

1 **OVERTURE 69** from the Southwest Florida Presbytery (to CCB, OC)
2 “Amend *BCO* 32-18 and 42-5 to Clarify the Contents of the Record of the Case in
3 Judicial Cases”
4

5 **Summary:** This proposal would reconcile various parts of the Rules of Discipline and bring
6 greater clarity regarding how the Record of the Case in a case of process is to be created by a
7 court of original jurisdiction and transmitted to the higher courts.
8

9 **Be it resolved** that *BCO* 32-18 and *BCO* 42-5 be amended as follows (underlining for
10 additions; ~~striketrough~~ for deletions):
11

12 **32-18.**

13 a. Minutes of the trial shall be kept by the clerk, which shall exhibit the charges,
14 the answer, record of the ~~testimony~~ proceedings, as defined by *BCO* 35-9, the
15 citations and returns thereto, the documents or other materials submitted to or
16 admitted to the court in the trial proceedings (all of which should be properly
17 marked and identified), and all such acts, orders, and decisions of the court relating
18 to the case, as either party may desire, and also the judgment.
19

20 b. The clerk shall without delay assemble the Record of the Case ~~which shall~~
21 ~~consist of the charges, the answer, the citations and returns thereto, and the minutes~~
22 ~~herein required to be kept~~ as defined by *BCO* 42-5.
23

24 c. The parties shall be allowed copies of the Record of the Case at their own
25 expense if they demand them.
26

27 d. When a case is removed by appeal or complaint, the lower court shall transmit
28 “the Record” thus prepared to the higher court with the addition of the notice of
29 appeal or complaint, and the reasons therefor, if any shall have been filed.
30

31 e. Nothing which is not contained in this “Record” shall be taken into
32 consideration by the higher court.
33

34 f. On the final decision of a case in a higher court, the judgment shall be sent
35 down to the court in which the case originated.
36

37 **42-5.**

38 a. It shall be the duty of the clerk of the lower court to file with the clerk of the
39 higher court, not more than thirty (30) days after receipt of notice of appeal, a copy
40 of all ~~proceedings in connection with the case~~ minutes of the trial proceedings as
41 prescribed by *BCO* 32-18 (including a transcription of the trial proceedings),
42 including minutes of any meeting of the court pursuant to *BCO* 32-3 and 32-5, the
43 notice of appeal, and reasons therefor, the response of the lower court, the
44 evidence, and any papers bearing on the case submitted to or admitted by the court

1 before the conclusion of the trial, and minutes pertaining to any censure imposed,
2 which together shall be known as “the Record of the Case.” ~~and~~

3
4 b. ~~¶~~The higher court shall not admit or consider anything not found in this
5 “Record” without the consent of the parties in the case.

6
7 c. Should new evidence come to light the case shall be remanded to the lower
8 court from which the appeal was made, unless both parties consent to admit the
9 new evidence and proceed with the case.

10
11 So that the new provisions would read as follows:

12
13 **32-18.**

14 a. Minutes of the trial shall be kept by the clerk, which shall exhibit the charges,
15 the answer, record of the proceedings, as defined by *BCO* 35-9, the citations and
16 returns thereto, the documents or other materials submitted to or admitted to the
17 court in the trial proceedings (all of which should be properly marked and
18 identified), and all such acts, orders, and decisions of the court relating to the case,
19 as either party may desire, and also the judgment.

20
21 b. The clerk shall without delay assemble the Record of the Case as defined by
22 *BCO* 42-5.

23
24 c. The parties shall be allowed copies of the Record of the Case at their own
25 expense if they demand them.

26
27 d. When a case is removed by appeal or complaint, the lower court shall transmit
28 “the Record” thus prepared to the higher court with the addition of the notice of
29 appeal or complaint, and the reasons therefor, if any shall have been filed.

30
31 e. Nothing which is not contained in this “Record” shall be taken into
32 consideration by the higher court.

33
34 f. On the final decision of a case in a higher court, the judgment shall be sent
35 down to the court in which the case originated.

36
37 **42-5.**

38 a. It shall be the duty of the clerk of the lower court to file with the clerk of the
39 higher court, not more than thirty (30) days after receipt of notice of appeal, a copy
40 of all minutes of the trial proceedings as prescribed by *BCO* 32-18 (including a
41 transcription of the trial proceedings), minutes of any meeting of the court pursuant
42 to *BCO* 32-3 and 32-5, the notice of appeal, any papers submitted to or admitted
43 by the court before the conclusion of the trial, and minutes pertaining to any
44 censure imposed, which together shall be known as “the Record of the Case.”

1 b. The higher court shall not admit or consider anything not found in this
2 “Record” without the consent of the parties in the case.

3
4 c. Should new evidence come to light the case shall be remanded to the lower
5 court from which the appeal was made, unless both parties consent to admit the
6 new evidence and proceed with the case.

7

8 **RATIONALE**

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10 The Rules of Discipline, as presently configured, make it difficult for Clerks to determine what
11 records and materials he must collect and transmit to the higher courts in case of appeal. The
12 instant proposal seeks to clarify what is included in the “Record of the Case” by refining the
13 definition of that phrase in *BCO* 42-5 and reconciling that definition with other related parts of
14 the Rules of Discipline. The present design of the Rules of Discipline divides the description of
15 the Clerk’s responsibilities between different provisions in a way that can be confusing.

16

17 The proposal is consistent with current *BCO* 35-9 as well as the 2025 General Assembly’s
18 adoption of last year’s helpful proposed change to that provision, which proposed that “all parts
19 of a trial” are to be recorded and thus help standardize those parts of Rules of Discipline touching
20 on the creation and transmission of the Record of the Case.

21

22 The proposal identifies the types of materials that the Record of the Case should include, both
23 making it easier for Clerks to prepare a case for appeal and better enabling the higher courts to
24 make a full and satisfactory review of the court of original jurisdiction’s full proceedings in a case
25 of process.

26

27 The proposal also includes some stylistic subsections on *BCO* 32-18 and *BCO* 42-5 to grant
28 greater clarity and precision in citation.

29

30 The proposal would improve the current situation, which imposes a burden on Clerks (as well as
31 the higher courts) to both examine and reconcile the differing language used in various provisions
32 of the Rules of Discipline to discern what should be assembled for and delivered to the reviewing
33 court in an appeal.

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36 *Adopted by the Southwest Florida Presbytery at its called meeting, April 16, 2026*

37 *Attested by TE Freddy Fritz, Stated Clerk*