may functionally result in the
35 concealment of the truth and undue silence to the prejudice of justice, said provision impedes
36 the church in its God-mandated commitment to the truth. Fully and joyfully giving ourselves
37 to the vision of the ninth commandment laid out in our Standards will involve the careful,
38 circumspect work of removing unnecessary hindrances that obstruct the courts of the church
39 in their labors to pursue, establish, expose, and respond with justice to the truth wherever it
40 may be found.

41

42 Significantly, the proposed amendment does not mandate that a court receive as equally
43 credible every witness’s testimony. It simply permits witnesses who profess no faith to offer
44 their testimony to be judged by the wisdom and discretion of the court (cf. *BCO* 35-5), even
45 as it retains the right of either party to object to the participation of any witness. This provision

1 will be incalculably valuable in the abundant and easily imagined scenarios wherein an
2 individual who does not believe in God or a future state of rewards and punishments may be
3 able to offer substantive testimony about the speech, actions, or abusive behavior of a member
4 of the church. Whether an unbelieving neighbor who witnesses sinful conduct while attending
5 a dinner in a member's home, or an adult child living at home who sees one spouse strike
6 another, or an atheist coworker who individually observes unethical acts or an adulterous
7 relationship in the workplace, or a medical professional who treats an injury and can
8 corroborate a victim's disclosure to the court, or a secularist visiting a church who alone
9 witnesses (or even suffers) the commitment of an offense, or a victim of abuse within the
10 church who has been so harmed as to have left the faith but nevertheless desires to bear witness
11 to the court and seek the justice deserved, all of these individuals and so many more may be
12 gifts to the church's courts as those courts seek to do what is right before God for the sake of
13 Christ's bride and in the cause of truth and justice.

14
15 What is more, the requirement of *BCO* 8-2 (echoing 1 Timothy 3:7) that every elder "should
16 have a good report of them that are outside the Church" suggests that the courts of the church
17 ought to have a constitutional means of formally receiving and substantiating by way of
18 judicial testimony an ill report from those outside the church—atheists among them—that
19 would call into question an ordained elder's continued qualification and fitness for office,
20 questions that would necessarily be settled through judicial process. As the *BCO* currently
21 stands, any offense witnessed and corroborable exclusively by individuals who do not believe
22 in God or a state of future rewards and punishments, whether committed by an elder or any
23 other member of the church, is rendered functionally invisible to the courts of the church
24 because there is no avenue for such witnesses to offer admissible testimony to the offense.
25 Such offenses are not invisible to the Lord of the church, and they should not be invisible to
26 the church of the Lord.

27
28 Outright lies are not the only threat to the justice of the church's courts. Constitutional
29 obstacles to the open pursuit of the truth, wherever it may be found, are perhaps a more
30 sinister—because a more subtle—way that falsehood may prevail and injustice multiply to the
31 harm of the most vulnerable under our care.

32
33 Of course, witnesses are not called upon in judicial proceedings only to testify to an offense.
34 They may also offer exculpatory testimony about an accused individual's innocence. It should
35 be noted, then, that permitting non-theists to offer testimony in the courts of the church may
36 serve the cause of truth and justice both by corroborating the wrongdoing of an offender and
37 by substantiating the innocence of the wrongfully accused.

38
39 By way of comparison with a sister NAPARC denomination, the Associate Reformed
40 Presbyterian Church already permits all persons created in the image of God to stand as
41 witnesses: "All persons generally are competent to testify as witnesses, though the court shall
42 make due allowance for age, intelligence, character, belief in God, possible bias, relationship
43 to the parties involved, and other like circumstances" (*Book of Discipline*, 4.4J).
44 Consequently, the ARP is currently better equipped than the PCA to welcome the truth into
45 her courts, protect the vulnerable, guard the purity of the church, and adjudicate with justice.

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The formation of the Ad Interim Committee on Domestic Abuse and Sexual Assault by the 47th General Assembly and the reception of their report at the 49th General Assembly indicated an initial commitment by the Presbyterian Church in America to take constructive action toward reviewing policies and procedures and implementing wise changes to the *BCO* in order to more effectively protect the vulnerable, respond to allegations of abuse, find the truth, acquit the innocent, and create judicial processes whereby victims are not unduly burdened and are instead able to pursue and receive just recourse from the church. This amendment represents one step toward making good on that commitment. While the proposed changes to Chapter 35 of the *BCO* are relevant to all manner of judicial proceedings, they are particularly crucial to ongoing endeavors to better protect children and victims of abuse.

In Holy Scripture, the certainty and efficacy of God’s justice are not contingent upon the internal faith or fear of any individual. The apostle Paul declares that Christ Jesus is he “who is to judge the living and the dead” (2 Timothy 4:1), the Lord who can be trusted to render justice according to deeds (2 Timothy 4:14). In line with Scripture’s unequivocal teaching that all persons without exception will be accountable to the justice of God, the proposed revision to *BCO* 35-8 requires the court to inform all witnesses that their testimony is given in the presence of God and that God will judge them on the truthfulness of their answers. Consequently, the members of the court may take heart in their declaration precisely because God truly is the God who is—the Judge of the living and of the dead—irrespective of any potential witness’s belief or non-belief. When invoking the justice of God, the most basic question is not, “Does this witness believe in the God of justice?” but rather, “Do we believe in the God of justice?”

Notably, while retaining the exemplary oath for Christians, the proposed amendment to *BCO* 35-8 does not require atheists to swear an unlawful oath (cf. *WCF* 22.2) by the name of a God in whom they do not believe. The court’s declaration to the witness regarding God’s presence and judgment is true regardless of the witness’s subjective belief, and the language of the added promise is applicable without issue to Christians with conscientious objections to oathtaking, non-Christian theists, and non-theist witnesses alike. Intriguingly, while non-Christian theists are currently permitted to testify in the courts of the church—and, presumably, to swear the included oath in its present language by God’s name—the added promise removes the possibility that a non-Christian theist might be asked to swear an oath by God’s name and, in this way, is more consistent with the claims of *WCF* 22.2 that oaths by God’s name require “holy fear and reverence” and must not be sworn “vainly and rashly.”

To the potential objection that the courts of the church ought to have jurisdiction over and authority to discipline all witnesses who testify, it should be noted that *BCO* 35-1 already permits any non-Christian theist—who is not subject to the court’s jurisdiction or authority to discipline—to testify as a witness. As currently written, *BCO* 35-1 does not require potential witnesses to be under the court’s jurisdiction, and it is the objection and not the proposed amendment that is foreign to the PCA’s existing policy in this regard.

1 To the potential objection that oath-taking is a necessary condition for admissible witness
2 testimony, it should be noted that *BCO* 35-8 already permits witnesses for conscientious
3 reasons to forego the exemplary oath and “affirm in any other manner.” As currently written,
4 *BCO* 35-8 does not require all potential witnesses to swear an oath, and it is the objection and
5 not the proposed amendment that is foreign to the PCA’s existing policy in this regard.
6

7 To the potential objection that admitting atheists as witnesses renders the church liable to
8 malicious lies, it should be noted that she already is and will continue to be until Christ returns.
9 It is not immediately clear why this concern should be selectively applied to the atheist—
10 eager adherents of other non-Christian religions could presumably have as much or more
11 reason to desire to intentionally harm the church with lies, but there exists no blanket
12 prohibition in the *BCO* barring them from offering testimony. What is more, an atheist willing
13 to lie in order to intentionally and maliciously bring harm to the church will presumably have
14 no ethical qualms about lying concerning his belief in the supernatural in order that he be
15 permitted to testify as a witness in the first place. Consequently, the current provisions of *BCO*
16 35 functionally do nothing to protect the church from an individual committed to spreading
17 lies about and within the church. Ironically, the provisions as presently constructed serve only
18 to prohibit the testimony of an honest atheist who forthrightly acknowledges his non-belief
19 and yet wishes to bear truthful witness to the court, even as they are impotent against the
20 dishonest atheist who is willing to lie about his beliefs in order to be admitted as a witness.
21 The proposed amendment, however, removes the obstacle barring the honest atheist from
22 testifying and, rather than relying on ineffective safeguards against malicious liars, focuses
23 attention on the court’s responsibility to judge the degree of credibility to be attached to the
24 testimony of theist and non-theist witnesses alike.
25

26 To the potential objection that atheist testimony is unnecessary because documentary evidence
27 is admissible and sufficient, it should be noted that there are myriad offenses which are the
28 interest of ecclesial courts that will never generate associated documentary evidence from
29 authorities. Though forensic tests and evidence may at times be available to substantiate
30 allegations of physical or sexual assault, other forms of abuse (e.g., emotional abuse, verbal
31 abuse, spiritual abuse, and instances of physical and sexual abuse that do not leave physical
32 evidence) and other forms of sin more generally (e.g., adultery, alcoholism, lying) are not
33 analogously confirmable by testing and documentation and may in many cases only be
34 substantiated through eyewitness testimony. Documentary evidence is in reality only available
35 in a small fraction of cases relevant to the courts of the church. Even where documentary
36 evidence is available, documents—unlike human witnesses—cannot answer the questions
37 posed to them by various parties seeking clarification, disputing facts, or pursuing further
38 related information in a judicial process. The courts’ ability to hear all relevant witness
39 testimony is therefore immensely important to their pursuit of truth and justice both when
40 documentary evidence may be available and in the far more frequent scenarios when it is not.
41

42 To the potential objection that the civil magistrate, not the church courts, ought to be entrusted
43 to handle the matters impacted by the amendment, it should be noted that most sinful offenses
44 initiating process in ecclesial courts, including some forms of abusive behavior, are non-
45 criminal in nature and therefore are not even subject to the involvement of the civil magistrate.

1 To be clear, there are indeed certain types of accusation and offense that the civil magistrate
2 ought to initially address and investigate. In such cases, the church should do its best to
3 continue to pastorally care for those involved, but the civil authorities should be promptly and
4 clearly notified of potential crimes, especially if those crimes are against those more
5 vulnerable. However, even in cases where an alleged offense is criminal in nature, it is
6 certainly within the realm of possibility that the civil magistrate could ignore, fail to properly
7 investigate, taint, or tamper with evidence relevant to, reach a wrong conclusion about, or
8 otherwise mishandle an allegation. To reject necessary changes in our *BCO* on the grounds
9 that the civil magistrate will handle the cases that fall through the cracks in our current
10 provision involves a failure to reckon with the variety of offenses of interest to ecclesial courts
11 and unduly binds the courts of the church to the actions and findings of an immanently fallible
12 civil magistrate.

13

14 *Adopted by Piedmont Triad Presbytery at its stated meeting, November 11, 2023*

15 *Attested by /s/ TE Ethan Smith, stated clerk*