

1 **OVERTURE 32** from the Houston Metro Presbytery (to CCB, OC)
2 “Amend *BCO* 36 to Provide for Elevation of a Censure without an Entirely New Trial”
3

4 **Be it resolved** that *BCO* 36 be amended to add a new paragraph, *BCO* 36-8, as follows
5 (underlining for additions):
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7 **36-8.** When members of a court wish to consider the elevation of an indefinite
8 suspension, whether from office or from the Sacraments (*BCO* 36-5) to the censure of
9 deposition or excommunication, it shall not be required to initiate process *de novo*
10 according to *BCO* 31-2 or *BCO* 32-2. The indefinitely suspended person is not in good
11 standing and has already been found impenitent, resulting in indefinite suspension
12 (*BCO* 30-3). However, the indefinitely suspended person has a right to a hearing in the
13 matter. The court supervising the indefinite suspension may consider a motion to find
14 him “incorrigible and contumacious” (*cf.* *BCO* 30-4) and present evidence to that
15 effect. The court shall give at least ten (10) days’ notice of such a motion to the
16 indefinitely suspended person and permit him the privilege of the floor to plead and
17 give a defense before the original trial court. The court, upon completing its hearing,
18 shall vote to determine whether or not to elevate the indefinite suspension to deposition
19 or excommunication.
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21 So that *BCO* 36-8 as amended would read:
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23 **36-8.** When members of a court wish to consider the elevation of an indefinite
24 suspension, whether from office or from the Sacraments (*BCO* 36-5) to the censure of
25 deposition or excommunication, it shall not be required to initiate process *de novo*
26 according to *BCO* 31-2 or *BCO* 32-2. The indefinitely suspended person is not in good
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28 (*BCO* 30-3). However, the indefinitely suspended person has a right to a hearing in the
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31 effect. The court shall give at least ten (10) days’ notice of such a motion to the
32 indefinitely suspended person and permit him the privilege of the floor to plead and
33 give a defense before the original trial court. The court, upon completing its hearing,
34 shall vote to determine whether or not to elevate the indefinite suspension to deposition
35 or excommunication.
36

37 **RATIONALE:**
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39 The *Book of Church Order* currently does not include any express provision for the elevating
40 of censure of indefinite suspension from either office or the Sacraments to a greater censure
41 of deposition or excommunication. This has led to confusion as to what is the proper process
42 for elevating the censure for a person whom the court has deemed unrepentant. Should such a
43 person be entitled to completely *de novo* process, that is, the court must charge the person
44 anew, marshal evidence and witnesses, and conduct a trial as if the person were presumed
45 innocent? While a censured person is entitled to some rights, clearly he is not entitled to all

1 rights under the Rules of Discipline. One who has been judged guilty by a court does not have
2 the right to a presumption of innocence. There is no person to make out a *BCO* 32-2 charge,
3 nor are there common fame reports to provoke a *BCO* 31-2 investigation. The court has
4 already been dealing with the indefinitely suspended person for some time, and by its previous
5 action, the court has already found indefinitely suspended person impenitent.

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7 The SJC revisited this issue, first decided in Case 2001-25 *TE Anthony Dallison v. North*
8 *Florida Presbytery* (*M30GA*, 2002, pages 156-1612). In that case, the SJC decided that *no*
9 process beyond a vote of the court was required to elevate a censure. In Case 2023-09 *TE*
10 *Aaron Myers v. Illiana Presbytery* (*M51GA*, 2024, pages 824-834), the SJC rejected two
11 possible options: either a *de novo* process with a new trial or elevation by pure legislative act.
12 Instead, it reasoned that a process which permitted the censured person to present evidence of
13 his penitence without giving him the full rights of an uncensured person under the Rules of
14 Discipline was the best path forward. This amendment would codify this path in our
15 constitution.

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18 *Adopted by Houston Metro Presbytery at its stated meeting, April 14, 2025*

19 *Attested by RE /s/ Eric Manthei, stated clerk*