

### Sessional Judicial Commissions

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In April, 2002, the Stated Clerk asked the advice of the Committee on Constitutional Business regarding the validity of sessions using judicial commissions. The CCB concurred with the Stated Clerk in his opinion on the matter.

May a Session use a Judicial Commission to adjudicate a judicial case, or must all judicial cases be heard by the entire Session?

Context: Some churches with thousands of members and dozens of elders on the Session have found it impractical to conduct try all judicial cases before the entire Session. I have been asked the same question by several unrelated parties, namely “**Is it constitutional for a Session to use a judicial commission to adjudicate judicial cases?**” It should be noted that I am speaking only to the constitutionality of a Session’s using a judicial commission; I am not addressing the wisdom or advisability of doing so. That is a discretionary decision of the Session.

Clerk’s response: The primary, though not exclusive, section of the *BCO* relating to the issue of commissions is 15-1.

**15-1.** A commission differs from an ordinary committee in that while a committee is appointed to examine, consider and report, a commission is authorized to deliberate upon and conclude the business referred to it, except in the case of judicial commissions of a Presbytery appointed under *BCO* 15-3. A commission shall keep a full record of its proceedings, which shall be submitted, to the court appointing it. Upon such submission this record shall be entered on the minutes of the court appointing, except in the case of a presbytery commission serving as a session or a judicial commission as set forth in *BCO* 15-3. When a commission is appointed to serve as an interim Session, its actions are the actions of a Session, not a Presbytery. Every commission of a Presbytery or Session must submit complete minutes and a report of its activities at least once annually to the court which commissioned it.

My response is, yes; a Session may elect to use a judicial commission to adjudicate judicial cases. I answer in the affirmative for several reasons.

- Chapter fifteen of the *BCO* deals with “Ecclesiastical Commissions” for all three levels of the courts of the church. The Presbytery is explicitly named in 15-1, 15-2, and 15-3. The General Assembly is explicitly named in 15-4, 15-5, and 16-6. The Session is explicitly named in 15-1 in the last sentence. In that reference, it is not a commission of Presbytery *acting* as a Session, but a commission *of the Session*. “Every commission of a Presbytery or Session [emphasis added] must submit complete minutes and a report of its activities at least once annually to the court which commissioned it.”
- The *BCO* is not exactly analogous to secular civil and criminal law. The *BCO* is not written as an exhaustive catalog of most possible eventualities, but is primarily a set of principles, with deference to lower courts, and the expectation that courts will use their discretion. Indeed, our constitution (*The Westminster Standards* and the *Book of Church Order*) is written in such a way that it sets forth general principles, setting forth acceptable parameters on many instances, and gives exacting details in a few instances. For example, on the issue of baptism, *WCF* XXVIII.7 states that, “Baptism is but once to be administered unto any person.” Therefore, it would not be proper for a PCA minister to rebaptize someone who had previously received a valid Christian baptism. A church member might ask a PCA pastor for a baptism by immersion because he or she had been baptized by pouring and now wanted to be immersed. The PCA pastor would refuse to rebaptize such a person. But what about the validity of Roman Catholic baptisms? The issue has been addressed by General Assemblies in America in the 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> centuries each coming to the same conclusion, that some sessions may accept Roman Catholic baptisms and some may reject Roman Catholic baptisms. *WCF* chapter II “Of God and of the Holy Trinity” is very exacting, following the Ancient Creeds; chapter III, “Of God’s Eternal Decree,” however, may be interpreted to be infralapsarian, or supralapsarian, though sublapsarianism is definitely excluded. *The Directory of Worship* was originally written as a replacement for the *Book of Common Prayer*. The *BCP* was prescribed worship, a prescribed liturgy that is to be followed word-for-word, with little variation allowed, with a premium set on uniformity; the *DW* is directed worship, essentially setting forth a collection of rubrics, or directions to be followed, allowing for variations, with a premium set on liberty of conscience. The PCA has taken it a step further by adding a preface to the *DW*, declaring only chapters 56, 57, 58 to be part of the constitution. It has been my observation over a period of years, that some erroneously look on our constitution in a quasi-congregational perspective, thinking of it as simply advisory in all respects and binding in no respects. It is also erroneous to look upon our constitution as if it were canon law of an hierarchical Church or a secular law code that is highly detailed. The insistence that a Session may not erect a Judicial Commission is, in my opinion, based on the latter erroneous perspective.

*BCO* 32-11 speaks of a “Judicial Committee”

In every process, if deemed expedient there may be a committee appointed, which shall be called the Judicial Committee, and whose duty it shall be to digest and arrange all the papers, and to prescribe, under the direction of the court, the whole order of the proceedings. The members of this committee shall be entitled, notwithstanding their performance of this duty, to sit and vote in the case as members of the court.

That Judicial Committee of *BCO* 32-11 is *not* a commission. The role of the Judicial Committee is explicitly stated. The erection of a Judicial Committee by any level of the church courts does *not* negate the right of the church court to form a Judicial Commission, if it so desires.

Having given a rationale for the constitutional permissibility of the use of a sessional judicial commission, it would be helpful to deal with some objections.

- It may be objected that only Presbytery and General Assembly Judicial Commissions are explicitly named in the *BCO*. The Presbytery is explicitly named in 15-1, 15-2, and 15-3. The General Assembly is explicitly named in 15-4, 15-5, and 16-6. The answer is that the Session having the power to erect commissions is explicitly named in 15-1 in the last sentence. In that reference, it is not a commission of Presbytery *acting* as a Session, but a commission *of the Session*. A commission may be erected by the Session to fulfill virtually any of the responsibilities of the Session (see *BCO* 12-5) including, “To inquire into the knowledge, principles and Christian conduct of the church members, under its care; to censure those found delinquent.”
- It may be objected that, since there are no step-by-step procedures for an appeal arising from a trial conducted by a Judicial Commission of the Session, like there are for a Presbytery Commission (15-3) or the General Assembly’s Standing Judicial Commission (15-5, c.[4]), then no Sessional Judicial Commission is possible. The answer is that *BCO* 15-1 gives the power to the Session to erect a judicial commission. Exact detailed procedures for handling cases by a Sessional Judicial Commission need not be included in the *BCO*. Though appellate civil or criminal procedures are codified in law, the *BCO* is not written as an exhaustive catalog of most possible eventualities, but is primarily a set of principles, with deference to lower courts, and the expectation that courts will use their discretion. Even the General Assembly’s Standing Judicial Commission specifies most of the details of its procedures in the “Operating Manual of the Standing Judicial Commission.” Some Presbyteries use the “Operating Manual of the Standing Judicial Commission” as guidelines for their procedures. It seems to me that a

Session could have similar appellate procedures, 1) the Sessional Judicial Commission would make its report to the Session on each given case committed to the Sessional Judicial Commission, 2) the Session would then, without debate, approve or disapprove the judgment, following the principles of *BCO* 15-3, 3) if the Session disapproved the judgment, it could appoint another commission to try the case, or the Session could elect to try the case before the Session as a whole, 4) or the Session could refer any strictly constitutional issue(s) to a study committee to report back to the Session, 5) A Session that uses a Sessional Judicial Commission, may be well advised to use the procedures of the Standing Judicial Commission, of a review of each Sessional Judicial Commission’s decision, and/or a rehearing of the case by the full Session (See section 18 of the “Operating Manual of the Standing Judicial Commission”), 6) if the decision of the Sessional Judicial Commission were averse to a church member, and the Session approved the judgment, the church member in question, could appeal directly to Presbytery, following the procedures of *BCO* 42. A particular church member’s appellate rights are not removed or diminished by the use of a Sessional Judicial Commission as long as just procedures are followed.

- It may be objected that *BCO* 15-3 speaks of a Presbytery’s Judicial Commission, but does not mention a Sessional Judicial Commission. The answer is that this is an argument from silence. *BCO* 15-3 is written for Presbytery use. The Session is explicitly named in 15-1 in the last sentence. In that reference, it is not a commission of Presbytery *acting* as a Session, but a commission *of the Session*. Though *BCO* 15-3 refers only to Presbytery, *BCO* 15-1 does include the Session and gives Sessions the authority to erect many sorts of commissions, including judicial commissions authorized to deliberate upon and conclude the business [judicial cases] referred to them.
- It may be objected that *BCO* Chapter 30 refers to censures inflicted by “church courts,” that a Sessional Judicial Commission is not a court, and, therefore, a Session may not utilize a Sessional Judicial Commission. The answer is that a commission is authorized by the court appointing it to deliberate and conclude the business referred to it. The actions of a commission are the actions of the court itself.
- It may be objected that the court of original jurisdiction of members of particular churches is the Session (*BCO* 33-1, 33-2) that a Sessional Judicial Commission is not a court, and, therefore, a Session may not utilize a Sessional Judicial Commission. The answer is that a commission is authorized by the court appointing it to deliberate and conclude the business referred to it. The actions of a commission are the actions of the court itself. Again this goes back to *BCO* 15-1 and *BCO* 15-1 does include Session and gives Sessions the authority to erect many

sorts of commissions, including judicial commissions authorized to deliberate upon and conclude the business [judicial cases] referred to them.

- It may be objected that the use of a Sessional Judicial Commission is merely a pragmatic expedient, particularly in larger churches that may have thousands of members and scores of elders. That, of course is not a constitutional argument; the issue is whether the use of a Sessional Judicial Commission is *constitutional*. To assert that sheer pragmatism and mere expediency lie at the root of the use of a Sessional Judicial Commission, is to question the motives of fellow elders. It could be argued, on the other hand that larger churches may either ignore church discipline due to the magnitude of the task of trying dozens of cases before the full Session, or they may use Sessional Judicial Commissions to fulfill justly and responsibly the duty of church discipline.

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