

1 **OVERTURE 67** from the Potomac Presbytery (to CCB, OC)  
2 “Amend *BCO* 40-5 to Clarify a Court Shall Make Two Determinations before Citing  
3 a Lower Court”  
4

5 **Be it resolved** that the 53<sup>rd</sup> General Assembly approve an amendment to *BCO* 40-5 as shown  
6 below (underlining for additions; ~~striketrough~~ for deletions):  
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8 **40-5.** When any court having appellate jurisdiction shall receive a ~~credible~~  
9 report with respect to the court next below of any important delinquency or  
10 grossly unconstitutional proceedings of such court, the first step shall be to  
11 make two determinations:

- 12 1. Would the matter reported, if true, be judged to be an important  
13 delinquency or a grossly unconstitutional proceeding?
- 14 2. Is there sufficient evidence provided to support the allegation and is it  
15 reported by a credible source (e.g. *BCO* 31-8)?  
16

17 If the higher court determines the answer to both questions is Yes, then the  
18 higher court shall cite the court alleged to have offended to appear before the  
19 higher court ~~having appellate jurisdiction~~, or its commission, by representative  
20 or in writing, at a specified time and place, and to show what the lower court  
21 has done or failed to do in the case in question. The citation to appear must  
22 specify the instance(s) of important delinquency or grossly unconstitutional  
23 proceeding and show what portion of the Constitution has been violated.  
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25 The court thus issuing the citation may reverse or redress the proceedings of  
26 the court below in other than judicial cases; or it may censure the delinquent  
27 court; or it may remit the whole matter to the delinquent court with an  
28 injunction to take it up and dispose of it in a constitutional manner; or it may  
29 stay all further proceedings in the case; as circumstances may require.  
30

31 So that the amended version would be as shown below:  
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33 **40-5.** When any court having appellate jurisdiction shall receive a report with  
34 respect to the court next below of any important delinquency or grossly  
35 unconstitutional proceedings of such court, the first step shall be to make two  
36 determinations:

- 37 1. Would the matter reported, if true, be judged to be an important  
38 delinquency or a grossly unconstitutional proceeding?
- 39 2. Is there sufficient evidence provided to support the allegation and is it  
40 reported by a credible source (e.g. *BCO* 31-8)?  
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43 higher court shall cite the court alleged to have offended to appear before the  
44 higher court, or its commission, by representative or in writing, at a specified  
45 time and place, and to show what the lower court has done or failed to do in

1 the case in question. The citation to appear must specify the instance(s) of  
2 important delinquency or grossly unconstitutional proceeding and show what  
3 portion of the Constitution has been violated.

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6 the court below in other than judicial cases; or it may censure the delinquent  
7 court; or it may remit the whole matter to the delinquent court with an  
8 injunction to take it up and dispose of it in a constitutional manner; or it may  
9 stay all further proceedings in the case; as circumstances may require.

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11 **Rationale**

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13 1. A preliminary determination of some sort should always be made before "citing" a court  
14 to appear and answer. Leapfrogging over that step is not prudent, fair, or productive in seeking  
15 to resolve the matter. It should be analogous to *BCO* 31-2, wherein a court must make some  
16 preliminary determination before taking the next step with an individual.

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18 2. The proposed change would better conform to parts of *BCO* Preliminary Principle 5 and  
19 7.

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21 PP 5 reminds us "... there are truths and forms with respect to which men of good character  
22 and principles may differ. In all these it is the *duty* both of private Christians and societies  
23 to exercise *mutual forbearance* toward each other." (emphasis added)

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25 PP 7 reminds us "... All church courts may err through human frailty ..." (But even an  
26 errant court deserves respect and patient dealing, at least initially.)

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28 3. As presently written, *BCO* 40-5 can become stern and stark and depreciate the collegial  
29 relationship between the "higher" (broader) church court and the "lower" (local) church court  
30 and disrupt the "harmony" advocated in *BCO* 11-3.

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32 ***BCO* 11-3.** All Church courts are one in nature, constituted of the same elements,  
33 possessed inherently of the same kinds of rights and powers, and differing only as the  
34 Constitution may provide. When, however, according to Scriptural example, and  
35 needful to the purity and harmony of the whole Church, disputed matters of doctrine  
36 and order arising in the lower courts are referred to the higher courts for decision, such  
37 referral shall not be so exercised as to impinge upon the authority of the lower court.

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39 ***BCO* 11-4.** ... These courts are not separate and independent tribunals, but they have a  
40 mutual relation, and every act of jurisdiction is the act of the whole Church performed  
41 by it through the appropriate organ.

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43 4. Here's an example of how the revision would pertain to the General Assembly's Committee  
44 on Review of Presbytery Records (and correspondingly in Presbyteries). If the PCA Stated  
45 Clerk's office received a *BCO* 40-5 letter alleging a Presbytery was guilty of a gross

1 delinquency or a grossly unconstitutional proceeding, it would be referred to the RPR officers  
2 who would review the material, presumably interacting with the Presbytery Clerk and anyone  
3 else that could shine a light on the matter, and present a recommendation to the full RPR at  
4 its May annual stated meeting. This would follow the provisions in *Rules of Assembly*  
5 *Operation* 16-5, which RPR uses when preparing its report on a Presbytery.

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7 **RAO 16-5.** The stated clerk of each Presbytery, or his representative, should be  
8 prepared to meet with the committee to answer questions and to clarify any possible  
9 discrepancy. The committee should make every reasonable effort to consult with  
10 the clerk of the Presbytery (or his designee) on any questions before finalizing the  
11 report to the General Assembly.

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13 The RPR Officers' recommendation on a *BCO* 40-5 letter might be to cite the Presbytery to  
14 formally respond or it might be to determine that no formal response is needed and that the  
15 matter does not warrant further attention. This would be similar to how RPR handles  
16 exceptions found in Minutes (which presently come to RPR as recommendations from three-  
17 man Read Teams).

18  
19 However, in rare cases where RPR determines a matter is of such importance and urgency and  
20 evidence of gross delinquency or grossly unconstitutional action requires immediate  
21 Assembly attention, it could forego seeking a formal response from Presbytery and  
22 recommend the Assembly proceed directly to final step in *RAO* 16-10.c and "appoint a  
23 representative to present its case and refer the matter to the Standing Judicial Commission to  
24 cite the Presbytery to appear for proceedings according to *BCO* 40-5." (*OMSJC* 15)

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27 *Adopted by the Potomac Presbytery at its stated meeting, March 21, 2026*  
28 *Attested by TE Joel St. Clair, Stated Clerk*