COMMON QUESTIONS FROM STATED CLERKS

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 *Roberts Rules of Order* by the Stated Clerk of the General Assembly of the Presbyterian Church in America are of an advisory nature and are not authoritative rulings that may only be rendered by the courts of the Church.

1. *What does a presbytery do when a church does not submit minutes for review, as the BCO requires?*

   A presbytery may assign the case to a Shepherding or Minister's Oversight Committee. This committee can visit and discuss the importance of the minutes with the session of the delinquent church. If this step is taken without result, additional formal action should be initiated through the presbytery; such action could lead to severing connection with the church.

2. *For what period of time does an elder hold office?*

   The office of elder is perpetual; that is, one holds the office for life unless removed from office through discipline or the elder demits. The *BCO* allows the church to determine the rotation or non-rotation of service.

   Most of *BCO* 24 addresses the matter of service. If a man who has been elected an elder goes on "inactive" status he remains an elder, but is not active on the session. To return to active service he must be elected and installed again. While he is inactive he may be called on to serve on committees of the courts (24-9). The references to an official relationship with the session are to service and not to the office per se (24-6, 8).

3. *Are officers permitted to vote before they are installed?*

   BCO 24-7 implies that installation is the official beginning of service for officers. Just as a teaching elder is not officially the pastor of a church until installed, so a ruling elder or deacon does not function officially until installation. If a session or diaconate desires to use the services of men elected to office but not yet installed, they may do so, but until they are installed, they cannot vote.

4. *Is the presbytery required to approve any amendments to a pastor's "terms of call?"*

   The 11th GA (*M11GA*, p.101, item 55) adopted the following advice from the Judicial Business Committee: "*BCO* 20-1 indicates that a presbytery must approve the call of a pastor. The call establishes the relationship of the pastor to the calling body. The *BCO* is silent concerning amending the call; however, in as much as the initial relationship must be approved by presbytery, it would follow that if any changes are made in the original call, the presbytery would necessarily have to approve the changes in the call for the protection of both the pastor and the calling body."

   The 21st GA adopted an overture to require that "any amendment to the terms of the call must be reported to and approved by the presbytery when amended." The action was sent down to the presbyteries for advice and consent (*M21GA*, II, 17, p.139) and the amendment failed to receive the two-thirds vote of consent from the presbyteries (*M22GA*, p. 55, item 3). However, many presbyteries have included in their Bylaws the requirement for reporting to the presbytery any changes to "terms of call."

5. What is the proper use of the "extraordinary clause?"

The 9th GA (*M9GA* 9-65, III, E, p.122) responded to this question: "The General Assembly recognizes that the use of the extraordinary clause is left to the discretion of an individual presbytery subject to review of the General Assembly and to the process provided for in the complaint. The General Assembly declares that the use of the extraordinary clause should be limited to extraordinary circumstances of the church or proven extraordinary gifts of the man. The Assembly would take notice, however, that there has been an increasing laxity in the application of the clause. The Assembly would, therefore, counsel that presbyteries exercise diligence and care in the use of this provision in order that they not prevent the ordination of a candidate for whom there are truly exceptional circumstances nor ordain a person who is inadequately prepared for the ministry."

6. Can a presbytery require a congregation to hold a congregational meeting (BCO 13-9)?

If there is a functioning session the answer is no. However, the presbytery can request (but not mandate) that the congregation hold a congregational meeting. If there is no functioning session and a committee serves as a session, the answer is yes, according to *BCO* 13-9.

7. In what circumstances can a presbytery dissolve a church or a church session?

There have been two SJC cases on the matter of dissolving a session:

In Case 90-4, The Judgment read:
"2. The *BCO* does not give a presbytery the authority and power to suspend members of a session without the consent of the congregation and without due process."

In Case 91-2, The Judgment read:
"1. The *Book of Church Order* of the Presbyterian Church in America does not give a presbytery constitutional authority and power to suspend, either temporarily or permanently, the session of a local church without the consent of the congregation and without due process... the presbytery did not have constitutional authority or power to suspend the session
2. Because the presbytery does not have the constitutional authority or power to replace, suspend or act as a session pro tem for a session of a church without the prior formal consent of the congregation of that church, the presbytery correctly determined that it did not have constitutional authority and power to constitute itself, or its commission, to act at any time as a session pro tem for the church."

There is no provision made in the *BCO* for a presbytery directly or through a commission to dissolve a session without due process (*BCO* 24-6; 33-1). If a session is unable to function [for example, they do not have two elders] (*BCO* 12-1), then the presbytery may assume original jurisdiction. "In cases in which the session cannot exercise its authority, it [presbytery] shall have the power to assume original jurisdiction" (*BCO* 13-9). As to the dissolution of a church, according to *BCO* 13-9.f, 13-10, the presbytery, at the request of the members, can dissolve a church.

8. Are ruling elders allowed to administer the sacraments?

The General Assembly considered the issue of whether ruling elders could administer the sacraments early in the history of the PCA when we had a shortage of ministers, which we do not now have. The Assembly studied the issue from 1973-1977 and finally came down on the historic majority opinion that only ministers may administer the sacraments. "Recommendation 8: That the General Assembly affirm that in keeping with the

confessional standards of the church, only properly ordained teaching elders may administer the sacraments" (*M7GA*, p. 84 [*WCF* 27-4, *WLC* 176]). There were majority and minority reports.

9. What role does Robert's Rules of Order play in our parliamentary authority?

The General Assembly, presbyteries and sessions have the following hierarchy of parliamentary authorities: (1) the PCA Constitution (*Westminster Standards, BCO*), (2) Standing Rules (in the case of the Assembly, the "Rules of Assembly Operation"), and (3) *Robert's Rules of Order*. The Constitution is the primary authority, the Standing Rules are the secondary authority, and *RRO* is the tertiary authority. It is nowhere stated that *RRO* supersedes the Constitution.

10. When does a church member have access to a session's minutes?

References to church members' access to minutes are in *BCO* 10-4 and 12-7*,* and yet neither of those references settles the issue of whether a church member may have access to session minutes, other than to extract from the minutes "whenever properly required" (*BCO* 10-4). A session may adopt a standing rule that supersedes and is different from *RRO*, but not contrary to the *BCO*. If the standing rules of a session do not address the issue, then *Robert's Rules of Order*, Chapter XV, Section 47, page 444, Tenth Edition, should be consulted: "Any member [of a society] has a right to examine the minutes of the society at a reasonable time and place, but this privilege must not be abused to the annoyance of the secretary. The same principle applies to the minutes of the boards and committees, their records being accessible to members of the boards and committees but to no other." If a person is denied an "extract" of the session minutes by the session, under (*BCO* 10-4), a complaint could be taken to presbytery and if denied by presbytery, could be filed with the Standing Judicial Commission of the General Assembly.

11. What is the difference between divesting a minister against his will and deposing him?

"To divest" is to remove from office without judicial process. Therefore, a minister may be divested without censure. "To divest a minister from office against his will" under (*BCO* 13-2, 34-10) is to remove a minister from office who has been without call for not more than three years or who has not been engaged in the regular discharge of his official functions because it is, in the opinion of the presbytery, due to his unacceptability to the church. "To depose from office," is to remove the minister from office with censure (*BCO* 30).

12. When can a Teaching Elder labor outside presbytery bounds?

Laboring outside the bounds of presbytery means to be engaged in a ministry that is not under the direct authority of the presbytery (i.e., out of ecclesiastical jurisdiction), such as a pastoral charge. A PCA minister laboring in such a ministry remains under the authority of presbytery even though his particular ministry is "outside" of presbytery's immediate oversight. The presbytery may review the terms of call to that ministry, but it does not have authority to approve the terms. For example, a PCA minister without call who takes a position teaching history at a non-PCA denominational college is not accepting another call any more than if he accepted a job teaching algebra at a public high school, or a job at a retail store. In other words, it is a job and not a ministerial calling. If he were teaching Bible or theology, however, and he wanted to maintain his status as a PCA minister he would need to seek and secure the approval of the presbytery (*BCO* 8-4; 13-2; 20-1).

13. *Are the requirements for an honorably retired teaching elder laboring outside of presbytery bounds (i.e., out of ecclesiastical jurisdiction) in an independent work, the same as for a teaching elder who is not honorably retired?*

In the *BCO* 8-7, 13-2, the issue becomes what is the court of jurisdiction. Whether he is honorably retired or not, in a work within the jurisdiction and bounds of presbytery, the court of authority and accountability is still his presbytery. The distinction is particularly noted because the honorably retired teaching elder does not have the same requirements of attendance at presbytery meetings or of reporting annually, as do those ministers without call or those laboring out of bounds. The presbytery would be advised to ensure that the honorably retired teaching elder, laboring out of bounds, would continue to have "full freedom to maintain and teach the doctrine of our church." (*BCO* 8-7, 24-9).

14. *When can a member of a court have his dissent/objection recorded?*

When a ruling elder disagrees with a motion or proposal that is pending before a session, he may seek to persuade the session to adopt his point of view. After the decision has been made by the session there are several options open to him, such as dissent, protest, objection, complaint, or motion to rescind an action previously adopted. Any member of a court who has a right to vote on a question, and is not satisfied with the action taken by that court is entitled to have a dissent or protest recorded (*BCO* 45-1 for full quote).

A dissent is a declaration on the part of one or more members of a minority, expressing a different opinion from the majority in its action on any issue before the court, and may be accompanied with the reasons on which it is founded (*BCO* 45-2). A protest is a more solemn and formal declaration by members of a minority (*BCO* 45-3 for full quote). An objection is a declaration by one or more members of a court who did not have the right to vote on an appeal or complaint (*BCO* 45-4 for full quote). If a dissent, protest, or objection is couched in temperate language, and is respectful to the court, it shall be recorded (*BCO* 45-5 for full quote). A complaint is stronger than a dissent, protest, or objection in that a complaint is a judicial process, which may carry the issue to a higher church court (*BCO* 43-1, 2, 3, 4, 5).

15. *What are the proper procedures for rescinding, repealing or annulling actions of a previous presbytery meeting?*

A motion to reconsider an action would be out of order if it were made by someone who voted with the minority: "The motion can be made by any member of the committee who *did not vote with the losing side;* or, in other words, the maker of the motion to *Reconsider* can be one who voted with the prevailing side, or one who did not vote at all, or even was absent" (*Robert's Rules of Order*, 10th ed. §37). At a later meeting, however, a person who voted in the minority may make a motion to rescind a previous action…In contrast to the case of the motion to *Reconsider,* there is no time limit on making these motions after the adoption of the measure to which they are applied, and they can be moved by any member, regardless of how he voted on the original question." It would, however, require an affirmative vote of a majority of the entire membership to pass. Moreover, there are limitations on what may be rescinded (*RRO,* 10th ed. §35). In short, anyone can make the motion to rescind regardless of how he voted on the matter at the previous meeting. It must be seconded. It is debatable. If no prior notice is given, or if there is no statement of the intention of making the motion given in the call of the meeting, a two-thirds vote is needed to pass the motion. If prior notice is given, or if there is a statement of the intention of making the motion given in the call of the meeting, a simple majority vote is needed to pass the motion.

16. How thoroughly should a minister coming from another denomination be examined (BCO 13-6)?

The traditional interpretation of *BCO* 13-6 has been that a minister coming from another denomination should be examined in knowledge and views in Christian experience, theology, the Sacraments and church government. *BCO* 21-4, especially those parts dealing with licensure, have not been required (e.g., preaching a sermon before presbytery). In other words, a presbytery should satisfy itself that the man has the requisite degrees, biblical languages and can answer knowledge and views questions. If he is found lacking in these areas, a three-fourths vote of presbytery is required to omit or waive these requirements.

It is helpful to note that *BCO* 13-6 was amended a number of years ago to include "shall examine them thoroughly in knowledge." Prior to the amendment, the presbytery was only required to examine a man from another denomination with regard to "views" only (just like a PCA minister transferring into another presbytery). This amendment history sheds light on the former practice; the intent of adding "knowledge" was to ensure that men from other denominations not only held confessional views but could also demonstrate how they held them.

17. Can licensure and ordination exams be combined at the same meeting?

There are no precedents about a presbytery holding or not holding licensure and ordination exams at the same meeting. It has been done when it seemed to presbytery to be appropriate. A case-by-case approach would be in order. (Presbytery still needs to make sure that internship requirements are satisfied, *BCO* 19.)

18. What is the procedure involving the restitution of a Teaching Elder to his ministerial office?

Only the presbytery that imposed the censure of deposition may lift that censure (*BCO* 37-8, 9.a) and restore him to ministerial office. If the censure was excommunication from the sacrament of the Lord's Table and deposition from office, there is a different procedure. Restoration to the sacrament would come through a PCA church session. He would need to join a PCA church (by reaffirmation of faith) and make clear that he had been excommunicated previously. It would be wise for the session to communicate with the clerk of presbytery and receive the particulars. If the session were satisfied with his repentance, they could receive him as a communicant member and remove the censure of excommunication (*BCO* 37-9.b.; 1-3; 6-4; 57-4, 5, 6). At that point he would be a communicant member of the PCA again, but still not a minister. Though a session would be the court to restore an excommunicated minister to the Lord's Table, it would certainly be appropriate for the former minister to appear before the presbytery that disciplined him and express his repentance.

19. How are we to understand BCO 38-3, 4?

BCO 38-3, 4 allows for a member to withdraw his membership from a church. Both sections also indicate that the session should seek to work pastorally with the member before acceding to the request. If pastoral efforts do not persuade the member, then the session should take no further action but erase his name from the roll and record the circumstances in the minutes. If there are no charges pending or judicial process already begun, the session cannot begin judicial process after receiving the request to withdraw. If a judicial process had already begun, then the session could either erase the name or proceed with and conclude judicial process even in the member's absence. With regard to dealing with a spouse who desires to withdraw while the other spouse does not, the session has to treat

the request on its own merit, not as a family issue (of course, pastoral care should be attempted as mentioned above).

20. Can a presbytery take up a matter from a local church without a complaint or appeal?

No, if only from a rumor; yes, if through review of records – but it cannot overturn an action without a complaint or appeal from the member(s) of the church. If members were charged by the session and wished to take their case to presbytery, the proper procedure for them to follow would be to submit to a trial by the session and then appeal to presbytery (*BCO* 42-2). If they did not submit to a trial, they may not appeal to presbytery (*BCO* 42-2). If they have a complaint, a complaint must first be lodged with the session and the session must have the opportunity to deal with the complaint (*BCO* 43-2; 43-3). One may not take a complaint to presbytery and bypass the session. In considering a case that is properly before it, the presbytery may "annul the whole or any part of the action of the lower court against which the complaint has been made, or send the matter back to the lower court with instructions for a new hearing" (*BCO* 43-10), if the case is a complaint. If the case is an appeal, "The decision of the higher court may be to affirm in whole or in part; to reverse in whole or in part; to render the decision that should have been rendered; or to remand the case to the lower court for a new trial" (*BCO* 42-9).

21. Can a presbytery discipline a church session with a charge of disobedience?

The *BCO* does not give this authority to a presbytery. However, a presbytery has the power "to see that the lawful injunctions of the higher courts are obeyed" (*BCO* 13-9e). Note that this power has to do with "lawful injunctions;" that is, properly determined decisions. Note also that the power of the church is moral and spiritual, ministerial and declarative (*BCO* Preliminary Preface, II, Preliminary Principles, 7, 8, and chapter 3). No court of the church has coercive or civil power over another court.

22. Can a presbytery require a committee of presbytery to visit a church without a session's permission?

As determined by Judicial Case #48, 1985 (*PCA Digest*, Vol. I, p. 341), *BCO* 11-4 reads in part, "The jurisdiction of these courts is limited by the express provisions of the Constitution." More specifically, *BCO* 13-9 "contains no express provision, which meaning is clear and undebatable, as would permit a presbytery to require the receiving of a presbytery committee's visit without a request by or a specific problem in the session or congregation in question" (*PCA Digest,* p. 342). In other words, the *BCO* does not give this authority to a presbytery.

23. How should a judicial commission act and report according to BCO 15-3?

The judicial commission of the presbytery is charged with investigating, absolving or indicting, conducting a trial, rendering a judgment, and presenting a written report to presbytery. The report is not final until it is received by presbytery, which votes to approve or not approve the report. If the report is not approved, the presbytery can choose to hear the case as a body or elect a new commission to rehear the case.

24. *May a presbytery nominate to a General Assembly Committee a man other than the alternate from their presbytery (who will automatically be considered)?*

Yes, under *BCO* 14-1, 11 and *RAO* 7-4 g. Reasoning: (1) Once a presbytery has nominated a man and he is elected by an action of the General Assembly as an alternate member of a General Assembly Committee or Agency, he is the Assembly's elected member (somewhat analogous to a motion that is being made and seconded is the property of the

body and may not be withdrawn without the consent of the body). (2) *RAO* 7-4 c is a not an absolute (note the qualifying term "ordinarily") and (3) *RAO* 7-4, g. distinguishes between "new nominee" and "alternates not assuming any vacancies during a year."

25. *May an alternate member of a General Assembly Committee or Agency serve on a Committee of Commissioners? RAO 13-2?*

No. *RAO* 13-2 states, "Commissioners serving on Permanent Committees or sub-committees of the Assembly or the staffs thereof are not eligible to serve on any Committees of Commissioners." An alternate is a committee member who votes only in the absence of a principal member, but he is a member, nevertheless.

26. *Is it constitutional for a session to use a judicial commission to adjudicate a judicial case, or must all judicial cases be heard by the entire session?*

This question arises in the context of some churches with thousands of members and dozens of elders on the session finding it impractical to conduct or try all judicial cases before the entire session. It is constitutional for the session to elect a judicial commission. However, the session must use discretion and must address the wisdom and advisability of electing a judicial commission to adjudicate a judicial case. The primary, though not exclusive, section of the *BCO* relating to the issue of commissions is 15-1:

> "A commission differs from an ordinary committee in that while a committee is appointed to examine, consider and report, a commission is authorized to deliberate upon and conclude the business referred to it, except in the case of judicial commissions of a presbytery appointed under *BCO* 15-3. A commission shall keep a full record of its proceedings, which shall be submitted, to the court appointing it. Upon such submission this record shall be entered on the minutes of the court appointing, except in the case of a presbytery commission serving as a session or a judicial commission as set forth in *BCO* 15-3. When a commission is appointed to serve as an interim session, its actions are the actions of a session, not a presbytery. Every commission of a presbytery or session must submit complete minutes and a report of its activities at least once annually to the court which commissioned it."

A session may elect to use a judicial commission to adjudicate judicial cases for several reasons:

- *BCO* 15 deals with "Ecclesiastical Commissions" for all three levels of the courts of the church. The presbytery is explicitly named in 15-1, 15-2, and 15-3. The General Assembly is explicitly named in 15-4, 15-5, and 16-6. The session is explicitly named in 15-1 in the last sentence. In that reference, it is not a commission of presbytery *acting* as a session, but a commission *of the session*. "Every commission of a presbytery *or session* [emphasis added] must submit complete minutes and a report of its activities at least once annually to the court which commissioned it."
- The *BCO* is not exactly analogous to secular civil and criminal law. The *BCO* is not written as an exhaustive catalog of most possible eventualities, but is primarily a set of principles, with deference to lower courts, and the expectation that courts will use their discretion. Indeed, our Constitution is written in such a way that it sets forth general principles, setting acceptable parameters on many instances, and giving exacting details in a few instances. For example, on the issue of baptism, *WCF* XXVIII.7 states that, "Baptism is but once to be administered unto any person." Therefore, it would not be proper for a PCA minister to re-baptize someone who had previously received a valid Christian baptism. A church member might ask a PCA

pastor for a baptism by immersion because he or she had been baptized by pouring and now wants to be immersed. The PCA pastor would refuse to re-baptize such a person. But what about the validity of Roman Catholic baptisms? The issue has been addressed by General Assemblies in America in the 18th, 19th, and 20th centuries each coming to the same conclusion, that some sessions may accept Roman Catholic baptisms and some may reject Roman Catholic baptisms. *WCF* chapter II "Of God and of the Holy Trinity" is very exacting, following the Ancient Creeds; chapter III, "Of God's Eternal Decree," however, may be interpreted to be infralapsarian, or supralapsarian, though sublapsarianism is definitely excluded. *The Directory of Worship* was originally written as a replacement for the *Book of Common Prayer*. The *BCP* was prescribed worship, a prescribed liturgy that is to be followed word-for-word, with little variation allowed, with a premium set on uniformity; the *DW* is directed worship, essentially setting forth a collection of rubrics, or directions to be followed, allowing for variations, with a premium set on liberty of conscience. The PCA has taken it a step further by adding a preface to the *DW*, declaring only chapters 56, 57, 58 to be part of the Constitution. Some erroneously look on our Constitution in a quasi-congregational perspective, thinking of it as simply advisory in all respects and binding in no respects. It is also erroneous to look upon our constitution as if it were canon law of a hierarchical church or a secular law code that is highly detailed. The insistence that a session may not erect a judicial commission is, in my opinion, based on the latter erroneous perspective.

- *BCO* 32-11 speaks of a "Judicial Committee":
  "In every process, if deemed expedient there may be a committee appointed, which shall be called the Judicial Committee, and whose duty it shall be to digest and arrange all the papers, and to prescribe, under the direction of the court, the whole order of the proceedings. The members of this committee shall be entitled, notwithstanding their performance of this duty, to sit and vote in the case as members of the court."

The judicial committee of *BCO* 32-11 is not a commission. The role of the judicial committee is explicitly stated. The erection of a judicial committee by any level of the church courts does *not* negate the right of the church court to form a judicial commission, if it so desires.

Having given a rationale for the constitutional permissibility of the use of a sessional judicial commission, it would be helpful to deal with some objections.

- It may be objected that only Presbytery and General Assembly Judicial Commissions are explicitly named in the *BCO*. The presbytery is explicitly named in 15-1, 15-2, and 15-3. The General Assembly is explicitly named in 15-4, 15-5, and 16-6. The answer is that the session having the power to erect commissions is explicitly named in 15-1 in the last sentence. In that reference, it is not a commission of presbytery *acting* as a session, but a commission *of the session*. A commission may be erected by the session to fulfill virtually any of the responsibilities of the session (see *BCO* 12-5) including, "To inquire into the knowledge, principles and Christian conduct of the church members, under its care; to censure those found delinquent."
- It may be objected that, since there are no step-by-step procedures for an appeal arising from a trial conducted by a judicial commission of the session, as there are for a presbytery commission (15-3) or the General Assembly's Standing Judicial Commission (15-5, c.[4]), then no sessional judicial commission is possible. The answer is that *BCO* 15-1 gives the power to the session to erect a judicial commission. Exact detailed procedures for handling cases by a sessional judicial commission need not be

included in the *BCO*. Though appellate civil or criminal procedures are codified in law, the *BCO* is not written as an exhaustive catalog of most possible eventualities, but is primarily a set of principles, with deference to lower courts, and the expectation that courts will use their discretion. Even the General Assembly's Standing Judicial Commission specifies most of the details of its procedures in the "Operating Manual of the Standing Judicial Commission." Some presbyteries use the "Operating Manual of the Standing Judicial Commission" as guidelines for their procedures. It seems to me that a session could have similar appellate procedures, 1) the sessional judicial commission would make its report to the session on each given case committed to the sessional judicial commission, 2) the session would then, without debate, approve or disapprove the judgment, following the principles of *BCO* 15-3; 3) if the session disapproved the judgment, it could appoint another commission to try the case, or the session could elect to try the case before the session as a whole; 4) or the session could refer any strictly constitutional issue(s) to a study committee to report back to the session; 5) a session that uses a sessional judicial commission, may be well advised to use the procedures of the Standing Judicial Commission, of a review of each sessional judicial commission's decision, and/or a rehearing of the case by the full session (see section 18 of the "Operating Manual of the Standing Judicial Commission"); 6) if the decision of the sessional judicial commission were averse to a church member, and the session approved the judgment, the church member in question, could appeal directly to presbytery, following the procedures of *BCO* 42. A particular church member's appellate rights are not removed or diminished by the use of a sessional judicial commission as long as just procedures are followed.

- It may be objected that *BCO* 15-3 speaks of a presbytery's judicial commission, but does not mention a sessional judicial commission. The answer is that this is an argument from silence. *BCO* 15-3 is written for presbytery use. The session is explicitly named in 15-1 in the last sentence. In that reference, it is not a commission of presbytery *acting* as a session, but a commission *of the session*. Though *BCO* 15-3 refers only to presbytery, *BCO* 15-1 does include the session and gives sessions the authority to erect many sorts of commissions, including judicial commissions authorized to deliberate upon and conclude the business [judicial cases] referred to them.
- It may be objected that *BCO* Chapter 30 refers to censures inflicted by "church courts," that a sessional judicial commission is not a court, and, therefore, a session may not utilize a sessional judicial commission. The answer is that a commission is authorized by the court appointing it to deliberate and conclude the business referred to it. The actions of a commission are the actions of the court itself.
- It may be objected that the court of original jurisdiction of members of particular churches is the session (*BCO* 33-1, 33-2) that a sessional judicial commission is not a court, and, therefore, a session may not utilize a sessional judicial commission. The answer is that a commission is authorized by the court appointing it to deliberate and conclude the business referred to it. The actions of a commission are the actions of the court itself. Again this goes back to *BCO* 15-1 and *BCO* 15-1 does include session and gives sessions the authority to erect many sorts of commissions, including judicial commissions authorized to deliberate upon and conclude the business [judicial cases] referred to them.
- It may be objected that the use of a sessional judicial commission is merely a pragmatic expedient, particularly in larger churches that may have thousands of members and scores of elders. That, of course is not a constitutional argument; the issue is whether the use of a sessional judicial commission is *constitutional*. To assert that sheer pragmatism and mere expediency lie at the root of the use of a sessional

judicial commission is to question the motives of fellow elders. It could be argued, on the other hand that larger churches may either ignore church discipline due to the magnitude of the task of trying dozens of cases before the full session, or they may use sessional judicial commissions to fulfill justly and responsibly the duty of church discipline.

27. *Is it constitutional for a presbytery to conduct a presbytery meeting via teleconferencing to consider a brief docket?*

BCO 13-4 while speaking to the matter of a quorum states, "Any three ministers belonging to the presbytery, together with at least three ruling elders, being met at the time and place appointed, shall be a quorum competent to proceed to business. However, any presbytery, by a majority vote of those present at a stated meeting, may fix its own quorum provided it is not smaller than the quorum stated in this paragraph." *Robert's Rules of Order*, 10th Edition speaks to the issue:

> "The coming of the internet and the widespread use of email and the fax machine have stirred interest in the concept of an "electronic meeting." This edition notes that the opportunity for simultaneous aural communication among all participants is central to the deliberative character of the meeting. It recognizes, therefore, that meetings may be conducted by videoconference or teleconference, when authorized by the bylaws and when regulated by special rules of order and standing rules specifying such things as how recognition is to be sought and the floor obtained. On the other hand, it warns that though e-mail or faxes may provide a suitable substitute for postal mail in the issuance of calls for meetings or the conduct of mail voting, they are not suited for the conduct of the deliberative process under the precedents and procedures common to parliamentary law" (p. xx).
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> "Efforts to conduct the deliberative process by postal or electronic mail or facsimile (fax) transmission – which are not recommended – must be expressly authorized by the bylaws and should be supported by special rules of order and standing rules as appropriate, since so many situations unprecedented in parliamentary law may arise and since many procedures common to parliamentary law are not applicable" (see pp. 482-483) (p. 20).
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> "A *meeting* of an assembly is a single official gathering of its members in one room or area to transact business for a length of time during which there is no cessation of proceedings and the members do not separate, unless for a short *recess*, as defined below. (For modification of the "one-room-or-area" requirement when the bylaws authorize meeting by videoconference or teleconference, see pages 482-483)" (pp. 79-80).
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> "Conduct of Business in Committees…The bylaws may authorize a board or committee (or even a relatively small assembly) to meet by videoconference or teleconference. If they do, then such meeting must be conducted by a technology that allows all persons participating to hear each other at the same time (and, if a videoconference, to see each other as well). The opportunity for simultaneous communication is central to the deliberative character of a meeting, and is what distinguishes it from attempts to do business by postal or electronic mail or by fax (see page 2). It is advisable to adopt special rules of order and standing rules as appropriate, to specify precisely how recognition is to be sought and the floor obtained during videoconferences and teleconferences (pp 482-483).

In April 2002, the Stated Clerk of the General Assembly sought the advice of the CCB (*RAO* 7-2 1) as to the constitutionality of presbytery meetings, (meetings of the court as a whole, not committee or commission meetings), being conducted by videoconferencing or teleconferencing. It was the opinion of the Stated Clerk that *BCO* 13-4 requires that a meeting of presbytery must be "at the time and place appointed," i.e., a "one-room-or-area" meeting. The CCB concurred with the opinion of the Stated Clerk (Minutes, CCB, April 23, 2002).

PLEASE NOTE: The 2021 General Assembly sent to the presbyteries a change to the BCO regarding virtual meetings. If that change passes, this information will be updated.

28. *Must a congregation approve a severance package to be given to a minister whose pastoral call is about to be dissolved by presbytery?*
    No, a congregation does not approve a severance package for a minister when the congregation votes to petition presbytery to dissolve a pastoral relationship. The congregation approves the terms of the call initially (*BCO* 20-6), but the *BCO* does not directly speak to the issue of a severance package. Therefore, it would be a budgetary matter to be approved by the session (*BCO* 12-5 b).

29. *What is the status of "Presbytery Standing Rules or By-laws" and "Church Standing Rules or By-laws" in relation to the Book of Church Order?*
    As a matter of general principle "Presbytery Standing Rules or By-laws" and "Church Standing Rules or By-laws" may complement the *Book of Church Order* but may not contradict the *Book of Church Order*. In some instances allowable parameters for variation from the *BCO* are stated (*BCO* 12-1, 13-4). However, a local church or a presbytery may not adopt procedures that violate the rights of persons or entities as specified in the *BCO*. The General Assembly operates with the "Constitution of the Church" being its primary authority, "Rules of Assembly Operation" as a secondary authority, and *Robert's Rules of Order* as a tertiary authority. Likewise, "Presbytery Standing Rules or By-laws" and "Church Standing Rules or By-laws" are a secondary authority to the "Constitution of the Church."