



JUDICIAL COMMISSION OPERATING MANUAL

This Manual is subordinate to the Constitution of the Presbyterian Church in America and to the SRPO of South Florida Presbytery. If there is any conflict between the provisions of this Manual and the Constitution or Presbytery By-Laws, the Constitution or Presbytery By-Laws shall take precedence.

**Based on the PJC Manual of Chesapeake Presbytery
Used with permission**

GENERAL RULES

1.0 MEMBERSHIP

- 1.1 Membership shall be determined by the Presbytery in accordance with its By-Laws. Members are nominated by the Presbytery's Admin Team for approval by the Presbytery as a whole.

2.0 CONDUCT OF COMMISSION MEMBERS

- 2.1 A member shall, at all times, keep in mind his high calling as an officer of the church of the Lord Jesus Christ and shall in all endeavors conduct himself in accordance with that calling. Further, since "ecclesiastical discipline...can derive no force whatever but from its own justice, the approbation of an impartial public, and the countenance and blessing of the great Head of the Church" (*BCO*, Preface, II. Preliminary Principles, 8), the members of the Presbytery Judicial Commission must maintain the highest standards of integrity, independence, impartiality, and competence.
- 2.2 All members of the commission, including officers, shall be entitled to participate in the discussion and to vote on any matter pending before the commission for which they are qualified.
- 2.3 A "qualified" member under these Rules is any member of the commission who:
- 2.31 in a hearing (10.4.a.2 below) has read the Record of the Case and all briefs timely filed by the parties;
 - 2.32 heard the arguments of the parties (if such arguments are presented) and the discussion as to the merits of the matters in controversy; and
 - 2.33 is not disqualified for one or more of the reasons stated in 2.4 - 2.12 below:
- 2.4 A member shall not render judgment in any matter pending before the Commission on the basis of anything other than the Constitution of the Church and the facts presented by the Record of the Case and the other materials properly before him. If he finds himself subject to any other influence, or if he finds himself unable to render the judgment so required, he shall recuse himself from further proceedings in that matter.
- 2.5 A member of the Commission shall not make any public or private statement that might reasonably be expected to affect the outcome of a pending matter or impending matter in any court of the church (*BCO* 11-4; 39-3).
- 2.5.1 A pending matter is a matter with respect to which process (*BCO* 31-2, ¶ 2) has commenced or which has been filed under the Rules of Discipline with the appropriate court. A matter continues to be pending through any appellate process. (*BCO* 39-1).

- 2.52** An impending matter is a matter that is reasonably expected to (a) become a case of process or (b) otherwise be brought before an appropriate court for consideration. "Reasonably" refers to the judgment of one in possession of all the relevant facts, which facts are subject to a fair-minded assessment.
- 2.6** So long as he complies with 2.5 above, a member may make public or private statements in the course of his duties as a presbyter or Session member with respect to biblical teaching, confessional interpretation, the principles of the form of government and discipline, the requirements of the *BCO*, *Robert's Rules*, and may explain Commission procedures.
- 2.7** A member of the Commission shall not discuss or comment on a pending or impending case with any party in the case or any person other than a Commission member, except as otherwise provided in this Manual or in the *BCO*.
- 2.8** Notwithstanding 2.5 above, a member of the Commission may fully participate in a judicial matter before the Session of which he is a member and advise his Session in judicial matters.
- 2.9** A member of the Commission shall not represent himself or any other party before the Commission, except in cases of reference in which a member of the Commission is assigned to act as prosecutor and is then recused from sitting in judgment on the case.
- 2.10** A member of the Commission shall perform the duties of his office with impartiality and shall be diligent to maintain the impartiality of the Commission.
- a. A member must be objective and open-minded with respect to all issues and parties.
 - b. A member shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the duties of his office.
 - c. A member shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the member outside the presence of the parties or their representatives, concerning a pending or impending matter, except as follows:
 - (1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted to the Commission chairman or secretary.
 - (2) If a member receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the member shall promptly notify the chairman and secretary of the substance of the communication in writing (email is acceptable). The chairman and secretary shall promptly notify the parties of the substance of the

communication in writing.

(3) A member shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

d. A member shall disqualify himself in any proceeding in which the member's impartiality might reasonably (see 2.5.b) be questioned, including but not limited to the following circumstances:

(1) The member has a personal bias or prejudice concerning a party or a party's representative, or personal knowledge of facts that are in dispute in the proceeding, which is inconsistent with the impartial performance of the duties of his office.

(2) The member, while a member or after nomination to membership, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the member to reach a particular result or rule in a particular way in the proceeding or controversy.

(3) The member, the member's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

- i. served as a representative in the matter in controversy;
- ii. was a witness concerning the matter; or
- iii. is a member of a session which is party to the case or is a member of a congregation party to a case.

e. A member subject to disqualification under this chapter shall disclose on the record the basis of the member's disqualification.

2.11. A member of the Commission shall conduct his extra-Commission activities to minimize the risk of conflict with the obligations of office thereby ensuring that he is available to fulfill his duties. A member shall not participate in activities that require the frequent disqualification of the member.

2.12. The enforcement of the Commission's standards of conduct shall be as follows:

a. If the eligibility of a member is questioned, the chairman shall rule on the member's eligibility. By majority vote the Commission may reverse the ruling of the chairman on the member's eligibility.

b. By a two-thirds vote the Commission may recommend to the Presbytery that a Commission member be removed from the Commission for cause. The recommendation shall include a brief statement of the grounds for the recommendation.

- c. **Should the conduct leading to a recommendation that a member be removed from the Commission be potentially liable to censure under the Rules of Discipline, the Commission may include in its recommendation to the Presbytery a further recommendation that the grounds for removal be forwarded to the appropriate session court of original jurisdiction for consideration under BCO31-2.**

3.0 OFFICERS AND THEIR DUTIES

- 3.1 The Office of Chairman of the Commission shall be nominated by the Presbytery Executive Committee for approval by the Presbytery as a whole. The Office of Secretary shall be determined by way of election within the Commission.**
- 3.2 These officers will remain in their elected positions until their Commission term expires or voluntarily resign from their position.**
- 3.3 The Chairman shall preside at meetings and perform other duties assigned by the Commission. If the Chairman cannot attend a meeting, he is able to designate another member of the Commission to moderate the meeting.**
- 3.4 The Secretary shall record the minutes of the meetings and the votes of the Commission and maintain the records of the Commission and perform other duties specified in this Manual and/or assigned by the Commission.**

4.0 PROPER BUSINESS BEFORE THE COMMISSION

- 4.1 The Commission shall receive via automatic deferral from the Stated Clerk of the Presbytery, all appeals (per BCO 42) and all complaints (either against a lower court within the bounds of the Presbytery or complaints against a Presbytery action or delinquency, per BCO 43).**
- 4.2 References (BCO 41) can only be referred to the Commission upon Presbytery approval, either as a deferral for further disposal or after the Presbytery as a whole decides to accede to the reference. If it is a judicial reference requiring assumption of original jurisdiction from the lower court, the Commission automatically receives the reference upon Presbytery's approval to accede. If the Presbytery refers the matter to the Commission without acceding, the Commission will deliberate and decide on Presbytery's behalf on acceding to the reference and will assume original jurisdiction of the matter and will conduct the process of adjudication over the case referred to the Presbytery.**
- 4.3 The Commission may also be charged by the Presbytery on matters related to General Review and Control provisions in BCO 40, where the Commission would be called to investigate and adjudicate any reports of "any important delinquency or grossly unconstitutional proceedings" (BCO 40-5), only when directed by the Presbytery to do so.**
- 4.4 Judicial matters related to teaching elders under the jurisdiction of the Presbytery**

are to be referred to the Commission only when proper charges have been filed (*BCO* 32-2, 34-2), and the Presbytery has referred the case to the Commission for investigation (*BCO* 31-2) and if required, adjudication.

5.0 MEETINGS

5.1 All meetings of the Commission are called meetings based on the business that it receives from either the Presbytery as a whole or by automatic reference of Appeals (*BCO* 42) or Complaints (*BCO* 43) that are filed with the Presbytery's Stated Clerk. Meetings of the Commission may be called by the Chairman or by two (2) or more members in writing (email acceptable).

6.0 QUORUM

6.1 A quorum for the transaction of business at any meeting of the Commission shall be four (4) qualified members, composed of at least two (2) teaching elders and at least (2) ruling elders.

7.0 THE RECORD OF THE CASE

7.1 Except in cases of reference and process against a teaching elder, the Record of the Case shall be prepared by the Clerk of the lower court (the Session) and shall be submitted to the Stated Clerk of the Presbytery. For cases of reference and process against a teaching elder, the Presbytery is the original court of jurisdiction and shall follow procedures outlined in *BCO* 32-18 and *BCO* 35-7, 8 to produce the Record of the Case.

7.2 Content

- a. The Record of the Case in an Appeal shall be prepared in accordance with *BCO* 32-18 and 42-5 which shall include:
 - (1) a copy of all proceedings in connection with the case, such as the Minutes of the trial before the lower court, the charges, answers, citations and returns;
 - (2) the notice of appeal and reasons therefore;
 - (3) all transcribed testimony actually taken before the lower court (*BCO* 35-7). Audio and/or video recordings shall not be admissible or be made a part of the Record of the Case unless the same have been transcribed and authenticated by the Moderator and Stated Clerk of the lower court (*BCO* 35-8);
 - (4) the response of the lower court in its actions, orders, decisions and judgment;
 - (5) any papers bearing on the case.
- b. The Record of the Case in a Complaint shall be prepared in accordance with *BCO* 32-18 and which shall include:
 - (1) a copy of all the lower court's proceedings in connection with the complaint, including the notice of complaint and supporting

- reasons and Minutes of any hearing;
- (2) the response of the lower court, its acts, orders, decisions and judgment;
- (3) all transcribed testimony actually taken before the lower court (*BCO 35-7*). Audio and/or video recordings shall not be admissible or be made a part of the Record of the Case unless the same have been transcribed and authenticated by the Moderator and Stated Clerk of the lower court (*BCO 35-8*);
- (4) any papers bearing on the complaint.

7.3 The Stated Clerk shall send a copy of the Record of the Case to:

- a. the members of the Commission, and
- b. the parties to the case. The Stated Clerk shall notify the parties that this manual is printed as an appendix to the *Presbytery By-Laws*.

7.4 The parties shall have the right to examine the Record of the Case. Corrections to the Record of the Case may be submitted as follows:

- a. If a party objects to the record as being incorrect or defective, such party shall notify the Stated Clerk by mail or electronic means within 15 days of the date of receiving of such Record of the Case from the Stated Clerk. Any party so objecting shall specify, in writing, the alleged defects and suggestions for the corrections that should be made. Such party shall send a copy of the objections by mail or electronic means and suggested corrections to the other party to the case. Failure to lodge a timely objection to the record of the case will constitute acceptance of the record of the case by the parties.
- b. If the other party shall agree to the suggested corrections, such corrections shall be reduced to writing, stipulated to by the parties and made a part of the Record of the Case. Such stipulation shall be filed by mail or electronic means with the Stated Clerk not more than 30 days after the date the last party received such Record of the Case from the Stated Clerk.
- c. If the parties do not agree on the correction, the hearing will be postponed, and the Stated Clerk shall remit the Record of the Case to the Clerk of the lower court (Session), together with the party's objections and suggested corrections. The Clerk or the Representative of the lower court (Session) shall reply promptly to these objections within 10 days of receipt of the notice of objections and corrections.
- c. If the Clerk of the lower court (Session) fails to reply or refuses these objections or certifies to the correctness of the Record of the Case as submitted, the Commission may consider proof of the error as submitted by the party, hear arguments of the parties, and make a decision as to whether in fairness and justice the Record of the Case should be corrected.
- d. The Commission may extend any of the deadline dates in this section if it determines that so doing is in the interest of justice.

8.0 BRIEFS

8.1 Preliminary Briefs

- a. **Once the Record of the Case is established only one preliminary brief may be submitted through the Stated Clerk before the initial hearing by the Commission. Any preliminary brief from a Complainant or Appellant shall be filed after the Commission has declared the case judicially in order and no later than 14 days after he receives the established (perfected) ROC. The Stated Clerk immediately shall mail a copy of this brief to the Respondent or Appellee. Any preliminary brief from a Respondent or Appellee must be filed no later than 14 days prior to the date set for the hearing of the case.**
- b. **Such a preliminary brief should include the party's position with regard to the following:**
 - (1) **A summary of the facts.**
 - (2) **A summary of the proceedings in the lower court(Session).**
 - (3) **A statement of the issues.**
 - (4) **The proposed judgment and relief.**
 - (5) **Argument in support of judgment and relief.**

8.2 No brief of a party shall make any reference to any fact not a part of the Record of the Case. The Commission may, at its discretion, strike all or part of a brief that makes such reference.

- a. **Any brief filed hereunder must be typewritten or printed on 8-1/2" x 11" paper, with no smaller than 10-point type, with 1" margin on all sides, and may be single spaced.**
- b. **The preliminary brief filed by a party shall not exceed 10 pages in length.**
- c. **Any brief timely filed which does not meet these standards of form shall be returned to the sending party with reasons. In this case a revised brief may be submitted provided that such brief is filed with the Stated Clerk within 5 days of notification that the brief does not meet the standard of form.**

8.3 Failure to file a brief by a party shall not be considered to be an abandonment of the case.

9.0 ADMINISTRATIVEPROCEDURE

9.1 When a judicial case is submitted to the Commission, the Commission shall make an initial determination as to whether the case is administratively in order:

- a. **A case is administratively in order if the relevant provisions of *BCO* 41, 42, and 43 have been followed.**
- b. **A case is judicially in order when the Commission determines that the relevant provisions of *BCO* 41, 42, and 43 have been followed and the documents for the Record of the Case are in order in accordance with 7.2.**

- c. If a case is initially found not to be administratively in order, the Stated Clerk shall contact the relevant parties or clerks and request that the case be put in order.
- d. If a case cannot be put in order within the Rules of Discipline of the *BCO* and the requirements of this Manual, or
- e. If the parties fail to put the case in order within 30 days after notification under this Section of the Manual,
- f. Then the Commission may make a determination that the case not be found in order and move towards its dismissal based on the grounds that it was not in order.

9.2 Once the case has been determined to be both administratively and judicially in order, the parties shall be notified. When the Record of the Case has been perfected under 7, and when the parties have had opportunity to file briefs under 8.1, the case shall be docketed for hearing by the Commission at a called meeting set to hear the case.

10.0 HEARINGS

10.1 Where it is determined under 9.3 that a judicial case should be heard by the Commission, the Commission shall first determine whether the case is judicially in order and ready for hearing. This review may be done by a telephone conference call and shall include:

- a. that the case was timely filed as provided in *BCO* 42-3 and 43-2;
- b. in the case of a complaint, that the complaint was first filed with the Court whose act or decision is alleged to be in error (*BCO* 43-2);
- c. that a ground or reason has been specified as required by *BCO* 42-3 and 43-2;
- d. that the parties have complied with the Rules of Discipline of the *BCO* and this Manual;
- e. that the Record of the Case appears to be complete and sufficiently documented.

10.2 If the Commission determines that a case is not judicially in order, then the Commission, through the Stated Clerk shall notify the parties and give them an opportunity to cure the defect, if it can be cured within the Rules of Discipline of the *BCO* and the requirements of this Manual.

- a. If the defect is cured within 30 days from the receipt of such notice the Commission shall proceed to adjudicate the case.
- b. If significant defects cannot be cured within 30 days of receipt of such notice, then the Commission may make a determination that the case not be found in order and move towards its dismissal based on the

grounds that it was not in order.

10.3 If it is determined that the appeal or complaint is judicially in order, the Chairman of the Commission shall take the following actions:

- a. Set a time and place for a hearing of the appeal or complaint, making every reasonable effort to obtain such time and place as may be agreeable to both the parties.
- b. Notify the parties of such time and place of hearing by letter with return receipt requested or by electronic means. If by letter, such notice shall be mailed not less than 30 days prior to the date of hearing.
- c. If by electronic means, such notice shall be sent not less than 30 days prior to the date of hearing and there must be a receipt of acknowledgement in the file from each party.
- d. Notify the parties of their right to submit written briefs, in accordance with 8. A written brief must comply with 8.3 and following.
- e. Notify all parties of their right to represent themselves or to be represented at the hearing in accordance with *BCO* 32-19 or 42-10, as the case may be.

10.4 Initial Procedures for Hearings before the Commission

- a. At the time and place set for a hearing of the case, the Chairman shall call the Commission to order and proceed as follows:
 - (1) Prayer should be offered by a member of the Commission.
 - (2) All Commission members shall be polled to certify that they have read the Record of the Case and all briefs timely filed. Any member who cannot so certify shall not participate in any aspect of the proceedings, including deliberations and voting on the case, unless such member can become qualified after a postponement of the hearing.
 - (3) The Chairman shall enjoin the Commission members to recollect and regard their high character as judges of a court of Jesus Christ and the solemn duty in which they are about to engage (*BCO* 32-12).
- b. Furthermore, the Chairman shall:
 - (1) Remind the Commission Members that they should disregard all evidence not in the Record of the Case (*BCO* 32-18); even though such evidence may be found in the briefs of the parties or in oral argument (See 8.3).
 - (2) Read to the Commission members the principles of Review set forth

in *BCO 39-3*.

- 10.5 After the initial procedures have been followed, the Commission shall proceed with an appeal in accordance with 13.3 and following, or if it is a complaint, it shall proceed in accordance with 14.3 and following.

11.0 PROCEDURE FOR HEARING A JUDICIAL REFERENCE CASE (*BCO 41*)

- 11.1 The only reference which the Commission may entertain is the reference of an appeal or a complaint received by the lower court and referred by that lower court to the Presbytery for final disposition, or a reference of "a judicial case with request for its trial and decision by the higher court" (*BCO 41-3*). References to the Commission are not automatic and must first be approved by the Presbytery (4.2).
- a. Where such a reference is received by the Stated Clerk, a determination shall be made under 9.1 as to whether or not the case is administratively in order.
 - b. If the case is found to be administratively in order, the Commission shall determine whether or not it should accede to the request of the lower court (*BCO 41-5*), only if the Presbytery has referred, but not acceded, the reference to the Commission. While deliberating on its decision to accede, the Commission must remember the admonition of *BCO 41-5* that "in general it is better that every court should discharge the duty assigned to it under the law of the church."
- 11.2 Where a judicial case referred to and accepted by the Commission under 11.1 above is an appeal under *BCO 42*, that appeal shall be heard by the Commission in accordance with the provisions of 12, and where such a case is a complaint under *BCO 43*, that complaint shall be heard by the Commission in accordance with the provisions of 13, and where it is an initial trial of an issue or charges, such a case shall be heard *de novo* by the Commission in accordance with the provisions of 12.2 or 13.2 and following as the case may be.
- 11.3 The Clerk of the lower court making the reference shall submit to this Commission all documents through the Stated Clerk which should become a part of the Record of the Case.
- 11.4 The lower court making the reference shall assist this Commission as provided in *BCO 41-6*.
- 11.5 The Commission shall be organized as in any other case, except the trial of such a case shall be conducted under the "General Provisions Applicable To All Cases Of Process" as set out in *BCO 32*, and in accordance with rules of evidence as set out in *BCO 35*.
- 11.6 The testimony of the witnesses in any case so referred and accepted shall be taken and transcribed as part of the Record of the Case. (Note the provisions of *BCO 41-6*)
- 11.7 The parties shall be responsible for the notification and expenses of their own

witnesses. When a party requests that a witness be cited to testify, the Chairman of the Commission shall promptly cite, by personal service or by certified mail, the witness to appear and testify as provided in *BCO32-4*.

- 11.8** When the trial hearing is convened the following procedures will apply:
- a. The initial proceedings set out in 10.4, as applicable, shall be followed, and at the close of the proceedings prayer shall be offered in accordance with 17.1.
 - b. The requirements of *BCO 32* shall apply.
 - c. The procedures of *BCO 32-15* shall be followed, namely:
 - (1) The Chairman shall charge the court.
 - (2) The indictment shall be read, and the answer of the accused shall be heard.
 - (3) The witnesses for the prosecutor and then those for the accused shall be examined.
 - (4) The arguments of the parties shall be heard:
 - (a) the Prosecutor; then
 - (b) the Accused; and
 - (c) the Prosecutor shall close.
 - (5) The Commission shall go into closed session and the roll shall be called and the members of the Commission may express their opinion in the case. After discussion:
 - (a) the vote shall be taken; and
 - (b) the preliminary verdict shall be determined.
 - (6) The Commission shall rise from closed session and announce the preliminary verdict, and the judgment shall be entered on the record.
 - d. The Record of the Case and the report of the Commission shall be prepared in accordance with the relevant provisions of this Manual.
- 11.9** Unless the parties waive their rights to submit a written brief, no decision shall be made until the time periods specified in 8.1 have expired. If briefs are filed, copies shall be sent to all members of the Commission as the case requires. Then the Chairman shall convene the Commission where further discussion of the case may take place. This may be done by telephone conference call. After discussion, the vote shall be taken on each issue. After a decision has been reached, the decision shall be processed in accordance with 16.
- 11.10** After a decision has been reached by the Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which if it is couched in temperate language (see 17.12) shall be appended to the decision.

12.0 PROCEDURE FOR HEARING AN APPEAL (*BCO42*)

12.1 At the hearing of an appeal the procedures outlined in *BCO 42-8* will apply.

12.2 At the time and place set for a hearing of the case, the Chairman shall call the Commission to order and proceed in accordance with the initial procedures set forth in 10.4, as applicable.

12.3 DURING THE HEARING

- a. The arguments of the parties shall be heard in the following order:
 - (1) the Appellant makes the opening argument;
 - (2) the Appellee then replies;
 - (3) the Appellant makes the closing argument.
- b. After the hearing shall have been opened and the initial requirements of *BCO 42-8* met, but before any arguments of the parties have been presented the members of the Commission shall have the opportunity to question the parties on any matter before the court.
- c. A party shall have a maximum of 30 minutes to argue his case before the Commission (and in the case of the Appellant, this 30 minutes is inclusive of both his opening and closing arguments).
- d. At any time during which a party is presenting an argument to the Commission, a member of the Commission may ask questions of that party; the time taken for such questions shall not form a part of the argument time of the party questioned.

12.4 AFTER THE ORAL ARGUMENTS

- a. After the oral arguments have been completed the Commission shall go into closed session to discuss the case and consider its merits.
- b. When the Commission has completed its discussion under 12.4.a above, and is ready to vote, the vote shall then be taken without further debate, on each specification, in this form: "**Shall this specification of error be sustained?**" The decision may be to affirm the lower court's decision, in whole or in part. If the lower court's decision is not sustained, the decision will be to:
 - (1) reverse the lower court's decision, in whole or in part; or,
 - (2) render the decision that should have been rendered; or,
 - (3) remand the case to the lower court for a new trial.

12.5 As soon as the judgment is thus rendered, the Chairman shall designate a member or committee of members voting with the majority to prepare a proposed written decision, which must be approved by the majority before it becomes final.

12.6 After a decision has been reached by the Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is

sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which if it is couched in temperate language (see 17.12) shall be appended to the decision.

13.0 PROCEDURE FOR HEARING A COMPLAINT (BCO43)

13.1 At the time and place set for a hearing of the case, the Chairman shall call the Commission to order and proceed in accordance with the initial procedures set forth in 10.4, as applicable.

13.2 DURING THE HEARING

- a. The arguments of the parties shall be heard in the following order:
 - (1) the Complainant makes the opening argument;
 - (2) the Respondent then replies;
 - (3) the Complainant makes the closing argument.
- b. After the hearing shall have been opened and the initial requirements of BCO 43-9 met, but before any arguments of the parties have been presented, the members of the Commission shall have the opportunity to question the parties on any matter before the court.
- c. A party shall have a maximum of 30 minutes to argue his case before the Commission (and in the case of the Complainant, this 30 minutes is inclusive of both his opening and closing arguments).
- d. At any time during which a party is presenting an argument to the Commission, a member of the Commission may ask questions of that party; the time taken for such questions shall not form a part of the argument time of the party questioned.

13.3 AFTER THE ORAL ARGUMENTS

- a. After the oral arguments have been heard the Commission shall go into closed session to discuss the complaint and consider its merits.
- b. When the Commission has completed its discussion under 13.3.a, above, the vote shall be taken, without further debate, as to what disposition should be made of the complaint. The decision may be to affirm the lower court's decision, in whole or in part. If the lower court's decision is not sustained the decision will be to:
 - (1) annul the whole or any part of the action of the lower court against which the complaint has been made; or,
 - (2) send the matter back to the lower court with instructions for a new hearing.

13.4 As soon as the judgment is rendered, when the complaint is heard by the

Commission, the Chairman shall designate a member or committee of members voting with the majority to prepare a proposed written decision.

- 13.5 After a decision has been reached by the Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which if it is couched in temperate language (see 17.12) shall be appended to the decision.

14.0 PROCEDURE FOR HEARING A REPORT ARISING OUT OF GENERAL REVIEW AND CONTROL (*BCO 40*)

- 14.1 A Report arising out of General Review and Control is one which purports to demonstrate an important delinquency or grossly unconstitutional proceeding of a lower court (*BCO 40-5*). When such a Report is submitted to the Commission by way of the Presbytery, it shall be first handled according to 9, as applicable.
- 14.2 If the Report is found administratively in order, any representative of the Report and lower court alleged to have offended shall be cited to appear, the latter by representative or in writing, providing such documents as bear on the alleged important delinquency or grossly unconstitutional proceedings (*BCO 40-5*). The Stated Clerk shall collate these documents which shall be deemed equivalent to a Record of the Case and dealt with according to 8, as applicable.
- 14.3 At the time and place set for a hearing of the Report, the Chairman shall call the Commission to order and proceed in accordance with the initial procedures set forth in 10.4 as applicable.
- 14.4 The hearing shall be conducted as follows:
- a. The members of the Commission shall have the opportunity to question the representatives present on any matter before the court.
 - b. The Commission shall then proceed to hear oral arguments, if there be any, in the following order:
 - (1) the representative of the Report shall make the opening argument;
 - (2) the representative of the court alleged to have offended shall reply;
 - (3) the representative of the Report shall make the closing argument.
 - c. A representative shall have a maximum of 30 minutes to argue his case before the Commission. With respect to the representative of the Report, this 30 minutes is inclusive of both the opening and closing arguments.
 - d. At any time during which a representative is presenting an argument to the Commission, a member of the Commission may ask questions of that representative; the time taken for such questions shall not form a part of the argument time of the representative questioned.

- 14.5 After arguments have been heard, the Commission shall go into closed session to discuss the Report and consider its merits.
- 14.6 When the Commission has completed its discussion and is ready to vote, the vote shall be taken on each recommendation. The report as a whole shall then be voted on by roll call without change or amendment. All qualified members present shall participate in the vote.
- 14.7 The Commission shall proceed to deliberate the merits of the matter and make a determination as follows:
- a. to reverse or redress the proceedings of the lower court in other than judicial cases; or
 - b. to censure the delinquent lower court; or
 - c. to remit the whole matter to the delinquent lower court with an injunction to take it up and dispose of it in a constitutional manner; or
 - d. to stay all further proceedings and declare that all matters relating to the Report, presently or previously pending before the Presbytery, are ended concluded and terminated.
 - e. a vote shall be taken on the decision(s). The report as a whole shall then be voted on by roll call. All qualified members present shall participate in the vote.
- 14.8 After a decision has been reached by the Commission, any member may file, within 20 days after the day the decision is reached, a concurring or dissenting opinion, which shall be appended to the decision.
- 14.9 When the Commission's report with its recommendations on the Report has been adopted by the Presbytery, a copy thereof shall immediately be sent by mail or electronic means to the Representatives and shall be included in the final report of the PJC to the Presbytery.

15.0 PROCEDURES FOR A PROCESS AGAINST A TEACHING ELDER

- 15.1 The Commission shall institute judicial process against a teaching elder within the jurisdiction of the Presbytery upon the Presbytery's receipt of proper charges (*BCO 32-2, 34-2*), the Presbytery's approval to refer the case to the Commission, and the finding of a strong presumption of guilt after an investigation has been conducted by the Commission (*BCO 31-2*).
- 15.2 If the Commission's final judgment is that the investigation does not raise "a strong presumption of the guilt of the party involved," (*BCO 31-2*) the Commission shall dismiss the case and advise the parties to the case.
- 15.3 If, however, the Commission's final judgment is that the investigation raises "a strong presumption of the guilt of the party involved," (*BCO 31-2*) it shall institute process under *BCO 31*. In such event, the Commission shall conduct a trial in accordance with the provisions of *BCO 32, BCO 35* and 11.5 through 11.10.

16.0 DECISIONS

16.1 Each decision shall be in the following format:

- a. A summary of the facts. (A presentation in chronological order of the relevant history and facts that bear on the case.)**
- b. A statement of the issues. (A concise framing by the Court of the specific issues being judged in the case.)**
- c. The judgment. (A definite conclusion rendered on the specific issues being adjudicated.)**
- d. The reasoning and opinion of the court. (The explanation by the court of the resolution of disputed facts and reasons for the judgment rendered.)**

16.2 A judgment of the Presbytery Judicial Commission shall be effective from the time of its ratification by the Presbytery and subsequent announcement to the parties in accordance with BCO 15-3.

16.3 Judicial decisions shall be binding and conclusive on the parties upon the ratification of the Commission's decision by the Presbytery (See *BCO* 15-30.

16.4 Each decision of the Commission shall show the name of the member(s) who wrote the opinion, together with the names of all members as to their concurrence, dissent, abstention or disqualification.

16.5 Each the four parts of the decision (See 16.1) are to be voted on separately. After all four parts have been approved individually, then the decision as a whole shall be voted on by roll call without change or amendment.

16.6 When a decision has been approved under this Manual by the Commission, and subsequently ratified by the Presbytery per *BCO* 15-3, a copy thereof shall be mailed immediately to the parties and shall then be public.

16.7 After a decision has been reached by the Commission, any member may file, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which if it is couched with temperate language (see 17.12) shall be appended to the decision.

17.0 MISCELLANEOUS

17.1 Any meeting of the Commission shall be opened and closed with prayer.

17.2 All oral arguments by the parties before the Commission shall be electronically recorded. Except in cases of reference, no other recordings are authorized without the consent of all of the parties and the approval of the Commission. Commission recordings shall be kept by the Stated Clerk for the use of the Commission until the case has been finally determined, and then such recordings may be destroyed. Upon request the Commission may authorize use of recordings.

17.3 Complaints

- a. Multiple complaints against the same act or decision of a lower court may be combined into one case but each complainant shall receive individual notices issued under this Manual. However, such multiple complainants may designate one of their number to be representative of the multiple complainants, and in such a case notices issued under this Manual shall be sent to that complainant.**
- b. A single complaint signed by more than one person against the same act or decision of a lower court shall be treated as a single complaint and all notices issued under this Manual shall be sent to the first named complainant.**
- d. In either of the cases under 11.8.a or b where a hearing is held under this Manual the multiple complainants shall be treated as one complainant and:
 - (1) be granted the same total amount of time to present oral arguments as would have been given to a single complainant to present oral arguments; and**
 - (2) be permitted to present one combined brief and supplemental brief (if the circumstances permit a supplemental brief) and such brief or supplemental brief shall meet the same requirements as would be imposed upon a single complainant presenting a brief or supplemental brief.****

17.4 New Evidence

- a. If at any time up to 15 days prior to the date set for the Commission to hear a judicial reference, appeal or complaint, a party asserts that new evidence has been obtained, which was not available or was not made available because of justifiable circumstances at the time the Record of the Case was put together, said new evidence shall be put in writing and sent within 5 days to the Stated Clerk and shall be received as part of the Record of the Case only when all the parties stipulate in writing agreeing to the new evidence. If the parties do not agree to this stipulation, and the party presenting the new evidence insists that it is material to the case, the proceedings shall be suspended, and the matter docketed at the next meeting of the Commission to make a determination as to whether the new evidence to be offered has an important bearing on the case. At that next meeting, the Commission may decide:
 - (1) that the new evidence does not have an important bearing on the case and proceed with the case; or**
 - (2) that the new evidence does have an important bearing on the case and refer the case to the lower court for a new trial (BCO 35-14).****
- b. If at any time during the 15 days immediately prior to the date set for the Commission to hear the case, a party asserts that new evidence has been obtained, which was not available or was not made available because of justifiable circumstances, at the time the Record of the Case was put together, said new**

evidence shall be put in writing and be presented to the Commission before any oral arguments are presented on the substance of the case. Under these circumstances, the Commission before proceeding to hear oral arguments, shall receive the new evidence into the Record of the Case only if all parties stipulate in writing agreeing to such new evidence. If the parties cannot agree to this stipulation, and the party presenting the new evidence insists that it is material to the case, the Commission shall make a determination as to whether the new evidence to be offered has an important bearing on the case. The Commission may then decide:

- (1) that the new evidence does not have an important bearing on the case and proceed with the case; or
- (2) that the new evidence does have an important bearing on the case and refer the case to the lower court for a new trial (*BCO 35-14*).

17.5 All issues before the Presbytery Judicial Commission shall be decided by a majority vote of those qualified members voting. There shall be no proxy voting.

17.6 The minutes of the meetings of the Commission must be approved by mail or electronic ballot within 20 days after receipt of such minutes. If any member fails to file with the Secretary the ballot within 20 days, that member's vote shall be recorded as approval of the minutes.

17.7 ABANDONMENT

If an appellant, complainant or party initiating a case referred to the Commission fails to appear, in person or by a qualified representative, after receiving proper notice, at any meeting of the Presbytery Judicial Commission, such party shall be deemed to have abandoned the case. The Stated Clerk shall immediately notify the party that the case has been dismissed because of the failure to appear, and the party shall have 10 days from the receipt of such notice to present, in writing, a satisfactory explanation of the failure to appear and prosecute the case. If the explanation is deemed sufficient by Commission, the case shall be reinstated and reset for another hearing; otherwise, it shall stand abandoned and dismissed.

17.8 WAIVER OF RIGHTS TO APPEAR

- a. Any party may upon a showing of good cause waive his right to appear before the Commission and present oral argument. This waiver shall be accomplished by a written notice to the Commission, mailed not less than 14 days prior to the scheduled hearing, stating the reasons for the waiver. A party's waiver has no effect upon the other party's right of appearance.
- b. The Commission, if it fails to find good cause for the waiver, may refuse to accept a waiver of appearance. If the requested waiver is rejected by the Commission, it shall promptly notify the party who requested the waiver. The party shall then be required to appear before the higher court at the scheduled time and place.
- c. Failure to so appear shall constitute an abandonment of the case by that party, unless within 10 days after the date of the scheduled hearing that

party provides satisfactory explanation of the failure to appear. If this explanation is deemed sufficient by the higher court and if the higher court believes the interests of justice will be served thereby, the case shall be reset for another hearing. If no further hearing is required, the case may be decided forthwith. If the party's explanation for not appearing is not deemed sufficient by the higher court, the case shall stand abandoned and dismissed.

- 17.9** In computing any period of time prescribed by this Manual, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or postal holiday, in which event the period extends until the end of the next day which is not a Saturday, Sunday or postal holiday.
- 17.10** When a provision of the Manual requires a computation of time under 17.9, above, such period of time shall be computed with the following construction of certain terms used herein, to-wit:
- a. A mailing by the Commission shall be computed from the day after the document is posted or delivered to an overnight carrier.
 - b. Documents required or permitted to be filed by a party shall be filed with the Stated Clerk. Such filing shall not be timely unless the documents are received in the office of the Stated Clerk within the time fixed for such filing, except that papers shall be deemed filed on the day of mailing if certified, registered or express mail of the United States Postal Service or any private service where verifying receipt is utilized. Neither facsimiles nor email will be allowed for purposes of filing. Interested parties should be aware that responsibility for such filings rests with them and those delays in delivery or non-delivery are the sole responsibility of the filing party.
 - c. "Notice," "notification," "from receipt," "after the receipt" shall be when the papers are actually delivered to the party. For all papers requiring such, the Commission shall be responsible for obtaining verification of date of delivery. However, compliance with such requirements shall be deemed to have been fulfilled in any of the following instances, to wit:
 - (1) If a party changes his/her address without notifying the Office of the Stated Clerk.
 - (2) If a party cannot be located after diligent inquiry.
 - (3) If a party refuses to accept delivery of materials or notice.
 - (4) If materials or notice are returned by the carrier with a notation that delivery could not be accomplished.
- 17.11** The Record of the Case, Briefs, Arguments, and all proceedings before the Commission shall be presented in the English language.

17.12 CONCURRING AND DISSENTING OPINIONS

- a. The right of a Commission member to file a Concurring or Dissenting Opinion (see 16.7) is an essential element of the work of the Commission, in that it preserves the unity of the Commission by allowing a member in the minority to submit to the Commission's judgment, while declaring, and thus clearing, his conscience in a particular decision. An Objection (*BCO 45-1, 4*) is only permissible in the case of an otherwise qualified member of the Commission (cf. 2.2-3) who could not vote due to being a member of a congregation in the bounds of the presbytery from which the case arose (cf. *BCO 39-2*).
- b. That right notwithstanding, in order to preserve the primacy of, the authority of, and respect for Commission decisions, any Concurring or Dissenting opinion shall be reviewed to ensure that it meets the following standards:
 - (1) Concurring or Dissenting opinions shall set forth concisely, as the case may be, the alternate grounds upon which the Commission's decision ought to have been rendered; or, the alleged error of the Commission's decision, a statement of the decision that should have been rendered, and the grounds sustaining.
 - (2) Ordinarily Concurring or Dissenting opinions should set forth positions or employ arguments that were offered in the course of the Commission's proceedings on a case.
 - (3) Concurring or Dissenting opinions shall be couched in temperate language conducive to maintaining respect for the Commission, vigorous expression of disagreement with the decision notwithstanding.
 - (4) Concurring or Dissenting opinions shall conform to the specifications for a primary brief (8.3.a-b.).
- c. The Chairman shall call a special meeting of the Commission by telephone conference to consider the adoption of an Answer to any Concurring or Dissenting Opinion. Upon the adoption of an Answer to a Concurring or Dissenting Opinion by the Commission, no further Concurring or Dissenting Opinion shall be permitted; neither shall any amendment to the Concurring or Dissenting Opinion in question be permitted. A Concurring or Dissenting Opinion may be withdrawn.

17.13 An Executive Session shall be understood to be a meeting or a portion of a meeting wherein only Commissioners, and others specifically invited by the Commission, are present. On the cessation of the Session, only the conclusion, judgment, or decision shall be made public. The proceeding shall be secret unless the Commission shall vote to remove the injunction of secrecy. (*Robert's Rules of Order, Newly Revised § 9, page 92.*)

17.14 A Closed Session shall be understood as a meeting or portion of a meeting wherein only Commissioners, and others specifically invited by the Commission, are present. Unlike an Executive Session, however, the proceedings shall not be

secret, but rather discussion of such matters outside of the meeting shall be at the discretion of each commissioner, and the minutes of such a closed session may be read and approved in open session. However, no person present at a closed session shall later identify in any manner the views, speeches or votes of a member of the commission during the closed session, apart from that member's written permission.

18.0 REPORTS

18.1 The Presbytery Judicial Commission shall make a full report of each case directed to the Presbytery, which report shall consist of the following:

- a. A summary of the facts.
- b. A statement of the issues.
- c. The judgment of the Presbytery Judicial Commission.
- d. The reasoning and opinion of the Presbytery Judicial Commission.
- e. The vote of the Presbytery Judicial Commission.
- f. Any concurring and/or dissenting opinions of any members of the Presbytery Judicial Commission, which have been approved under 17.12.