OVERTURE 1 from Northern New England Presbytery (to CCB, OC)

"Amend *BCO* 32-2 to Clarify that a Court May Investigate Whether Charges Should Be Filed""

Be it resolved that *BCO* 32-2 be amended by striking the current language and replacing it with the following (deletions indicated by strikethrough; additions by underlining).

Existing language:

32-2. ~~Process against an offender shall not be commenced unless some person or persons undertake to make out the charge; or unless the court finds it necessary, for the honor of religion, itself to take the step provided for in *BCO* 31-2.~~

Proposed language:

32-2. Prior to commencing process against an alleged offender, regardless of how allegations arose, the court shall investigate to the extent necessary to determine:

a. if it is a personal or general offense
b. if personal, whether Matthew 18 has been followed
c. if the nature of the alleged offense rises to a level warranting judicial process
d. if the accuser is like any of those described in *BCO* 31-8
e. if there is a strong presumption of guilt
f. if it is reasonable to expect the offense can be proven through judicial process.

Rationale

The current language of *BCO* 32-2 has sometimes been read to allow an individual to force a court of the Church to institute process by the filing of charges, taking the court's discretion to investigate and determine if discipline in the restricted and technical sense of judicial process (*BCO* 27-1.b) is the necessary avenue for achieving the ends of discipline as laid out in *BCO* 27-3.

Thus, in Case 2011-15, the SJC declares that "in general *BCO* 32-2 requires that a court commence process upon the filing of charges."[1] The concurring opinion to case 2010-04 lays out this two-fold path to judicial process in more detail.

> There are two (2) basic ways for such concerns to be resolved by a trial.
>
> First, a trial may result from a *BCO* 31-2 investigation, which leads to a finding of a strong presumption of guilt. Upon such a finding, a prosecutor is appointed, an indictment drawn, Parties cited, and a trial is conducted.
>
> Second, a trial may result when someone, who believes an offense has occurred and after practicing Matthew 18:15, files "charges" under *BCO* 32-2.

[1] Case 2011-15: *Complaint of Mr. Hahn v. Philadelphia Metro*, *M42GA*, 2014, 516. https://www.pcahistory.org/pca/ga/42nd_pcaga_2014.pdf

> It is at this point that some err in understanding how our Constitution instructs us to proceed. Some, incorrectly, believe that when *BCO* 32-2 "charges" are made, the Constitution requires (1) a *BCO* 31-2 investigation and (2) a finding of a strong presumption of guilt, before proceeding to trial. The correct interpretation of the Constitution, as set forth in the Decision, is that when *BCO* 32-2 "charges" are made out (and Matthew 18:15 has been practiced and *BCO* 31-8 does not apply), there is NO investigation under *BCO* 31-2, but rather the Court goes directly to appoint a prosecutor, an indictment is drawn, the Parties are cited, and a trial is conducted.[2]

This reading of the current language means that the filing of charges by an individual is both a necessary and a sufficient cause to institute judicial process. Thus, a court that has received charges has a very narrow latitude in not ordering an indictment to be drawn and proceeding to trial (only the provisions of *BCO* 31-8 according to the decision in Case 2011-15).

However, previously one of the issues raised in Case 91-6 was "Does a court have the prerogative of not adjudicating a case once charges have been placed before it?" At that time, the SJC answered, and GA approved (it was the procedure at that time for GA to approve SJC decisions), that "A court has the duty to investigate the allegations to determine if a trial is necessary (*BCO* 31-2)."[3] Thus, GA concluded that a court should have the obligation to investigate before instituting process. Ramsay agrees:

> The whole tone of these Rules is evidently this: that judicial prosecution is not to be originated, either by a court or by a voluntary prosecutor, unless the honor of religion requires this step, all other means to this end having been first exhausted; but that this means is, of course, to be resorted to when the honor of religion does require it, the honor of religion to be preserved at every cost. And the honor of religion is synonymous with the holiness of the Church.[4]

But by the reading in *Hahn*, an individual may force a court of the Church to process without the court having the ability to exhaust all other means to maintain the ends of discipline (the glory of God, the purity of his Church, and the keeping and reclaiming of lost sinners, *BCO* 27-3). This removes the discretion of the court, the use of the wisdom God has given to the shepherds he has called to care for that portion of the Church.

The amendment makes explicit that bringing allegations before a court is a necessary but <u>not</u> a sufficient step for moving into judicial process.[5] It makes explicit that the court always has the authority and the duty to investigate and pursue the ends of discipline through the

---

[2] Case 2010-04: *Sartorius et al. v. Siouxlands*, *M39GA*, 2011, Concurring Opinion, 585. https://www.pcahistory.org/pca/ga/39th_pcaga_2011.pdf

[3] Case 1991-6: *Lovelace v. Northeast Presbytery*, *M21GA*, 1993, 190. https://www.pcahistory.org/pca/ga/21st_pcaga_1993.pdf

[4] F. P. Ramsay, *An Exposition of the Form of Government and the Rules of Discipline of the Presbyterian Church in the United States* (Richmond, VA: The Presbyterian Committee of Publication, 1898), 194.

[5] A more in-depth argument for this position and against the reading put forward in the SJC's decision on Case 2011-15 may be found in the concurring opinion to that decision filed by RE Howard Donahoe. *M42GA*, Case 2011-15, 517-528.

appropriate means. The proposed language maintains judicial process in its proper and historical place, as the means of last resort when all other means have been exhausted.

Adopted by the Northern New England Presbytery at its stated meeting, May 18, 2024.
Attested by TE Per Almquist, stated clerk.