

1 **OVERTURE 37** from James River Presbytery (to CCB, OC)
2 “Amend *BCO* 43-3; 43-8; 43-9 Regarding Complaint Procedures”
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4 **Whereas** *BCO* 43-3 reads as if a new complaint is to be filed with a higher court in order to
5 have that court review the denial of a complaint in the lower court; and
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7 **Whereas** what is intended is for the higher court to provide what amounts to appellate
8 review of the same complaint based on the record in the lower court; and
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10 **Whereas** the current wording of the *BCO* typically gives rise to confusion and unnecessary
11 additional labors and paperwork for both courts;
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13 **Now, therefore, be it resolved**, that the James River Presbytery respectfully overtures the
14 42nd General Assembly of the Presbyterian Church in America to approve amending
15 Chapter 43 of the *Book of Church Order* as follows (underlining for new wording;
16 ~~strike-through~~ for deletions):
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18 1. By amending the first three sentences of *BCO* 43-3 as follows: “
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20 **43-3.** If, after considering a complaint, the court alleged to be delinquent or in
21 error is of the opinion that it has not erred, and denies the complaint, the complainant
22 may ~~make~~ take that complaint to the next higher court. If the lower court fails to
23 consider the complaint against it by or at its next stated meeting, the complainant
24 may ~~make~~ take that complaint to the next higher court. Written notice thereof ~~of~~
25 ~~complaint, together with supporting reasons,~~ shall be filed with both the clerk of
26 the lower court and the clerk of the higher court within thirty (30) days of
27 notification of the last court’s decision. Notification shall be deemed to have
28 occurred on the day of mailing (if certified, registered or express mail of a
29 national postal service or any private service where verifying receipt is utilized),
30 the day of hand delivery, or the day of confirmed receipt in the case of e-mail or
31 facsimile. Furthermore, compliance with such requirements shall be deemed to
32 have been fulfilled if a party cannot be located after diligent inquiry or if a party
33 refuses to accept delivery.
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35 2. By amending *BCO* 43-8 as follows:
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37 **43-8.** Subject to the provisions below, after~~After~~ the higher court has
38 decided that the ~~complaint~~ notice filed with its clerk is was timely and that the
39 complaint is otherwise in order for it to be heard by the higher court, the court it
40 shall hear the complaint, or in accordance with the provision of *BCO* 15-2 and 15-3,
41 appoint a commission to do so. Ordinarily the court or its commission shall schedule
42 a hearing in a manner that reasonably accommodates the schedules of the respective
43 parties and affords each party a prior opportunity to file a written brief upon such
44 terms and in accord with a briefing schedule established by the court or its
45 commission in the reasonable exercise of its discretion. If the date of the hearing
46 shall, for good cause, be other than the same day it is presented, the court shall
47 notify the complainant and respondent in writing of the date set for the hearing.
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1 3. By amending the last sentence of *BCO* 43-9 as follows:
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3 **43-9.** At the hearing, after all the papers bearing on the complaint have been
4 read, the complainant and respondent will be given the opportunity to present
5 argument, the complainant having the right of opening and closing the argument.
6 After the hearing has been concluded, the court or the commission should go into
7 closed session, and discuss and consider the merits of the complaint. The vote
8 should then or later be taken as to what disposition should be made of the
9 complaint, and the complainant and respondent notified of the court's decision.
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11 *Approved by James River Presbytery at its stated meeting, April 12, 2014*

12 *Attested by /s/ RE Jeremy L. Pryor, stated clerk*