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**OPERATING MANUAL FOR
CHESEAPEAKE PRESBYTERY
JUDICIAL COMMISSION**

PREFACE

This Manual is subordinate to the Constitution of the Presbyterian Church in America and to the Chesapeake Presbytery By Laws. If there is any conflict between the provisions of this Manual and the Constitution or Presbytery By Laws, the Constitution or Presbytery By Laws shall take precedence.

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GENERAL RULES

10 **1. MEMBERSHIP**

11
12 1.1 Membership shall be determined by the Presbytery in
13 accordance with its By Laws. Members are nominated by the
14 Presbytery’s Executive Committee for approval by the
15 Presbytery as a whole per the Presbytery By Laws
16 Section 6-2.
17

18
19 **2. CONDUCT OF COMMISSION MEMBERS**

20
21 2.1 A member shall, at all times, keep in mind his high calling
22 as an officer of the church of the Lord Jesus Christ and
23 shall in all endeavors conduct himself in accordance with
24 that calling. Further, since “ecclesiastical discipline . . .
25 can derive no force whatever but from its own justice, the
26 approbation of an impartial public, and the countenance
27 and blessing of the great Head of the Church” (*BCO*,
28 Preface, II. Preliminary Principles, 8), the members of the
29 Presbytery Judicial Commission must maintain the highest
30 standards of integrity, independence, impartiality, and
31 competence.
32

33 2.2 All members of the commission, including officers, shall
34 be entitled to participate in the discussion and to vote on any
35 matter pending before the commission for which they are
36 qualified.
37

38 2.3 A “qualified” member under these Rules is any member of
39 the commission who:

- 40
41 a. in a hearing (*OMPJC* 10.4.a (2)) has read the
42 Record of the Case and all briefs timely filed by the
43 parties;
44 b. heard the arguments of the parties (if such arguments
45 are presented) and the discussion as to the merits

PJC MANUAL

1 of the matters in controversy; and

2 c. is not disqualified for one or more of the reasons
3 stated in *OMPJC* 2.4-2.12 below.

4
5 2.4 A member shall not render judgment in any matter
6 pending before the Commission on the basis of anything
7 other than the Constitution of the Church and the facts
8 presented by the Record of the Case and the other materials
9 properly before him. If he finds himself subject to any other
10 influence, or if he finds himself unable to render the
11 judgment so required, he shall recuse himself from further
12 proceedings in that matter.

13
14 2.5 A member of the Commission shall not make any public
15 or private statement that might reasonably be expected to
16 affect the outcome of a pending matter or impending matter in
17 any court of the church (*BCO* 11-4; 39-3).

18
19 a. A pending matter is a matter with respect to which
20 process (*BCO* 31-2, ¶ 2) has commenced or which has
21 been filed under the Rules of Discipline with the
22 appropriate court. A matter continues to be pending
23 through any appellate process. (*BCO* 39-1).

24 b. An impending matter is a matter that is reasonably
25 expected to (a) become a case of process or (b)
26 otherwise be brought before an appropriate court for
27 consideration. “Reasonably” refers to the judgment of
28 one in possession of all the relevant facts, which facts
29 are subject to a fair-minded assessment.

30
31 2.6. So long as he complies with *OMPJC* 2.5 above, a member
32 may make public or private statements in the course of his
33 duties as a presbyter or Session member with respect to
34 biblical teaching, confessional interpretation, the principles of
35 the form of government and discipline, the requirements of
36 the *BCO*, *Robert's Rules*, and may explain Commission
37 procedures.

38
39 2.7. A member of the Commission shall not discuss or comment
40 on a pending or impending case with any party in the case
41 or any person other than a Commission member, except as
42 otherwise provided in this Manual or in the *BCO*.

43
44 2.8. Notwithstanding *OMPJC* 2.5 above, a member of the
45 Commission may fully participate in a judicial matter before

PJC MANUAL

1 the Session of which he is a member and advise his
2 Session in judicial matters.

3
4 2.9. A member of the Commission shall not represent himself or
5 any other party before the Commission, except in cases of
6 reference in which a member of the Commission is assigned
7 to act as prosecutor and is then recused from sitting in
8 judgment on the case.

9
10 2.10. A member of the Commission shall perform the duties of
11 his office with impartiality and shall be diligent to
12 maintain the impartiality of the Commission.

13
14 a. A member must be objective and open-minded with
15 respect to all issues and parties.

16 b. A member shall not, in connection with cases,
17 controversies, or issues that are likely to come before
18 the court, make pledges, promises, or commitments
19 that are inconsistent with the impartial performance of
20 the duties of his office.

21 c. A member shall not initiate, permit, or consider *ex*
22 *parte* communications, or consider other
23 communications made to the member outside the
24 presence of the parties or their representatives,
25 concerning a pending or impending matter, except as
26 follows:

27
28 (1) When circumstances require it, *ex parte*
29 communication for scheduling, administrative,
30 or emergency purposes, which does not
31 address substantive matters, is permitted to the
32 Commission chairman or secretary.

33 (2) If a member receives an unauthorized *ex*
34 *parte* communication bearing upon the
35 substance of a matter, the member shall
36 promptly notify the chairman and secretary of
37 the substance of the communication in
38 writing (email is acceptable). The chairman
39 and secretary shall promptly notify the parties
40 of the substance of the communication in
41 writing.

42 (3) A member shall not investigate facts in a
43 matter independently, and shall consider only
44 the evidence presented and any facts that
45 may properly be judicially noticed.

PJC MANUAL

1
2 d. A member shall disqualify himself in any proceeding
3 in which the member's impartiality might reasonably
4 (see *OMPJC* 2.5.b) be questioned, including but not
5 limited to the following circumstances:
6

7 (1) The member has a personal bias or
8 prejudice concerning a party or a party's
9 representative, or personal knowledge of facts
10 that are in dispute in the proceeding, which is
11 inconsistent with the impartial performance of
12 the duties of his office.

13 (2) The member, while a member or after
14 nomination to membership, has made a
15 public statement, other than in a court
16 proceeding, judicial decision, or opinion, that
17 commits or appears to commit the member
18 to reach a particular result or rule in a
19 particular way in the proceeding or
20 controversy.

21 (3) The member, the member's spouse, or a
22 person within the third degree of relationship
23 to either of them, or the spouse of such a
24 person:

25 i served as a representative in the
26 matter in controversy;

27 ii was a witness concerning the matter; or

28 iii is a member of a session which is
29 party to the case or is a member of a
30 congregation party to a case.
31

32 e. A member subject to disqualification under this chapter
33 shall disclose on the record the basis of the member's
34 disqualification.
35

36 2.11. A member of the Commission shall conduct his extra-
37 Commission activities to minimize the risk of conflict with
38 the obligations of office thereby ensuring that he is
39 available to fulfill his duties. A member shall not participate
40 in activities that require the frequent disqualification of the
41 member.
42

43 2.12. The enforcement of the Commission's standards of conduct
44 shall be as follows:
45

PJC MANUAL

- 1 a. If the eligibility of a member is questioned, the chairman
2 shall rule on the member's eligibility. By majority vote
3 the Commission may reverse the ruling of the chairman
4 on the member's eligibility.
- 5 b. By a two-thirds vote the Commission may recommend
6 to the Presbytery that a Commission member be
7 removed from the Commission for cause. The
8 recommendation shall include a brief statement of the
9 grounds for the recommendation.
- 10 c. Should the conduct leading to a recommendation that a
11 member be removed from the Commission be potentially
12 liable to censure under the Rules of Discipline, the
13 Commission may include in its recommendation to the
14 Presbytery a further recommendation that the grounds
15 for removal be forwarded to the appropriate session
16 court of original jurisdiction for consideration under
17 *BCO* 31-2.
18
19

20 **3. OFFICERS AND THEIR DUTIES**

- 21
- 22 3.1 The Office of Chairman of the Commission shall be
23 nominated by the Presbytery Executive Committee for
24 approval by the Presbytery as a whole. The Office of
25 Secretary shall be determined by way of election within the
26 Commission.
27
- 28 3.2 These officers will remain in their elected positions until
29 their Commission term expires or voluntarily resign from
30 the elected officer position.
31
- 32 3.3 The Chairman shall preside at meetings and perform other
33 duties assigned by the Commission. If the Chairman cannot
34 attend a meeting, he is able to designate another member of
35 the Commission to moderate the meeting.
36
- 37 3.4 The Secretary shall record the minutes of the meetings and
38 the votes of the Commission and maintain the records of
39 the Commission and perform other duties specified in this
40 Manual and/or assigned by the Commission.
41

PJC MANUAL

4. PROPER BUSINESS BEFORE THE COMMISSION

4.1 The Commission shall receive via automatic deferral from the Stated Clerk of the Presbytery, all appeals (per BCO 42) and all complaints (either against a lower court within the bounds of the Presbytery or complaints against a Presbytery action or delinquency, per BCO 43).

4.2 References (BCO 41) can only be referred to the Commission upon Presbytery approval, either as a deferral for further disposal or after the Presbytery as a whole decides to accede to the reference. If it is a judicial reference requiring assumption of original jurisdiction from the lower court, the Commission automatically receives the reference upon Presbytery's approval to accede. If the Presbytery refers the matter to the Commission without acceding, the Commission will deliberate and decide on Presbytery's behalf on acceding to the reference and will assume original jurisdiction of the matter and will conduct the process of adjudication over the case referred to the Presbytery.

4.3 The Commission may also be charged by the Presbytery on matters related to General Review and Control provisions in BCO 40, where the Commission would be called to investigate and adjudicate any reports of "any important delinquency or grossly unconstitutional proceedings" (BCO 40-5), only when directed by the Presbytery to do so.

4.4 Judicial matters related to teaching elders under the jurisdiction of the Presbytery are to be referred to the Commission only when proper charges have been filed (BCO 32-2, 34-2), and the Presbytery has referred the case to the Commission for investigation (BCO 31-2) and if required, adjudication.

5. MEETINGS

5.1 All meetings of the Commission are called meetings based on the business that it receives from either the Presbytery as a whole or by automatic reference of Appeals (BCO 42) or Complaints (BCO 43) that are filed with the Presbytery's Stated Clerk. Meetings of the Commission may be called by the Chairman or by two (2) or more members in writing (email acceptable).

PJC MANUAL

6. QUORUM

- 6.1 A quorum for the transaction of business at any meeting of the Commission shall be four (4) qualified members, composed of at least two (2) teaching elders and at least (2) ruling elders.

7. THE RECORD OF THE CASE

- 7.1 Except in cases of reference and process against a teaching elder, the Record of the Case shall be prepared by the Clerk of the lower court (the Session) and shall be submitted to the Stated Clerk of the Presbytery. For cases of reference and process against a teaching elder, the Presbytery is the original court of jurisdiction and shall follow procedures outlined in BCO 32-18 and BCO 35-7, 8 to produce the Record of the Case.

7.2 Content

- a. The Record of the Case in an Appeal shall be prepared in accordance with *BCO* 32-18 and 42-5 which shall include:
- (1) a copy of all proceedings in connection with the case, such as the Minutes of the trial before the lower court, the charges, answers, citations and returns;
 - (2) the notice of appeal and reasons therefor;
 - (3) all transcribed testimony actually taken before the lower court (*BCO* 35-7). Audio and/or video recordings shall not be admissible or be made a part of the Record of the Case unless the same have been transcribed and authenticated by the Moderator and Stated Clerk of the lower court (*BCO* 35-8);
 - (4) the response of the lower court in its actions, orders, decisions and judgment;
 - (5) any papers bearing on the case.
- b. The Record of the Case in a Complaint shall be prepared in accordance with *BCO* 32-18 and 43-6 which shall include:
- (1) a copy of all the lower court's

PJC MANUAL

proceedings in connection with the complaint, including the notice of complaint and supporting reasons and Minutes of any hearing;

(2) the response of the lower court, its acts, orders, decisions and judgment;

(3) all transcribed testimony actually taken before the lower court (*BCO* 35-7). Audio and/or video recordings shall not be admissible or be made a part of the Record of the Case unless the same have been transcribed and authenticated by the Moderator and Stated Clerk of the lower court (*BCO* 35-8);

(4) any papers bearing on the complaint.

7.3 The Stated Clerk shall send a copy of the Record of the Case to

- a. the members of the Commission; and
- b. the parties to the case. The Stated Clerk shall notify the parties that the *PJC Manual* is printed as an appendix to the *Presbytery By Laws*.

7.4 The parties shall have the right to examine the Record of the Case. Corrections to the Record of the Case may be submitted as follows:

- a. If a party objects to the record as being incorrect or defective, such party shall notify the Stated Clerk by mail or electronic means within 15 days of the date of receiving of such Record of the Case from the Stated Clerk. Any party so objecting shall specify, in writing, the alleged defects and suggestions for the corrections that should be made. Such party shall send a copy of the objections by mail or electronic means and suggested corrections to the other party to the case. Failure to lodge a timely objection to the record of the case will constitute acceptance of the record of the case by the parties.
- b. If the other party shall agree to the suggested corrections, such corrections shall be reduced to writing, stipulated to by the parties and made a part of the Record of the Case. Such stipulation shall be

PJC MANUAL

1 filed by mail or electronic means with the Stated
2 Clerk not more than 30 days after the date the last
3 party received such Record of the Case from the
4 Stated Clerk.

- 5 c. If the parties do not agree on the correction, the
6 hearing will be postponed, and the Stated Clerk shall
7 remit the Record of the Case to the Clerk of the
8 lower court (Session), together with the party's
9 objections and suggested corrections. The Clerk or
10 the Representative of the lower court (Session) shall
11 reply promptly to these objections within 10 days of
12 receipt of the notice of objections and corrections.
- 13 d. If the Clerk of the lower court (Session) fails to
14 reply or refuses these objections or certifies to the
15 correctness of the Record of the Case as submitted,
16 the Commission may consider proof of the error as
17 submitted by the party, hear arguments of the
18 parties, and make a decision as to whether in fairness
19 and justice the Record of the Case should be
20 corrected.
- 21 e. The Commission may extend any of the deadline
22 dates in this section if it determines that so doing is
23 in the interest of justice.
24

25 8. BRIEFS

26 8.1 Preliminary Briefs

- 27
28
29 a. Once the Record of the Case is established
30 only one preliminary brief may be submitted
31 through the Stated Clerk before the initial
32 hearing by the Commission. Any preliminary
33 brief from a Complainant or Appellant shall be
34 filed after the Commission has declared the case
35 judicially in order and no later than 14 days
36 after he receives the established (perfected)
37 ROC. The Stated Clerk immediately shall mail a
38 copy of this brief to the Respondent or
39 Appellee. Any preliminary brief from a
40 Respondent or Appellee must be filed no later
41 than 14 days prior to the date set for the hearing of
42 the case.
- 43 b. Such a preliminary brief should include the
44 party's position with regard to the following:
45 (1) A summary of the facts.

PJC MANUAL

- (2) A summary of the proceedings in the lower court (Session).
- (3) A statement of the issues.
- (4) The proposed judgment and relief.
- (5) Argument in support of judgment and relief.

8.2 No brief of a party shall make any reference to any fact not a part of the Record of the Case. The Commission may, at its discretion, strike all or part of a brief that makes such reference.

- 8.3
- a. Any brief filed hereunder must be typewritten or printed on 8-1/2 x 11 inch paper, with no smaller than 10 point type, with 1 inch margin on all sides, and may be single spaced.
 - b. The preliminary brief filed by a party shall not exceed 10 pages in length.
 - c. Any brief timely filed which does not meet these standards of form shall be returned to the sending party with reasons. In this case a revised brief may be submitted provided that such brief is filed with the Stated Clerk within 5 days of notification that the brief does not meet the standard of form.

8.4 Failure to file a brief by a party shall not be considered to be an abandonment of the case.

9. ADMINISTRATIVEPROCEDURE

9.1 When a judicial case is submitted to the Commission, the Commission shall make an initial determination as to whether the case is administratively in order.

- a. A case is administratively in order if the relevant provisions of *BCO* 41, 42, and 43 have been followed.
- b. A case is judicially in order when the Commission determines that the relevant provisions of *BCO* 41, 42, and 43 have been followed and the documents for the Record of the Case are in order in accordance with

PJC MANUAL

OMPJC 7.2.

- 1
- 2
- 3 9.2 a. If a case is initially found not to be
- 4 administratively in order, the Stated Clerk shall
- 5 contact the relevant parties or clerks and request
- 6 that the case be put in order.
- 7 b. If a case cannot be put in order within the
- 8 Rules of Discipline of the *BCO* and the
- 9 requirements of this Manual, or
- 10 c. If the parties fail to put the case in order within
- 11 30 days after notification under this Section of the
- 12 Manual,
- 13 d. Then the Commission may make a determination
- 14 that the case not be found in order and move
- 15 towards its dismissal based on the grounds that it
- 16 was not in order.
- 17

- 18 9.3 Once the case has been determined to be both
- 19 administratively and judicially in order, the parties shall be
- 20 notified. When the Record of the Case has been perfected
- 21 under *OMPJC 7*, and when the parties have had opportunity
- 22 to file briefs under *OMPJC 8.1*, the case shall be
- 23 docketed for hearing by the Commission at a called
- 24 meeting set to hear the case.
- 25
- 26

10. HEARINGS

- 27
- 28
- 29 10.1 Where it is determined under *OMPJC 9.3* that a
- 30 judicial case should be heard by the Commission, the
- 31 Commission shall first determine whether the case is
- 32 judicially in order and ready for hearing. This review
- 33 may be done by a telephone conference call and shall
- 34 include:
- 35

- 36 a. that the case was timely filed as provided in
- 37 *BCO 42-3* and *43-2*;
- 38 b. in the case of a complaint, that the complaint
- 39 was first filed with the Court whose act or
- 40 decision is alleged to be in error (*BCO 43-2*);
- 41 c. that a ground or reason has been specified as
- 42 required by *BCO 42-3* and *43-2*;
- 43 d. that the parties have complied with the Rules
- 44 of Discipline of the *BCO* and this Manual;
- 45 e. that the Record of the Case appears to be

PJC MANUAL

1 complete and sufficiently documented.
2

- 3 10.2 a. If the Commission determines that a case is not
4 judicially in order, then the Commission, through
5 the Stated Clerk shall notify the parties and give
6 them an opportunity to cure the defect, if it can
7 be cured within the Rules of Discipline of the
8 *BCO* and the requirements of this Manual.
9 b. If the defect is cured within 30 days from the
10 receipt of such notice the Commission shall
11 proceed to adjudicate the case.
12 c. If significant defects cannot be cured within 30
13 days of receipt of such notice, then the
14 Commission may make a determination that the
15 case not be found in order and move towards its
16 dismissal based on the grounds that it was not in
17 order.
18

19 10.3 If it is determined that the appeal or complaint is
20 judicially in order, the Chairman of the Commission shall
21 take the following actions:

- 22 a. Set a time and place for a hearing of the appeal or
23 complaint, making every reasonable effort to
24 obtain such time and place as may be agreeable to
25 both the parties.
26 b. Notify the parties of such time and place of
27 hearing by letter with return receipt requested or
28 by electronic means. If by letter, such notice shall
29 be mailed not less than 30 days prior to the date of
30 hearing. If by electronic means, such notice shall
31 be sent not less than 30 days prior to the date of
32 hearing and there must be a receipt of
33 acknowledgement in the file from each party.
34 c. Notify the parties of their right to submit written
35 briefs, in accordance with *OMPJC* 8. A written
36 brief must comply with *OMPJC* 8.3 and
37 following.
38 d. Notify all parties of their right to represent
39 themselves or to be represented at the hearing in
40 accordance with *BCO* 32-19 or 42-10, as the case
41 may be.
42

43 10.4 Initial Procedures for Hearings before the Commission

- 44 a. At the time and place set for a hearing of the case,
45 the Chairman shall call the Commission to order

PJC MANUAL

and proceed as follows:

- (1) Prayer should be offered by a member of the Commission.
- (2) All Commission members shall be polled to certify that they have read the Record of the Case and all briefs timely filed. Any member who cannot so certify shall not participate in any aspect of the proceedings, including deliberations and voting on the case, unless such member can become qualified after a postponement of the hearing.
- (3) The Chairman shall enjoin the Commission members to recollect and regard their high character as judges of a court of Jesus Christ and the solemn duty in which they are about to engage (*BCO* 32-12).

b. Furthermore, the Chairman shall:

- (1) Remind the Commission Members that they should disregard all evidence not in the Record of the Case (*BCO* 32-18); even though such evidence may be found in the briefs of the parties or in oral argument (See *OMPJC* 8.3).
- (2) Read to the Commission members the principles of Review set forth in *BCO* 39-3.

10.5 After the initial procedures have been followed, the Commission shall proceed with an appeal in accordance with *OMPJC* 13.3 and following, or if it is a complaint, it shall proceed in accordance with *OMPJC* 14.3 and following.

11. PROCEDURE FOR HEARING A JUDICIAL REFERENCE CASE (*BCO* 41)

11.1 The only reference which the Commission may entertain is the reference of an appeal or a complaint received by the lower court and referred by that lower court to the Presbytery for final disposition, or a reference of "a judicial case with request for its trial and decision by the higher court" (*BCO* 41-3). References to the Commission

PJC MANUAL

1 are not automatic and must first be approved by the
2 Presbytery (*OMPJC 4.2*).

- 3
- 4 a. Where such a reference is received by the Stated
5 Clerk, a determination shall be made under
6 *OMPJC 9.1* as to whether or not the case is
7 administratively in order.
- 8 b. If the case is found to be administratively in
9 order, the Commission shall determine whether
10 or not it should accede to the request of the
11 lower court (*BCO 41-5*), only if the Presbytery has
12 referred, but not acceded, the reference to the
13 Commission. While deliberating on its decision to
14 accede, the Commission must remember the
15 admonition of *BCO 41-5* that “in general it is
16 better that every court should discharge the duty
17 assigned to it under the law of the church.”

18

19 11.2 Where a judicial case referred to and accepted by the
20 Commission under *OMPJC 11.1* above is an appeal
21 under *BCO 42*, that appeal shall be heard by the
22 Commission in accordance with the provisions of
23 *OMPJC 12*, and where such a case is a complaint under
24 *BCO 43*, that complaint shall be heard by the
25 Commission in accordance with the provisions of
26 *OMPJC 13*, and where it is an initial trial of an issue or
27 charges, such a case shall be heard *de novo* by the
28 Commission in accordance with the provisions of
29 *OMPJC 12.2* or *13.2* and following as the case may be.

30

31 11.3 The Clerk of the lower court making the reference shall
32 submit to this Commission all documents through the
33 Stated Clerk which should become a part of the Record of
34 the Case.

35

36 11.4 The lower court making the reference shall assist this
37 Commission as provided in *BCO 41-6*.

38

39 11.5 The Commission shall be organized as in any other case,
40 except the trial of such a case shall be conducted under
41 the “General Provisions Applicable To All Cases Of
42 Process” as set out in *BCO 32*, and in accordance with
43 rules of evidence as set out in *BCO 35*.

44

45 11.6 The testimony of the witnesses in any case so referred and

PJC MANUAL

1 accepted shall be taken and transcribed as part of the
2 Record of the Case. (Note the provisions of *BCO* 41-6)

3
4 11.7 The parties shall be responsible for the notification and
5 expenses of their own witnesses. When a party requests
6 that a witness be cited to testify, the Chairman of the
7 Commission shall promptly cite, by personal service or
8 by certified mail, the witness to appear and testify as
9 provided in *BCO* 32-4.

10
11 11.8 When the trial hearing is convened the following
12 procedures will apply:

13
14 a. The initial proceedings set out in *OMPJC* 10.4,
15 as applicable, shall be followed, and at the close
16 of the proceedings prayer shall be offered in
17 accordance with *OMPJC* 17.1.

18 b. The requirements of *BCO* 32 shall apply.

19 c. The procedures of *BCO* 32-15 shall be
20 followed, namely:

21 (1) The Chairman shall charge the court.

22 (2) The indictment shall be read, and the
23 answer of the accused shall be heard.

24 (3) The witnesses for the prosecutor and then
25 those for the accused shall be examined.

26 (4) The arguments of the parties shall be
27 heard:

28 (a) the Prosecutor; then

29 (b) the Accused; and

30 (c) the Prosecutor shall close.

31 (5) The Commission shall go into closed
32 session and the roll shall be called and the
33 members of the Commission may express
34 their opinion in the case. After discussion:

35 (a) the vote shall be taken; and

36 (b) the preliminary verdict shall
37 be determined.

38 (6) The Commission shall rise from closed
39 session and announce the preliminary
40 verdict, and the judgment shall be entered
41 on the record.

42 d. The Record of the Case and the report of the
43 Commission shall be prepared in accordance
44 with the relevant provisions of this Manual.
45

PJC MANUAL

1 11.9 Unless the parties waive their rights to submit a
2 written brief, no decision shall be made until the time
3 periods specified in *OMPJC* 8.1 have expired. If briefs
4 are filed, copies shall be sent to all members of the
5 Commission as the case requires. Then the Chairman
6 shall convene the Commission where further discussion
7 of the case may take place. This may be done by
8 telephone conference call. After discussion, the vote shall
9 be taken on each issue. After a decision has been
10 reached, the decision shall be processed in accordance
11 with *OMPJC* 16.

- 12
- 13 11.10 After a decision has been reached by the Commission,
14 any member may file by mail or electronic means,
15 within 14 days after the date the text of the decision is
16 sent by the Secretary to the members of the Commission,
17 a concurring or dissenting opinion, which if it is couched
18 in temperate language (see *OMPJC* 17.12) shall be
19 appended to the decision.

20

21

22

23 **12. PROCEDURE FOR HEARING AN APPEAL (BCO 42)**

- 24
- 25 12.1 At the hearing of an appeal the procedures outlined in
26 *BCO* 42-8 will apply.

- 27
- 28 12.2 At the time and place set for a hearing of the case, the
29 Chairman shall call the Commission to order and
30 proceed in accordance with the initial procedures set
31 forth in *OMPJC* 10.4, as applicable.

32

33 12.3 DURING THE HEARING

- 34
- 35 a. The arguments of the parties shall be heard in
36 the following order:
37 (1) the Appellant makes the opening
38 argument;
39 (2) the Appellee then replies;
40 (3) the Appellant makes the closing argument.
- 41 b. After the hearing shall have been opened and the
42 initial requirements of *BCO* 42-8 met, but before
43 any arguments of the parties have been
44 presented the members of the Commission
45 shall have the opportunity to question the parties

PJC MANUAL

1 on any matter before the court.

- 2 c. A party shall have a maximum of 30 minutes to
3 argue his case before the Commission (and in the
4 case of the Appellant, this 30 minutes is inclusive
5 of both his opening and closing arguments).
6 d. At any time during which a party is presenting
7 an argument to the Commission, a member of the
8 Commission may ask questions of that party;
9 the time taken for such questions shall not form a
10 part of the argument time of the party questioned.

11 12.4 AFTER THE ORAL ARGUMENTS

- 13
14 a. After the oral arguments have been completed the
15 Commission shall go into closed session to
16 discuss the case and consider its merits.
17 b. When the Commission has completed its
18 discussion under *OMPJC* 12.4.a above, and is
19 ready to vote, the vote shall then be taken
20 without further debate, on each specification, in
21 this form: "**Shall this specification of error be
22 sustained?**"

23 The decision may be to affirm the lower
24 court's decision, in whole or in part. If the lower
25 court's decision is not sustained, the decision will
26 be to:

- 27 (1) reverse the lower court's decision, in
28 whole or in part; or,
29 (2) render the decision that should have
30 been rendered; or,
31 (3) remand the case to the lower court for
32 a new trial.

33
34 12.5 As soon as the judgment is thus rendered, the Chairman
35 shall designate a member or committee of members
36 voting with the majority to prepare a proposed written
37 decision, which must be approved by the majority before it
38 becomes final.

39
40 12.6 After a decision has been reached by the Commission,
41 any member may file by mail or electronic means,
42 within 14 days after the date the text of the decision is
43 sent by the Secretary to the members of the Commission,
44 a concurring or dissenting opinion, which if it is couched
45 in temperate language (see *OMPJC* 17.12) shall be

PJC MANUAL

1 appended to the decision.
2
3

4 **13. PROCEDURE FOR HEARING A COMPLAINT (BCO 43)** 5

6 13.1 At the time and place set for a hearing of the case, the
7 Chairman shall call the Commission to order and
8 proceed in accordance with the initial procedures set
9 forth in *OMPJC* 10.4, as applicable.
10

11 13.2 DURING THE HEARING 12

- 13 a. The arguments of the parties shall be heard in
14 the following order:
15 (1) the Complainant makes the opening
16 argument;
17 (2) the Respondent then replies;
18 (3) the Complainant makes the closing
19 argument.
20 b. After the hearing shall have been opened and the
21 initial requirements of *BCO* 43-9 met, but before
22 any arguments of the parties have been
23 presented, the members of the Commission
24 shall have the opportunity to question the parties
25 on any matter before the court.
26 c. A party shall have a maximum of 30 minutes to
27 argue his case before the Commission (and in the
28 case of the Complainant, this 30 minutes is
29 inclusive of both his opening and closing
30 arguments).
31 d. At any time during which a party is presenting
32 an argument to the Commission, a member of the
33 Commission may ask questions of that party;
34 the time taken for such questions shall not form a
35 part of the argument time of the party questioned.
36

37 13.3 AFTER THE ORAL ARGUMENTS 38

- 39 a. After the oral arguments have been heard the
40 Commission shall go into closed session to
41 discuss the complaint and consider its merits.
42 b. When the Commission has completed its
43 discussion under *OMPJC* 13.3.a, above, the vote
44 shall be taken, without further debate, as to what
45 disposition should be made of the complaint. The

PJC MANUAL

1 decision may be to affirm the lower court's
2 decision, in whole or in part. If the lower
3 court's decision is not sustained the decision will
4 be to:

- 5 (1) annul the whole or any part of the action
6 of the lower court against which the
7 complaint has been made; or,
- 8 (2) send the matter back to the lower
9 court with instructions for a new hearing.

10
11 13.4 As soon as the judgment is rendered, when the
12 complaint is heard by the Commission, the Chairman
13 shall designate a member or committee of members
14 voting with the majority to prepare a proposed written
15 decision.

16
17 13.5 After a decision has been reached by the Commission,
18 any member may file by mail or electronic means,
19 within 14 days after the date the text of the decision is
20 sent by the Secretary to the members of the Commission,
21 a concurring or dissenting opinion, which if it is couched
22 in temperate language (see *OMPJC* 17.12) shall be
23 appended to the decision.

24 25 26 **14. PROCEDURE FOR HEARING A REPORT ARISING** 27 **OUT OF GENERAL REVIEW AND CONTROL-(BCO 40)** 28

29 14.1 A Report arising out of General Review and Control
30 is one which purports to demonstrate an important
31 delinquency or grossly unconstitutional proceeding of a
32 lower court (*BCO* 40-5). When such a Report is submitted
33 to the Commission by way of the Presbytery, it shall be
34 first handled according to *OMPJC* 9, as applicable.

35
36 14.2 If the Report is found administratively in order, any
37 representative of the Report and lower court alleged to
38 have offended shall be cited to appear, the latter by
39 representative or in writing, providing such documents
40 as bear on the alleged important delinquency or grossly
41 unconstitutional proceedings (*BCO* 40-5). The Stated
42 Clerk shall collate these documents which shall be
43 deemed equivalent to a Record of the Case and dealt
44 with according to *OMPJC* 8 as applicable.
45

PJC MANUAL

- 1 14.3 At the time and place set for a hearing of the Report, the
2 Chairman shall call the Commission to order and
3 proceed in accordance with the initial procedures set forth
4 in *OMPJC* 10.4 as applicable.
5
- 6 14.4 The hearing shall be conducted as follows:
7 a. The members of the Commission shall have the
8 opportunity to question the representatives
9 present on any matter before the court.
10 b. The Commission shall then proceed to hear oral
11 arguments, if there be any, in the following order:
12 (1) the representative of the Report shall
13 make the opening argument;
14 (2) the representative of the court alleged to
15 have offended shall reply;
16 (3) the representative of the Report shall
17 make the closing argument.
18 c. A representative shall have a maximum of 30
19 minutes to argue his case before the
20 Commission. With respect to the representative
21 of the Report, this 30 minutes is inclusive of
22 both the opening and closing arguments.
23 d. At any time during which a representative is
24 presenting an argument to the Commission, a
25 member of the Commission may ask questions of
26 that representative; the time taken for such
27 questions shall not form a part of the argument
28 time of the representative questioned.
29
- 30 14.5 After arguments have been heard, the Commission shall
31 go into closed session to discuss the Report and consider
32 its merits.
33
- 34 14.6 When the Commission has completed its discussion and
35 is ready to vote, the vote shall be taken on each
36 recommendation. The report as a whole shall then be
37 voted on by roll call without change or amendment. All
38 qualified members present shall participate in the vote.
39
- 40 14.7 The Commission shall proceed to deliberate the merits of
41 the matter and make a determination as follows:
42
- 43 a. to reverse or redress the proceedings of the lower
44 court in other than judicial cases; or
45 b. to censure the delinquent lower court; or

PJC MANUAL

- 1 c. to remit the whole matter to the delinquent lower
- 2 court with an injunction to take it up and dispose
- 3 of it in a constitutional manner; or
- 4 d. to stay all further proceedings and declare that all
- 5 matters relating to the Report, presently or
- 6 previously pending before the Presbytery, are
- 7 ended concluded and terminated.
- 8 e. a vote shall be taken on the decision(s). The
- 9 report as a whole shall then be voted on by roll
- 10 call. All qualified members present shall
- 11 participate in the vote.
- 12

13 14.8 After a decision has been reached by the Commission,
14 any member may file, within 20 days after the day the
15 decision is reached, a concurring or dissenting opinion,
16 which shall be appended to the decision.

17
18 14.9 When the Commission's report with its recommendations
19 on the Report has been adopted by the Presbytery, a copy
20 thereof shall immediately be sent by mail or electronic
21 means to the Representatives and shall be included in the
22 final report of the PJC to the Presbytery.

23 24 25 **15. PROCEDURES FOR A PROCESS AGAINST A TEACHING** 26 **ELDER**

27
28 15.1 The Commission shall institute judicial process against a
29 teaching elder within the jurisdiction of the Presbytery
30 upon the Presbytery's receipt of proper charges (*BCO* 32-
31 2, 34-2), the Presbytery's approval to refer the case to the
32 Commission, and the finding of a strong presumption of
33 guilt after an investigation has been conducted by the
34 Commission (*BCO* 31-2).

35
36 15.2 If the Commission's final judgment is that the
37 investigation does not raise "a strong presumption of the
38 guilt of the party involved," (*BCO* 31-2) the Commission
39 shall dismiss the case and advise the parties to the case.

40
41 15.3 If, however, the Commission's final judgment is that
42 the investigation raises "a strong presumption of the guilt
43 of the party involved," (*BCO* 31-2) it shall institute
44 process under *BCO* 31. In such event, the Commission
45 shall conduct a trial in accordance with the provisions of

PJC MANUAL

1 *BCO 32, BCO 35 and OMPJC 11.5 through 11.10.*
2
3

4 **16. DECISIONS**

- 5
6 16.1 Each decision shall be in the following format:
7
8 a. A summary of the facts. (A presentation in
9 chronological order of the relevant history and
10 facts that bear on the case.)
11 b. A statement of the issues. (A concise framing
12 by the Court of the specific issues being judged in
13 the case.)
14 c. The judgment. (A definite conclusion rendered
15 on the specific issues being adjudicated.)
16 d. The reasoning and opinion of the court. (The
17 explanation by the court of the resolution of
18 disputed facts and reasons for the judgment
19 rendered.)
20
- 21 16.2 A judgment of the Presbytery Judicial Commission shall
22 be effective from the time of its ratification by the
23 Presbytery and subsequent announcement to the parties in
24 accordance with BCO 15-3.
25
- 26 16.3 Judicial decisions shall be binding and conclusive on the
27 parties upon the ratification of the Commission's decision
28 by the Presbytery (See *BCO 15-30*).
29
- 30 16.4 Each decision of the Commission shall show the name of
31 the member(s) who wrote the opinion, together with the
32 names of all members as to their concurrence, dissent,
33 abstention or disqualification.
34
- 35 16.5 Each the four parts of the decision (See *OMPJC 16.1*) are
36 to be voted on separately. After all four parts have been
37 approved individually, then the decision as a whole shall
38 be voted on by roll call without change or amendment.
39
- 40 16.6 When a decision has been approved under this Manual by
41 the Commission, and subsequently ratified by the
42 Presbytery per *BCO 15-3*, a copy thereof shall be mailed
43 immediately to the parties and shall then be public.
44
- 45 16.7 After a decision has been reached by the Commission, any

PJC MANUAL

1 member may file, within 14 days after the date the text of
2 the decision is sent by the Secretary to the members of the
3 Commission, a concurring or dissenting opinion, which if
4 it is couched with temperate language (see *OMPJC* 17.12)
5 shall be appended to the decision.
6
7

8 17. MISCELLANEOUS 9

10 17.1 Any meeting of the Commission shall be opened and
11 closed with prayer.
12

13 17.2 All oral arguments by the parties before the
14 Commission shall be electronically recorded. Except in
15 cases of reference, no other recordings are authorized
16 without the consent of all of the parties and the approval of
17 the Commission. Commission recordings shall be kept by
18 the Stated Clerk for the use of the Commission until the
19 case has been finally determined, and then such
20 recordings may be destroyed. Upon request the
21 Commission may authorize use of recordings.
22

23 17.3 Complaints
24

25 a. Multiple complaints against the same act or
26 decision of a lower court may be combined into
27 one case but each complainant shall receive
28 individual notices issued under this Manual.
29 However, such multiple complainants may
30 designate one of their number to be representative
31 of the multiple complainants, and in such a case
32 notices issued under this Manual shall be sent to
33 that complainant.

34 b. A single complaint signed by more than one
35 person against the same act or decision of a lower
36 court shall be treated as a single complaint and all
37 notices issued under this Manual shall be sent to
38 the first named complainant.

39 c. In either of the cases under *OMPJC* 11.8.a or b
40 where a hearing is held under this Manual the
41 multiple complainants shall be treated as one
42 complainant and:

43 (1) be granted the same total amount of time
44 to present oral arguments as would have
45 been given to a single complainant to
46 present oral arguments; and

PJC MANUAL

(2) be permitted to present one combined brief and supplemental brief (if the circumstances permit a supplemental brief) and such brief or supplemental brief shall meet the same requirements as would be imposed upon a single complainant presenting a brief or supplemental brief.

17.4 New Evidence

- a. If at any time up to 15 days prior to the date set for the Commission to hear a judicial reference, appeal or complaint, a party asserts that new evidence has been obtained, which was not available or was not made available because of justifiable circumstances at the time the Record of the Case was put together, said new evidence shall be put in writing and sent within 5 days to the Stated Clerk and shall be received as part of the Record of the Case only when all the parties stipulate in writing agreeing to the new evidence. If the parties do not agree to this stipulation, and the party presenting the new evidence insists that it is material to the case, the proceedings shall be suspended and the matter docketed at the next meeting of the Commission to make a determination as to whether the new evidence to be offered has an important bearing on the case. At that next meeting, the Commission may decide:
- (1) that the new evidence does not have an important bearing on the case and proceed with the case; or
 - (2) that the new evidence does have an important bearing on the case and refer the case to the lower court for a new trial (*BCO* 35-14).
- b. If at any time during the 15 days immediately prior to the date set for the Commission to hear the case, a party asserts that new evidence has been obtained, which was not available or was not made available because of justifiable circumstances, at the time the Record of the Case was put together, said new evidence shall be put in writing and be presented to the Commission before any oral arguments are presented on the substance of the case. Under these

PJC MANUAL

1 circumstances, the Commission before
2 proceeding to hear oral arguments, shall receive
3 the new evidence into the Record of the Case
4 only if all parties stipulate in writing agreeing to
5 such new evidence. If the parties cannot agree to
6 this stipulation, and the party presenting the new
7 evidence insists that it is material to the case, the
8 Commission shall make a determination as to
9 whether the new evidence to be offered has an
10 important bearing on the case. The Commission
11 may then decide:

- 12 (1) that the new evidence does not have an
13 important bearing on the case and
14 proceed with the case; or
- 15 (2) that the new evidence does have an
16 important bearing on the case and refer
17 the case to the lower court for a new trial
18 (*BCO 35-14*).

19
20 17.5 All issues before the Presbytery Judicial Commission shall
21 be decided by a majority vote of those qualified members
22 voting. There shall be no proxy voting.
23

24 17.6 The minutes of the meetings of the Commission must
25 be approved by mail or electronic ballot within 20
26 days after receipt of such minutes. If any member fails
27 to file with the Secretary the ballot within 20 days, that
28 member's vote shall be recorded as approval of the
29 minutes.
30

31 17.7 ABANDONMENT

32
33 If an appellant, complainant or party initiating a case
34 referred to the Commission fails to appear, in person or
35 by a qualified representative, after receiving proper
36 notice, at any meeting of the Presbytery Judicial
37 Commission, such party shall be deemed to have
38 abandoned the case. The Stated Clerk shall immediately
39 notify the party that the case has been dismissed because
40 of the failure to appear, and the party shall have 10 days
41 from the receipt of such notice to present, in writing, a
42 satisfactory explanation of the failure to appear and
43 prosecute the case. If the explanation is deemed sufficient
44 by Commission, the case shall be reinstated and reset for
45 another hearing; otherwise, it shall stand abandoned and
46 dismissed.

PJC MANUAL

17.8 WAIVER OF RIGHTS TO APPEAR

- a. Any party may upon a showing of good cause waive his right to appear before the Commission and present oral argument. This waiver shall be accomplished by a written notice to the Commission, mailed not less than 14 days prior to the scheduled hearing, stating the reasons for the waiver. A party's waiver has no effect upon the other party's right of appearance.
- b. The Commission, if it fails to find good cause for the waiver, may refuse to accept a waiver of appearance. If the requested waiver is rejected by the Commission, it shall promptly notify the party who requested the waiver. The party shall then be required to appear before the higher court at the scheduled time and place.
- c. Failure to so appear shall constitute an abandonment of the case by that party, unless within 10 days after the date of the scheduled hearing that party provides satisfactory explanation of the failure to appear. If this explanation is deemed sufficient by the higher court and if the higher court believes the interests of justice will be served thereby, the case shall be reset for another hearing. If no further hearing is required, the case may be decided forthwith. If the party's explanation for not appearing is not deemed sufficient by the higher court, the case shall stand abandoned and dismissed.

17.9 In computing any period of time prescribed by this Manual, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or postal holiday, in which event the period extends until the end of the next day which is not a Saturday, Sunday or postal holiday.

17.10 When a provision of the Manual requires a computation of time under *OMPJC* 17.9, above, such period of time shall be computed with the following construction of

PJC MANUAL

1 certain terms used herein, to-wit:
2

- 3 a. A mailing by the Commission shall be
4 computed from the day after the document is
5 posted or delivered to an overnight carrier.
- 6 b. Documents required or permitted to be filed by a
7 party shall be filed with the Stated Clerk. Such
8 filing shall not be timely unless the documents are
9 received in the office of the Stated Clerk within
10 the time fixed for such filing, except that papers
11 shall be deemed filed on the day of mailing if
12 certified, registered or express mail of the
13 United States Postal Service or any private service
14 where verifying receipt is utilized. Neither
15 facsimiles nor E- mail will be allowed for
16 purposes of filing. Interested parties should be
17 aware that responsibility for such filings rests
18 with them and those delays in delivery or non-
19 delivery are the sole responsibility of the filing
20 party.
- 21 c. "Notice," "notification," "from receipt," "after the
22 receipt" shall be when the papers are actually
23 delivered to the party. For all papers
24 requiring such, the Commission shall be
25 responsible for obtaining verification of date of
26 delivery. However, compliance with such
27 requirements shall be deemed to have been
28 fulfilled in any of the following instances, to wit:
- 29 (1) If a party changes his/her address
30 without notifying the Office of the Stated
31 Clerk.
 - 32 (2) If a party cannot be located after diligent
33 inquiry.
 - 34 (3) If a party refuses to accept delivery of
35 materials or notice.
 - 36 (4) If materials or notice are returned by the
37 carrier with a notation that delivery
38 could not be accomplished.

39
40 17.11 The Record of the Case, Briefs, Arguments, and all
41 proceedings before the Commission shall be presented
42 in the English language.

43
44 17.12 CONCURRING AND DISSENTING OPINIONS

PJC MANUAL

- 1 a. The right of a Commission member to file a
2 Concurring or Dissenting Opinion (see *OMPJC*
3 16.7) is an essential element of the work of the
4 Commission, in that it preserves the unity of the
5 Commission by allowing a member in the
6 minority to submit to the Commission's judgment,
7 while declaring, and thus clearing, his conscience
8 in a particular decision. An Objection (*BCO* 45-1,
9 4) is only permissible in the case of an
10 otherwise qualified member of the Commission
11 (cf. *OMPJC* 2.2-3) who could not vote due to
12 being a member of a congregation in the bounds
13 of the presbytery from which the case arose (cf.
14 *BCO* 39-2).
- 15 b. That right notwithstanding, in order to preserve
16 the primacy of, the authority of, and respect for
17 Commission decisions, any Concurring or
18 Dissenting opinion shall be reviewed to ensure
19 that it meets the following standards:
- 20 (1) Concurring or Dissenting opinions shall
21 set forth concisely, as the case may be,
22 the alternate grounds upon which the
23 Commission's decision ought to have
24 been rendered; or, the alleged error of the
25 Commission's decision, a statement of
26 the decision that should have been
27 rendered, and the grounds sustaining.
- 28 (2) Ordinarily Concurring or Dissenting
29 opinions should set forth positions or
30 employ arguments that were offered in
31 the course of the Commission's
32 proceedings on a case.
- 33 (3) Concurring or Dissenting opinions shall
34 be couched in temperate language
35 conducive to maintaining respect for the
36 Commission, vigorous expression of
37 disagreement with the decision
38 notwithstanding.
- 39 (4) Concurring or Dissenting opinions shall
40 conform to the specifications for a
41 primary brief (*OMPJC* 8.3.a- b.).
- 42 c. The Chairman shall call a special meeting of
43 the Commission by telephone conference to
44 consider the adoption of an Answer to any
45 Concurring or Dissenting Opinion. Upon the

PJC MANUAL

1 adoption of an Answer to a Concurring or
2 Dissenting Opinion by the Commission, no
3 further Concurring or Dissenting Opinion shall
4 be permitted; neither shall any amendment to
5 the Concurring or Dissenting Opinion in question
6 be permitted. A Concurring or Dissenting
7 Opinion may be withdrawn.
8

9 17.13 An Executive Session shall be understood to be a
10 meeting or a portion of a meeting wherein only
11 Commissioners, and others specifically invited by the
12 Commission, are present. On the cessation of the Session,
13 only the conclusion, judgment, or decision shall be made
14 public. The proceeding shall be secret unless the
15 Commission shall vote to remove the injunction of
16 secrecy. (*Robert's Rules of Order*, Newly Revised § 9,
17 page 92.)

18 A Closed Session shall be understood as a meeting
19 or portion of a meeting wherein only Commissioners,
20 and others specifically invited by the Commission, are
21 present.. Unlike an Executive Session, however, the
22 proceedings shall not be secret, but rather discussion of
23 such matters outside of the meeting shall be at the
24 discretion of each commissioner, and the minutes of
25 such a closed session may be read and approved in open
26 session. However, no person present at a closed session
27 shall later identify in any manner the views, speeches or
28 votes of a member of the commission during the closed
29 session, apart from that member's written permission.
30
31

32 18 REPORTS

33
34 18.1 The Presbytery Judicial Commission shall make a full
35 report of each case directed to the Presbytery, which
36 report shall consist of the following:
37 a. A summary of the facts.
38 b. A statement of the issues.
39 c. The judgment of the Presbytery Judicial
40 Commission.
41 d. The reasoning and opinion of the Presbytery
42 Judicial Commission.
43 e. The vote of the Presbytery Judicial Commission.
44 f. Any concurring and/or dissenting opinions of
45 any members of the Presbytery Judicial

PJC MANUAL

1 Commission, which have been approved under
2 *OMPJC* 17.12.