

1 **OVERTURE 19** from the Session of Fountain Square Presbyterian Church (to CCB, OC)  
2 “Amend *BCO* 41 to allow Venue Change in Judicial Cases”  
3

4 [Note: This overture was passed by the Session of Fountain Square Presbyterian Church on  
5 February 1, 2024, submitted to Central Indiana Presbytery at its stated meeting on  
6 February 9, 2024, and rejected by Central Indiana Presbytery at that meeting. (The  
7 relevant extract of the Presbytery minutes has been provided to the Stated Clerk of the  
8 PCA according to RAO 11-10.)]  
9

10 **Resolved** that the *Book of Church Order (BCO)* 41 be amended as follows, and that these  
11 proposed amendments be referred to the Study Committee proposed in Overture 4 to  
12 the 51<sup>st</sup> General Assembly of the Presbyterian Church in America: (deletions are  
13 denoted throughout by ~~strike~~throughs, additions are underlined)  
14

15 “**41-1.** A reference is a written representation and application ~~made~~ requested by a  
16 ~~lower~~ court of original jurisdiction to an adjacent or higher court for advice or other  
17 action on a matter pending before ~~the lower court, and is ordinarily to be made to the~~  
18 ~~next higher court~~ it.  
19

20 **41-2.** Among proper subjects for reference are matters that are new, delicate or  
21 difficult; or on which the members of the lower court are very seriously divided or  
22 cannot maintain impartiality; or which relate to questions involving the Constitution  
23 and legal procedures respecting which the lower court feels the need of guidance.  
24

25 **41-3.** In making a reference the ~~lower~~ court of original jurisdiction may ask for advice  
26 only, or for final disposition of the matter referred; ~~and in~~ in particular, it may refer a  
27 report regarding a personal offense (BCO 29-3) with request for its investigation and  
28 report (BCO 31) by an adjacent court of the same gradation (BCO 11-4), or a judicial  
29 case (BCO 32) with request for its trial and decision by the higher court.  
30

31 **41-4.** A reference may be presented to the ~~higher~~ requested court by one or more  
32 representatives appointed by the ~~lower~~ court of original jurisdiction for this purpose.  
33 It should be accompanied with so much of the record as shall be necessary for proper  
34 understanding and consideration of the matter referred.  
35

36 **41-5.** Although references are sometimes proper, in general it is better that every court  
37 should discharge the duty assigned it under the law of the Church. A ~~higher~~ requested  
38 court is not required to accede to the request of the ~~lower~~ court of original jurisdiction,  
39 but it should ordinarily give advice when so requested.  
40

41 **41-6.** When a court makes a reference, the court of original jurisdiction ~~is~~ ought to  
42 have all the testimony and other documents duly prepared, produced and in perfect  
43 readiness, so that the ~~higher~~ requested court may be able to fully consider and handle  
44 the case with as little difficulty or delay as possible, and should be able and ready to

1 assist with any logistical or financial burdens which may ensue upon acceding to the  
2 reference request.”  
3

4 so that the final text would read:  
5

6 “**41-1.** A reference is a written representation and application requested by a court of  
7 original jurisdiction to an adjacent or higher court for advice or other action on a matter  
8 pending before it.  
9

10 **41-2.** Among proper subjects for reference are matters that are new, delicate or  
11 difficult; or on which the members of the lower court are very seriously divided or  
12 cannot maintain impartiality; or which relate to questions involving the Constitution  
13 and legal procedures respecting which the lower court feels the need of guidance.  
14

15 **41-3.** In making a reference the court of original jurisdiction may ask for advice only,  
16 or for final disposition of the matter referred. In particular, it may refer a report  
17 regarding a personal offense (*BCO* 29-3) with request for its investigation and report  
18 (*BCO* 31) by an adjacent court of the same gradation (*BCO* 11-4), or a judicial case  
19 (*BCO* 32) with request for its trial and decision by the higher court.  
20

21 **41-4.** A reference may be presented to the requested court by one or more  
22 representatives appointed by the court of original jurisdiction for this purpose. It  
23 should be accompanied with so much of the record as shall be necessary for proper  
24 understanding and consideration of the matter referred.  
25

26 **41-5.** Although references are sometimes proper, in general it is better that every court  
27 should discharge the duty assigned it under the law of the Church. A requested court  
28 is not required to accede to the request of the court of original jurisdiction, but it should  
29 ordinarily give advice when so requested.  
30

31 **41-6.** When a court makes a reference, the court of original jurisdiction ought to have  
32 all the testimony and other documents duly prepared, produced and in perfect  
33 readiness, so that the requested court may be able to fully consider and handle the case  
34 with as little difficulty or delay as possible, and should be able and ready to assist with  
35 any logistical or financial burdens which may ensue upon acceding to the reference  
36 request.”  
37

## 38 **RATIONALE**

39

40 For small Presbyteries and Sessions, it can be particularly difficult to perform an investigation  
41 properly, let alone to execute a trial. This provision provides the ability in certain  
42 circumstances for a court to transfer a case to another court of the same gradation (*BCO* 11-  
43 4) without having to send it up to a “higher court”—thus ensuring that the higher courts can  
44 function in a more appellate capacity.  
45

Overture 19, Session of Fountain Square Presbyterian Church

1 In the cases originative against Teaching Elders, where the only higher court is the General  
2 Assembly, reference to that court functionally eliminates the right of appeal, since there no  
3 court higher than that of the General Assembly. Implementing the ability for courts to  
4 reference a case “horizontally” preserves the right of appeal and ultimately upholds biblical  
5 justice without increasing the already high workload of the Standing Judicial Commission.

6  
7 Nothing in this proposed language requires accession by the requested court.

8  
9 *Adopted by the Session of Fountain Square Presbyterian Church on February 1, 2024.*

10 *Attested by /s/ RE Dan Barber, Clerk of Session, Fountain Square Presbyterian Church.*

11 *Submitted to Central Indiana Presbytery at its stated meeting on February 9, 2024.*

12 *Rejected by Central Indiana Presbytery at its stated meeting on February 9, 2024. [The*  
13 *relevant extract of the Presbytery minutes has been provided to the Stated Clerk of the*  
14 *PCA according to RAO 11-10.]*

15 *Attested by /s/ Taylor Bradbury, Stated Clerk, Central Indiana Presbytery*