

1 **OVERTURE 23** from the Pacific Northwest Presbytery (to CCB, OC)
2 "Amend *BCO* 41-3 to Allow Supplemental Judges for a Session Trial"
3

4 **Be it resolved** that the 52nd GA approve the amendment to *BCO* 43-1 shown below
5 (underlining for additions; ~~strikethrough~~ for deletions):
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7 ***BCO* 41-3.** In making a reference the lower court may ask for advice only, or for final
8 disposition of the matter referred; and in particular it may refer a judicial case with a
9 request ~~for its trial and decision by the higher court:~~

- 10 a. That the higher court take original jurisdiction of the case, its trial,
11 judgment, and whatever censure it deems warranted; or
12 b. That the higher court provide additional teaching and/or ruling elders to
13 serve with the lower court in a judicial case, as may seem prudent to the
14 lower court, which additional elders, during their term of service on the
15 case, shall have all the rights and responsibilities of judges in the lower
16 court, subject to the rights of the parties under *BCO* 32-16.
17

18 **Rationale:**
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- 20 1. Sessions can presently reference a full trial to Presbytery, and Presbytery would decide
21 whether to accept the reference/request. This amendment follows that principle. Just as
22 presbytery has authority to decide whether to accept a referenced trial, it would have
23 authority to decide if supplemental judges are supplied, and if so, who they are.
24
25 2. The 2024 *PCA Yearbook* shows 2023 statistics as submitted by churches. It shows 1,645
26 churches and 7,418 ruling elders, for an average of 4.5 REs per church. And if you ignore
27 the 20 churches reporting 20 REs or more, the RE average drops to 4 per church. And the
28 median is probably closer to three per church.¹
29
30 3. A trial would be challenging, even with a five-person Session, if the pastor was trial
31 moderator, one elder was prosecutor, and two elders were witnesses for the prosecution.
32 That could reduce the court to a bare minimum quorum of two. And if that Session only
33 had three REs, it's possible the Session might not reach a quorum, especially if the accused
34 has a reasonable basis to object to any of them. (*BCO* 35-6, 13)
35
36 4. A Presbytery-supplied supplemental judge would be a sort of deputized "member" of the
37 trial court, solely for things related to the trial, somewhat akin to a non-ordained prosecutor
38 being a deputized "member" of the trial court. Supplemental judges would have the same
39 rights as Session-member judges pertaining to the trial. For example, a supplemental judge
40 could file a dissenting or concurring opinion. However, a supplemental judge would be
41 disqualified from participating in any Presbytery review of a complaint or appeal arising
42 from the case, per *BCO* 39-2: "When the proceedings of a lower court are before a higher

¹ Granted, our statistical data is less accurate than it could be, because not all our churches submitted statistics for 2023. And one of the churches with 20 or more REs is reported as having 299 REs, which raised the average from 4.0 to 4.5 REs per church in the 7,418 total.

1 court, the members of the lower court shall not lose the right to sit, deliberate and vote in
2 the higher court, except in cases of appeal or complaint."
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4 5. Ordinarily, a Session would specify how many supplemental judges it requests, and
5 Presbytery alone would decide whether to grant the request, and if so, who to appoint. The
6 Session would ordinarily have the right to withdraw its request for supplemental judges at
7 any time prior to first decision of the court, or the convening of the trial, whichever comes
8 first. As with other aspects of judicial process, the accused may register an objection with
9 the court regarding supplemental judges, and thus preserve it for appeal.
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11 6. A Session already has the right to request a TE from outside the Session to serve as the
12 trial moderator when it has no pastor, or presumably, when it is impractical or
13 unreasonable for the current pastor to do so. *BCO 12-3* seems to allow the Session to
14 recruit that moderator, without even notifying Presbytery.
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16 *BCO 12-3.* When a church is without a pastor, the moderator of the Session
17 may be either a minister appointed for that purpose by the Presbytery, with
18 consent of the Session, or one invited by the Session to preside on a particular
19 occasion, or one of its own members elected to preside. In judicial cases, the
20 moderator shall be a minister of the Presbytery to which the church belongs.
21

22 7. This amendment does not jeopardize the accused's right to a fair trial. It could actually
23 serve to protect it. If a referenced trial conducted completely by Presbytery is fair, then
24 borrowing a couple RE or TE judges from Presbytery should be fair also. In other words,
25 it would not violate Preliminary Principle 6 which says, "the power to elect persons to the
26 exercise of authority in any particular society resides in that society." We already allow a
27 member of a mission church to be disciplined by a temporary session that is not elected
28 by that church. And because a supplemental judge would not have participated in finding
29 a "strong presumption of guilt," the accused might regard him as inherently more neutral.
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31 8. For a Presbytery to be able to promptly supply supplemental judges, it might consider
32 adding a provision in its standing rules authorizing its moderator or a standing committee
33 to choose such supplemental judges, rather than wait for the next stated Presbytery
34 meeting or a called meeting. Otherwise, it could unnecessarily delay the process.²
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36 *The initial version of this Overture was approved at Pacific NW's Stated Meeting on 2/7/25.*
37 *A PNW Commission was authorized to revise and file when it deemed most prudent to do so.*
38 *Attested by TE Jerid Krulish, Pacific NW Presbytery Clerk*

² As an aside, if a trial reference is accepted, a Presbytery might stipulate it is accepting on the condition that the Session provide the prosecutor and cover the cost of trial transcription. That would be similar to what the SJC did in a 2020 trial reference it accepted from one of our Presbyteries.