

1 **OVERTURE 34** from Philadelphia Presbytery (BCO amendments to CCB, OC;
2 “Amend BCO 42-4; 43-2; and 43-3 as well as OMSJC amendment to SJC)
3 OMSJC 18.10 b. to Clarify Filing Requirements and
4 Allow Electronic Filings”
5

6 **Whereas**, the *Operating Manual of the Standing Judicial Commission (OMSJC)* explicitly
7 prohibits filings by electronic means, as set forth in OMSJC 18.10.b:
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9 Documents required or permitted to be filed by a party shall be filed with
10 the Stated Clerk. Such filing shall not be timely unless the documents are
11 received in the office of the Stated Clerk within the time fixed for such
12 filing, except that papers shall be deemed filed on the day of mailing if sent
13 by certified, registered, priority, or express mail of the United States Postal
14 Service or any delivery service where verifying receipt is utilized. **Neither**
15 **facsimiles nor E-mail will be allowed for purposes of filing.** Interested
16 parties should be aware that responsibility for such filings rests with them
17 and that delays in delivery or non-delivery are the sole responsibility of the
18 filing party.” (emphasis added)
19 and
20

21 **Whereas**, it is unspecified in BCO 42-4, BCO 43-2, and BCO 43-3 whether facsimiles or
22 email may be allowed for the purposes of filing written notice of an appeal or
23 complaint; and
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25 **Whereas**, the provisions in *The Book of Church Order* related to filings were created before
26 the advent of any generally available and reliable electronic communications;
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28 **Whereas**, filings by electronic means are permitted, and in some instances, mandated, in civil
29 and criminal courts in the United States;
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31 **Whereas**, Church courts and individuals may be uncertain or confused about whether
32 electronic filings are valid;
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34 **Whereas**, Appendix H of the BCO suggests that a Presbytery Commission could accept
35 electronic filings:
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37 At its discretion and with the consent of both parties, the Commission may
38 decide to accept email, fax or similar means for filings after establishing
39 procedures to confirm the date that a document is filed and received.
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41 **Whereas**, procedural errors in filing often result from the current requirement of simultaneous
42 filings with the lower and higher court, and courts have greater expertise in such
43 matters than individuals;
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45 **Whereas**, it is in the interest of procedural justice to preserve a uniform process of filing
46 between lower courts and higher courts of the Presbyterian Church in America so that

1 its members might not have their constitutional rights of appeal or complaint denied
2 them by obscurity and unclarity in the *BCO*, and incongruence of procedures between
3 lower and higher courts;
4

5 **Therefore**, the Philadelphia Presbytery overtures to amend *BCO* 42-4, *BCO* 43-2, and *BCO*
6 43-3 and *OMSJC* 18.10.b as follows: [Proposed additions underlined and deletions
7 noted by strike out.]
8

9 **42-4.** Notice of appeal may be given the court before its adjournment.
10 Written notice of appeal, ~~with~~ including supporting reasons (an “Appeal
11 Notice”), shall be filed by the appellant with ~~both the clerk of the lower~~
12 ~~court and~~ the clerk of the higher court, within thirty (30) days of notification
13 of the last court’s decision. With respect to the notice of appeal and the
14 notification of the last court’s decision, the following provisions shall apply:
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16 a. An Appeal Notice shall not be timely unless received by the clerk within
17 the time fixed for such Appeal Notice, except that an Appeal Notice shall
18 be deemed filed on the day of mailing if sent by certified, registered,
19 priority, or express mail of the United States Postal Service or any
20 delivery service where verifying receipt is utilized. Filing an Appeal
21 Notice by facsimile or e-mail will be allowed and shall be deemed to
22 have occurred on the day of confirmed receipt. Clerks of courts shall (1)
23 make reasonable efforts to publicize addresses (both physical and
24 electronic) to which Appeal Notices may be sent and (2) acknowledge as
25 soon as practical the receipt of a facsimile or e-mail filing of an Appeal
26 Notice. Interested parties should be aware that responsibility for such
27 filings rests with them and that delays in delivery or non-delivery are the
28 sole responsibility of the filing party and that the filing party bears the
29 burden of proving that a facsimile or e-mail filing was timely made.

30 b. Notification of the last court’s decision shall be deemed to have occurred
31 on the day of mailing (if certified, registered or express mail of a national
32 postal service or any private service where verifying receipt is utilized),
33 the day of hand delivery, or the day of confirmed receipt in the case of e-
34 mail or facsimile. Furthermore, compliance with such requirements shall
35 be deemed to have been fulfilled if a party cannot be located after diligent
36 inquiry or if a party refuses to accept delivery. No attempt should be
37 made to circularize the courts to which appeal is being made by either
38 party before the case is heard.

39 c. Within ten (10) days of receiving the Appeal Notice, the higher court
40 shall send a copy of the Appeal Notice to the lower court, together with
41 a request for the Record of the Case (as set forth in *BCO* 42-5).
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43 **43-2.** A complaint shall first be made to the court whose act or decision is
44 alleged to be in error. Written notice of complaint, ~~with~~ including
45 supporting reasons (a “Complaint Notice”), shall be filed with the clerk of

1 the court within sixty (60) days following the meeting of the court. A
2 Complaint Notice shall not be timely unless received by the clerk within the
3 time fixed for the Complaint Notice, except that a Complaint Notice shall
4 be deemed filed on the day of mailing if sent by certified, registered,
5 priority, or express mail of the United States Postal Service or any delivery
6 service where verifying receipt is utilized. Filing a Complaint Notice by
7 facsimile or e-mail will be allowed and shall be deemed to have occurred
8 on the day of confirmed receipt. Clerks of courts shall (1) make reasonable
9 efforts to publicize addresses (both physical and electronic) to which
10 Complaint Notices may be sent and (2) acknowledge as soon as practical
11 the receipt of a facsimile or e-mail filing of a Complaint Notice. Interested
12 parties should be aware that responsibility for such filings rests with them
13 and that delays in delivery or non-delivery are the sole responsibility of the
14 filing party and that the filing party bears the burden of proving that a
15 facsimile or e-mail filing was timely made. The court shall consider the
16 complaint at its next stated meeting, or at a called meeting prior to its next
17 stated meeting. No attempt should be made to circularize the court to which
18 complaint is being made by either party.

19
20 **43-3.** If, after considering a complaint, the court alleged to be delinquent or
21 in error is of the opinion that it has not erred, and denies the complaint, the
22 complainant may take that complaint to the next higher court. If the lower
23 court fails to consider the complaint against it by or at its next stated
24 meeting, the complainant may take that complaint to the next higher court.
25 ~~Written~~ A Complaint Notice notice thereof shall be filed with both the clerk
26 of the lower court and the clerk of the higher court within thirty (30) days
27 of notification of the last court's decision. With respect to the complaint to
28 the next higher court and the notification of the last court's decision, the
29 following provisions shall apply:

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31 a. A Complaint Notice to a higher court shall include a copy of the
32 complaint that was filed with the lower court. A Complaint Notice shall
33 not be timely unless received by the clerk within the time fixed for the
34 Complaint Notice, except that the Complaint Notice shall be deemed
35 filed on the day of mailing if sent by certified, registered, priority, or
36 express mail of the United States Postal Service or any delivery service
37 where verifying receipt is utilized. Filing a Complaint Notice by
38 facsimile or e-mail will be allowed and shall be deemed to have
39 occurred on the day of confirmed receipt. Clerks of courts shall (1)
40 make reasonable efforts to publicize addresses (both physical and
41 electronic) to which Complaint Notices may be sent and (2)
42 acknowledge as soon as practical the receipt of a facsimile or e-mail
43 filing of a Complaint Notice. Interested parties should be aware that
44 responsibility for such filings rests with them and that delays in delivery
45 or non-delivery are the sole responsibility of the filing party and that the

1 filing party bears the burden of proving that a facsimile or e-mail filing
2 was timely made.

3 b. Notification of the last court's decision shall be deemed to have
4 occurred on the day of mailing (if certified, registered or express mail
5 of a national postal service or any private service where verifying receipt
6 is utilized), the day of hand delivery, or the day of confirmed receipt in
7 the case of e-mail or facsimile. Furthermore, compliance with such
8 requirements shall be deemed to have been fulfilled if a party cannot be
9 located after diligent inquiry or if a party refuses to accept delivery. No
10 attempt should be made to circularize the courts to which appeal is being
11 made by either party before the case is heard.

12 c. Within ten (10) days of receiving the Complaint Notice, the higher court
13 shall send a copy of the Complaint Notice to the lower court, together
14 with a request for the response of the lower court, if any, and any papers
15 bearing on the complaint (as set forth in BCO 43-6).

16
17 **OMSJC 18.10**

18 b. Documents required or permitted to be filed by a party shall be filed
19 with the Stated Clerk. Such filing shall not be timely unless the
20 documents are received in the office of the Stated Clerk within the
21 time fixed for such filing, except that papers shall be deemed filed
22 on the day of mailing if sent by certified, registered, priority, or
23 express mail of the United States Postal Service or any delivery
24 service where verifying receipt is utilized. Filing by facsimile or e-
25 mail will be allowed and shall be deemed to have occurred on the
26 day of confirmed receipt. ~~Neither facsimiles nor E-mail will be~~
27 allowed for purposes of filing. Interested parties should be aware
28 that responsibility for such filings rests with them and that delays in
29 delivery or non-delivery are the sole responsibility of the filing party
30 and that the filing party bears the burden of proving that a facsimile
31 or e-mail filing was timely made."

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33 *Adopted by Philadelphia Presbytery at its stated meeting, March 16, 2019*

34 *Attested by /s/ TE Greg Hobaugh, stated clerk*