

## Avoiding Procedural Errors in Judicial Cases

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Having served as Stated Clerk of the PCA for more than two decades, I have noticed several recurring procedural errors as Presbyteries handle complaints, trials, cases without process, and appeals. Here are some guidelines to help Presbytery stated clerks avoid typical pitfalls.

### General

- In addition to determining whether a complaint or appeal is in order, *deny* the complaint or appeal and *specify the ground(s)* and the *BCO* reference(s).<sup>2</sup>
- *Read and follow* the “Procedural Checklist for PCA *BCO* Rules of Discipline.” Most errors could be avoided by following the “Procedural Checklist for PCA *BCO* Rules of Discipline.”
- Give or transmit a copy of the “Procedural Checklist for PCA *BCO* Rules of Discipline” (Clerks Handbook 070-B) to clerks of session handling judicial matters.
- Give or transmit a copy of the “Procedural Checklist for PCA *BCO* Rules of Discipline” to Presbytery judicial commissions, especially the chairman of the commission.
- Ideally, the moderator of a Presbytery should be elected because he knows the rules, RONR (12<sup>th</sup> ed.) 47:6 and is able to preside at a meeting efficiently. However, many times the moderator is elected in order to honor a man, or because he is an elder of a certain category.
- The Stated Clerk of Presbytery is usually the parliamentarian of Presbytery and is expected to be knowledgeable of the *BCO*, the Standing Rules of Presbytery, and *Robert’s Rules*. The Stated Clerk of Presbytery will need to advise the moderator, especially in judicial proceedings.
- In judicial cases, courts must be careful to distinguish between judicial decisions and pastoral advice. Judicial decisions should focus on judicial issues. It is unwise for members of a Shepherding Committee dealing with a situation to serve on a judicial commission dealing with the same situation.
- The SJC has never received a perfectly conducted case with a perfect Record of the Case (ROC). The SJC looks for *reversible* errors that are clearly unconstitutional.
- A definite suspension is analogous to a jail sentence; once it is completed, the definite suspension ends (*BCO* 37-1). If a court is unsure of the genuineness of the repentance of the accused, the court should impose indefinite suspension (*BCO* 36-5; 37-3).
- The SJC bases its decisions on the PCA Constitution and the Record of the Case (*BCO* 32-18; *RAO* 17-1; *OMSJC* 7; 10.8 b.). Briefs must reference the ROC (*OMSJC* 8.3). Therefore, it is of utmost importance to have a full and complete Record of the Case.
- SJC members are restricted to dealing with the issues that were raised by the parties to the case in the lower court(s) (*BCO* 39-3.1). Therefore, parties to cases should ensure that they have raised any important issues in the lower court(s) before it goes to the SJC.
- Both *BCO* 34-10 and 38-2 may apply to Ruling Elders and Deacons.

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<sup>1</sup> Updated by the Stated Clerk’s Office, September 2024.

<sup>2</sup> For example, do not simply say the complaint is not in order. State in the minutes, the Presbytery found that the complaint was not in order and denied the complaint because the complainant had not first presented his complaint to the session in a timely manner (*BCO* 43-3). Do not simply say that the appeal is out of order, say in the minutes that the appeal is not in order and is denied because the appellant did not submit to a regular trial (*BCO* 42-20).

## **Trials**

- If a session uses a judicial commission to conduct a trial, the moderator of the commission must be a minister (*BCO* 12-3).
- A chargeable offense is anything contrary both to the Bible and the PCA Constitution (*BCO* 29-1). Take care when trying a person on an interpretation of the Bible that is not addressed in the PCA Constitution. Officers are held to a higher standard (*BCO* 21-5; 24-6) than individual members (*BCO* 57-5).
- Advise parties that the *BCO* is available online (*BCO* 32-2) <https://www.pcaac.org/bco/>
- Members of a court of original jurisdiction and the judicial commission should familiarize themselves with “Procedural Checklist for PCA *BCO* Rules of Discipline. “
- At least ten days must elapse between citation of the accused and the next meeting of the court or commission (*BCO* 32-3; 32-7).
- The accused may plead in writing if he cannot be present at the second meeting of the court (*BCO* 32-3).
- If the accused refuses to appear the second time, he or she may be dealt with for contumacy (*BCO* 32-6; 33-2; 34-4). However, the court may convict the accused of contumacy only, not the original charge on which he was indicted.
- Any member of the court who has expressed an opinion regarding the merits of the case before the court or does not attend the meetings of the court shall be disqualified from sitting as a judge (*BCO* 32-17).
- Under *BCO* 32-19, one may not hire a lawyer to represent the accused.
  - If the trial is before a session, a member of that congregation may represent him. If an appeal is made to Presbytery, a member of that Presbytery may represent him. If before the SJC, he may be represented by any member of the PCA.
  - A proposed amendment to *BCO* 32-19 that would allow any member of the PCA to represent anyone before any court failed.
  - One of the first questions I asked the CCB was whether one whose profession is a lawyer could represent anyone. The CCB answered 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.
- Witnesses must be of proper age [that is not defined] and intelligence [not defined] and believe in God and a future state of rewards and punishment (*BCO* 35-1).
- The accused is not required to testify (*BCO* 35-1).
- A husband or wife is not required to testify against one’s spouse (*BCO* 35-2).
- Witnesses may not hear other witnesses’ testimony if either party objects (*BCO* 35-6).
- Both parties to a case have the right to cross-examine witnesses (*BCO* 35-7).
- Only the testimony of witnesses needs to be reduced to writing, not the entire proceedings of the trial (*BCO* 35-9). Though only the testimony is required to be recorded, the best practice is to record and transcribe the entire proceedings of the trial. Doing so assists in placing “all acts, orders, and decisions of the court relating to the case” (*BCO* 32-18) in the Record of the Case, allowing it to be cited in an appeal (*BCO* 42-5).
- The prosecutor does not have a vote in the trial (*BCO* 35-13).
- When a member of a church court is under process (trial or appeal), his official functions may be suspended but not as a censure (*BCO* 31-10).
- A defendant in a case shall not sit as a judge in his own case (*BCO* 31-11).
- When a church member is under process, the Session may prevent the accused from approaching the Lord’s Table until the charges against him may be examined (*BCO* 33-4).

## Appeals

- One may only appeal a conviction; one may not appeal a charge on which one has been found not guilty (*BCO 42-1*).
- Only the convicted person may appeal his conviction; no one else may appeal on his or her behalf (*BCO 42-2*).
- Only one who has submitted to a trial or has been divested without censure under *BCO 34-10* are entitled to an appeal (*BCO 42-2*). In a case without process (*BCO 38-1*), the offender may appeal the censure only.
- *BCO 42-3* lists grounds for an appeal, but it does not exclude other grounds.
- The accused/appellant needs to be informed of the decision of the court regarding his appeal (*BCO 42-4*). The clock does not start until the accused/appellant has been notified of the decision of the court or unless the court has made a good-faith effort to communicate the decision to the accused/appellant in the methods specified in *BCO 42-4*.
- Neither party (the accused/appellant nor appellee) may circularize the court (*BCO 42-4*). Circularizing the court is seeking to influence the opinions and decisions of members of the court before the case is considered.
- Notice of appeal shall have the effect of suspending the judgment of the lower court until it has been decided by the higher court (*BCO 42-6*).
- When a member of a church court is under process (trial or appeal), his official functions may be suspended but not as a censure (*BCO 31-10*).
- No complaint is allowable in a judicial case in which an appeal is pending (*BCO 43-1*).

## Complaints

- One must have standing to file a complaint, *BCO 43-1*.
  - The SJC has held that a TE is always a member of Presbytery, but an RE only has standing to file a complaint when an action was taken at a Presbytery meeting at which he was a commissioner (*BCO 13-1*).
  - Only the complainant may take his complaint to a higher court (*BCO 43-3*). Someone else may not take a complaint that was not his own to a higher court.
- One must file a complaint within the specified timeframe: sixty (60) days following the meeting of the court of original jurisdiction (*BCO 43-2*) or thirty (30) days after the notification of the decision by the higher court (*BCO 43-3*).
- Neither party (the complainant nor the respondent) may circularize the court (*BCO 43-2*). Circularizing the court is seeking to influence the opinions and decisions of members of the court before the case is considered.
- When elevating a complaint to a higher court, the complainant must file with the stated clerk of the higher court the same complaint that was filed with the stated clerk of the lower court and denied by the lower court (*BCO 43-3*). There are three purposes for this requirement,
  - To give the court of original jurisdiction an opportunity to change its ruling.
  - To ensure that the complainant does not add to his original complaint.
  - To ensure that the higher court evaluates the case on the basis of the Record of the Case.
- The complainant needs to be informed of the decision of the court regarding his complaint (*BCO 43-3*). The clock does not start until the complainant has been notified of the decision of the court or unless the court has made a good-faith effort to communicate the decision to the complainant in the methods specified in *BCO 43-3*.
- Notice of complaint (unlike notice of an appeal) does not have the effect of suspending the matter complained against, unless there is a motion approved by at least one-third of those who were present for the original action being complained about (*BCO 43-4*).

### Cases without Process

- The moderator, clerk, and members of the judicial commission should review the document, “Procedures for a Case without Process, *BCO* 38-1,” found in your Presbytery Clerk’s Handbook (071-B).
- The Moderator should explain the procedures of *BCO* 38-1 to the court before the court considers the case without process.
- Often, a person who has been the subject of a *BCO* 31-2 investigation may opt for a case without process under *BCO* 38-1. If there has been a *BCO* 31-2 investigation before a *BCO* 38-1 procedure, do not have the *BCO* 31-2 committee or commission report first because that would violate the *BCO* 38-1 rights of the self-accused person that only the statement of facts that he has approved and the sins to which he confesses may be used by the court to decide on a censure.
- It is unwise for a Shepherding Committee to report prior to a *BCO* 38-1 procedure, because that would violate the *BCO* 38-1 rights of the self-accused person that only the statement of facts that he has approved and the sins to which he confesses may be used by the court to decide on a censure.
- A "Statement of Facts and Confession of Guilt" (such as Clerks Handbook 071-B 4) must be signed by the accused and the court before the court renders a judgment (*BCO* 38-1). That will become part of the Record of the Case if a complaint is filed.
- If the offense is a personal offense, the court must invite the person who was wronged or injured by the sin to review and comment on the written Confession before it is approved by the court and the accused. The court is to take the wronged person’s comments into account as it determines whether the written Confession is accurate and sufficient.
- It is wise to have the person sign a "Voluntary Statement in Addition to the Statement of Facts and Confession of Guilt" (Clerks Handbook 071-B 5) before the court renders a judgment. That will become part of the Record of the Case if a complaint is filed.
- It is wise to give a copy of “Information for Persons Agreeing to a Case without Process under *BCO* 38-1” (Clerks Handbook 071-B 6) to the self-accused before the proceedings.
- The person has the right of appeal (*BCO* 38-1). That does not mean he may retract his guilty plea; it only means he may complain against the severity of the censure (*BCO* 42-2).