Procedural Outline for Judicial Process

This outline is for informational purposes only. Though every attempt has been made to keep these accurate, the Rules of Discipline found in the *BCO* are the only binding source for the procedures to be followed.

		BCO	Item	Date
1.		31-1, 33-1, 34-1	Allegations received by clerk of court with jurisdiction	_____
2.		31-2	Investigation commenced	_____
	2.1		Committee/Commission appointed to conduct (optional)	_____

First Meeting

The steps outlined below are the only steps that can be taken at the first meeting, unless both parties (the accused and the prosecutor) agree and any witnesses to be called are present. If both parties agree and it is practicable, the court can proceed to trial immediately (*BCO* 32-3).

NOTE: All parts of a trial other than deliberations shall be recorded (transcription, audiotape, videotape, or some other electronic means) and witnesses informed of such prior to testifying (*BCO* 35-9).

		BCO	Item	Date
1.		31-2	Investigation conducted by court, or report of investigative committee/commission	_____
2.		31-2	Determination of "strong presumption of guilt" F.P. Ramsay: "A strong presumption means a belief by the members of the Court that the evidence as then known by them would indicate that guilt probably exists; unless evidence to the contrary can be produced not then known to them." (pp.185f.)	_____
	2.1.		If no strong presumption of guilt, the court may act as it deems fit for the situation.	_____
	2.2.	31-2	If the court determines there is a strong presumption of guilt, process must be instituted. Morton Smith: "Once a Court has determined to enter into an investigation, then the Court no longer has discretion of not instituting a process if strong presumption of guilt appears. In other words, only if the investigation has failed to produce strong evidence of guilt, may the Court decide not to institute process. The Court may, even when believing there is no guilt, institute process for the purpose of vindicating the innocent party. Thus the Court has unlimited discretion, except when a strong presumption of guilt has been raised by the investigation. Then the Court must institute process." (p.302)	_____
3.		15-3	Court determines whether to try case itself or appoint a judicial commission to try the case	_____
	3.1.	41-3	Court may refer matter to the higher court with the request that the higher court provide additional elders to serve with the lower court on the case	_____

4. 31-2, 32-3.1 31-2 Prosecutor appointed to prepare the indictment and to conduct the case _____
   - Presbytery: Prosecutor must be a member of the Presbytery; Session: prosecutor may be any communing member of the same congregation
   - 31-5 Injured parties, or those with knowledge of personal offenses, can not be prosecutors unless they have tried the means of reconciliation.
   - 31-9 Every voluntary prosecutor shall be warned that if he fail to show probably cause of the charges, he may himself be censured as a slanderer of the brethren.

5. 31-2, 32-3.2 Indictment ordered to be drawn and a copy, with names of witnesses known then to support it, served on the accused _____
   - 31-4 Every indictment shall begin: "In the name of the Presbyterian Church in America," and shall conclude, "against the peace, unity and purity of the Church and the honor and majesty of the Lord Jesus Christ, as the King and Head thereof."
   - 32-5 The times, places, and circumstances should, if possible, be particularly stated

6. 32-3.3 Accused cited to appear and be heard at another meeting _____
   - 32-3.1, 32-7 No sooner than 10 days after citation (receipt of it by accused)
   - 32-4 Citation signed by moderator or clerk in the name of the court by order of the court
   - 32-4 Delivered in person or in another manner providing verification of date of receipt

7. 31-10 Court determines whether to suspend all the accused's official functions (requires a ⅔ majority of the Session or Presbytery, even if the case is assigned to a commission) _____
   Morton Smith: "This should be done with great caution, lest the Court be viewed as precipitate in its judgement of the accused, or in any way serve to prejudice the Court against giving him a fair hearing." (p.305)

8. 32-3 Attention called to Rules of Discipline and assistance to obtain them offered _____

9. 32-11 Judicial committee appointed, if deemed expedient _____
   - Its duty is to digest and arrange all the papers, and to prescribe, under the direction of the court, the whole order of the proceedings
   - Members of this committee are entitled to sit and vote as members of the court

Arraignment (the Second Meeting)

NOTE: All parts of a trial other than deliberations shall be recorded (transcription, audiotape, videotape, or some other electronic means) and witnesses informed of such prior to testifying (*BCO* 35-9).

	BCO	Item	Date
1.	32-3	Charges read to the accused Morton Smith: "The charge read to the accused must be identical with the written form of the indictment." (pp.309) F.P. Ramsay: "The accused may, of course, object to the indictment, and may move that it be rejected by the Court, as not in proper form, or as being too indefinite, or he may move that it be amended so as to eliminate imperfections." (p.196)	_____
1.1	32-3	Accused pleads - Accused may plead in writing, when they can not be present - If absent, accused should have counsel assigned to them F.P. Ramsay: "The accused must plead either 'guilty' or 'not guilty,' or he may plead 'guilty in part, and not guilty in part' (specifying what is admitted and what is denied)." (p.196)	_____

1.2	32-6	If accused appears and refuses to plead or otherwise cooperate, he shall be dealt with for his contumacy (33-2; 34-4)	_____
1.3	33-2; 34-4	If found contumacious, accused is immediately suspended from the sacraments and office - Censure is only removed after repentance for contumacy and satisfaction in relation to the charges against him. - Censure is made public.	_____
1.4	32-3	The trial is scheduled and all parties and their witnesses are cited to appear - No sooner than 14 days from such citation	_____
2.	32-6	If accused refuses to appear, he shall be cited a second time - Accompanied with a notice that if he does not appear at the time appointed, he shall be dealt with for his contumacy (33-2; 34-4). 32-7 - The citation must provide sufficient time for a seasonable and convenient compliance.	_____

The Trial

NOTE: All parts of a trial other than deliberations shall be recorded (transcription, audiotape, videotape, or some other electronic means) and witnesses informed of such prior to testifying (*BCO* 35-9).

	BCO	Item	Date
1.	32-10	Court ascertains that their citations have been duly served Morton Smith: "To guarantee this, the officer of the Court citing the accused, should either have the citation served person, by at least two persons, or at least by certified mail with a signature of reception required." (pp.309)	_____
2.	32-16	The right of any member of the court to sit in the trial may be challenged - Either party may challenge. - Question decided by the other members of the court. 32-17 - Any member who expresses his opinion of the merits of the case to either party, or to any person not a member of the court shall be disqualified—applies throughout the process of the trial. 32-17 - Any member who is absent from any sitting without the permission of the court, or satisfactory reasons rendered, shall be disqualified—applies throughout the process of the trial.	_____
3.	32-12, 32-15.1	Moderator charges the court - This is the formal beginning of the trial itself.	_____
4.	32-15.2	Indictment is read F.P. Ramsay: "The indictment may not be challenged at this point as to whether or not it is true, or whether, if true it is an offense. This is to be decided by the trial itself. If the indictment is set aside as defective, then the process is back to the point when it appointed the prosecutor, and directed an indictment to be drawn." (pp.201-204)	_____
5.	32-15.2	The answer of the accused is heard	_____
6.	32-15.3	Witnesses for the prosecutor are heard 35-7 - No question shall be put or answered except by permission of the moderator, subject to an appeal to the court. The court shall not permit questions frivolous or irrelevant to the charge at issue.	_____

35-1 - Persons who do not believe in the existence of God, or a future state of rewards and punishments are not competent as witnesses.

35-2 - The accused may testify but may not be compelled to.

35-2 - A spouse may not be compelled to testify.

35-2 - Either party has the right to challenge the competency of a witness, which shall be decided by the court.

35-1

35-6 - No witness yet to be examined, unless a member of the court, may be present during the examination of another witness, if either party objects.

35-13 - Members of the court called to testify may continue as judges, unless either party objects, at which time the court determines whether the member is disqualified. The member against whom the objection has been made retains the right to vote in the determination of qualification.

35-3 - Reasonable accommodations to prevent in-person contact with the accused may be made.

6.1. 35-8 Oath administered by Moderator _____

6.2. 35-7 Examined by the prosecutor _____

6.3. 35-7 Cross-examined by the accused _____

6.4. 35-7 Members of the court or either party may ask any additional questions _____

7. 32-15.3 Witnesses for the defense are heard _____

35-7 - No question shall be put or answered except by permission of the moderator, subject to an appeal to the court. The court shall not permit questions frivolous or irrelevant to the charge at issue.

35-1 - Persons who do not believe in the existence of God, or a future state of rewards and punishments are not competent as witnesses.

35-2 - The accused may testify but may not be compelled to.

35-2 - A spouse may not be compelled to testify.

35-1 - Either party has the right to challenge the competency of a witness, which shall be decided by the court.

35-6 - No witness yet to be examined, unless a member of the court, may be present during the examination of another witness, if either party objects.

35-13 - Members of the court called to testify may continue as judges, unless either party objects, at which time the court determines whether the member is disqualified. The member against whom the objection has been made retains the right to vote in the determination of qualification.

35-3 - Reasonable accommodations to prevent in-person contact with the accused may be made.

7.1. 35-8 Oath administered by Moderator _____

7.2. 35-7 Examined by the accused _____

7.3. 35-7 Cross-examined by the prosecutor _____

7.4. 35-7 Members of the court or either party may ask any additional questions _____

8. 32-15.4 Prosecutor is heard _____

9. 32-15.4 Accused is heard _____

10. 32-15.4 Prosecutor closes _____
F.P. Ramsay: "The prosecutor may respond to specifics that have been spoken to by the accused, but should not add any further new arguments." (pp.201-204)

11. 32-15.5 Roll is called and members may express their opinion _____
F.P. Ramsay: "This is not intended to be a discussion of the merits at this point, but to get each member of the Court to express his own views, thus giving the whole Court the benefit of the views of all." (pp.201-204)
- The manual for the SJC states that for trials before them this is to be done in closed session (*OMSJC* 12.8).
- The manual for the SJC that for trials before them discussion is allowed following the roll and before the vote is taken (*OMSJC* 12.8).

12. 32-15.6 Vote is taken _____

13. 32-15.6 Verdict is announced _____

14. 36-1 If found guilty, the court moves to discussion of censure _____

30-1 - Admonition and definite suspension from office are for those convicted who satisfy the court as to their repentance and makes such restitution as is appropriate. These conclude the judicial process.

30-1 - Indefinite suspension (from office or the sacraments) shall be administered to an accused who, upon conviction, remains impenitent.

30-5 - Deposition from office may or may not be accompanied by another censure.

Other Notes

1. Disciplinary procedures are ordinarily held in executive session (RONR (12th ed), 9:24; 63:2). *Robert's Rules* has very strict limits on executive session. Among other things:
   1.1. Only the members of the court (in the case of a Presbytery: only the TEs and those REs who were appointed delegates of their Sessions for that meeting), the accused (and his counsel, if before a Session and not a member of the court), and the witnesses are allowed to be present unless the court gives specific permission for someone else.
   1.2. One who is present in such a session may not divulge information from that executive session to anyone without permission of the body.
   1.3. See RONR (12th ed), 9:24-27for the description of Executive Session
2. The accused, prosecutor, and counsel for the accused do not exercise rights of judge in any discussion arising from the case (accused 31-11; counsel 32-19; prosecutor is not specifically mentioned, but it would be a conflict of interest).
3. Representation
   3.1. If the trial is before a Session or Presbytery, the accused may be represented by any member in good standing of a church in the same Presbytery or by any teaching elder member of that Presbytery. Before the General Assembly, the accused may be represented by any member in good standing of the PCA (*BCO* 32-19)
   3.2. Under *BCO* 32-19, a lawyer may not be hired for either party. CCB has said that one whose profession is a lawyer does not disqualify one from representing anyone unless 1) one is paid to be counsel, or 2) one is in an attorney-client relationship with the accused.
4. The testimony of more than one witness shall be necessary to establish any charge. Corroborative evidence may count as the second witness (*BCO* 35-4).
5. A husband or wife shall not be compelled to bear testimony against one another (*BCO* 35-2).
6. The Record of the Case (ROC) is defined in *BCO* 32-18 and in 42-5 for appeals. *OMSJC* 7.2.a helpfully expands on the ROC for an appeal.