

1 **OVERTURE 20** from the Session of Fountain Square Presbyterian Church (to CCB, OC)  
2 “Proposed Systematic Changes to *BCO* 31, 32, and 35”  
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  
11 **BE IT RESOLVED** that the *Book of Church Order (BCO)* Chapters 31, 32, and 35 be  
12 amended as follows, and that these proposed amendments be referred to the Study  
13 Committee proposed in Overture 4 to the 51<sup>st</sup> General Assembly of the Presbyterian  
14 Church in America: (deletions are denoted throughout by ~~strikethroughs~~, additions  
15 are underlined).  
16

### 17 **CHAPTER 31**

#### 18 *Investigations and ~~t~~The Parties in Cases of Process*

19  
20  
21 **31-1.** It is incumbent on every member of a court of Jesus Christ engaged in church  
22 discipline (*BCO* 27) to bear in mind the inspired injunction:  
23

24 “Brethren, if a man is overtaken in any trespass, you who are spiritual restore  
25 such a one in the spirit of gentleness, considering yourself lest you also be  
26 tempted” (Galatians 6:1). [Editorial note: current *BCO* 32-1]  
27

28 **31-~~12~~**. Original jurisdiction (the right first or initially to hear and determine) in relation  
29 to ministers of the Gospel shall be in the Presbytery of which the minister is a member,  
30 except in cases as provided in *BCO* 34-1. Such original jurisdiction in relation to  
31 church members shall be in the Session of the church of which he/she is a member,  
32 except in cases as provided in *BCO* 33-1. Any report received by an Officer (*BCO* 7-  
33 2) regarding an alleged offense (*BCO* 29) shall be forwarded without delay to Clerk  
34 of the court of original jurisdiction. The Clerk of the court shall, within seven (7)  
35 calendar days of receipt, notify the accused person (and any associated entity, e.g.,  
36 RUF, MNA, etc.) that a report has been filed against him.”  
37

38 **31-3.** ~~The original and only parties in a case of process are the accuser and the accused.~~  
39 ~~The accuser is always the Presbyterian Church in America, whose honor and purity~~  
40 ~~are to be maintained. The prosecutor, whether voluntary or appointed, is always the~~  
41 ~~representative of the Church, and as such has all its rights in the case. In appellate~~  
42 ~~courts the parties are known as appellant and appellee. [Editorial note: this paragraph~~  
43 ~~is moved to proposed 31-8] Great caution ought to be exercised in receiving~~  
44 accusations from any person who is known to indulge a malignant spirit towards the  
45 accused; who is not of good character; who is himself under censure or process; who

1 is deeply interested in any respect in the conviction of the accused; or who is known  
2 to be litigious, rash or highly imprudent. [Editorial note: moved from current 31-8]

3  
4 **31-24.** It is the duty of all church Sessions and Presbyteries to exercise care over those  
5 subject to their authority. They shall with due diligence and great discretion demand  
6 from such persons satisfactory explanations concerning reports affecting their  
7 Christian character, and . ~~This duty is more imperative when~~ those who deem  
8 themselves aggrieved by injurious reports ~~shall~~ may ask for an investigation. Reports  
9 regarding an alleged personal offense (BCO 29-3) in which there is an alleged victim  
10 shall ordinarily be initiated by the court no more than thirty (30) days from receipt by  
11 the Clerk of the court and shall be completed without undue delay.

12 ~~If such investigation, however originating, should result in raising a strong~~  
13 ~~presumption of the guilt of the party involved, the court shall institute process, and~~  
14 ~~shall appoint a prosecutor to prepare the indictment and to conduct the case. This~~  
15 ~~prosecutor shall be a member of the court, except that in a case before the Session, he~~  
16 ~~may be any communing member of the same congregation with the accused.~~ [Editorial  
17 note: move to 31-7]

18  
19 **31-5.** The court shall ensure that those investigating meet a basic standard of conduct  
20 for impartiality, and the court may hire a third party to aid in investigation. When the  
21 allegations involve personal offenses (BCO 29-3) against women, the court shall  
22 ordinarily ensure that the investigative body includes female advisory members.

23  
24 A member shall recuse himself from any investigation in which the member's  
25 impartiality might reasonably be questioned, including but not limited to the following  
26 circumstances:

- 27  
28 i. The member has personal bias or prejudice concerning a party or a party's  
29 representative;  
30 ii. The member has personal knowledge of facts that are in dispute in the  
31 proceeding, or has investigated the facts of a matter independently;  
32 iii. The member was a witness concerning the matter. [Editorial note: these  
33 paragraphs are a new insertion]

34  
35 **31-6:** Upon completion of an investigation ([editorial: proposed] BCO 31-4), a report  
36 shall be prepared by the court and considered by it outside the presence of any persons  
37 directly involved, and the approved report shall be transmitted to all such persons at  
38 the same time. Neither the court at large, nor the accused shall have access to evidence  
39 collected (testimony recordings, documents, etc.) apart from what is contained within  
40 the report, unless it is brought forth by the prosecutor at trial. [Editorial note: this  
41 paragraph is a new insertion]

42  
43 **31-7.** If such investigation, however originating, should result in raising a strong  
44 presumption of the guilt of the party involved, the court shall institute process  
45 ([editorial: proposed] BCO 32-2) and conduct the case. This prosecutor shall be a

1 member of the court, except that in a case before the Session, he may be any  
2 communing member of the same congregation with the accused.  
3

4 **31-38.** The original and only parties in a case of process are the accuser and the  
5 accused. In every case the Church is the injured and accusing party, against the  
6 accused. Thus, the accuser is always the Presbyterian Church in America, whose honor  
7 and purity are to be maintained. The prosecutor, whether voluntary or appointed, is  
8 ‘always the representative of the Church, and as such has all its rights in the case. In  
9 appellate courts the parties are known as appellant and appellee. The accused may  
10 obtain representation ([editorial: proposed] *BCO* 32-7) when formal process begins  
11 ([editorial: proposed] *BCO* 32-1).  
12

13 ~~**31-4.** Every indictment shall begin: “In the name of the Presbyterian Church in~~  
14 ~~America,” and shall conclude, “against the peace, unity and purity of the Church,~~  
15 ~~and the honor and majesty of the Lord Jesus Christ, as the King and Head~~  
16 ~~thereof.” In every case the Church is the injured and accusing party, against the~~  
17 ~~accused. [Editorial: moved to proposed *BCO* 32-2]~~  
18

19 **31-59.** An injured party shall not become a prosecutor of personal offenses without  
20 having tried the means of reconciliation and of reclaiming the offender, required by  
21 Christ.  
22

23 “Moreover, if thy brother shall trespass against thee, go and tell him his fault  
24 between thee and him alone: if he shall hear thee, thou hast gained thy brother  
25 but if he will not hear thee, then take with thee one or two more, that in the  
26 mouth of two or three witnesses every word may be established” (Matthew  
27 18:15-16).  
28

29 A church court, however, may judicially investigate personal offenses as if general  
30 when the interest of religion seem to demand it. So, also, those to whom private  
31 offenses are known cannot become prosecutors without having previously endeavored  
32 to remove the scandal by private means.  
33

34 **31-610.** When the offense is general, the case may be conducted either by any person  
35 appearing as prosecutor or by a prosecutor appointed by the court.  
36

37 **31-711.** When the prosecution is instituted by the court, the previous steps required by  
38 our Lord in the case of personal offenses are not necessary. There are many cases,  
39 however, in which it will promote the interests of religion to send a committee to  
40 converse in a private manner with the offender, and endeavor to bring him to a sense  
41 of his guilt, before instituting actual process.  
42

43 ~~**31-8.** Great caution ought to be exercised in receiving accusations from any person~~  
44 ~~who is known to indulge a malignant spirit towards the accused; who is not of good~~  
45 ~~character; who is himself under censure or process; who is deeply interested in any~~

1 ~~respect in the conviction of the accused; or who is known to be litigious, rash or highly~~  
2 ~~imprudent.~~

3  
4 **31-912.** Every voluntary prosecutor shall be previously warned, that if he fail to show  
5 probable cause of the charges, he may himself be censured as a slanderer of the  
6 brethren.

7  
8 **31-103.** When a member of a church court is under process, all his official functions  
9 may be suspended at the court's discretion; but this shall never be done in the way of  
10 censure. When a report is made (BCO 31-1) alleging a serious personal offense or  
11 public scandal by a member of the court, the court shall ordinarily suspend the accused  
12 from some or all of his official functions, which may include the right to attend and  
13 vote in unrelated matters of the court, for the duration of the resulting investigation,  
14 but this shall never be done in the way of censure. The court may by separate action  
15 continue such suspension if the investigation results in a strong presumption of guilt  
16 (BCO 31-2). The court shall in no way prevent the accused from attending meetings  
17 of the court regarding his case, nor restrict him from access to the minutes of the same  
18 distributed to other members of the court.

19  
20 **31-114.** In the discussion of all questions arising in ~~his own~~ the case, the ~~accused~~  
21 ~~parties~~ shall exercise the rights of ~~defendant~~ the parties only, not of judge. In light of  
22 the duty of all church Sessions and Presbyteries to exercise care for their constituents  
23 ([editorial: proposed] BCO 31-24), it is wise for the court to appoint men, and women  
24 when appropriate, to assist in providing care for both parties. Any man so appointed  
25 shall not have the right to vote in any matters related to the case.

26  
27 **31-15.** In all judicial matters, the court shall ordinarily operate in Closed Session. A  
28 Closed Session shall be understood as a meeting or portion of a meeting wherein only  
29 commissioners, and others specifically invited by the court, are present. The  
30 proceedings shall not be secret, but rather discussion of such matters outside of the  
31 meeting shall be at the discretion of each commissioner, and the minutes of such a  
32 closed session may be read and approved in open session. However, no person present  
33 at a closed session shall later identify in any manner the views, speeches or votes of a  
34 member during the closed session, apart from that member's written permission.

## 35 36 **CHAPTER 32**

### 37 38 *General Provisions Applicable to all Cases of Process*

39  
40 **32-1.** ~~It is incumbent on every member of a court of Jesus Christ engaged in a trial of~~  
41 ~~offenders, to bear in mind the inspired injunction:~~

42 ~~“Brethren, if a man is overtaken in any trespass, you who are spiritual restore~~  
43 ~~such a one in the spirit of gentleness, considering yourself lest you also be~~  
44 ~~tempted” (Galatians 6:1). [Editorial: moved to proposed BCO 31-1]~~

1 ~~32-2.~~ Process against an offender shall not be commenced unless some person or  
2 persons undertake to make out the charge; or unless the court finds it necessary, for  
3 the honor of religion, itself to take the steps provided for in *BCO* 31-24 through 31-6.  
4 Process begins when the court appoints a prosecutor, which should ordinarily be done  
5 immediately after finding a strong presumption of guilt by investigation, or after  
6 receiving charges directly.”  
7

8 32-2. An indictment is the written account of charges and specifications formally  
9 prepared by the prosecutor. Every indictment shall begin: **“In the name of the**  
10 **Presbyterian Church in America,”** and shall conclude, **“against the peace, unity**  
11 **and purity of the Church, and the honor and majesty of the Lord Jesus Christ,**  
12 **as the King and Head thereof.”** In drawing the indictment, the times, places and  
13 circumstances should, if possible, be particularly stated, that the accused may have an  
14 opportunity to make his defense (cf. *BCO* 32-11). [Editorial: the first sentence is new;  
15 the rest is from existing 31-4, 32-5]  
16

17 32-3. A citation is a notice for a party or a witness to appear before the court, and shall  
18 be issued and signed by the moderator or clerk by order and in the name of the court.  
19 It is appropriate that with each citation the moderator or clerk call the attention of the  
20 parties to the Rules of Discipline (*BCO* 27 through 46) and assist the parties to obtain  
21 access to them. ~~When a charge is laid before the Session or Presbytery, it shall be~~  
22 ~~reduced to writing, and nothing shall be done at the first meeting of the court, unless~~  
23 ~~by consent of parties, except:~~

- 24 1. ~~to appoint a prosecutor,~~
- 25 2. ~~to order the indictment drawn and a copy, along with names of witnesses then~~  
26 ~~known to support it, served on the accused, and~~
- 27 3. ~~to cite the accused to appear and be heard at another meeting which shall not~~  
28 ~~be sooner than ten days after such citation.~~

29 ~~At the second meeting of the court the charges shall be read to the accused, if~~  
30 ~~present, and he shall be called upon to say whether he be guilty or not.~~

31 ~~If the accused confesses, the court may deal with him according to its discretion;~~  
32 ~~if he plead and take issue, the trial shall be scheduled and all parties and their~~  
33 ~~witnesses cited to appear. The trial shall not be sooner than fourteen (14) days after~~  
34 ~~such citation.~~

35 ~~Accused parties may plead in writing when they cannot be personally present.~~  
36 ~~Parties necessarily absent should have counsel assigned to them.~~ [Editorial: the  
37 remainder of this is moved to later in the chapter]  
38

39 32-4. The citation shall be issued and signed by the moderator or clerk by order and in  
40 the name of the court. He shall also issue citations to such witnesses as either party  
41 shall nominate to appear on his behalf. Indictments and citations shall be delivered in  
42 person or in another manner providing verification of the date of receipt; electronic  
43 delivery alone is sufficient when receipt is acknowledged by the recipient. Compliance  
44 with these requirements shall be deemed to have been fulfilled if a party cannot be  
45 located after diligent inquiry or if a party refuses to accept delivery.

1  
2 ~~32-5. In drawing the indictment, the times, places and circumstances should, if~~  
3 ~~possible, be particularly stated, that the accused may have an opportunity to make his~~  
4 ~~defense. Any person refusing to obey a citation shall be cited a second time. This~~  
5 ~~second citation shall be accompanied with a notice that if he does not appear at the~~  
6 ~~time appointed (unless providentially hindered, which fact he must make known to the~~  
7 ~~court) he shall be dealt with for his contumacy ([Editorial: proposed]BCO 32-10).~~

8  
9 ~~32-6. a. When an accused person shall refuse to obey a citation, he shall be cited a~~  
10 ~~second time. This second citation shall be accompanied with a notice that if he does~~  
11 ~~not appear at the time appointed (unless providentially hindered, which fact he must~~  
12 ~~make known to the court) he shall be dealt with for his contumacy (cf. BCO 33-2; 34-~~  
13 ~~4).~~

14 ~~b. When an accused person shall appear and refuse to plead, or otherwise refuse to~~  
15 ~~cooperate with lawful proceedings, he shall be dealt with for his contumacy (cf. BCO~~  
16 ~~33-2; 34-4). On all questions arising in the progress of a case, the discussion shall first~~  
17 ~~be between the parties; and when they have been heard, they may be required to~~  
18 ~~withdraw from the court until the members deliberate upon and decide the point.~~  
19 ~~[Editorial: added language taken from current BCO 32-14]~~

20  
21 ~~32-7. The time which must elapse between the serving of the first citation on the~~  
22 ~~accused person, and the meeting of the court at which he is to appear, shall be at least~~  
23 ~~ten (10) days. The time allotted for his appearance on the subsequent citation shall be~~  
24 ~~left to the discretion of the court, provided that it be quite sufficient for a seasonable~~  
25 ~~and convenient compliance with the citation. In cases of process before any church~~  
26 ~~court, no professional representative shall be permitted to appear on behalf of any~~  
27 ~~party, nor assist with oral or written arguments, nor engage in communications~~  
28 ~~regarding the case. A person shall be considered a professional representative when:~~  
29 ~~the representative is functioning in an attorney/client relationship, or the representative~~  
30 ~~is remunerated specifically for his representation.~~

31  
32 a. In accordance with the preceding provisions, the accused may obtain  
33 representation, and parties necessarily absent shall have representation  
34 assigned to them. Representatives for either party shall be communing  
35 members in good standing and may continue until the conclusion of the case  
36 in a higher court. Representatives shall not be allowed to sit in judgment in the  
37 case or vote in any related judicial matters decided by the court.  
38 Representatives for either party may appoint assistants according to these same  
39 provisions.

40  
41 b. In cases originating before a Session, a party may be represented by any  
42 communing member of the same particular church. If the Session judges that  
43 a party will not be well-served by representation from that body, the Session  
44 may request a representative from its Presbytery. In cases originating before  
45 any other court, a party may be represented by any member of that court.

1 [Editorial: revision of current *BCO* 32-19, with a portion taken from current  
2 *BCO* 32-3]  
3

4 ~~32-8. When the offense with which an accused person stands charged took place at a~~  
5 ~~distance, and it is inconvenient for the witnesses to appear before the court having~~  
6 ~~jurisdiction, that court may either (a) appoint a commission of its body, or (b) request~~  
7 ~~the coordinate court contiguous to the place where the facts occurred to take the~~  
8 ~~testimony for it, or (c) have the testimony taken by videoconference, which shall~~  
9 ~~employ technical means that ensure that all persons participating in the meeting can~~  
10 ~~see and hear each other at the same time, and which allows for live cross examination~~  
11 ~~by both parties. The accused shall always have reasonable notice of the time and place~~  
12 ~~of the meeting of this commission or coordinate court. If deemed expedient there may~~  
13 ~~be a committee appointed, which shall be called the Judicial Committee, and whose~~  
14 ~~duty it shall be to digest and arrange all the papers, and to prescribe, under the direction~~  
15 ~~of the court, the whole order of the proceedings (cf. [editorial: proposed] *BCO* 32-11).~~  
16 ~~The members of this committee shall be entitled, notwithstanding their performance~~  
17 ~~of this duty, to sit and vote in the case as members of the court. [Editorial: added~~  
18 ~~language taken from current *BCO* 32-11]~~  
19

20 ~~32-9. When an offense, alleged to have been committed at a distance, is not likely~~  
21 ~~otherwise to become known to the court having jurisdiction, it shall be the duty of the~~  
22 ~~court within whose bounds the facts occurred, after satisfying itself that there is~~  
23 ~~probable ground for accusation, to send notice to the court having jurisdiction, which~~  
24 ~~shall at once proceed against the accused; or the whole case may be remitted for trial~~  
25 ~~to the coordinate court within whose bounds the offense is alleged to have been~~  
26 ~~committed. Minutes of the trial shall be kept by the clerk, which shall exhibit the~~  
27 ~~charges, the answer, record of the testimony, as defined by *BCO* 35-9, and all such~~  
28 ~~acts, orders, and decisions of the court relating to the case, as either party may desire,~~  
29 ~~and also the judgment. The clerk shall without delay assemble the Record of the Case~~  
30 ~~which shall consist of the charges, the answer, the citations and returns thereto, and~~  
31 ~~the minutes herein required to be kept.~~  
32

- 33 a. When a case is removed by appeal or complaint, the lower court shall transmit  
34 “the Record” thus prepared to the higher court with the addition of the notice  
35 of appeal or complaint, and the reasons therefor, if any shall have been filed.  
36  
37 b. Nothing which is not contained in this “Record” shall be taken into  
38 consideration by the higher court. On the final decision of a case in a higher  
39 court, the judgment shall be sent down to the court in which the case originated.  
40

41 The parties shall be allowed copies of the Record of the Case at their own expense if  
42 they demand them. [Editorial: added language taken from current *BCO* 32-18 with  
43 minor edits]  
44

1 **32-10.** ~~Before proceeding to trial, courts ought to ascertain that their citations have~~  
2 ~~been duly served. Contumacy is noncompliance with a lawful directive of the court~~  
3 ~~(failure to appear for a citation, refusal to testify or provide evidence, etc.). Any officer~~  
4 ~~or private member of the church found by the court to be noncompliant may be~~  
5 ~~censured for contumacy (BCO 33-2; 34-4). [Editorial: the first sentence is an~~  
6 ~~adaptation from current BCO 32-6; the remainder of the added language taken from~~  
7 ~~current BCO 35-14 with edits]~~

8  
9 **32-11.** ~~In every process, if deemed expedient there may be a committee appointed,~~  
10 ~~which shall be called the Judicial Committee, and whose duty it shall be to digest and~~  
11 ~~arrange all the papers, and to prescribe, under the direction of the court, the whole~~  
12 ~~order of the proceedings. The members of this committee shall be entitled,~~  
13 ~~notwithstanding their performance of this duty, to sit and vote in the case as members~~  
14 ~~of the court. Process occurs throughout a series of meetings of the court leading to and~~  
15 ~~concluding with trial. Nothing shall be done at the first meeting of the court except as~~  
16 ~~specified below, unless by consent of the parties:~~

- 17  
18 a. At the first meeting of the court, the court shall (1) appoint a prosecutor; (2)  
19 order the indictment drawn, and a copy, along with names of witnesses then  
20 known to support it, served on the accused; and (3) cite the accused to appear  
21 and be heard at another meeting which shall not be sooner than ten days after  
22 such citation.  
23  
24 b. At the second meeting of the court, the court shall (1) read at least the charges  
25 to the accused, if present, and (2) he shall be called upon to say whether he be  
26 guilty or not.  
27  
28 i. If the accused confesses, the court may deal with him according to its  
29 discretion.  
30 ii. If the accused does not confess, the trial shall be scheduled and all  
31 parties and their witnesses cited to appear. The trial shall not be sooner  
32 than fourteen (14) days after such citation. Accused parties may plead  
33 in writing when they cannot be personally present. [Editorial: added  
34 language expanded and adapted from current BCO 32-3]

35  
36 The accused or a member of the court may object to the consideration of a  
37 charge, for example, if he thinks the passage of time since the alleged offense  
38 makes fair adjudication unachievable. The court should consider factors such  
39 as the gravity of the alleged offense as well as what degradations of evidence  
40 and memory may have occurred in the intervening period. [Editorial: added  
41 language taken from current BCO 32-20]

42  
43 **32-12.** Before proceeding to trial, the court shall delineate any trial rules to be observed  
44 by both parties not contained herein (e.g., points of order or objections which will be  
45 observed, manner to present evidence, etc.) at least fourteen (14) days prior to trial



1 commencement, to which both parties shall assent. Courts ought also to ascertain that  
2 their citations have been duly served. [Editorial: added language expanded and taken  
3 from current *BCO* 32-10]

4 ~~When the trial is about to begin, it shall be the duty of the moderator solemnly to~~  
5 ~~announce from the chair that the court is about to pass to the consideration of the case,~~  
6 ~~and to enjoin on the members to recollect and regard their high character as judges of~~  
7 ~~a court of Jesus Christ, and the solemn duty in which they are about to engage.~~  
8 [Editorial: this paragraph is moved to proposed *BCO* 32-15]  
9

10 **32-13.** In order that the trial may be fair and impartial, ~~the~~witnesses shall be examined  
11 in the presence of the accused (as permitted by *BCO* 32-~~8~~14), or at least after he shall  
12 have received due citation to attend. Witnesses may be cross-examined by both parties,  
13 and any questions asked must be pertinent to the issue (*BCO* 35-7). Every member  
14 sitting as a judge shall maintain a high standard of integrity, independence, and  
15 competence:  
16

- 17 i. He shall not render judgment on any matter pending before his court on  
18 anything other than the Constitution of the Church and the facts presented by  
19 the Record of the Case and other materials properly before him, and he shall  
20 not vote without having read the entirety of the Record of the Case and all other  
21 documents properly filed by the parties, and has heard the arguments of the  
22 parties and the discussion as to the merits of the matters in controversy.  
23
- 24 ii. He shall not express his opinion of the merits of any case pending trial to either  
25 party, or to any person not a member of the court, or absent himself from any  
26 sitting without the permission of the court, or satisfactory reasons rendered.  
27
- 28 iii. He shall not make any public or private statement that might reasonably be  
29 expected to affect the outcome of a matter which has been filed under the Rules  
30 of Discipline (*BCO* 27 through 46) with a court. Notwithstanding the  
31 foregoing, he may make statements regarding the principles of the form of  
32 government and discipline, the requirements of the *BCO*, the *Rules of Assembly*  
33 *Operation*, and *Robert's Rules*. If such statements seem to the member  
34 especially liable to be construed to address a matter before the court, a member  
35 making such public or private statements shall expressly qualify the statements  
36 indicating that they are limited to the subject matters permitted by this  
37 subsection and are not made with a view to the matter.  
38
- 39 iv. He shall be objective and open-minded with respect to all issues and all parties.  
40

41 Pending the trial of a case, any member of the court who cannot meet these  
42 requirements shall be thereby disqualified from taking part in subsequent proceedings.  
43 A member shall recuse himself from sitting as a judge when his impartiality might  
44 reasonably be questioned ([Editorial: proposed]*BCO* 31-5). [Editorial: language  
45 adapted from the *Operating Manual of the Standing Judicial Commission* §2]

1  
2 A member of the court shall not be disqualified from sitting as a judge by having given  
3 testimony in the case, unless a party makes an objection, and the court subsequently  
4 determines that such member should be disqualified. The elder against whom the  
5 objection has been made shall retain the right to vote in the determination of  
6 qualification. Either party may, for cause, challenge the right of any member to sit in  
7 the trial of the case, which question shall be decided by the other members of the court.  
8 [Editorial: language taken from current *BCO* 35-13 and 32-16]  
9

10 ~~**32-14.** On all questions arising in the progress of a trial, the discussion shall first be~~  
11 ~~between the parties; and when they have been heard, they may be required to withdraw~~  
12 ~~from the court until the members deliberate upon and decide the point.~~ [Editorial:  
13 moved to *BCO* 32-6] An offense may take place outside the court of original  
14 jurisdiction.  
15

- 16 a. When it is inconvenient for the witnesses to appear before the court having  
17 jurisdiction, that court may either:  
18  
19 i. appoint a commission of its body, or  
20 ii. request the coordinate court contiguous to the place where the facts  
21 occurred to take the testimony for it, or  
22 iii. have the testimony taken by videoconference, which shall employ  
23 technical means that ensure that all persons participating in the meeting  
24 can see and hear each other at the same time, and which allows for live  
25 cross-examination by both parties.  
26

27 The accused shall always have reasonable notice of the time and place of the  
28 meeting of this commission or coordinate court. [Editorial: taken and adapted  
29 from current *BCO* 32-8]  
30

- 31 b. When it is not likely otherwise to become known to the court having  
32 jurisdiction, it shall be the duty of the court within whose bounds the facts  
33 occurred, after satisfying itself that there is probable ground for accusation, to  
34 send notice to the court having jurisdiction, which shall at once proceed against  
35 the accused; or the whole case may be remitted for trial to the coordinate court  
36 within whose bounds the offense is alleged to have been committed. [Editorial:  
37 taken and adapted from current *BCO* 32-9]  
38

39 **32-15.** When a court of first resort proceeds to the trial of a case, the following order  
40 shall be observed:  
41

- 42 1. The moderator shall charge the court that it is about to pass to the consideration  
43 of the case, and to enjoin on the members to recollect and regard their high  
44 character as judges of a court of Jesus Christ, and the solemn duty in which

1            they are about to engage. [Editorial: additional language taken from current  
2            *BCO* 32-12]

3            2. The indictment shall be read, and the answer of the accused heard; the reading  
4            of the indictment may be waived by consent of the parties.

5            3. The witnesses for the prosecutor and then those for the accused shall be  
6            examined.

7            4. The parties shall be heard: first, the prosecutor, and then the accused, and the  
8            prosecutor shall close.

9            5. The roll shall be called, and the members may express their opinion in the case.

10           6. The vote shall be taken, the verdict announced, and judgment entered on the  
11           records.

12  
13           ~~32-16. Either party may, for cause, challenge the right of any member to sit in the trial~~  
14           ~~of the case, which question shall be decided by the other members of the court.~~  
15           [Editorial: moved to proposed *BCO* 32-13]

16  
17           ~~32-17. Pending the trial of a case, any member of the court who shall express his~~  
18           ~~opinion of its merits to either party, or to any person not a member of the court; or who~~  
19           ~~shall absent himself from any sitting without the permission of the court, or~~  
20           ~~satisfactory reasons rendered, shall be thereby disqualified from taking part in the~~  
21           ~~subsequent proceedings.~~ [Editorial: moved to proposed *BCO* 32-13]

22  
23           ~~32-18. Minutes of the trial shall be kept by the clerk, which shall exhibit the charges,~~  
24           ~~the answer, record of the testimony, as defined by *BCO* 35-7, and all such acts, orders,~~  
25           ~~and decisions of the court relating to the case, as either party may desire, and also the~~  
26           ~~judgment.~~

27           ~~The clerk shall without delay assemble the Record of the Case which shall consist of~~  
28           ~~the charges, the answer, the citations and returns thereto, and the minutes herein~~  
29           ~~required to be kept.~~

30           ~~The parties shall be allowed copies of the Record of the Case at their own expense if~~  
31           ~~they demand them.~~

32           ~~When a case is removed by appeal or complaint, the lower court shall transmit “the~~  
33           ~~Record” thus prepared to the higher court with the addition of the notice of appeal or~~  
34           ~~complaint, and the reasons therefor, if any shall have been filed.~~

35           ~~Nothing which is not contained in this “Record” shall be taken into consideration by~~  
36           ~~the higher court. On the final decision of a case in a higher court, the judgment shall~~  
37           ~~be sent down to the court in which the case originated.~~ [Editorial: moved to proposed  
38           *BCO* 32-9]

39  
40           ~~32-19: No professional counsel shall be permitted as such to appear and plead in cases~~  
41           ~~of process in any court; but an accused person may, if he desires it, be represented~~  
42           ~~before the Session by any communing member of the same particular church, or before~~  
43           ~~any other court, by any member of that court. A member of the court so employed~~  
44           ~~shall not be allowed to sit in judgment in the case.~~ [Editorial: moved to proposed *BCO*  
45           32-7]

1  
2 ~~32-20. The accused or a member of the court may object to the consideration of a~~  
3 ~~charge, for example, if he thinks the passage of time since the alleged offense makes~~  
4 ~~fair adjudication unachievable. The court should consider factors such as the gravity~~  
5 ~~of the alleged offense as well as what degradations of evidence and memory may have~~  
6 ~~occurred in the intervening period.~~ [Editorial: moved to proposed BCO 32-11]

7  
8 **CHAPTER 35**

9  
10 *Evidence*

11  
12 **35-1. . . .**

13  
14 **35-4.** The testimony of more than one witness shall be necessary in order to establish  
15 any charge; yet if, in addition to the testimony of one witness, corroborative evidence  
16 be produced, or if several credible witnesses bear testimony to different similar acts,  
17 belonging to the same general charge, the offense may be considered to be proved.

18  
19 **35-5.** It belongs to the court to judge the degree of credibility to be attached to all  
20 evidence. All evidence to be presented at trial, along with witness names, shall be  
21 exchanged by the parties at least fourteen (14) days before the trial is scheduled to  
22 commence.

23  
24 **35-6.** No witness afterwards to be examined, unless a member of the court, shall be  
25 present during the examination of another witness on the same case, if either party  
26 object.

27  
28 **35-7.** Witnesses shall be examined first by the party introducing them; then cross-  
29 examined by the opposite party; after which any member of the court, or either party,  
30 may put additional interrogatories. No question shall be put or answered except by  
31 permission of the moderator, subject to an appeal to the court. [Editorial note: new  
32 paragraph]

33  
34 The court shall not permit questions frivolous or irrelevant to the charge at issue,  
35 including assertions or questions regarding the character of the witness not in question,  
36 and any finding by the court that such an assertion or question was made shall be  
37 stricken from the Record of the Case.

38  
39 **35-8. . . .**

40  
41 **35-10.** The records of a court or any part of them, whether original or transcribed, if  
42 regularly authenticated by the moderator and clerk, or by either of them, shall be  
43 deemed good and sufficient evidence in every other court. In like manner, testimony  
44 taken by one court (including testimony written or recorded during investigation) and  
45 regularly authenticated shall be received by every other court.

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~~35-11. In like manner, testimony taken by one court and regularly certified shall be received by every other court as no less valid than if it had been taken by itself. Evidence relevant to the issue at charge shall be automatically admitted by the court when its authenticity is not in dispute or can be easily ascertained by the court.~~

**35-12.** When it is not convenient for a court to have the whole or perhaps any part of the testimony in any particular case taken in its presence, a commission shall be appointed, or coordinate court requested, to take the testimony in question, which shall be considered as if taken in the presence of the court.

Due notice of the commission or coordinate court or videoconference, and of the time and place of its meeting, shall be given to the opposite party, that he may have an opportunity of attending. If the accused shall desire on his part to take testimony at a distance for his own exculpation, he shall give notice to the court of the time and place at which it shall be taken, in order that a commission or coordinate court, as in the former case, may be appointed for the purpose. Testimony may be taken on written interrogatories by filing the same with the clerk of the court having jurisdiction of the case, and giving two weeks' notice thereof to the adverse party, during which time he may file cross-interrogatories, if he desire it. Testimony shall then be taken by the commission or coordinate court in answer to the direct and cross-interrogatories, if such are filed, and no notice need be given of the time and place of taking the testimony.

~~35-13. A member of the court shall not be disqualified from sitting as a judge by having given testimony in the case, unless a party makes an objection, and the court subsequently determines that such member should be disqualified. The elder against whom the objection has been made shall retain the right to vote in the determination of qualification. [editorial: moved to proposed BCO 32-13] A member of the court who is the prosecutor in the case (BCO 31-2) is disqualified from sitting as a judge. [editorial: moved to proposed BCO 32-7]~~

~~35-14. An officer or private member of the church refusing to testify may be censured for contumacy. [Editorial: moved to proposed BCO 32-10]~~

**35-15.** If after trial before any court new testimony be discovered, which the accused believes important, it shall be his right to ask a new trial and it shall be within the power of the court to grant his request.

**35-16~~4~~.** If, in the prosecution of an appeal, new evidence be offered which, in the judgment of the appellate court, has an important bearing on the case, it shall be competent for that court to refer the case to the lower court for a new trial; or, with the consent of parties, to admit the evidence and proceed with the case.

so that the final text would read:

1           **CHAPTER 31**

2  
3                   *Investigations and the Parties in Cases of Process*

4  
5           **31-1.** It is incumbent on every member of a court of Jesus Christ engaged in church  
6 discipline (*BCO 27*) to bear in mind the inspired injunction:

7  
8                   “Brethren, if a man is overtaken in any trespass, you who are spiritual restore  
9 such a one in the spirit of gentleness, considering yourself lest you also be  
10 tempted” (*Galatians 6:1*).

11  
12           **31-2.** Original jurisdiction (the right first or initially to hear and determine) in relation  
13 to ministers of the Gospel shall be in the Presbytery of which the minister is a member,  
14 except in cases as provided in *BCO 34-1*. Such original jurisdiction in relation to  
15 church members shall be in the Session of the church of which he/she is a member,  
16 except in cases as provided in *BCO 33-1*. Any report received by an Officer (*BCO 7-*  
17 *2*) regarding an alleged offense (*BCO 29*) shall be forwarded without delay to Clerk  
18 of the court of original jurisdiction. The Clerk of the court shall, within seven (7)  
19 calendar days of receipt, notify the accused person (and any associated entity, e.g.,  
20 RUF, MNA, etc.) that a report has been filed against him.”

21  
22           **31-3.** Great caution ought to be exercised in receiving accusations from any person  
23 who is known to indulge a malignant spirit towards the accused; who is not of good  
24 character; who is himself under censure or process; who is deeply interested in any  
25 respect in the conviction of the accused; or who is known to be litigious, rash or highly  
26 imprudent.”

27  
28           **31-4.** It is the duty of all church Sessions and Presbyteries to exercise care over those  
29 subject to their authority. They shall with due diligence and great discretion demand  
30 from such persons satisfactory explanations concerning reports affecting their  
31 Christian character, and those who deem themselves aggrieved by injurious reports  
32 may ask for an investigation.” Reports regarding an alleged personal offense (*BCO*  
33 *29-3*) in which there is an alleged victim shall ordinarily be initiated by the court no  
34 more than thirty (30) days from receipt by the Clerk of the court and shall be completed  
35 without undue delay.

36  
37           **31-5.** The court shall ensure that those investigating meet a basic standard of conduct  
38 for impartiality, and the court may hire a third party to aid in investigation. When the  
39 allegations involve personal offenses (*BCO 29-3*) against women, the court shall  
40 ordinarily ensure that the investigative body includes female advisory members.

41  
42           A member shall disqualify himself from any investigation in which the member’s  
43 impartiality might reasonably be questioned, including but not limited to the following  
44 circumstances:

- 1 a. The member has personal bias or prejudice concerning a party or a party's
- 2 representative;
- 3 b. The member has personal knowledge of facts that are in dispute in the
- 4 proceeding, or has investigated the facts of a matter independently;
- 5 c. The member was a witness concerning the matter.

6  
7 **31-6:** Upon completion of an investigation (*BCO* 31-4), a report shall be prepared by  
8 the court and considered by it outside the presence of any persons directly involved,  
9 and the approved report shall be transmitted to all such persons at the same time.  
10 Neither the court at large, nor the accused shall have access to evidence collected  
11 (testimony recordings, documents, etc.) apart from what is contained within the report,  
12 unless it is brought forth by the prosecutor at trial.

13  
14 **31-7.** If such investigation, however originating, should result in raising a strong  
15 presumption of the guilt of the party involved, the court shall institute process (*BCO*  
16 32-2) and conduct the case. This prosecutor shall be a member of the court, except that  
17 in a case before the Session, he may be any communing member of the same  
18 congregation with the accused.

19  
20 **31-8.** The original and only parties in a case of process are the accuser and the accused.  
21 In every case the Church is the injured and accusing party, against the accused. Thus,  
22 the accuser is always the Presbyterian Church in America, whose honor and purity are  
23 to be maintained. The prosecutor, whether voluntary or appointed, is always the  
24 representative of the Church, and as such has all its rights in the case. In appellate  
25 courts the parties are known as appellant and appellee. The accused may obtain  
26 representation (*BCO* 32-7) when formal process begins (*BCO* 32-1).

27  
28 **31-9.** An injured party shall not become a prosecutor of personal offenses without  
29 having tried the means of reconciliation and of reclaiming the offender, required by  
30 Christ.

31  
32 “Moreover, if thy brother shall trespass against thee, go and tell him his fault  
33 between thee and him alone: if he shall hear thee, thou hast gained thy brother  
34 but if he will not hear thee, then take with thee one or two more, that in the  
35 mouth of two or three witnesses every word may be established” (Matthew  
36 18:15-16).

37  
38 A church court, however, may judicially investigate personal offenses as if general  
39 when the interest of religion seem to demand it. So, also, those to whom private  
40 offenses are known cannot become prosecutors without having previously endeavored  
41 to remove the scandal by private means.

42  
43 **31-10.** When the offense is general, the case may be conducted either by any person  
44 appearing as prosecutor or by a prosecutor appointed by the court.

1 **31-11.** When the prosecution is instituted by the court, the previous steps required by  
2 our Lord in the case of personal offenses are not necessary. There are many cases,  
3 however, in which it will promote the interests of religion to send a committee to  
4 converse in a private manner with the offender, and endeavor to bring him to a sense  
5 of his guilt, before instituting actual process.  
6

7 **31-12.** Every voluntary prosecutor shall be previously warned, that if he fail to show  
8 probable cause of the charges, he may himself be censured as a slanderer of the  
9 brethren.  
10

11 **31-13.** When a member of a church court is under process, all his official functions  
12 may be suspended at the court's discretion; but this shall never be done in the way of  
13 censure. When a report is made (*BCO* 31-1) alleging a serious personal offense or  
14 public scandal by a member of the court, the court shall ordinarily suspend the accused  
15 from some or all of his official functions, which may include the right to attend and  
16 vote in unrelated matters of the court, for the duration of the resulting investigation,  
17 but this shall never be done in the way of censure. The court may by separate action  
18 continue such suspension if the investigation results in a strong presumption of guilt  
19 (*BCO* 31-2). The court shall in no way prevent the accused from attending meetings  
20 of the court regarding his case, nor restrict him from access to the minutes of the same  
21 distributed to other members of the court.  
22

23 **31-14.** In the discussion of all questions arising in the case, the parties shall exercise  
24 the rights of the parties only, not of judge. In light of the duty of all church Sessions  
25 and Presbyteries to exercise care for their constituents (*BCO* 31-4), it is wise for the  
26 court to appoint men, and women when appropriate, to assist in providing care for both  
27 parties. Any man so appointed shall not have the right to vote in any matters related to  
28 the case.  
29

30 **31-15.** In all judicial matters, the court shall ordinarily operate in Closed Session. A  
31 Closed Session shall be understood as a meeting or portion of a meeting wherein only  
32 commissioners, and others specifically invited by the court, are present. The  
33 proceedings shall not be secret, but rather discussion of such matters outside of the  
34 meeting shall be at the discretion of each commissioner, and the minutes of such a  
35 closed session may be read and approved in open session. However, no person present  
36 at a closed session shall later identify in any manner the views, speeches or votes of a  
37 member during the closed session, apart from that member's written permission.  
38

## 39 **CHAPTER 32**

### 40 *General Provisions Applicable to all Cases of Process*

41  
42  
43 **32-1.** Process against an offender shall not be commenced unless some person or  
44 persons undertake to make out the charge; or unless the court finds it necessary, for  
45 the honor of religion, itself to take the steps provided for in *BCO* 31-4 through 31-6.



1 Process begins when the court appoints a prosecutor, which should ordinarily be done  
2 immediately after finding a strong presumption of guilt by investigation, or after  
3 receiving charges directly.”  
4

5 **32-2.** An indictment is the written account of charges and specifications formally  
6 prepared by the prosecutor. Every indictment shall begin: **“In the name of the**  
7 **Presbyterian Church in America,”** and shall conclude, **“against the peace, unity**  
8 **and purity of the Church, and the honor and majesty of the Lord Jesus Christ,**  
9 **as the King and Head thereof.”** In drawing the indictment, the times, places and  
10 circumstances should, if possible, be particularly stated, that the accused may have an  
11 opportunity to make his defense (cf. *BCO* 32-11).  
12

13 **32-3.** A citation is a notice for a party or a witness to appear before the court, and shall  
14 be issued and signed by the moderator or clerk by order and in the name of the court.  
15 It is appropriate that with each citation the moderator or clerk call the attention of the  
16 parties to the Rules of Discipline (*BCO* 27 through 46) and assist the parties to obtain  
17 access to them.  
18

19 **32-4.** Indictments and citations shall be delivered in person or in another manner  
20 providing verification of the date of receipt; electronic delivery alone is sufficient  
21 when receipt is acknowledged by the recipient. Compliance with these requirements  
22 shall be deemed to have been fulfilled if a party cannot be located after diligent inquiry  
23 or if a party refuses to accept delivery.  
24

25 **32-5.** Any person refusing to obey a citation shall be cited a second time. This second  
26 citation shall be accompanied with a notice that if he does not appear at the time  
27 appointed (unless providentially hindered, which fact he must make known to the  
28 court) he shall be dealt with for his contumacy (*BCO* 32-10).  
29

30 **32-6.** On all questions arising in the progress of a case, the discussion shall first be  
31 between the parties; and when they have been heard, they may be required to withdraw  
32 from the court until the members deliberate upon and decide the point.  
33

34 **32-7.** In cases of process before any church court, no professional representative shall  
35 be permitted to appear on behalf of any party, nor assist with oral or written arguments,  
36 nor engage in communications regarding the case. A person shall be considered a  
37 professional representative when: the representative is functioning in an  
38 attorney/client relationship, or the representative is remunerated specifically for his  
39 representation.  
40

- 41 a. In accordance with the preceding provisions, the accused may obtain  
42 representation, and parties necessarily absent shall have representation  
43 assigned to them. Representatives for either party shall be communing  
44 members in good standing and may continue until the conclusion of the case  
45 in a higher court. Representatives shall not be allowed to sit in judgment in the

1 case or vote in any related judicial matters decided by the court.  
2 Representatives for either party may appoint assistants according to these same  
3 provisions.  
4

- 5 b. In cases originating before a Session, a party may be represented by any  
6 communing member of the same particular church. If the Session judges that  
7 a party will not be well-served by representation from that body, the Session  
8 may request a representative from its Presbytery. In cases originating before  
9 any other court, a party may be represented by any member of that court.  
10

11 **32-8.** If deemed expedient there may be a committee appointed, which shall be called  
12 the Judicial Committee, and whose duty it shall be to digest and arrange all the papers,  
13 and to prescribe, under the direction of the court, the whole order of the proceedings  
14 (cf. *BCO* 32-11). The members of this committee shall be entitled, notwithstanding  
15 their performance of this duty, to sit and vote in the case as members of the court.  
16

17 **32-9.** Minutes of the trial shall be kept by the clerk, which shall exhibit the charges,  
18 the answer, record of the testimony, as defined by *BCO* 35-9, and all such acts, orders,  
19 and decisions of the court relating to the case, as either party may desire, and also the  
20 judgment. The clerk shall without delay assemble the Record of the Case which shall  
21 consist of the charges, the answer, the citations and returns thereto, and the minutes  
22 herein required to be kept.  
23

- 24 c. When a case is removed by appeal or complaint, the lower court shall transmit  
25 “the Record” thus prepared to the higher court with the addition of the notice  
26 of appeal or complaint, and the reasons therefor, if any shall have been filed.  
27

- 28 d. Nothing which is not contained in this “Record” shall be taken into  
29 consideration by the higher court. On the final decision of a case in a higher  
30 court, the judgment shall be sent down to the court in which the case originated.  
31

32 The parties shall be allowed copies of the Record of the Case at their own expense if  
33 they demand them.  
34

35 **32-10.** Contumacy is noncompliance with a lawful directive of the court (failure to  
36 appear for a citation, refusal to testify or provide evidence, etc.). Any officer or private  
37 member of the church found by the court to be noncompliant may be censured for  
38 contumacy (*BCO* 33-2; 34-4).  
39

40 **32-11.** Process occurs throughout a series of meetings of the court leading to and  
41 concluding with trial. Nothing shall be done at the first meeting of the court except as  
42 specified below, unless by consent of the parties:  
43

- 44 a. At the first meeting of the court, the court shall (1) appoint a prosecutor; (2)  
45 order the indictment drawn, and a copy, along with names of witnesses then

1 known to support it, served on the accused; and (3) cite the accused to appear  
2 and be heard at another meeting which shall not be sooner than ten days after  
3 such citation.  
4

5 b. At the second meeting of the court, the court shall (1) read at least the charges  
6 to the accused, if present, and (2) he shall be called upon to say whether he be  
7 guilty or not.  
8

9 i. If the accused confesses, the court may deal with him according to its  
10 discretion.

11 ii. If the accused does not confess, the trial shall be scheduled and all parties  
12 and their witnesses cited to appear. The trial shall not be sooner than  
13 fourteen (14) days after such citation. Accused parties may plead in  
14 writing when they cannot be personally present.  
15

16 The accused or a member of the court may object to the consideration of a charge,  
17 for example, if he thinks the passage of time since the alleged offense makes fair  
18 adjudication unachievable. The court should consider factors such as the gravity  
19 of the alleged offense as well as what degradations of evidence and memory may  
20 have occurred in the intervening period.  
21

22 **32-12.** Before proceeding to trial, the court shall delineate any trial rules to be observed  
23 by both parties not contained herein (e.g., points of order or objections which will be  
24 observed, manner to present evidence, etc.) at least fourteen (14) days prior to trial  
25 commencement, to which both parties shall assent. Courts ought also to ascertain that  
26 their citations have been duly served.  
27

28 **32-13.** In order that the trial may be fair and impartial, witnesses shall be examined in  
29 the presence of the accused (as permitted by *BCO* 32-14), or at least after he shall have  
30 received due citation to attend. Witnesses may be cross-examined by both parties, and  
31 any questions asked must be pertinent to the issue (*BCO* 35-7). Every member sitting  
32 as a judge shall maintain a high standard of integrity, independence, and competence:  
33

34 i. He shall not render judgment on any matter pending before his court on  
35 anything other than the Constitution of the Church and the facts presented by  
36 the Record of the Case and other materials properly before him, and he shall  
37 not vote without having read the entirety of the Record of the Case and all other  
38 documents properly filed by the parties, and has heard the arguments of the  
39 parties and the discussion as to the merits of the matters in controversy.  
40

41 ii. He shall not express his opinion of the merits of any case pending trial to either  
42 party, or to any person not a member of the court, or absent himself from any  
43 sitting without the permission of the court, or satisfactory reasons rendered.  
44

1           iii. He shall not make any public or private statement that might reasonably be  
2 expected to affect the outcome of a matter which has been filed under the Rules  
3 of Discipline with a court. Notwithstanding the foregoing, he may make  
4 statements regarding the principles of the form of government and discipline,  
5 the requirements of the *BCO*, the *Rules of Assembly Operation*, and *Robert's*  
6 *Rules*. If such statements seem to the member especially liable to be construed  
7 to address a matter before the court, a member making such public or private  
8 statements shall expressly qualify the statements indicating that they are  
9 limited to the subject matters permitted by this subsection and are not made  
10 with a view to the matter.

11  
12           iv. He shall be objective and open-minded with respect to all issues and all parties.

13  
14 Pending the trial of a case, any member of the court who cannot meet these  
15 requirements shall be thereby disqualified from taking part in subsequent proceedings.  
16 A member shall recuse himself from sitting as a judge when his impartiality might  
17 reasonably be questioned (*BCO* 31-5).

18  
19 A member of the court shall not be disqualified from sitting as a judge by having given  
20 testimony in the case, unless a party makes an objection, and the court subsequently  
21 determines that such member should be disqualified. The elder against whom the  
22 objection has been made shall retain the right to vote in the determination of  
23 qualification. Either party may, for cause, challenge the right of any member to sit in  
24 the trial of the case, which question shall be decided by the other members of the court.

25  
26 **32-14.** An offense may take place outside the court of original jurisdiction.

27  
28           a. When it is inconvenient for the witnesses to appear before the court having  
29 jurisdiction, that court may either:

- 30  
31                   iv. appoint a commission of its body, or  
32                   v. request the coordinate court contiguous to the place where the facts  
33 occurred to take the testimony for it, or  
34                   vi. have the testimony taken by videoconference, which shall employ  
35 technical means that ensure that all persons participating in the meeting  
36 can see and hear each other at the same time, and which allows for live  
37 cross-examination by both parties.

38  
39           The accused shall always have reasonable notice of the time and place of the  
40 meeting of this commission or coordinate court.

41  
42           b. When it is not likely otherwise to become known to the court having  
43 jurisdiction, it shall be the duty of the court within whose bounds the facts  
44 occurred, after satisfying itself that there is probable ground for accusation, to  
45 send notice to the court having jurisdiction, which shall at once proceed against

1 the accused; or the whole case may be remitted for trial to the coordinate court  
2 within whose bounds the offense is alleged to have been committed.

3  
4 **32-15.** When a court of first resort proceeds to the trial of a case, the following order  
5 shall be observed:

- 6  
7 1. The moderator shall charge the court that it is about to pass to the consideration  
8 of the case, and to enjoin on the members to recollect and regard their high  
9 character as judges of a court of Jesus Christ, and the solemn duty in which  
10 they are about to engage.
- 11 2. The indictment shall be read, and the answer of the accused heard; the reading  
12 of the indictment may be waived by consent of the parties.
- 13 3. The witnesses for the prosecutor and then those for the accused shall be  
14 examined.
- 15 4. The parties shall be heard: first, the prosecutor, and then the accused, and the  
16 prosecutor shall close.
- 17 5. The roll shall be called, and the members may express their opinion in the case.
- 18 6. The vote shall be taken, the verdict announced, and judgment entered on the  
19 records.

20  
21 **CHAPTER 35**

22 *Evidence*

23  
24  
25 **35-1.** . . .

26  
27 **35-4.** The testimony of more than one witness shall be necessary in order to establish  
28 any charge; yet if, in addition to the testimony of one witness, corroborative evidence  
29 be produced, or if several credible witnesses bear testimony to different similar acts,  
30 belonging to the same general charge, the offense may be considered to be proved.

31  
32 **35-5.** It belongs to the court to judge the degree of credibility to be attached to all  
33 evidence. All evidence to be presented at trial, along with witness names, shall be  
34 exchanged by the parties at least fourteen (14) days before the trial is scheduled to  
35 commence.

36  
37 **35-6.** No witness afterwards to be examined, unless a member of the court, shall be  
38 present during the examination of another witness on the same case, if either party  
39 object.

40  
41 **35-7.** Witnesses shall be examined first by the party introducing them; then cross-  
42 examined by the opposite party; after which any member of the court, or either party,  
43 may put additional interrogatories. No question shall be put or answered except by  
44 permission of the moderator, subject to an appeal to the court. [Editorial note: new  
45 paragraph]

1  
2 The court shall not permit questions frivolous or irrelevant to the charge at issue,  
3 including assertions or questions regarding the character of the witness not in question,  
4 and any finding by the court that such an assertion or question was made shall be  
5 stricken from the Record of the Case.

6  
7 **35-8. . . .**

8  
9 **35-10.** The records of a court or any part of them, whether original or transcribed, if  
10 regularly authenticated by the moderator and clerk, or by either of them, shall be  
11 deemed good and sufficient evidence in every other court. In like manner, testimony  
12 taken by one court (including testimony written or recorded during investigation) and  
13 regularly authenticated shall be received by every other court.

14  
15 **35-11.** Evidence relevant to the issue at charge shall be automatically admitted by the  
16 court when its authenticity is not in dispute or can be easily ascertained by the court.

17  
18 **35-12.** When it is not convenient for a court to have the whole or perhaps any part of  
19 the testimony in any particular case taken in its presence, a commission shall be  
20 appointed, or coordinate court requested, to take the testimony in question, which shall  
21 be considered as if taken in the presence of the court.

22 Due notice of the commission or coordinate court or videoconference, and of  
23 the time and place of its meeting, shall be given to the opposite party, that he may have  
24 an opportunity of attending. If the accused shall desire on his part to take testimony at  
25 a distance for his own exculpation, he shall give notice to the court of the time and  
26 place at which it shall be taken, in order that a commission or coordinate court, as in  
27 the former case, may be appointed for the purpose. Testimony may be taken on written  
28 interrogatories by filing the same with the clerk of the court having jurisdiction of the  
29 case, and giving two weeks' notice thereof to the adverse party, during which time he  
30 may file cross-interrogatories, if he desire it. Testimony shall then be taken by the  
31 commission or coordinate court in answer to the direct and cross-interrogatories, if  
32 such are filed, and no notice need be given of the time and place of taking the  
33 testimony.

34  
35 **35-13.** If after trial before any court new testimony be discovered, which the accused  
36 believes important, it shall be his right to ask a new trial and it shall be within the  
37 power of the court to grant his request.

38  
39 **35-14.** If, in the prosecution of an appeal, new evidence be offered which, in the  
40 judgment of the appellate court, has an important bearing on the case, it shall be  
41 competent for that court to refer the case to the lower court for a new trial; or, with the  
42 consent of parties, to admit the evidence and proceed with the case.

43  
44 **BE IT FURTHER RESOLVED** that the following references be updated accordingly:  
45

- 1 • *BCO* 38-3, update “31-2” to “31-3”
- 2 • *BCO* 42-6, update “31-10” to “31-13”
- 3 • *BCO* 35-3, 38-1, 42-10, update “32-19” to “32-7”
- 4 • *BCO* 38-3.a, update “32-3” to “32-11”
- 5 • *BCO* 33-2, 34-4 update “32-6” to “32-10”
- 6 • All references to these same chapters within the Appendices
- 7 • All references to these same chapters within the *OMSJC*

## 8

## 9 **RATIONALE**

10

11 These three chapters have enjoyed no small number of attempted and successful overtures and  
12 throughout their history. Even so, still much confusion abounds for many lower courts,  
13 resulting and an overabundance of work for the higher courts upon review and control,  
14 complaint and appeal. We believe that much of this can be mitigated in the future by adding  
15 structure that will bring clarity to the process, while offering new emendations—as the  
16 Assembly did recently to *BCO* 35— which will prove very helpful to future investigations  
17 and cases of process.

18

19 Should all these changes be adopted as proposed, the result would be the retaining of most of  
20 the current text (with some additions throughout), relocating items together throughout these  
21 three chapters, several entirely new paragraphs, totaling 1102 additional words with the *Rules*  
22 *of Discipline*, as allocated below:

- 23
- 24 • 400 words regarding impartiality (123 in 31-5; 277 in 32-13);
- 25 • 103 words regarding the reporting of allegations;
- 26 • 80 words regarding reporting of results of an investigation;
- 27 • 126 words regarding non-censure suspension;
- 28 • 110 words regarding the adoption of closed session; and
- 29 • 283 words regarding various sundry changes throughout the remainder.

30

31 It would further demonstrate a new logical flow for the lower courts to better follow in  
32 handling any judicial cases arising before them:

### 33

### 34 Chapter 31

- 35
- 36 • 31-1 Solemn warning when beginning judicial procedures (Existing 32-1)
- 37 • 31-2 Original jurisdiction and notification of reports (Existing 31-1)
- 38 • 31-3 Caution in receiving accusations (Existing 31-8)
- 39 • 31-4 Initiation and timeliness of investigations (Existing 31-2, ¶1)
- 40 • 31-5 Impartiality of the investigative body
- 41 • 31-6 Investigative Committee Findings and Documents
- 42 • 31-7 Actions of the court upon finding a strong presumption of guilt (Existing 31-2,  
43 ¶2)
- 44 • 31-8 Parties in a case of process (Existing 31-3)

- 1 • 31-9 Requirements for prosecution of personal offenses (Existing 31-5)
- 2 • 31-10 Requirements for prosecution of general offenses (Existing 31-6)
- 3 • 31-11 Requirements for prosecution when instituted by the court (Existing 31-7)
- 4 • 31-12 Voluntary prosecutors (Existing 31-9)
- 5 • 31-13 Administrative suspension (Existing 31-10)
- 6 • 31-14 Care for the parties and voting rights (Existing 31-11 with expansion)
- 7 • 31-15 Closed Session for Judicial process

8

9 The result is a chapter that follows the flow of actual investigations through the initiation of  
10 process, with some changes to existing paragraphs for better fit: for example, current *BCO*  
11 31-8 is moved to 31-2, which is where considering of accusations would normally begin, upon  
12 their reception. The bulk of the additions aim to provide some additional clarity to the  
13 investigative process, which currently occupies the minority of the text in this chapter. These  
14 changes will also result in less complaints to the higher courts while simultaneously providing  
15 a modest increase in direction for investigations—without being too prescriptive—  
16 maintaining the current *BCO* posture of discretion for decision-making by a court of original  
17 jurisdiction, being closest to whatever investigation and process is occurring.

18

## 19 Chapter 32

20

- 21 • 32-1 Initiation of formal process (Current 32-2)
- 22 • 32-2 Indictments (Current 31-4, 32-5, reference to 32-20)
- 23 • 32-3 Citations (Current 32-3, 32-4 in part)
- 24 • 32-4 Delivery of citations and indictments (Current 32-4 in part)
- 25 • 32-5 Refusal to obey citations (adaptation of current 32-6, 35-12; reference to 32-10)
- 26 • 32-6 Progress of a case (Current 32-14)
- 27 • 32-7 Prohibition against professional counsel (Current 32-19)
- 28 • 32-8 Judicial Committees (Current 32-11)
- 29 • 32-9 Minutes (Current 32-18)
- 30 • 32-10 Contumacy (adaptation of current 32-6 in part)
- 31 • 32-11 Meetings of the court (adapted from current 32-3, 32-20)
- 32 • 32-12 Pretrial matters (Current 32-10, with expansion)
- 33 • 32-13 Trial impartiality (expansion of current 32-13, 32-16, 35-13, based on *OMSJC*  
34 2)
- 35 • 32-14 Offenses taking place at a distance (adapted from current 32-8, 32-9)
- 36 • 32-15 The trial (adapted from current 32-12, 32-15)

37

38 If all proposed changes are adopted, items that appear in multiple locations within the  
39 chapter—for example, citations or indictments, which appear both here in current *BCO* 32-3  
40 and 32-5, as well as 31-3—would be collocated in the same section, or at least in adjacent  
41 sections. The resulting structure is in a natural flow regarding judicial process and provides a  
42 helpful outline within the *BCO* itself for presbyters in conducting court cases (in addition to  
43 the helpful procedural checklists already provided elsewhere): Sections 1–10 explain the  
44 individual elements of judicial process (citations, indictments, representation, recordkeeping,



1 contumacy, etc.), while Sections 11–15 delineate the formal meetings of the court from the  
2 first to the last culminating with the trial and decision itself.

3  
4 Chapter 35

- 5  
6 • 35-1 Witness competency  
7 • 35-2 Rights of the accused  
8 • 35-3 Accommodations for witness testimony  
9 • 35-4 Proving a charge  
10 • 35-5 Judging credibility of evidence  
11 • 35-6 Sequestration of witnesses  
12 • 35-7 Examination of witnesses at trial  
13 • 35-8 Witness oath  
14 • 35-9 Recording of testimony and the Record of the Case  
15 • 35-10 Admissibility of evidence from other courts  
16 • 35-11 Admissibility of other evidence  
17 • 35-12 Testimony taken at a distance  
18 • 35-13 Right to request a new trial  
19 • 35-14 Evidence offered during appeal

20  
21 The bulk of the reorganization of *BCO* 35 occurred during the work of the Overture  
22 Committee to the 49<sup>th</sup> General Assembly, ratified at the 50<sup>th</sup>, wherein we significantly  
23 reworked the first five sections along the same lines as what has been proposed for *BCO* 31  
24 and 32. The substantive changes in *BCO* 35 do no materially alter the topic of each section.

25  
26 **Itemized Rationale.** The following brief description of each proposed change and the  
27 rationale for it is offered.

28  
29 ***Proposed BCO 31-1: Solemn Warning When Beginning Judicial Procedure.*** Moved from  
30 *BCO* 32-1 to the first chapter where most cases originate.

31  
32 **Rationale:** Commenting on what today is our *BCO* 32-1 (in Ramsay it is §172),  
33 Ramsay offers this wisdom: “The trial proper begins with the charge of the Moderator  
34 to the court (183), while the process begins with the determination of the court that  
35 there shall be a judicial prosecution, and judicial procedure begins with the  
36 determination of the court to investigate; but this principle, while especially imperative  
37 during the trial proper, applies throughout the whole judicial procedure, as indeed in  
38 all dealing with offenders.”

39  
40 The warning to brothers about engaging in the restorative process of ecclesiastical  
41 discipline is certainly apropos both at the start of a trial, but even as much at the start  
42 of any judicial process; hence, it is proposed to be moved here. As such, the word  
43 “trial” is replaced by “church discipline.”

1 **Proposed BCO 31-2: Notification of Reports Against Christian Character.** Requires  
2 Officers of the PCA to immediately forward any report received to the Stated Clerk of the  
3 court of original jurisdiction, who shall notify the accused within seven days. Also requires  
4 that coordinating agencies/entities (e.g., RUF, MTW, Presbytery, etc.) be notified when an  
5 allegation regarding the Christian character of an officer is submitted to the court of original  
6 jurisdiction.

7  
8 **Rationale:** Reports often come at inopportune times. As such, notification of the report  
9 to the accused and the broader court of original jurisdiction can be significantly  
10 delayed, perhaps by months. This is unfair to all involved—the accusers, the accused,  
11 and the court. Timeliness is of significant importance in all judicial matters. In  
12 addition, as was proposed at the 50<sup>th</sup> General Assembly, there needs to be some  
13 direction regarding reporting of allegations to agencies which are associated but do  
14 not have original jurisdiction, which is also answered in this proposal.

15  
16 No language is here offered as to whether the initial report is to be shared with anyone,  
17 including the accused or any other agency/entity; that is to be determined by the body  
18 through its investigative and deliberative processes.

19  
20 **Proposed BCO 31-3.** Moves the consideration of accusers earlier in the chapter, from 31-8 to  
21 31-3, as the consideration often begins upon receiving the initial report against a member.

22  
23 **Proposed BCO 31-4 The Imperative Duties of an Investigation and Timeliness of Such.**  
24 Clarifies that the duties of church courts to investigate all reports regarding the Christian  
25 character (alleged morality-related offenses) equally and sets a standard for timeliness to begin  
26 such an investigation.

27  
28 **Rationale:** All reports against the Christian character of any individual under the care  
29 of our Church are equally important in the sight of God (1 Timothy 5:21). The justice  
30 of the Lord Jesus Christ and our responsibilities as His under-shepherds demand that  
31 regardless of who is aggrieved by the accusations, each court take its responsibility  
32 equally seriously. Likewise, the court should avoid the appearance of favoritism, and  
33 this phrase has been interpreted by some as “circling the wagons” to protect an accused  
34 person—who undoubtedly will argue he is aggrieved by any reports against him.  
35 Finally, the current language creates a potential subjective standard to be met by  
36 investigating bodies which may be used by an accused person as grounds for complaint  
37 and/or dismissal of a strong presumption of guilt.

38  
39 These small changes remove the appearance of any favoritism in the process from a  
40 rules perspective and yet preserve the right of someone to ask themselves for an  
41 investigation because they are aggrieved by injurious reports against them.

42  
43 Regarding timeliness, Overture 25 to the 50<sup>th</sup> General Assembly attempted a similar  
44 change. The changes here propose that an investigation should *ordinarily* begin within  
45 30 days of receipt of the report by the Clerk. This is a reasonable time frame; and

1 “begin” simply means the court “taking up” or “considering” whether or not to pursue  
2 an investigation, along the lines of the requirement in *BCO* 43-2 regarding  
3 “consideration” of complaints, as it has discretion in this matter.  
4

5 ***Proposed BCO 31-5: Timely and Impartial Investigations.*** Investigations shall begin in a  
6 timely manner and shall be performed by individuals who meet a basic standard for  
7 impartiality, and allows for third-parties to be hired to aid in investigation. Also clarifies that  
8 the court should ordinarily involve female advisors when considering allegations of a moral  
9 nature brought by female parishioners.  
10

11 **Rationale:** *BCO* 11-3 teaches us “All Church courts are one in nature, constituted of  
12 the same elements, possessed inherently of the same kinds of rights and powers, and  
13 differing only as the Constitution may provide.” Our high court has long had a well-  
14 defined standard for conduct of Commission members (*OMSJC* §2). The changes  
15 proposed here codifies a basic standard of impartiality in part from what is used by our  
16 high court. Since all courts are one in the same in nature and SJC members are chosen  
17 from said lower courts themselves, it is perfectly reasonable to assume that a basic  
18 standard for impartiality may reasonably be likewise expected of the lower courts.  
19

20 Two other items here proposed including the allowance for outside third parties as  
21 well as the ordinary addition of female advisory members on the investigative body  
22 when there are accusations of personal sin against a woman—as is the case for the  
23 majority of “normal” investigation in the courts of the world—but stops short of being  
24 exclusively the only option, again, preserving the discretion of the court of original  
25 jurisdiction.  
26

27 ***Proposed BCO 31-6: Investigative Committee Findings and Documents.*** Clarifies that  
28 neither the accused nor court members at large have the right to investigative documents  
29 (witness testimony, evidence, etc.) and that the Investigative Report shall be distributed to all  
30 parties at the same time.  
31

32 **Rationale:** Years and years of discussion on the Review of Presbytery Records as to  
33 what a “full and accurate record” (*BCO* 13-11) actually means when it comes to  
34 judicial process, but more specifically investigations and complaints, for which there  
35 is less definition and more flexibility in our current language. These proposed changes  
36 codify prior SJC rulings in specific cases, providing guidance to the lower courts who  
37 may not be familiar with them. As a matter of practice, nothing in this proposed  
38 language limits the ability of a court or its investigative body to engage in further  
39 follow-up conversations with individuals involved in an investigation after delivering  
40 their report.  
41

42 Further, the proposed language does not infringe on the right of the accused or hinder  
43 him/her in making a sufficient defense. If the investigation results in a strong  
44 presumption of guilt, then the evidence collected by the investigative body will be

1 passed along to the prosecutor, and from there the formal process will take over. The  
2 SJC explained this succinctly in its decision in Case 2021-06, p.7:

3  
4 . . . the SJC does not agree with the Complainant that he would necessarily  
5 have the right to “the minutes and documents of the *BCO* 31-2 Committee.”  
6 An investigative committee might interview several people who may or may  
7 not have ended up being significant for determining whether there was a strong  
8 presumption of guilt in a certain matter. Likewise, a committee might collect a  
9 range of documents that are not germane to their investigation. Surely it would  
10 be inappropriate to disclose each witness, all testimony, and every document  
11 to an accused individual upon his request. Those witnesses, documents, and  
12 evidence that are germane to the charges and specifications will be made  
13 known in the indictment; at that point, the accused should have access to those  
14 materials to prepare a defense (*BCO* 32-4, 5, 8).

15  
16 ***Proposed BCO 31-7: Finding of a Strong Presumption of Guilt.*** This proposal retains the  
17 full language of the second paragraph of current *BCO* 31-2, and simply moves it to its own  
18 section, given the expansion of the earlier investigative procedures. This keeps it within the  
19 normal flow of the investigative process.

20  
21 ***Proposed BCO 31-8 through 31-12.*** These paragraphs represent a renumbering of current  
22 *BCO* 31-3 and 31-5 through 31-9, with no changes to text or order, respectively. Existing *BCO*  
23 31-4 is proposed to be moved to *BCO* 32 in another overture, except for the last sentence,  
24 which is incorporated into proposed 31-8, where it fits contextually very well.

25  
26 ***Proposed BCO 31-13: Ordinary Automatic Administrative Leave in Reports Alleging a***  
27 ***Serious Personal Offense or Public Scandal.*** This paragraph clarifies that certain kinds of  
28 reports received by courts should ordinarily result in a type of “Administrative Leave” during  
29 investigation in cases alleging serious immorality or public scandal, and clarifies what this  
30 leave may or may not include, while still giving significant discretion to the court and seeking  
31 to protect an accused person’s rights as a member of that court.

32  
33 **Rationale:** Overture 8 to the 50<sup>th</sup> General Assembly attempted to get at this outcome.  
34 This proposal does several things differently. First, it *ordinarily* places an accused  
35 person under suspension for serious morality-related allegations—what qualifies as  
36 “serious” is best determined by the court (no change is envisioned here regarding  
37 doctrinal reports; these too may still warrant a suspension of a Teaching Elder). The  
38 proposed language here specifically gives no examples of what might be serious,  
39 because each case is unique: a financial crime may be serious enough, for example.  
40 No position is taken with regard to pay, which is a matter to be decided by the various  
41 courts which may be involved.

42  
43 This also further clarifies that during this leave the accused shall be allowed into any  
44 proceedings regarding his case, but he may, as part of his “administrative suspension”  
45 be disallowed from attendance and voting in other matters before the court. It has been

1 observed by the SJC that Sessions have some discretion in disallowing certain  
2 members to attend given special circumstances (e.g., SJC Case 2011-11); and, if all  
3 courts are one in the same in nature (*BCO* 11-3), then such may be applied to other  
4 courts as well. To pick up on the same example from earlier, if a Teaching Elder was  
5 accused of embezzlement from his church, and he was also on an Admin or Finance  
6 committee, or even was Treasurer of the Presbytery, the court should be able to  
7 suspend him from those duties.

8  
9 ***Proposed BCO 31-14: Disallow the Accused from Voting in His Own Defense.*** This  
10 paragraph represents a renumbering of current *BCO* 31-11, with no changes to the text.

11  
12 ***Proposed BCO 31-15: Adoption of Closed Session for Judicial Matters.*** Establishes a *BCO*-  
13 wide provision for Closed Session (in which the SJC normally operates) and specifies that  
14 judicial process—including investigations—shall take place in Closed Session by default.

15  
16 **Rationale:** Closed Session is the normal mode of operation for the Standing Judicial  
17 Commission. As such, it is a good model for lower courts. Executive Session—solely  
18 a machination of *Robert’s Rules of Order (RONR)*—is often misunderstood by courts  
19 and court members, and has and does create a lot of confusion. Further, Executive  
20 Session itself creates practical issues, too, when, for example, a pastor is charged: can  
21 he not tell his Session? Can he not tell his congregation? Etc. Closed Session mitigates  
22 many of these issues. Nothing in the proposed language here prevents the entering into  
23 an Executive Session if the court deems it necessary. In either Closed or Executive  
24 sessions, it remains to the court to determine “who should be invited.” This also further  
25 specifies that all judicial matters normally operate this way, eliminating significant  
26 confusion with regard to *RONR* provisions on this matter.

27  
28 ***Proposed BCO 32-1: Initiation of Formal Process.*** Identifies how formal process begins and  
29 codifies previous SJC rulings (following Ramsay) that process begins when the court appoints  
30 a prosecutor, whether in the case of charges being filed directly, or upon finding a strong  
31 presumption of guilt after an investigation.

32  
33 **Rationale:** There is some confusion among presbyters regarding when process  
34 “officially” begins. However, Ramsay is normally appealed to on this point, who  
35 explains that it begins when the prosecutor is appointed. This simply codifies that  
36 interpretation for clarity and directs that the court should ordinarily appoint a  
37 prosecutor without delay, as delays in such appointment can cause additional judicial  
38 problems.

39  
40 ***Proposed BCO 32-2: Indictments.*** Explains what an indictment is and its form and collocates  
41 all indictment references together from *BCO* 31 and 32.

42  
43 **Rationale:** The first sentence is new, and simply explains the element itself. The  
44 remainder of this section is pulled verbatim from current *BCO* 31-4 and 32-5.

1 **Proposed BCO 32-3: Citations.** Explains what a citation is and its form.  
2

3 **Rationale:** Most of the changes to 32-3 consist in relocating the remainder of current  
4 *BCO* 32-3 to later in the chapter, to coincide with the new flow of the chapter. The  
5 first sentence also incorporates the two elements from current *BCO* 32-4 on who shall  
6 sign the citation and the fact that citations shall also be issued to trial witnesses.  
7

8 **Proposed BCO 32-4: Delivery of Citations and Indictments.** Explains the method of serving  
9 both indictments and citations and explains in what circumstances exclusively digital delivery  
10 is acceptable.  
11

12 **Rationale:** The struck content was relocated into proposed *BCO* 32-3. The only new  
13 item here is clarification that exclusively electronic delivery is acceptable if the  
14 recipient acknowledges receipt. This may be worked out ahead of time by the parties  
15 and court, and follows the general practice where electronic items are counted as  
16 received on the day the clerk finds them in his email as long as a paper copy is likewise  
17 mailed—this simply makes the latter step of sending a paper copy unnecessary in most  
18 circumstances.  
19

20 **Proposed BCO 32-5: Refusal to Obey Citations.** Explains what the court is to do when a  
21 citation is ignored.  
22

23 **Rationale:** This section represents a split of current *BCO* 32-6 into two parts, this  
24 being the first, and the remainder appearing later in proposed *BCO* 32-10. The only  
25 substantive change here is the replacement of the word “accused” with “any person”  
26 which helpfully clarifies that contumacy may apply to anyone refusing to appear  
27 before a court with respect to judicial process, having been properly cited to do so.  
28

29 **Proposed BCO 32-6: Progress of a Case.** This is simply a renumbering of current *BCO* 32-  
30 14.  
31

32 **Proposed BCO 32-7: Prohibition Against Professional Counsel.** Defines professional  
33 representation during process, and specifies the requirements of such a representative for both  
34 parties.  
35

36 **Rationale:** This came in its original form from two presbyteries to the 50<sup>th</sup> General  
37 Assembly but its genesis was the recent SJC trial. There were several deficiencies in  
38 the first iteration. Simply put, this current proposal codifies existing CCB  
39 interpretation and application of the current language of *BCO* 32-19. The full language  
40 of the CCB’s advice is quoted below from *M27GA*, p. 148:  
41

42 **V. ADVICE TO STATED CLERK**  
43 **SC Advice 1**  
44 **Question**

1 “Does *BCO* 32-19 forbid parties in cases on appeal or complaints taken to a  
2 higher court to secure the professional services of attorneys (either members  
3 of the PCA or not members of the PCA) to prepare their appeal or complaint,  
4 prepare briefs, and handle correspondence and communications with an  
5 ecclesiastical court or its clerk.”

6 **Response**

7 Yes *BCO* 32-19 forbids professional counsel from formal involvement (that is,  
8 acting in an attorney/client relationship) in cases of process in the courts of the  
9 church. Parties in such cases may, of course, seek help anywhere they can find  
10 it, but the parties should not be “represented” by professional counsel “as such”  
11 in any case, including correspondence about the case.

12  
13 Respectfully submitted,

14 /s/ Robert C Cannada, Jr., Chairman

15 /s/ Frank D. Moser, Secretary

16 *Received as information*

17  
18 The deficiencies of the previous version (the prohibitions were considered by many to  
19 be too broad) have been removed, and the additions (counsel may continue throughout  
20 the duration of the case; representation at the Session level may be obtained through  
21 presbytery) were initially welcome from the previous iteration. This proposal strictly  
22 limits itself to codifying the longstanding (now 24 years) advice given to the Assembly  
23 on such matters.

24  
25 Additionally, clarification is provided for assistants in proposed 32-7a, and the only  
26 provisions applying to them likewise apply to trial representatives: that they are  
27 members in good standing and they shall not be allowed to likewise vote in the judicial  
28 matters in which they are assisting.

29  
30 The last sentence of current *BCO* 32-3 is incorporate herein since it applies to  
31 representation, following the rationale of collocating items together topically  
32 throughout this chapter.

33  
34 ***Proposed BCO 32-8: Judicial Committees.*** This is a renumbering of current *BCO* 32-11 with  
35 an update to the reference therein to the new appropriate provision of *BCO* 32.

36  
37 ***Proposed BCO 32-9: Minutes and Records.*** This is a renumbering of current *BCO* 32-18  
38 with some added structure.

39  
40 **Rationale:** The current 32-18 is composed of five separate paragraphs, and the new  
41 format will make individual items more easily referenceable in judicial decisions.

42  
43 ***Proposed BCO 32-10: Contumacy.*** Explains what contumacy is and who may be censured in  
44 that case.

1       **Rationale:** The first sentence attempts to explain at the most basic level what  
2       contumacy is, and then establishes some examples—without limiting contumacy to  
3       just those examples—via adaptation from the language currently in *BCO* 32-6  
4       (refusing to appear, appearing and refusing to plead). The current language contains a  
5       provision “or otherwise refuse to cooperate with lawful proceedings” which is  
6       nebulous at best, and serves as a kind of catchall for any kind of contumacy within  
7       formal process. With this new sentence explaining what contumacy is, that “catchall”  
8       becomes unnecessary and thus is dropped.

9  
10       The remainder of the added language is taken from current *BCO* 35-14, replacing  
11       “refusing to testify” with “found by the court to be noncompliant.”

12  
13       **Proposed BCO 32-11: Meetings of the Court.** Delineates the basic meetings of the court and  
14       what happens at each of those meetings.

15  
16       **Rationale:** The first sentence is new and explanatory to describe the meetings of the  
17       court. The remainder of proposed *BCO* 32-11 including subparagraphs A and B is  
18       taken almost verbatim from current *BCO* 32-3. The only substantive change here is  
19       the replacing of “if he plead and take issue” with “if the accused does not confess”  
20       since neither the words “plea” nor “plead” are present anywhere else in the text.

21  
22       This section is concluded with the exact language of current *BCO* 32-20, which  
23       explains how the accused might object to the consideration of a charge, which typically  
24       happens very early in the court’s process (though it may continue throughout if the  
25       question is undecided), here collocated with the early meetings of the court for clarity.

26  
27       **Proposed BCO 32-12: Pretrial Matters.** Explains that courts may provide additional trial  
28       rules not contained within the *BCO* (which gives minimal guidance) and requires that any  
29       such rules must be agreed to by both parties along the same timeline for the commencement  
30       of trial.

31  
32       **Rationale:** This stipulation follows the same timeline for trials, so it introduces no  
33       essential delays in the process. It does codify the practice of some PCA courts in  
34       stipulating additional parameters for any specific proceeding—a flexibility that is  
35       allowed by the *BCO* in providing courts of original jurisdiction latitude to use their  
36       discretion in these matters. For example, a court may provide a rule that “heresay” will  
37       not ordinarily be allowed. There is no specific prohibition in the *BCO* against it, though  
38       it is generally frowned upon, and not considered nearly as weighty as original first-  
39       person evidence and testimony.

40  
41       The result of the court implementing such parameters at the beginning will 1) serve to  
42       head off future appeals, the parties having agreed beforehand, and 2) set expectations  
43       for both parties as to what the court will be allowing or disallowing, whatever the case  
44       may be. The PCA does not have an extensive rulebook in this regard, so codifying the  
45       ability for courts and standing judicial bodies to do this is very helpful.



1  
2 **Proposed BCO 32-13: Trial Impartiality and Requirements of Judges.** Preserves the existing  
3 language, further establishes the requirements for impartiality in any trial, and consolidates  
4 current *BCO* 32-17 and 35-13 into this section.  
5

6 **Rationale:** The only statements around impartiality at trial currently pertain to the  
7 examination of witnesses, the language of which is herein retained.  
8

9 *BCO* 11-3 teaches us “All Church courts are one in nature, constituted of the same  
10 elements, possessed inherently of the same kinds of rights and powers, and differing  
11 only as the Constitution may provide.” Our high court has long had a well-defined  
12 standard for conduct of Commission members (*OMSJC* §2). The changes proposed  
13 here codifies a basic standard for competency, independence, and impartiality for  
14 judges in judicial cases, based in large part on what is used by our high court. Since  
15 all courts are one and the same in nature and SJC members are chosen from said lower  
16 courts themselves, it is perfectly reasonable to expect that these standards should be  
17 expected of judges in the lower courts as well.  
18

19 Accordingly, language is herein adapted from *OMSJC* §2 in four paragraphs beginning  
20 with the end of the current language in *BCO* 32-13. These paragraphs attempt to offer  
21 the same standard of conduct for lower court judges as there is for those in higher  
22 courts. These provisions also coincide with the proposals for impartiality with regard  
23 to Investigations (proposed *BCO* 31-4 through 31-7).  
24

25 The sixth paragraph represents an incorporation of current *BCO* 32-17, commonly  
26 referred to as the prohibition against “circularizing the court”—though this  
27 phraseology is often confusing to presbyters. This paragraph concludes with an  
28 adaptation from *OMSJC* §2 on when a member shall recuse himself.  
29

30 This section concludes with the incorporation of current *BCO* 35-13 which also  
31 pertains to the disqualification of judges, and thus makes the most sense to be placed  
32 here in the revised structure of these chapters. No substantive changes are made.  
33

34 **Proposed BCO 32-14: Offenses Taking Place at a Distance.** This language represents a  
35 renumbering of current *BCO* 32-8 and 32-9, consolidating them into one section, both of  
36 which pertain to offenses occurring outside the court of original jurisdiction, and offering a  
37 more pleasant formatting of the content therein.  
38

39 **Proposed BCO 32-15: The Trial.** Delineates the steps to be taken at the trial proper, which  
40 remain unaltered from this same section currently.  
41

42 **Rationale:** Step 1 incorporates the current language of *BCO* 32-12 nearly exactly since  
43 it pertains to that same step. The only other alteration is a single additional phrase is  
44 added to Step 2 noting that the reading of the indictment may be waived by the court,  
45 having already been read to the accused at the second meeting of the court.

1  
2 The remainder of the current *BCO* 32 (§16–20) have already been incorporated in the  
3 preceding proposals, and thus are stricken hereafter.  
4

5 ***Proposed BCO 35-4: Affirm that a Pattern of Offenses Satisfies Evidentiary Criteria.***  
6 Clarifies, in accordance with historical Presbyterian interpretation, that multiple individual  
7 witnesses to a single general charge may be used to satisfy the requirements of “two or three  
8 witnesses” as a pattern of offense.  
9

10 **Rationale:** It can be an issue as to whether each separate *act* requires two witnesses to  
11 be considered proven, even under the current provision which allows for one of those  
12 witnesses to be a piece of corroborating evidence. The additional language here  
13 clarifies that singular acts under the same general charge function to satisfy the charge,  
14 and the language is taken directly from the 1821 PCUSA *Book of Discipline*, VI.VI.  
15

16 ***Proposed BCO 35-5: Clarification Regarding Evidentiary Discovery.*** Clarifies that the court  
17 shall direct both parties to exchange all evidentiary materials and witnesses at least fourteen  
18 (14) days ahead of the scheduled commencement of the trial.  
19

20 **Rationale:** This is a practice that has been in use by some courts in the PCA, and it  
21 appears to be a good practice which should be codified for all. Nothing in this proposal  
22 would preclude rebuttal evidence of any kind, which should be disclosed as soon as  
23 possible under this same principle. The court here has discretion to order discovery  
24 exchange earlier, but it must do so at least two weeks beforehand, which corresponds  
25 to the 14-day provision of existing *BCO* 32-3 (proposed *BCO* 32-11) for the  
26 scheduling of such trial after the second meeting of the court.  
27

28 ***Proposed BCO 35-7: Prohibiting Blanket Character Attacks in the Name of Credibility.***  
29 Specifies that while a party shall not be hindered from making his or her case, character attacks  
30 unrelated to the indictment or specific testimony by either party shall not be permitted by the  
31 court and directs the court how to proceed if it occurs.  
32

33 **Rationale:** A party should be allowed to present its case—that is not in question. But  
34 what should not be allowed by any church court is attacks on the character of anyone  
35 testifying that are unrelated to their testimony or the issue at charge.  
36

37 T. David Gordon’s entire article on this point is convincing, but here we shall only  
38 quote it in part (*M27GA*, p. 125):  
39

40 **The Issue is the Law, not the Parties**

41 I suppose it should be evident to the reader that judges are responsible to rule  
42 and decide in terms of the law of the Church, not in terms of their perception  
43 of who are the “good guys” and/or the “bad guys.” Sadly, experience teaches  
44 that again, shepherds are fairly astute at identifying the deceitfulness of the  
45 human heart, but they are less astute at judging matters of law. Regrettably,

1 those who sit in judgment often expect or even encourage arguments related to  
2 the moral character of the parties in question. Such comments are almost never  
3 proper or germane (and a judicious moderator of a trial will rule them out of  
4 order, and not permit them).

5 If the issue involved is an individual's moral character, then, of course, some  
6 comments about moral character are germane. But even here, they are only  
7 germane in a relatively narrow arena. If an elder is on trial for adultery, it is  
8 irrelevant to ask whether he pays his taxes, gives money to the Church, etc. He  
9 is not on trial for these other matters; he is on trial for adultery. Similarly, if an  
10 individual complains against an action of one of the courts, the moral character  
11 of the complainant or of the court in question is irrelevant. The only relevant  
12 question is whether the court erred in the specific way that it has been alleged  
13 to have erred. Neither party should be obliged to prove its moral standing in  
14 any complaint. Since no one is permitted to complain who is not a member in  
15 good standing of the Church (*BCO* 43-1), it must be assumed that the person  
16 filing the complaint is already deemed by the court to be in good standing.  
17 And, since the court itself is constituted by those who have been deemed wise  
18 and exemplary, its moral character similarly is not at issue. If good people  
19 break some specific law of the Church, the Church's courts must render a  
20 judgment of guilt; if bad people keep some specific law of the Church, the  
21 Church's courts must render a judgment of innocence.

22  
23 This is what the Bible teaches when God is spoken of as no "respector of  
24 *persons*" (a wonderful translation of the more-contemporary "is not partial").  
25 The point in these passages is that God's justice cannot be perverted by  
26 *personal* considerations. God is, in this sense, not a juror, but a judge. The issue  
27 for him is always whether his own inflexible, faultless *standard* has been  
28 violated or not; the issue is never whether other *personal* considerations can  
29 cause the demands of justice to be perverted. "For the LORD your God is God  
30 of gods and Lord of lords, the great God, mighty and awesome, who is not  
31 partial and takes no bribe, who executes justice for the orphan and the widow,  
32 and who loves the strangers, providing them food and clothing" (Deut.10:17-  
33 18). Thus, when we exercise justice impartially, we are imitating God. "You  
34 shall not render an unjust judgment; you shall not be partial to the poor or defer  
35 to the great: with justice you shall judge your neighbor" (Lev. 19:15). "You  
36 must not be partial in judging: hear out the small and the great alike; you shall  
37 not be intimidated by anyone, for the judgment is God's." (Deut. 1:17).  
38 Biblically, justice is administered only when there is an entire disregard for the  
39 *persons* involved; whether they be small or great, rich or poor, strangers or  
40 friends.

41  
42 Ironically, then, what is often the *shepherd's* greatest strength (an ability to  
43 "size people up" in terms of their moral or spiritual condition) is the *judge's*  
44 greatest weakness. To be genuinely useful as an elder, one must wear two hats,  
45 and develop two sets of skills. To be a good shepherd of souls, one must

1 develop good instincts, and one must cultivate empathy and sympathy; in short,  
2 one must be a “people person.” To be an administrator of justice, one must  
3 develop a capacity to put personal considerations aside, for the purposes of  
4 administering law impartially. Although this challenge may appear beyond the  
5 capacity of mere mortals, we must remember that though we are indeed mere  
6 creatures, we are creatures made in the image of our God, Who is Himself both  
7 a compassionate Shepherd and an impartial Judge.  
8

9 Further, this proposal allows the court itself to enforce this provision, and does not rely  
10 solely on the ability of one party to recognize it in the heat of the moment. And it thus  
11 directs the court what to do with the Record of the Case when such an instance occurs.  
12

13 ***Proposed BCO 35-10 and 35-11: Clarification Regarding Evidentiary Admissibility.***  
14 Clarifies which evidence shall be automatically admitted by the court.  
15

16 **Rationale:** In the case of a complaint, typically both parties would stipulate evidence  
17 for automatic admittance to the Record of the Case, and the ROC is thus created by  
18 agreement. In cases of process, however, this process simply does not work: why  
19 would an accused person ever stipulate to a single piece of evidence? The burden lies  
20 squarely on the prosecution; the accused is innocent until proven guilty, and as such  
21 any man so accused is likely not to stipulate to any evidence.  
22

23 According to the justice of the Lord Jesus, from whose sight nothing is hidden,  
24 evidence that is relevant on its face should be admitted automatically by the court when  
25 its authenticity is not in dispute.  
26

27 This also provides a path for the admission of material such as police reports, medical  
28 records, etc. which today may require testimony to admit into evidence. This can be  
29 an issue, as has been brought up multiple times in the last few years, because the author  
30 of such a report, for example, may not be determined to be competent to testify  
31 according to our rules in *BCO* 35-1. Were these provisions adopted, the court would  
32 automatically admit such records so long as their authenticity and relevance was not  
33 in dispute, which in the case of things such as police reports, medical records, etc., is  
34 relatively easy for the court to determine.  
35

36 The proposed provisions here further codify that such evidence received as testimony  
37 during investigation—investigations themselves are official proceedings of the  
38 court—shall be automatically admissible where the authenticity of such is not in  
39 question.  
40

41 These changes cumulatively will have the effect of working to ensure that all relevant  
42 evidence is considered by the court in its decision, while helping to protect witnesses  
43 from (perhaps multiple) unnecessary retellings of their stories diminishing the right of  
44 cross-examination by the opposing party.  
45

Overture 20, Fountain Square Presbyterian Church

1 ***Proposed BCO 35-13 and 35-14: Deletions.*** The current language in *BCO* 35-13 and 35-14  
2 is moved to other proposed sections in *BCO* 31 and *BCO* 32. The remaining section, *BCO* 35-  
3 16 is thus renumbered to 35-14.

4

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

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

7 *Submitted to Central Indiana Presbytery at its stated meeting on February 9, 2024. Rejected*  
8 *by Central Indiana Presbytery at its stated meeting on February 9, 2024.*

9 *[The relevant extract of the Presbytery minutes has been provided to the Stated Clerk of the*  
10 *PCA according to RAO 11-10.]*

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