

1 **OVERTURE 3** from Central Carolina Presbytery (to CCB, OC)  
2 “Amend *BCO* 34-1 and 33-1 Regarding Assumption of Original Jurisdiction”  
3

4 [Strike-through for deletions; bold for additions]

5  
6 Chapter 34 - *Special Rules Pertaining to Process Against a Minister*  
7 (*Teaching Elder*)  
8

9 34-1. Process against a minister shall be entered before the Presbytery of  
10 which he is a member. However, ~~if the Presbytery refuses to act in~~  
11 doctrinal cases or cases of public scandal ~~and two~~ , **if five** other  
12 Presbyteries request the General Assembly to assume original jurisdiction  
13 (to first receive and initially hear and determine), the General Assembly  
14 shall do so. **Assumption shall be postponed until the Presbytery has**  
15 **concluded its consideration of the matter and rendered its judgment –**  
16 **or at least until after it has been afforded reasonable time to do so.**  
17

18 Chapter 33 - *Special Rules Pertaining to Process Before Sessions*  
19

20 33-1. Process against all church members, other than ministers of the  
21 Gospel, shall be entered before the Session of the church to which such  
22 members belong, except in cases of appeal. However, ~~if the Session~~  
23 ~~refuses to act~~ in doctrinal cases or instances of public scandal ~~and~~ , **if two**  
24 other Sessions of churches in the same Presbytery request the Presbytery  
25 of which the church is a member to initiate proper or appropriate action in  
26 a case of process and thus assume jurisdiction and authority, the  
27 Presbytery shall do so. **Assumption shall be postponed until the**  
28 **Session has concluded its consideration of the matter and rendered its**  
29 **judgment – or at least until after it has been afforded reasonable time**  
30 **to do so.**  
31

32 **RATIONALE**  
33

34 Presently, there are three conditions that “set the bar” for a higher court to assume original  
35 jurisdiction (AOJ) over a minister or church member:

- 36 1) the matter must be considered a doctrinal case or case of public scandal,
  - 37 2) the Presbytery (or Session) refuses to act,
  - 38 3) two other Presbyteries (or Sessions) request the higher court to AOJ.
- 39

40 This overture seeks to remove the second condition, deleting the potentially-confusing  
41 phrase “*if the Presbytery/Session refuses to act.*” It also raises the bar in the required number  
42 of petitioning Presbyteries. (Currently, with 76 Presbyteries, five equates to 6½ %.) The  
43 overture leaves the bar at two for petitioning Sessions (since the average Presbytery has 16  
44 churches).

1 Three values need to be balanced:

- 2
- 3 a) the right of individuals to be judged by the court most familiar with them,
  - 4 b) the right of the original court (the narrower church) to decide matters in its jurisdiction,
  - 5 and
  - 6 c) the right of the broader church (via the higher court) to re-examine matters in limited
  - 7 circumstances - doctrinal cases or cases of potential public scandal.
- 8

9 The present wording of 34-1 and 33-1 upsets the proper balance. The overture restores it.

10

### 11 Appropriate Deference to the Original Court

12

13 Whenever a Presbytery or Session is actively addressing a matter, the higher court must  
14 postpone considering petitions for AOJ until the original court has concluded its consideration  
15 and rendered its judgment, or at least has been afforded reasonable time to do so (in the  
16 judgment of the higher court). Clearly, it would be unmanageable for two courts to exercise  
17 original jurisdiction simultaneously, and unfair to the party in question. However, if the  
18 original court does not address or conclude the matter within a reasonable time, the higher  
19 court could then proceed with AOJ.

20

21 While restoring proper balance, reasonable barriers must remain in place to defend the rights  
22 of the original court and its members. A philosophy of deference is reflected in *BCO* 39  
23 regarding higher court judicial review, and while judicial (appellate) review is different than  
24 AOJ, the general principles still adhere.

25

26 39-3.2. A higher court should ordinarily exhibit great deference to a lower  
27 court regarding those factual matters which the lower court is more  
28 competent to determine, because of its proximity to the events in  
29 question, and because of its personal knowledge and observations of the  
30 parties and witnesses involved. . . .

31

32 39-3.3. A higher court should ordinarily exhibit great deference to a lower  
33 court regarding those matters of discretion and judgment which can only  
34 be addressed by a court with familiar acquaintance of the events and  
35 parties. . . .

36

37 At the same time, *BCO* 39 uses a different standard of deference for doctrinal  
38 cases (which are the more likely matters for AOJ):

39

40 39-3.4. . . . a higher court should not consider itself obliged to exhibit the  
41 same deference to a lower court when the issues being reviewed involve  
42 the interpretation of the Constitution of the Church. . . . [i.e., “its doctrinal  
43 standards set forth in the *Westminster Confession*, together with the  
44 *Larger and Shorter Catechisms*, and *The Book of Church Order* . . .” from  
45 *BCO* Preface III]

1 Refuses to “Act”

2  
3 As presently worded, AOJ via 34-1 or 33-1 is essentially unachievable since the phrase  
4 “refuses to act” is vague – or at least it has been interpreted variously. Does it mean a  
5 Presbytery refuses to: (a) discuss the matter, (b) investigate informally, (c) investigate  
6 formally, (d) indict, (e) try and convict, (f) censure appropriately, or (g) something else?  
7 Some men plausibly interpret “to act” as “to indict” since the paragraph begins with the  
8 noun “Process” and process begins with indictment and appointment of a prosecutor. But  
9 that is not how the PCA’s highest court has interpreted the phrase in two cases.

10  
11 The noun “act” can, and has been, interpreted by some elders to mean just about any action  
12 or attention a Presbytery gives to the matter. And even if Presbytery’s “action” is broadly  
13 considered unacceptable, AOJ might not be possible via 34-1 since (some might argue) the  
14 Presbytery did not technically “refuse to act.” If so, the bar for AOJ is set out-of-reach. The  
15 bar needs to be brought down to a reasonable level. To remedy this flaw, the GA should  
16 simply delete any reference to what the lower court does. AOJ should not be contingent on  
17 the actions of the original court. The bar can be set at a reasonable level by the other two  
18 conditions.

19  
20 Petitioning Threshold

21  
22 With 76 Presbyteries, two is an insufficient number to initiate consideration of AOJ. Five is  
23 a more reasonable threshold. In 2002, an overture proposed raising the bar to 10% of all  
24 Presbyteries, but today that would require eight and that threshold seems needlessly high.  
25 (Furthermore, 24 Presbyteries voted against the overture raising the bar to 10%.) By  
26 comparison, AOJ can occur in four other Presbyterian denominations without *any* petitions  
27 from lower courts (see below).

28  
29 Regarding 33-1, since 2/3 of all Presbyteries have less than 20 churches, the threshold of  
30 two petitioning Sessions remains sufficient and 33-1 should remain unchanged in that  
31 regard. From the 2007 PCA *Yearbook*, the median number of churches in our Presbyteries is  
32 16, and for that median, two equates to 12 ½%. The largest Presbytery has 48 churches and  
33 the smallest has 5. The two-Session threshold equates to 5% for a Presbytery with 40  
34 churches, but 20% for a Presbytery with 10. Here is the current breakdown (also attached):

- 35  
36 4 Presbyteries with 40 or more churches  
37 7 Presbyteries with 30-39 churches  
38 14 Presbyteries with 20-29 churches  
39 34 Presbyteries with 10-19 churches  
40 17 Presbyteries with 10 or less churches

41  
42 Judicial History

43  
44 Two years ago, a doctrinal matter involving a minister in Louisiana Presbytery was well-  
45 suited for AOJ, but it did not happen – despite valid petitions from Presbyteries. The overly-  
46

1 broad interpretation of the phrase “refuses to act” blocked AOJ. In that case, the PCA got  
2 tangled addressing it via less direct and less suitable routes (via Memorial, *BCO* 40-5, and  
3 eventually *BCO* 43). Rather than assuming original jurisdiction and requiring the minister to  
4 answer for himself, the entire Presbytery was eventually put on trial in a novel and somewhat  
5 awkward proceeding (Case 2007-14, *M36GA* Dallas). AOJ would have been the most  
6 logical and appropriate path to address the matter, and would have better served the PCA,  
7 the SJC, Louisiana Presbytery and the minister in question.  
8

9 Nine years ago, this phrase also had the PCA knotted in a matter involving a minister from  
10 Tennessee Valley Presbytery (Case 1999-01, *M28GA* Tampa 2000 & *M29GA*, Dallas 2001).  
11 In that case, the SJC also declined requests from multiple Presbyteries and ruled it could not  
12 assume original jurisdiction because TVP had not “refused to act.” (GA eventually overruled  
13 the SJC and instructed them to assume original jurisdiction and conduct a 31-2 investigation,  
14 which subsequently resulted in no indictment. After that case, the GA amended the SJC  
15 Manual and it now has procedures in the assumption of original jurisdiction – Section 18.)  
16

### 17 Legislative History

18

19 The PCA Historical Center reports the PCA provision for GA to assume original jurisdiction  
20 might be related to earlier events in the PCUS.  
21

22 “Around 1940, PCUS presbyteries of Harmony, Knoxville, Mecklenburg and Central  
23 Mississippi each brought overtures to the PCUS General Assembly requesting an  
24 investigation of the teachings of E.T. Thompson at Union Seminary in Richmond. These  
25 overtures were answered in the negative on the understanding that in the PCUS *BCO*,  
26 original jurisdiction over a minister resided *solely* in the presbytery. Dr. Thompson was  
27 further protected when his East Hanover Presbytery indicated they had investigated his  
28 teachings and found them to be in conformity with the Standards. By this action, the PCUS  
29 Assembly turned original jurisdiction into exclusive jurisdiction.”  
30

31 In 1973 when the PCA formed with 16 Presbyteries, *BCO* 34-1 only specified that “other  
32 Presbyteries” could request the GA to assume original jurisdiction. Sixteen years later in  
33 1989, based on a recommendation from the Ad Interim Committee on the GA, it was  
34 amended to specify “two other Presbyteries.” (PCA then had 45 Presbyteries.) This change  
35 also conformed 34-1 with 33-1, which already required two Sessions to petition a Presbytery  
36 for AOJ. (*M17GA*, p. 55)  
37

38 In 2001, Evangel Presbytery brought an overture seeking to amend 33-1 and 34-1, but the  
39 GA answered in the negative (*M29GA*, p. 203). A year later, 34-1 was revisited when 23  
40 Presbyteries overtured the 2002 Birmingham GA to increase the petitioning threshold from  
41 “two other Presbyteries” to “at least 10% of all the Presbyteries.” The 30th GA adopted that  
42 overture and sent it to the 64 Presbyteries for vote. While 40 Presbyteries eventually voted  
43 in favor of the increase (62.5%), it was three short of the 2/3 required and thus was not  
44 adopted (*M30GA*, p. 214 & *M31GA*, p. 51).

1 Other Presbyterian Denominations

2  
3 The OPC does not have a provision for the assumption of original jurisdiction, but there are  
4 provisions in the ARP, EPC, RPCNA, and PCUSA. Excerpts are shown below and  
5 underlining is added to show the “measure” of the original court’s actions. None of their  
6 provisions require petitions from *any* lower courts to trigger AOJ. Their higher courts can  
7 assume original jurisdiction unilaterally (with cause, and sometimes with a time delay and/or  
8 notification to the lower court).

9  
10 ARP Book of Discipline, Chapter 3: Jurisdiction, paragraph 3 – In cases  
11 where the court having original jurisdiction is unable or unwilling to  
12 exercise jurisdiction, the next higher court may assume original jurisdiction  
13 upon demonstration of sufficient cause having been shown to the higher  
14 court.

15  
16 EPC Book of Discipline, Chapter 3: Jurisdiction, paragraph 3 – Assumption  
17 of Jurisdiction. In the event a court shall be unable or unwilling to try a  
18 person or persons accused, the next higher court may assume jurisdiction  
19 after giving thirty days’ written notice to the lower court of its intention to  
20 assume jurisdiction.

21  
22 RPCNA Book of Discipline, Section 2, Chapter 1: Parties & Jurisdiction,  
23 paragraph 5. The presbytery has original jurisdiction in relation to  
24 suspension, deposition, or excommunication of teaching elders; the  
25 session in relation to all others. A higher court may direct a lower court to  
26 begin process; or the higher court may begin process or appoint a  
27 commission to do so, if the lower court has neglected or refused to begin  
28 process, or is otherwise incapable of proper action.

29  
30 PCUSA Rules of Discipline D-3.0103 When a lower governing body  
31 fails to act in a particular remedial or disciplinary case for a period of  
32 ninety days after the filing of a complaint in a remedial case or charges in  
33 a disciplinary case, the higher governing body, on the request of any  
34 party, may assume jurisdiction in the case. It may either issue specific  
35 instructions to the lower governing body as to its disposition or conclude  
36 the matter itself.

37  
38 Each of these provisions has some merit, but they are inadequate because they are contingent  
39 on what the original court does, and this contingency is problematic. If a Presbytery intends  
40 to shield a minister, because it agrees with his unorthodox views or for other reasons, it is  
41 unreasonable to assume they will conduct an adequate trial or impose an adequate censure –  
42 even if they *were* to indict. Consider two examples. Suppose a minister in XYZ Presbytery  
43 changes his views and now denies the deity of Christ. This becomes broadly known and  
44 other Presbyteries exhort XYZ to indict the man. XYZ Presbytery already knows the man’s  
45 views and previously chose not to indict, but seeking to shield the minister from GA scrutiny,  
46

1 they proceed to indictment and trial and, let's say, even convict him, but only impose  
2 admonition and allow him to remain a minister in good standing (and none of his fellow  
3 XYZ presbyters file Complaint). Or, suppose a local Session follows the same path with the  
4 renowned owner of a busy abortion clinic. Even in instances like these when the original  
5 court *has actually instituted process*, if the censure is inadequate, other Presbyteries or  
6 Sessions should have the right to petition for AOJ and if granted, the minister or member  
7 would then answer for himself directly before the higher court (the broader church). Thus,  
8 AOJ should not be contingent on what the original court does or doesn't do.

### 9 10 Mutual Relationship of the Courts

11  
12 The higher court's assumption of original jurisdiction is not inevitably adversarial to the  
13 lower court nor automatically critical of its performance or judgment. Indeed, the higher  
14 court might reach a conclusion similar to the lower court, thus vindicating the lower court  
15 and its reputation and that of the member in question (as in Case 99-01 cited above). In fact,  
16 AOJ might be exactly what's needed to publicly exonerate the lower court, and the minister  
17 or member, and end the controversy.

18  
19 Two *BCO* paragraphs highlight the mutual relationship of the courts (underlining added):

20  
21 *BCO* 1-5. Ecclesiastical jurisdiction is not a several, but a joint power, to  
22 be exercised by presbyters in courts. These courts may have jurisdiction  
23 over one or many churches, but they sustain such mutual relations as to  
24 realize the idea of the unity of the Church.

25  
26 *BCO* 11-4. . . . Every court has the right to resolve questions of doctrine  
27 and discipline seriously and reasonably proposed, and in general to  
28 maintain truth and righteousness, condemning erroneous opinions and  
29 practices which tend to the injury of the peace, purity, or progress of the  
30 Church. Although each court exercises exclusive original jurisdiction over  
31 all matters especially belonging to it, the lower courts are subject to the  
32 review and control of the higher courts, in regular gradation. These courts  
33 are not separate and independent tribunals, but they have a mutual  
34 relation, and every act of jurisdiction is the act of the whole Church  
35 performed by it through the appropriate organ.

### 36 37 Summary

38  
39 Granted, AOJ should be rare – but it should not be impossible. The process is temperate and  
40 graduated. If a sufficient number of lower courts file petitions, the higher court determines if  
41 the lower court is actively addressing the matter. Consideration of the petitions is postponed  
42 until after the original court concludes its consideration and renders its judgment – or at least  
43 until after it has been afforded reasonable time to do so. Once the lower court renders its  
44 judgment, or appears unwilling or unable to render its judgment after a reasonable time, the  
45 higher court then determines if the matter is a doctrinal case or a case of public scandal. If it

1 does not meet that threshold, the petitions are not granted. If it meets the “type of case”  
2 threshold, the higher court determines if there is warrant for formal indictment. If the higher  
3 court determines there is not sufficient basis for indictment, the matter ends and the person  
4 is cleared. But if investigation discovers reason to indict, the higher court proceeds via *BCO*  
5 Rules of Discipline and, if applicable, the SJC Manual.

6  
7 In conclusion, the PCA should amend 34-1 (and 33-1 to parallel) to make the assumption of  
8 original jurisdiction *realistically possible* – in doctrinal cases or cases of public scandal. The  
9 phrase “refuses to act” should be deleted and the bar raised for number of petitioning  
10 Presbyteries.

11  
12 *Adopted by Central Carolina Presbytery at its stated meeting on October 28, 2008*

13 *Attested by: /s/ RE Howard Donahoe, stated clerk*

### Attachment to Overture 3

76 Presbyteries listed by number of churches in each – from 48 to 5  
(from 2007 PCA Yearbook - formatted by Central Carolina Presbytery)

Presbytery	#Ch	Msn	TE's	Commun members	Presbytery	#Ch	Msn	TE's	Commun members
Covenant	48	5	91	7,228	South Coast	16	8	46	1,892
MS Valley	48	2	96	8,278	Fellowship	15	0	25	3,824
Palmetto	44	1	97	9,866	Heritage	15	4	37	3,152
Calvary	42	2	86	6,314	South Texas	15	6	41	2,652
Evangel	38	2	123	12,909	Blue Ridge	14	2	34	3,573
Grace	38	2	57	3,767	GA Foothills	14	0	33	3,336
SE Alabama	33	0	53	5,096	K. Central	14	9	67	2,633
C. Carolina	31	7	76	7,156	Korean SW	14	14	52	3,336
Tennessee V.	31	2	99	8,627	N. Florida	14	2	35	3,820
N. Texas	30	6	70	8,427	Houston Metro	13	2	38	2,189
W. Carolina	30	2	65	4,590	NW Georgia	13	0	23	1,905
Chesapeake	28	3	66	8,105	E. PA	12	1	45	2,050
Gulf Coast	27	2	52	4,784	Korean NW	12	6	23	691
Potomac	27	2	56	5,268	Korean SE	12	14	38	1,786
C. Florida	25	5	77	7,758	Siouxlands	12	3	23	1,529
James River	24	3	58	5,765	Illiana	11	1	29	1,100
SW Florida	24	4	49	3,789	New Jersey	11	0	17	839
Warrior	24	0	30	1,601	New River	11	1	9	562
Korean Eastern	23	6	40	2,068	NY State	11	0	22	1,363
Metro NYC	23	13	82	3,177	Gulfstream	10	1	22	3,814
Westminster	23	1	35	2,075	S. New Engl	10	6	35	1,515
Missouri	22	3	104	5,258	Iowa	9	1	13	1,023
Savannah River	22	0	39	3,654	Pacific	9	8	36	994
Metro Atlanta	21	14	131	8,534	Phil Metro W	9	2	31	1,676
S. Florida	20	6	86	12,992	Piedmont Triad	9	2	21	2,100
Ascension	19	0	39	2,331	Chicago Metro	8	8	46	2,583
E. Carolina	19	3	42	2,979	Louisiana	8	0	13	917
Pacific NW	19	5	53	2,822	N. Illinois	8	1	16	2,533
Southwest	19	5	42	3,071	N. New Engl.	8	1	12	481
Susquehanna V.	19	1	59	4,169	SE LA	8	1	14	1,208
N. California	18	6	42	2,138	Wisconsin	8	0	11	709
Ohio Valley	18	6	54	3,196	Heartland	7	1	33	1,014
Pittsburgh	18	3	35	2,491	Korean S	7	11	23	445
C.Georgia	17	0	49	2,754	Philadelphia	7	12	76	5,226
Great Lakes	17	7	43	2,599	Platte Valley	7	0	14	1,004
Nashville	17	1	49	6,419	Suncoast FL	7	3	16	1,232
Korean Capital	16	16	32	4,172	W. Canada	7	4	18	669
Rocky Mountain	16	8	70	3,674	E. Canada	5	5	15	221