

1 **OVERTURE 40** from TE Christian L. Keidel of (to CCB, OC)
2 Philadelphia Metro West Presbytery
3 “Amend BCO 15-1 and 15-3 Regarding Presbytery Judicial Commission Decisions”
4

5 [Note: Submitted under RAO 11-10]
6

7 **Whereas** the following rationale is given for the revisions [herein proposed] of BCO 15-1
8 and 15-3:
9

10 Rather than conform the GA Court to Presbytery, I urge we conform the Presbytery to the
11 GA Court. The GA Court procedure has these advantages:
12

13 1. It allows a judicial commission to be a true commission, whose decisions and actions
14 represent the Presbytery. In establishing the current procedures of the SJC of GA, the Ad
15 Interim Committee on Judicial Procedure (AICJP) said the following: “A *commission is not*
16 *a body separate from the Assembly, with delegated powers, acting on its behalf. Rather, a*
17 *commission is the Assembly itself, exercising its own Christ-appointed powers, determining*
18 *to act for particular purposes, with a more limited number of commissioners.” (Report of*
19 *AICJP to the 24th GA, June 1996, p. 56)*
20

21 2. It provides a check against abuse in the case of commission decisions where 1/3 of the
22 voting members of a judicial commission make a minority report. In such instance,
23 Presbytery would hear and decide between a majority and minority position, or have a new
24 commission determine the matter if they do not approve of either. “*In most cases the SJC*
25 *ought to function as a true commission, in the historic Presbyterian sense of the term,*
26 *concluding the business referred to it. Prudence, on the other hand, as well as lessons*
27 *learned from the experience of other denominations, suggests that when the SJC itself is*
28 *seriously divided, the matter ought to be referred to the broader Assembly for final action.*
29 *This amendment provides for both”.* (Report of AICJP to the 24th GA, June 1996, p. 55) If
30 our Presbytery adopts the basic procedure of BCO 15, it will protect against abuse of power
31 or authority by a judicial commission.
32

33 3. The current BCO 15-3 says the decisions of a Presbytery judicial commission must be
34 approved by Presbytery without debate in an up or down vote. This forces Presbyters to
35 make a decision on cases they have not heard directly and almost always results in approval
36 and can thus be seen as somewhat perfunctory. “*Further, we concluded that a significant*
37 *degree of the tension arising from our current procedure resulted from the hybrid form of*
38 *the SJC - a commission in name – but subject to approval by the Assembly, an Assembly that*
39 *has not heard and cannot debate the case. It is our judgment that the PCA should return to*
40 *the historic usage of the PCUS, a procedure adopted not in its declining days, but in a*
41 *period of its health.*
42

43 *Consider the testimony of I. D. Leslie: "After studying closely fifty judicial cases coming up*
44 *to the General Assembly, from 1870 to 1909, and having had all judicial cases since then go*
45 *through my hands as clerk, I do not find a single case in which the Assembly opened for*
46 *discussion the judgment of a commission to which an appeal or complaint was given. In*
47

1 every case, the judgment of the commission was entered on the minutes as the judgment of the
2 Assembly...” [I. D. Leslie, *Presbyterian Law and Procedure in the Presbyterian Church in*
3 *the United States. Richmond, VA: Presbyterian Committee of Publication, 1930, pp.119-20.*]
4 (*Report of AICJP to the 24th GA, June 1996, pp. 49-50*)

5 4. Since “the judgment shall be effective from the time of its announcement to the parties,”
6 there does not have to be a long delay until the next stated meeting of Presbytery for the
7 judicial decision to go into effect, especially over the summer months. Also, if the proposed
8 [main] motion were to be adopted, parties would conceivably have to wait for close to a year
9 or half a year, before receiving approval of the GA for a GA SJC decision. This seems
10 discouragingly long.
11

12 **Be it therefore resolved** that BCO 15-1 and 15-3 be amended as follows (strike through for
13 deletions; underlining for new wording):
14

15 **15-1.** A commission differs from an ordinary committee in that while a
16 committee is appointed to examine, consider and report, a commission is
17 authorized to deliberate upon and conclude the business referred to it,
18 ~~except in the case of judicial commissions of a Presbytery appointed under~~
19 ~~BCO 15-3. . . .~~
20

21 **15-3. a.** Presbytery as a whole may try a judicial case within its
22 jurisdiction (including the right to refer any strictly constitutional issue
23 to a study committee with options listed below), or it may of its own
24 motion commit any judicial case to a commission. Such a commission
25 shall be appointed by the Presbytery from its members other than
26 members of the Session of the church from which the case comes up.
27 The commission shall try the case in the manner presented by the
28 Rules of Discipline and shall submit to the Presbytery a full statement
29 of the case and the judgment rendered. ~~The Presbytery without debate~~
30 ~~shall approve or disapprove of the judgment, or may refer, (a debatable~~
31 ~~motion), any strictly constitutional issue(s) to a study committee.~~
32

33 The decision of the Presbytery Judicial Commission shall be the final
34 decision of the Presbytery except as set forth below. Members of the
35 Judicial Commission may file concurring or dissenting opinions, or a
36 minority report as set forth in (c) below. The judgment of the
37 Commission shall be effective from the time of its announcement to
38 the parties.
39

40 **b.** In case of referral, the Presbytery shall either dismiss some or
41 all of the specific charges raised in the case or decide the case only
42 after the report of the study committee has been heard and discussed.
43 ~~If Presbytery approves, the judgment of the commission shall be final~~
44 ~~and shall be entered on the minutes of Presbytery as the action. If~~

1 ~~Presbytery disapproves, it shall hear the case as a whole, or appoint a~~
2 ~~new commission to hear the case again.”~~
3

4 c. (1) If, within twenty-four (24) hours of the time of adjournment
5 of a Judicial Commission meeting at which a final decision was
6 rendered in a case, at least one-third (1/3) of the voting members
7 of the Judicial Commission file written notice of their intention
8 to file a minority decision with the Stated Clerk of the Presbytery,
9 and within twenty (20) days from the adjournment do file such
10 a minority decision, such minority decision shall be considered
11 a minority report and shall be referred, with the report of the
12 Judicial Commission, to the Presbytery.
13

14 (2) No such reference* from the Judicial Commission of a
15 minority report shall be considered by the Presbytery unless the
16 report of the Judicial Commission and the minority report have
17 been mailed to the clerk of Session of each church at least
18 fifteen (15) days prior to the meeting of the Presbytery.
19 *NOTE: It was the opinion of the 26th General Assembly that
20 “reference” is NOT to be understood as the technical term
21 “reference” in BCO 41-1.
22

23 (3) The Presbytery shall act upon such a reference* from the
24 Judicial Commission, in each case without question, discussion,
25 debate, or amendment, as follows:
26

27 a) The Judicial Commission shall have 30 minutes to
28 present its decision to the Presbytery. *NOTE: It was the
29 opinion of the 26th General Assembly that “reference” is
30 NOT to be understood as the technical term “reference” in
31 BCO 41-1.
32

33 b) The minority shall have 30 minutes to present its
34 decision to the Presbytery.
35

36 c) The Judicial Commission shall have 10 minutes to reply
37 to the minority report.
38

39 d) The decision of the minority shall be proposed and the
40 Presbytery shall, without question, discussion, debate, or
41 amendment approve or disapprove of the minority report.
42

43 e) If the Presbytery disapproves the minority report, the
44 Presbytery shall take up the decision of the Judicial
45 Commission and without question, discussion, debate, or
46 amendment, approve or disapprove of the decision of the
47 Judicial Commission.
48

1 (4) If the Presbytery approves of a proposed decision, it shall
2 be the decision of the Presbytery, and printed in its minutes. If
3 the Presbytery finally disapproves of both proposed decisions,
4 it must set the case for hearing before the Presbytery or a
5 special commission appointed by it, and in either instance the
6 case shall be tried on the record as delivered to the Stated
7 Clerk. Any such special commission shall then proceed to
8 consider the case and shall report its decision, in like manner,
9 to the Presbytery for its approval or disapproval. In any event,
10 the full record of the case, including written testimony of
11 witnesses, all documents, exhibits and papers shall be delivered
12 to the Stated Clerk for preservation.

13
14 *This Overture was originally introduced by me to the Philadelphia Metro West Presbytery*
15 *as a substitute overture to the General Assembly at its stated meeting on January 18, 2014,*
16 *and was defeated. It is submitted now to General Assembly in accordance with RAO 11-10.*