

1 **OVERTURE 36** from Savannah River Presbytery (to CCB, OC)  
2 “Amend *BCO* 40-4 and 40-5 To Clarify the Meaning of ‘Credible Report’”  
3

4 **Whereas**, there has been various interpretations regarding the meaning of “credible report”  
5 in *BCO* 40-5; and  
6

7 **Whereas**, these various interpretations have contended either that (1) a credible report may  
8 arise from any credible source presented to the court having appellate jurisdiction with  
9 respect to the court next below; or (2) a credible report may arise only upon referral of  
10 a matter from the General Assembly according to *RAO* 16-10.c; and  
11

12 **Whereas**, *BCO* 40-4 allows that: “Courts may sometimes entirely neglect to perform their  
13 duty, by which neglect heretical opinions or corrupt practices may be allowed to gain  
14 ground; or offenders of a very gross character may be suffered to escape; or some  
15 circumstances in their proceedings of very great irregularity may not be distinctly  
16 recorded by them.” and  
17

18 **Whereas**, *BCO* 40-4 also states that: “If, therefore, the next higher court be well advised that  
19 any such neglect or irregularity has occurred on the part of the lower court, it is  
20 incumbent on it to take cognizance of the same, and to examine, deliberate and judge  
21 in the whole matter as completely as if it had been recorded, and thus brought up by  
22 review of its records.” and  
23

24 **Whereas**, consequently when a court next below neglects to perform its duty under the  
25 Constitution; and further, fails to record its actions distinctly, the remedy is for the  
26 court with appellate jurisdiction to “be well advised that any such neglect or irregularity  
27 has occurred;” and  
28

29 **Whereas**, since it is not clearly defined by what means the appellate court may “be well  
30 advised that any such neglect or irregularity has occurred;” and  
31

32 **Whereas**, when the lower court fails to distinctly record its actions as required, and further  
33 does not inform members who may be affected and harmed by these actions with  
34 notice in a timely manner, it results in members losing their right to file an Appeal  
35 (*BCO* 42) or a Complaint (*BCO* 43) in a timely manner; and  
36

37 **Whereas**, courts can fail in the proper exercise of their responsibility to distinctly record their  
38 actions in such a manner that it is not discerned or discovered by the higher court  
39 during the process of the regular review of the lower court’s records, the higher court  
40 during its review of records is not able to determine or judge the validity of the record;  
41 and  
42

43 **Whereas**, *BCO* 40-4 and *BCO* 40-5 grant the higher court the right to review the record again  
44 once the higher court has received credible reports of “any important delinquency or  
45 grossly unconstitutional proceedings of such court;” and these credible reports can

1           come from any credible source, which then requires the higher court to review “any  
2           important delinquency or grossly unconstitutional proceedings of such court.”  
3

4       **Therefore**, to clarify the meaning of “credible reports” this overture recommends that  
5       *BCO* 40-4 and *BCO* 40-5 be amended with the following (additional wording  
6       underlined):  
7

8           40-4. Courts may sometimes entirely neglect to perform their duty, by  
9           which neglect heretical opinions or corrupt practices may be allowed to gain  
10          ground; or offenders of a very gross character may be suffered to escape; or  
11          some circumstances in their proceedings of very great irregularity may not  
12          be distinctly recorded by them. In any of these cases their records will by  
13          no means exhibit to the higher court a full view of their proceedings. If,  
14          therefore, the next higher court be well advised, through a credible report as  
15          defined in *BCO* 40-5, that any such neglect or irregularity has occurred on  
16          the part of the lower court, it is incumbent on it to take cognizance of the  
17          same, and to examine, deliberate and judge in the whole matter as completely  
18          as if it had been recorded, and thus brought up by review of its records.  
19

20          40-5. When any court having appellate jurisdiction shall receive a credible  
21          report, with respect to the court next below of any important delinquency or  
22          grossly unconstitutional proceedings of such court, the first step shall be to  
23          cite the court alleged to have offended to appear before the court having  
24          appellate jurisdiction, or its commission, by representative or in writing, at  
25          a specified time and place, and to show what the lower court has done or  
26          failed to do in the case in question. A credible report may arise either from  
27          a review of the records of the lower court as required under *BCO* 40-1; or  
28          from other credible means that make known to the court having appellate  
29          jurisdiction of the court next below of any important delinquency or grossly  
30          unconstitutional proceedings; and/or where the right of members to file a  
31          timely Appeal (*BCO* 42) or Complaint (*BCO* 43) was abridged by a lower  
32          court’s failure to conduct proper proceedings or to provide timely notices.  
33          When a court acts on any credible report, the parties shall be the lower court  
34          and the court having appellate jurisdiction.  
35

36          The court thus issuing the citation may reverse or redress the proceedings  
37          of the court below in other than judicial cases; or it may censure the  
38          delinquent court; or it may remit the whole matter to the delinquent court  
39          with an injunction to take it up and dispose of it in a constitutional manner;  
40          or it may stay all further proceedings in the case; as circumstances may  
41          require.  
42

43          As amended the provision would read:  
44

45          40-4. Courts may sometimes entirely neglect to perform their duty, by  
46          which neglect heretical opinions or corrupt practices may be allowed to gain

1 ground; or offenders of a very gross character may be suffered to escape; or  
2 some circumstances in their proceedings of very great irregularity may not  
3 be distinctly recorded by them. In any of these cases their records will by  
4 no means exhibit to the higher court a full view of their proceedings. If,  
5 therefore, the next higher court be well advised, through a credible report as  
6 defined in *BCO* 40-5, that any such neglect or irregularity has occurred on  
7 the part of the lower court, it is incumbent on it to take cognizance of the  
8 same, and to examine, deliberate and judge in the whole matter as completely  
9 as if it had been recorded, and thus brought up by review of its records.  
10

11 40-5. When any court having appellate jurisdiction shall receive a credible  
12 report, with respect to the court next below of any important delinquency or  
13 grossly unconstitutional proceedings of such court, the first step shall be to  
14 cite the court alleged to have offended to appear before the court having  
15 appellate jurisdiction, or its commission, by representative or in writing, at  
16 a specified time and place, and to show what the lower court has done or  
17 failed to do in the case in question. A credible report may arise either from  
18 a review of the records of the lower court as required under *BCO* 40-1; or  
19 from other credible means that make known to the court having appellate  
20 jurisdiction of the court next below of any important delinquency or grossly  
21 unconstitutional proceedings; and/or where the right of members to file a  
22 timely Appeal (*BCO* 42) or Complaint (*BCO* 43) was abridged by a lower  
23 court's failure to conduct proper proceedings or to provide timely notices.  
24 In these cases, the parties shall be the lower court and the court having  
25 appellate jurisdiction.  
26

27 The court thus issuing the citation may reverse or redress the proceedings  
28 of the court below in other than judicial cases; or it may censure the  
29 delinquent court; or it may remit the whole matter to the delinquent court  
30 with an injunction to take it up and dispose of it in a constitutional manner;  
31 or it may stay all further proceedings in the case; as circumstances may  
32 require.  
33

34 *Adopted by Savannah River Presbytery at its stated meeting, April 16, 2019*

35 *Attested by /s/ RE William Hatcher, stated clerk*