

1 **OVERTURE 9** from Platte Valley Presbytery (to CCB, OC)
2 “Amend *BCO* 42-4; 43-2; 43-3 regarding Method and Deadlines of
3 Filing Cases”
4

5 **Whereas**, the Standing Judicial Commission ruled in Case 2016-02 (*M45GA*, 2017, pp. 510–
6 14), that notice of complaints must be made by hard copy, and that electronic filing
7 of complaints are administratively out of order; and
8

9 **Whereas**, the language of both *BCO* 42-4 (filing appeals) and *BCO* 43-3 (filing complaints)
10 confusingly refer to two kinds of notification: the notification of the lower court’s
11 original decision, and the notification of appeal/complaint by the appellant/
12 complainant; and
13

14 **Whereas**, *BCO* 42-4 and *BCO* 43-3 explicitly provide that the “notification” (that is, the
15 notification of the lower court’s original decision) may be made electronically, but
16 do not explicitly forbid notification of appeals and complaints from being made
17 electronically; and
18

19 **Whereas**, *BCO* 43-2 does not describe multiple types of “notification,” but still does not
20 explicitly define that complainants may not file a complaint electronically; and
21

22 **Whereas**, the *Operating Manual* (18.10.b) of the Standing Judicial Commission much more
23 clearly defines proper, timely filing:
24

25 Documents required or permitted to be filed by a party shall be filed with
26 the Stated Clerk. Such filing shall not be timely unless the documents are
27 received in the office of the Stated Clerk within the time fixed for such
28 filing, except that papers shall be deemed filed on the day of mailing if
29 certified, registered or express mail of the United States Postal Service or
30 any private service where verifying receipt is utilized. Neither facsimiles
31 nor Email will be allowed for purposes of filing. Interested parties should
32 be aware that responsibility for such filings rests with them and that delays
33 in delivery or non-delivery are the sole responsibility of the filing party.
34

35 and
36

37 **Whereas**, this language would also help Sessions and Presbyteries clarify proper, timely
38 filing of appeals and complaints if included in the *BCO*; and
39

40 **Whereas**, the authors of the SJC Concurring Opinion on Case 2016-02 acknowledged this
41 confusion of language, writing, “Accordingly we believe that *BCO* 43-3 should be
42 clarified by amendment offered through an Overture” (*M45GA*, 2017, p. 514);
43

44 **Therefore, Platte Valley Presbytery overtures** to amend *BCO* 42-4 to read (~~striketrough~~
45 for deletions; underlining for new words):

1 **42-4.** Notice of appeal may be given the court before its adjournment.
2 Written notice of appeal, with supporting reasons, shall be filed by the
3 appellant with both the clerk of the lower court and the clerk of the higher
4 court, ~~within thirty (30) days of notification of the last court's decision.~~
5 Such filing shall not be timely unless the documents are received by the
6 clerk of the lower court and the clerk of the higher court within thirty (30)
7 days of notification of the last court's decision, except that papers shall be
8 deemed filed on the day of mailing if certified, registered or express mail
9 of the United States Postal Service or any private service where verifying
10 receipt is utilized. Neither facsimiles nor e-mail will be allowed for
11 purposes of filing. Interested parties should be aware that responsibility
12 for such filings rests with them and that delays in delivery or non-delivery
13 are the sole responsibility of the filing party.

14 Notification of the last court's decision shall be deemed to have
15 occurred on the day of mailing (if certified, registered or express mail of a
16 national postal service or any private service where verifying receipt is
17 utilized), the day of hand delivery, or the day of confirmed receipt in the
18 case of e-mail or facsimile. Furthermore, compliance with such
19 requirements shall be deemed to have been fulfilled if a party cannot be
20 located after diligent inquiry or if a party refuses to accept delivery. No
21 attempt should be made to circularize the courts to which appeal is being
22 made by either party before the case is heard.
23

24 So that it reads:
25

26 **42-4.** Notice of appeal may be given the court before its adjournment.
27 Written notice of appeal, with supporting reasons, shall be filed by the
28 appellant with both the clerk of the lower court and the clerk of the higher
29 court. Such filing shall not be timely unless the documents are received by
30 the clerk of the lower court and the clerk of the higher court within thirty
31 (30) days of notification of the last court's decision, except that papers
32 shall be deemed filed on the day of mailing if certified, registered or
33 express mail of the United States Postal Service or any private service
34 where verifying receipt is utilized. Neither facsimiles nor e-mail will be
35 allowed for purposes of filing. Interested parties should be aware that
36 responsibility for such filings rests with them and that delays in delivery or
37 non-delivery are the sole responsibility of the filing party.

38 Notification of the last court's decision shall be deemed to have
39 occurred on the day of mailing (if certified, registered or express mail of a
40 national postal service or any private service where verifying receipt is
41 utilized), the day of hand delivery, or the day of confirmed receipt in the
42 case of e-mail or facsimile. Furthermore, compliance with such
43 requirements shall be deemed to have been fulfilled if a party cannot be
44 located after diligent inquiry or if a party refuses to accept delivery. No
45 attempt should be made to circularize the courts to which appeal is being
46 made by either party before the case is heard.

1 **And, therefore, Platte Valley Presbytery further overtures** to amend *BCO* 43-2 to read
2 (~~strikethrough~~ for deletions; underlining for new words):

3
4 43-2. A complaint shall first be made to the court whose act or decision is
5 alleged to be in error. Written notice of complaint, with supporting
6 reasons, shall be filed with the clerk of the court ~~within sixty (60) days~~
7 ~~following the meeting of the court.~~ Such filing shall not be timely unless
8 the documents are received in the office of the Stated Clerk within sixty
9 (60) days following the meeting of the court, except that papers shall be
10 deemed filed on the day of mailing if certified, registered or express mail
11 of the United States Postal Service or any private service where verifying
12 receipt is utilized. Neither facsimiles nor e-mail will be allowed for
13 purposes of filing. In regard to filing a complaint with a court, as outlined
14 in this section, or in taking that complaint to a higher court, as outlined in
15 *BCO* 43-3, interested parties should be aware that responsibility for such
16 filings rests with them and that delays in delivery or nondelivery are the
17 sole responsibility of the filing party. The court shall consider the
18 complaint at its next stated meeting, or at a called meeting prior to its next
19 stated meeting. No attempt should be made to circularize the court to
20 which complaint is being made by either party.
21

22 So that it reads:

23
24 **43-2.** A complaint shall first be made to the court whose act or decision is
25 alleged to be in error. Written notice of complaint, with supporting
26 reasons, shall be filed with the clerk of the court. Such filing shall not be
27 timely unless the documents are received in the office of the Stated Clerk
28 within sixty (60) days following the meeting of the court, except that
29 papers shall be deemed filed on the day of mailing if certified, registered
30 or express mail of the United States Postal Service or any private service
31 where verifying receipt is utilized. Neither facsimiles nor e-mail will be
32 allowed for purposes of filing. In regard to filing a complaint with a court,
33 as outlined in this section, or in taking that complaint to a higher court, as
34 outlined in *BCO* 43-3, interested parties should be aware that
35 responsibility for such filings rests with them and that delays in delivery or
36 non-delivery are the sole responsibility of the filing party. The court shall
37 consider the complaint at its next stated meeting, or at a called meeting
38 prior to its next stated meeting. No attempt should be made to circularize
39 the court to which complaint is being made by either party.
40

41 **And, therefore, Platte Valley Presbytery further overtures** to amend *BCO* 43-3 to read
42 (~~strikethrough~~ for deletions; underlining for new words):

1 **43-3.** If, after considering a complaint, the court alleged to be delinquent
2 or in error is of the opinion that it has not erred, and denies the complaint,
3 the complainant may take that complaint to the next higher court. If the
4 lower court fails to consider the complaint against it by or at its next stated
5 meeting, the complainant may take that complaint to the next higher court.
6 Written notice thereof shall be filed with both the clerk of the lower court
7 and the clerk of the higher court ~~within thirty (30) days of notification of~~
8 ~~the last court's decision.~~ Such filing shall not be timely unless the
9 documents are received by the clerk of the lower court and the clerk of the
10 higher court within thirty (30) days of notification of the last court's
11 decision, except that papers shall be deemed filed on the day of mailing if
12 certified, registered or express mail of the United States Postal Service or
13 any private service where verifying receipt is utilized. Neither facsimiles
14 nor e-mail will be allowed for purposes of filing.

15 Notification of the last court's decision shall be deemed to have
16 occurred on the day of mailing (if certified, registered or express mail of a
17 national postal service or any private service where verifying receipt is
18 utilized), the day of hand delivery, or the day of confirmed receipt in the
19 case of e-mail or facsimile. Furthermore, compliance with such
20 requirements shall be deemed to have been fulfilled if a party cannot be
21 located after diligent inquiry or if a party refuses to accept delivery.
22

23 So that it reads:
24

25 **43-3.** If, after considering a complaint, the court alleged to be delinquent
26 or in error is of the opinion that it has not erred, and denies the complaint,
27 the complainant may take that complaint to the next higher court. If the
28 lower court fails to consider the complaint against it by or at its next stated
29 meeting, the complainant may take that complaint to the next higher court.
30 Written notice thereof shall be filed with both the clerk of the lower court
31 and the clerk of the higher court. Such filing shall not be timely unless the
32 documents are received by the clerk of the lower court and the clerk of the
33 higher court within thirty (30) days of notification of the last court's
34 decision, except that papers shall be deemed filed on the day of mailing if
35 certified, registered or express mail of the United States Postal Service or
36 any private service where verifying receipt is utilized. Neither facsimiles
37 nor e-mail will be allowed for purposes of filing.

38 Notification of the last court's decision shall be deemed to have
39 occurred on the day of mailing (if certified, registered or express mail of a
40 national postal service or any private service where verifying receipt is
41 utilized), the day of hand delivery, or the day of confirmed receipt in the
42 case of e-mail or facsimile. Furthermore, compliance with such
43 requirements shall be deemed to have been fulfilled if a party cannot be
44 located after diligent inquiry or if a party refuses to accept delivery.
45

46 *Adopted by Platte Valley Presbytery at its stated meeting, February 2, 2019*

47 *Attested by TE Jacob Gerber, stated clerk*