

## Procedures for a Case without Process

### BCO 38-1

L. Roy Taylor, Stated Clerk Emeritus, PCA

#### **Differences between Cases with Process & Cases without Process**

##### **Cases with Process**

- BCO 31-2 investigation resulting in a strong presumption of guilt to a chargeable offense (BCO 29-1).
- Full trial procedures, process, standards of evidence, prosecutor, defender, witnesses, etc., resulting in a verdict of guilty or not guilty.
- Upon conviction, a guilty person may appeal to a higher court concerning both the guilty verdict and the censure imposed and may cite several bases for appeal (BCO 42-1, 2, 3, and 4).
- Notice of appeal has effect of suspending the judgment (BCO 42-6), i.e., holding the censure in abeyance until the appeal is settled by the higher court.

##### **Cases without Process (BCO 38-1)**

- Person comes forward and makes a "confession of guilt" (Cf. BCO 29-1)
- No full trial procedures, process, standards of evidence, prosecutor, defender, witnesses, etc., because the person makes a "confession of guilt."
- After the court had rendered a judgment (i.e. imposed a censure), the person may file a complaint concerning the judgment, BCO 38-1; 43-1 (i.e. against censure that was imposed based on his confession of guilt). In making such complaint, he is not retracting his "confession of guilt."
- Filing a complaint does *not* suspend the censure unless the court acts to do so (BCO 43-4).

#### **Procedural Checklist for Cases without Process**

<b>Line Nbr</b>	<b>Date or N/A</b>	<b>Initials</b>	<b>Item</b>	<b>BCO #</b>
1.			Person comes forward and makes known his offense to the court.	38-1; 29-1
2.			<b>A statement of facts</b> is prepared for the record, specifying the sins or also the violations of the PCA Constitution ( <i>Westminster Standards, Book of Church Order</i> ) to which the person makes <b>a confession of guilt</b> . It is wise to be as specific and concise as possible, including references to Scripture and the PCA Constitution.	38-1; 29-1
3.			The person agrees that he <b>intends to make a confession of guilt</b> , that the statement of facts is accurate, and <b>that he permits the court to render a judgment</b> (impose a censure) without process based on his confession of guilt and statement of facts. It is wise to have the person sign such a statement and that a copy be retained by the clerk.	38-1

4.			If the <b>person</b> who is making a confession of guilt <b>wishes to make a statement to the court</b> the court may not use such a statement as a basis for judgment without the person's permission. Therefore, it is wise for the court to have the person certify in writing that he wishes to make a statement to the court and that he gives his permission for the court to use his statement as a basis for judgment (imposition of censure).	38-1
5.			It is appropriate that the moderator remind the court of their responsibilities (Gal. 6:1). Disciplinary procedures ordinarily are conducted in executive session.	32-12 and 15-1 may be adapted to the occasion.
6.			The court decides <b>whether the person is repentant and is making such restitution as is appropriate</b> to the offenses to which he has made a confession of guilt.	30-1
7.			If the person is <b>a minister</b> , the court decides <b>whether the offense</b> to which the person made a confession of guilt is <b>base</b> (vile, contemptible) <b>and flagitious</b> (heinous, extraordinarily wicked, flagrantly wicked).	34-7
8.			The court deliberates as to <b>whether a censure is called for, which censures are available, and which censures are appropriate</b> to the case.	38-1; Ch. 30; Ch. 36
9.			If, in the opinion of the court, <b>the person is repentant and makes such restitution as is appropriate</b> , the censure of <b>admonition</b> may be imposed. Such censure may be administered in private by a member of the court or in the presence of the court by the moderator.	30-1; 30-2; 36-3
10.			If, in the opinion of the court, <b>the person is repentant and makes such restitution as is appropriate</b> , the censure of <b>definite suspension from office</b> may be imposed, when the credit of religion, the honor of Christ, and the good of the penitent require it. Such censure is administered in closed session or open session of the court.	30-1; 30-3 ¶ 3; 36-4
11.			If, in the opinion of the court, <b>the person remains impenitent or has not made appropriate restitution</b> , even though he has made a confession of guilt, the court may impose the censure of <b>indefinite suspension from the sacrament</b> . (There is no definite suspension from the sacrament, BCO 30-3, ¶ 1). Such censure is administered in closed session or open session of the court with added solemnity.	30-1; 30-3 ¶ 1; 36-5
12.			If, in the opinion of the court, <b>the person who is a deacon, ruling elder, or minister remains impenitent or has not made appropriate restitution</b> , even though he has made a confession of guilt, the court may impose the censure of <b>indefinite suspension from office</b> . Such censure is administered in closed session or open session of the court with added solemnity.	30-1; 30-3 ¶ 4; 36-5 (See also 34-8 for a minister)

13.			If, in the opinion of the court, <b>the person remains impenitent or has not made appropriate restitution</b> , even though he has made a confession of guilt, the court may impose the censure of <b>excommunication</b> . Such censure is administered in closed session or open session of the court, or in public by the moderator	30-1; 30-3 ¶ 4; 30-4; 36-6
14.			If, in the opinion of the court, <b>the person who is a deacon, ruling elder, or minister remains impenitent or has not made appropriate restitution</b> , even though he has made a confession of guilt, the court may impose the censure <b>of deposition from office</b> . Such censure is administered by the moderator.	30-1; 30-3 ¶ 4; 30-5; 36-7
15.			If the <b>person is a minister</b> , and the court considers the offenses to which he has confessed to be <b>base</b> (vile, contemptible) <b>and flagitious</b> (heinous, extraordinarily wicked, flagrantly wicked), the court must immediately impose either the censure of <b>definite suspension from office</b> or the censure of <b>deposition from office</b> . Such censure is administered by the moderator in closed session or open session of the court.	34-7; 30-1; 30-3 ¶ 3, ¶ 4; 36-5; 36-7

**Sample**

**Required Statement of Facts and Confession of Guilt for a BCO 38-1 Case  
without Process**

I [insert name] agree that the following statement of facts is accurate:

[List accurately and concisely the actions, statements, or attitudes to which the person is making a confession of guilt. Cite circumstances, events, and dates as may be relevant and appropriate. Cite scriptural references or quotations that are applicable. Cite sections of the *Westminster Standards* or the *Book of Church Order* that are applicable. *The Westminster Larger Catechism* is particularly helpful in this regard in its exposition of the Ten Commandments, *WLC* 91-151].

I confess that I am guilty of the sins of [list].

I confess that I am guilty of violating the PCA constitution [cite sections] by [cite offenses committed].

I affirm that I intend to make a confession of guilt as specified above.

In grant my permission for the [Session of \_\_\_\_\_ or Presbytery of \_\_\_\_\_], to whose oversight I am subject, to use the statement of facts to which I have agreed and the confession of guilt which I have made to render a judgment and impose whatever censure or censures the church court considers to be appropriate in my case.

I realize that, though I may not appeal to a higher church court regarding my confession of guilt which I am making (*Book of Church Order* 42-2) because I have not submitted to a regular trial, I do, nevertheless, retain the right to file a complaint regarding the judgment (censure or censures) that this church court may impose (*Book of Church Order* 38-1).

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Sample**

**Permission Form for a Voluntary Statement in Addition to the Required  
Statement of Facts and Confession of Guilt for a BCO 38-1 Case without  
Process**

I [insert name] hereby indicate my desire to make a statement to the [Session of \_\_\_\_\_ or Presbytery of \_\_\_\_\_], to whose oversight I am subject, for its consideration in determining the censure or censures in my case without process (*Book of Church Order* 38-1). The statement I wish to make is in addition to the statement of facts which I have approved and confession of guilt which I have made in my case without process presently being considered.

Moreover, I give my consent to the church court to which I am subject to use the statements I make in the presence of the court as a basis of judgment without process.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## Information for Persons Agreeing to a Case without Process under BCO 38-1<sup>1</sup>

L. Roy Taylor, Stated Clerk Emeritus, PCA

You have chosen to come forward and make known your offense(s) to the Elders to whom you are spiritually accountable. The following is intended to help you understand what is expected of you, the procedures that will take place and the options available to you and to the Elders functioning as a church court under *Book of Church Order* 38-1.

Be aware of the differences between a Case with Process (undergoing a trial) and a Case without Process.

### Differences between Cases with Process & Cases without Process

- | <b>Cases with Process</b>   | <b>Cases without Process (BCO 38-1)</b>   |
|---|---|
| <ul style="list-style-type: none"> <li>• BCO 31-2 investigation resulting in a strong presumption of guilt to a chargeable offense (BCO 29-1).</li> </ul>   | <ul style="list-style-type: none"> <li>• Person comes forward and makes a “confession of guilt” (Cf. BCO 29-1)</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Full trial procedures, process, standards of evidence, prosecutor, defender, witnesses, etc., resulting in a verdict of guilty or not guilty.</li> </ul>   | <ul style="list-style-type: none"> <li>• No full trial procedures, process, standards of evidence, prosecutor, defender, witnesses, etc., because the person makes a “confession of guilt.”</li> </ul>  |
| <ul style="list-style-type: none"> <li>• Upon conviction, a guilty person may appeal to a higher court concerning both the guilty verdict and the censure imposed and may cite several bases for appeal (BCO 42-1, 2, 3, and 4).</li> </ul> | <ul style="list-style-type: none"> <li>• After the court had rendered a judgment (i.e. imposed a censure), the person may file a complaint concerning the judgment, BCO 38-1; 43-1 (i.e. against censure that was imposed based on his confession of guilt). In making such complaint, he is not retracting his “confession of guilt.”</li> </ul> |
| <ul style="list-style-type: none"> <li>• Notice of appeal has effect of suspending the judgment (BCO 42-6), i.e., holding the censure in abeyance until the appeal is settled by the higher court.</li> </ul>                               | <ul style="list-style-type: none"> <li>• Filing a complaint does <i>not</i> suspend the censure unless the court acts to do so (BCO 43-4).</li> </ul>   |

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<sup>1</sup> **Book of Church Order 38-1.** When any person shall come forward and make his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process. In handling a confession of guilt, it is essential that the person intends to confess and permit the court to render judgment without process. Statements made by him in the presence of the court must not be taken as a basis of a judgment without process except by his consent. In the event a confession is intended, a full statement of the facts should be approved by the accused, and by the court, before the court proceeds to a judgment. The accused has the right of complaint against the judgment.

A procedure in a case without process under *BCO* 38-1 is a disciplinary procedure, under the *Book of Church Order*, Part II, the “Rules of Discipline.” This is a serious matter. It is not simply your elders giving you pastoral advice. In coming forward and acknowledging an “offense,” you are not merely saying that you have said or done something that may have caused someone somehow to be offended, or that you simply exercised poor judgment; you are admitting to an offense as defined in the *Book of Church Order*<sup>2</sup>, which is why there is a “confession of guilt.” You are to certify to the church court that you intend to make a confession of guilt.

In a *BCO* 38-1 case without process several items will be used as the bases for the elders to decide whether a censure should be imposed against you and what the censure should be:

1. A Statement of Facts that is required
2. A Confession of Guilt that is required
3. An Additional Statement to the Church Court that you may elect to make.

The church court (the Session for church members or the Presbytery for ministers) will prepare a Statement of Facts regarding the offense(s) concerning which you are making a confession of guilt. In order for the church court to proceed, you will be informed of the Statement of Facts and you will need to approve the Statement of Facts for the records of the church court. The Statement of Facts will list accurately and concisely the actions, statements, or attitudes to which you are making a confession of guilt. It will cite circumstances, events, and dates as may be relevant and appropriate, and it will cite scriptural references or quotations that are applicable, as well as sections of the *Westminster Standards* or the *Book of Church Order* that are applicable. You will be asked to certify that the Statement of Facts is accurate and that you give your permission to the church court to use the Statement of Facts as a basis for imposing a censure.

You will be asked to make a Confession of Guilt for the records of the church court based on the Statement of Facts that lists the specific offenses to which you are admitting guilt. You will be asked to certify to the church court that you intend to make a Confession of Guilt and that you give your permission to the church court to use your Confession of Guilt as a basis for imposing a censure.

In addition to the Statement of Facts and Confession of Guilt, which are required, you may want to make an Additional Statement to the Church Court. If you want to make an Additional Statement to the Church Court, you will be asked to certify for the records of the church court that you give the church court permission to use your Additional Statement as basis for a judgment in your case.

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<sup>2</sup> **29-1.** An offense, the proper object of judicial process, is anything in the doctrines or practice of a Church member professing faith in Christ which is contrary to the Word of God. The *Confession of Faith* and the *Larger and Shorter Catechisms* of the Westminster Assembly, together with the formularies of government, discipline, and worship are accepted by the Presbyterian Church in America as standard expositions of the teachings of Scripture in relation to both faith and practice. Nothing, therefore, ought to be considered by any court as an offense, or admitted as a matter of accusation, which cannot be proved to be such from Scripture

Sometimes Sessions and often Presbyteries have Shepherding Committees or the equivalent that may make a recommendation to the church court regarding whether a censure should be imposed or what the censure should be. The church court will take such recommendations into account but is not required to follow such recommendations.

A basic principle of biblical justice is that the censure(s) should be appropriate to the offense(s). There are several censures available for the church court to impose (see *BCO* Chapter 30, *Church Censures*). These include admonition (a censure available only in the case of repentant persons), definite suspension from office for a specified period of time (if a Deacon, Ruling Elder, or Minister), indefinite suspension from Communion,<sup>3</sup> indefinite suspension from office (if a Deacon, Ruling Elder, or Minister), and deposition from office (if a Deacon, Ruling Elder, or Minister) or also excommunication. Though there are some procedures specified in the *Book of Church Order* 38-1 regarding a case without process, the church court, in deciding whether a censure is needed and what censure or censures to impose, will need to exercise its wisdom and discretion in accordance with the general principles of Scripture and the parameters of the PCA Constitution.

In the case of Ministers some special rules apply (see *BCO* Chapter 34). Since, in some respects, ministers are held to a higher standard, some offenses are more strongly censured (*BCO* 34-7).

Though you are coming forward and making your offense(s) known to the church court, the elders who decide your case will seek to discern whether you are repentant and that have made or are making appropriate restitution when necessary. Repentance involves 1) a sincere admission of and sorrow for sin, 2) a personal appropriation of the grace and mercy of Christ, and 3) a renewed purpose and endeavor to live your life in loving obedience to Christ (*Westminster Confession of Faith* 15-2). Just as the Lord Jesus explained sin to be more than outward actions (for example, Matthew 5:21-48), so the Church understands sin in the same manner. The *Westminster Larger Catechism*'s explanation of the Moral Law will be helpful to you in this regard (*WLC* 91-151).

Just as John preached, "Bear fruit in keeping with repentance" (Matthew 3:8), so the Church calls upon people to "repent and turn to God, performing deeds in keeping with their repentance" (Acts 26:20). Making restitution for our sins is not a meritorious work that earns us forgiveness from God or restoration by the Church; it is a means of our demonstrating the genuineness of our repentance and our seeking to repair the damage our sins may have caused. This is why the elders who decide your case will seek to discern whether you are repentant and that have made or are making appropriate restitution when necessary.

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<sup>3</sup> Indefinite suspension from the sacrament or from office is used when the church court does not think that the person is truly repentant and may be lifted when the person comes to repentance. An unrepentant person should not receive communion. There is no censure of definite suspension from communion, since repentant persons may receive communion and communion, properly received, is a means of grace.



Disciplinary procedures are ordinarily held in executive session. This means that if a Session is conducting the case, the only people present are the members of that particular church Session and the person making confession, unless the Session gives specific permission for others to be present. If a Presbytery is conducting the case, the only people present are Ministers who are members of that particular Presbytery, Ruling Elders who have been elected to be commissioners to that particular meeting of the Presbytery, and the person making confession, unless the Presbytery gives specific permission for others to be present. After the Statement of Facts and Confession of Guilt are presented, and after the Additional Statement, if any, is made, then you will be dismissed from the room while the church court discusses your case and decides on a censure. You will then be asked to return and you will be informed of the censure.

If after the case is concluded, you think that the censure(s) imposed upon you was (were) disproportionately severe to your offense(s), you may file a complaint with reasons against the judgment (i.e. the censure(s), (*BCO* 38-1; *BCO* 43). In so doing you are not retracting the Statement of Facts to which you agreed or the Confession of Guilt which you made, or the Additional Statement you may have made. You are complaining that the censure(s) was (were) too severe. You will need to file your complaint within thirty (30) days of the decision of the church court. File the complaint with the Stated Clerk of the church court that imposed the censure. If church court fails to consider your properly filed complaint by its next stated meeting or denies your complaint, you may carry your complaint forward to the next higher church court.

In exercising discipline the Church, among other things, is concerned for “the spiritual good of offenders themselves” (*BCO* 27-3) and “acts the part of a tender mother, correcting her children for their good, that every one of them may be presented faultless in the day of the Lord Jesus” (*BCO* 27-4). A goal of discipline is the restoration of the offender (*BCO* Chapter 37, *The Removal of Censure*). The Elders of the church court that impose the censure(s) will work with you to bring about the removal of any censure(s) they may consider appropriate to your case, as you make spiritual progress through repentance and your using means of grace (the Word of God, prayer, and Communion) that God has provided for our spiritual benefit.

The Office of the Stated Clerk may give advice and counsel regarding constitutional and procedural matters. Interpretations of *The Book of Church Order*, *The Westminster Standards*, “The Rules of Assembly Operation,” “The Operating Manual of the Standing Judicial Commission,” and/or *Robert’s Rules of Order* by the Stated Clerk of the General Assembly of the PCA or staff members of the Office of the Stated Clerk are for information only, however, and are not authoritative rulings that may only be made by the courts of the Church. Responses to inquiries are based on information supplied by the inquirer, which may not necessarily be comprehensive. The Office of the Stated Clerk does not represent parties in ecclesiastical judicial cases and may not prepare judicial cases for parties. Parties to potential cases or cases in process are responsible for their own constitutional and procedural knowledge and understanding. The Office of the Stated Clerk does not give legal advice. When legal advice is needed, professional legal counsel should be secured from one familiar with applicable laws and regulations.