

1 **OVERTURE 38** from the Southeast Alabama Presbytery (to CCB, OC)
2 “Amend *BCO* 30-4 to Require a New Case with Process for Elevation of Indefinite
3 Suspension to Excommunication”
4

5 **Be it resolved** that *BCO* 30-4 be amended as follows (underlining for additions):
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7 **30-4.** Excommunication is the excision of an offender from the communion
8 of the Church. This censure is to be inflicted only on account of gross crime or
9 heresy and when the offender shows himself incorrigible and contumacious.
10 Elevating indefinite suspension from the Sacraments to excommunication shall
11 require a new case of process establishing that the matter is a gross crime or
12 heresy and that the offender has shown himself incorrigible and contumacious.
13 The design of this censure is to operate on the offender as a means of reclaiming
14 him, to deliver the church from the scandal of his offense, and to inspire all with
15 fear by the example of his discipline.
16

17 So that *BCO* 30-4 as amended would read:
18

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20 of the Church. This censure is to be inflicted only on account of gross crime or
21 heresy and when the offender shows himself incorrigible and contumacious.
22 Elevating indefinite suspension from the Sacraments to excommunication shall
23 require a new case of process establishing that the matter is a gross crime or
24 heresy and that the offender has shown himself incorrigible and contumacious.
25 The design of this censure is to operate on the offender as a means of reclaiming
26 him, to deliver the church from the scandal of his offense, and to inspire all with
27 fear by the example of his discipline.
28

29 **RATIONALE:**
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31 The SJC recently decided *TE Aaron Myers v. Iliana Presbytery (M51GA, 2024, pages 824-*
32 *834)* in which it concluded that where there is a previous finding of guilt and imposition of
33 censure, a censured person is not entitled to full process *de novo* for the court to find him
34 “incorrigible and contumacious” (*BCO* 30-4). The SJC, invoking the “intrinsic powers” of our
35 courts and “parliamentary law,” prescribed the following procedure:
36

37 The indefinitely suspended person has a right to a hearing in the matter: he must
38 be charged by the court supervising the indefinite suspension with being
39 “incorrigible and contumacious,” he must be presented with the evidence to that
40 effect, he must be called upon to plead before the court, and he would have a
41 right to a defense before the original trial court. The court, upon completing its
42 hearing, would be called upon to consider a motion to amend a matter
43 previously adopted, to elevate the indefinite suspension to excommunication.
44 Passage would require a two thirds majority (2/3), unless previous notice were
45 given of an intent to offer a motion to amend a matter previously adopted, the

1 notice framed in such a way as to avoid undermining the impartiality of the
2 maker and thereby disqualifying him from participation in the hearing.

3
4 This procedure is not expressly prescribed anywhere in our Rules of Discipline.
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6 The SJC previously treated a decision to elevate censure as a matter of its discretion without
7 the necessity of further process in *Dallison v. North Florida Presbytery*, (M30GA 2002, page
8 156, 160-161). As in *Myers*, *Dallison* denied that the Constitution requires a “new trial for
9 new charges” for elevating censure but afforded the court “discretion” in such elevations of
10 censure (subject to the “clear error” standard). But *Dallison* never mentioned limiting that
11 discretion by a parliamentary procedure as the SJC only recently held in *Myers*, evidencing
12 an ongoing lack of certainty and uniformity in the standards our courts should apply when
13 imposing the Church’s highest censure in elevation cases.

14
15 Contrary to the variable holdings on display in *Myers* and *Dallison*, before a member of the
16 Church is excommunicated, he should be afforded a regular case of process per our Rules of
17 Discipline to guarantee that those conditions peculiarly pertinent to excommunication have
18 been established in accordance with the time-tested procedures that Presbyterianism has long
19 recognized as decent and fair.

20
21 Such procedures ensure a meaningful record is made detailing the ground for the court’s
22 decision and affording an excommunicated person a meaningful final review of his
23 excommunication. Since the accused’s restoration to the Sacraments is the intended result of
24 indefinite suspension and excommunication alike, the real difference between the two
25 censures is whether the accused has any right of review, a hollow right indeed in the absence
26 of the protections afforded by a case of process. Importantly, a person under indefinite
27 suspension from the Sacraments has no right to complain against a court’s refusal to restore
28 him, however meritorious his case may be, since he is not in “good standing.” (BCO 43-1).
29 Therefore, an appeal from his excommunication is the censured person’s last and only
30 opportunity to seek relief from a censuring court that has made an error about whether he is
31 truly “incorrigible and contumacious.” In deciding to elevate censure to excommunication it
32 is possible for a court to act irregularly, refuse reasonable indulgence, receive improper
33 evidence or decline to receive proper evidence, hurry to a decision, manifest prejudice, make
34 a mistake, or commit injustice in the censure. (BCO 42-3). But if the censuring court’s actions
35 are not regulated by the familiar and well-defined boundaries afforded by a case of process,
36 how can the accused obtain, and the higher courts afford him, a meaningful review of his
37 excommunication? The weightiness of this last opportunity for review is evident when we
38 understand that once he is excommunicated, he thereafter lacks any kind of standing either to
39 complain or appeal should the court of original jurisdiction refuse to restore him, thus
40 instantiating and insulating any error of the censuring court, perhaps permanently.

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42 This proposed amendment to BCO 30-4 provides that the court, having reckoned the case unfit
43 for excommunication in the first instance, and having fulfilled its responsibility to “frequently
44 converse with” the accused “as well as pray with him and for him, that it would please God
45 to give him repentance” (BCO 37-2), must thereafter demonstrate that the censure of indefinite

1 suspension from the Sacraments should be elevated because those peculiar conditions
2 justifying the different and greater censure of excommunication (i.e., that the case involves a
3 “gross crime or heresy” and that the offender has shown himself “incorrigible and
4 contumacious”) have been established before taking the extraordinary step of “excising him
5 from the communion of the Church.”

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8 *Adopted by the Southeast Alabama Presbytery at its stated meeting, April 22, 2025*

9 *Attested by TE Kevin Corley, stated clerk*