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Proposed Overture to the General Assembly

Southwest Florida Presbytery- February 8, 2014

Change BCO 15-1 and 15-5(a) and (b) in order to regularize the approval of judicial commission decisions

Whereas, the Book of Church Order (BCO) recognizes a distinction between commissions (BCO 15-1), which “conclude the business assigned to it” and judicial commissions (BCO 15-3), which must submit its decision, without debate, for approval or disapproval of presbytery; and

Whereas, the BCO establishes the principle that judicial commissions act on behalf of a presbytery, but do not have their decisions finalized until the entire court hears and approves the judgment rendered (BCO 15-3); and

Whereas, the Standing Judicial Commission of the General Assembly (SJC) has been established (BCO 15-4) and Rules of Assembly Operations (RAO 17) in a way that isolates its decisions from review of the General Assembly, making its judgments final, without approval of the General Assembly as a whole (BCO 15-5a and b); and

Whereas this represents a contradiction in the way the various courts of the church operate—with presbyteries and their judicial commissions operating in one fashion and the General Assembly and the SJC operating in another; and

Whereas, this contradiction may violate the essential principle of BCO 11-3 that “all Church courts are one in nature;” and

Whereas, insulation of SJC Decisions from the oversight of the entire General Assembly may violate the principle of the General Assembly having the power to “bear testimony against error in doctrine” (BCO 14-6a); and

Whereas, the means for ensuring that the SJC remain the General Assembly’s judicial commission is already present in the model found in presbytery judicial commissions in BCO 15-3; and

Whereas, the General Assembly may wish to decide a judicial case, notwithstanding the limiting vows taken by SJC members (RAO 17-1), just as a presbytery does; and

Whereas, the General Assembly may wish to decide a judicial case by not ordinarily deferring to the factual findings of the presbytery or its discretion and judgment (BCO 39-3.2); and

Whereas, there is recognition of the need for informed, careful deliberation on the part of commissioners in order to ensure fair outcomes in judicial proceedings (cf. SJC Manual 10.8.a-b; 17.8.b)

1 *Therefore, be it resolved, that BCO 15-1 and 15-5(a) and (b) be amended as follows*
2 *(additions in underline):*

3 **15-1.** A commission differs from an ordinary committee in that while a committee is
4 appointed to examine, consider and report, a commission is authorized to deliberate upon
5 and conclude the business referred to it, except in the case of judicial commissions of a
6 Presbytery appointed under BCO 15-3 and the case of the Standing Judicial Commission
7 of the General Assembly appointed under BCO 15-4. A commission shall keep a full
8 record of its proceedings, which shall be submitted to the court appointing it. Upon such
9 submission this record shall be entered on the minutes of the court appointing, except in
10 the case of a presbytery commission serving as a session or a judicial commission as set
11 forth in BCO 15-3 and the case of the Standing Judicial Commission of the General
12 Assembly appointed under BCO 15-4. When a commission is appointed to serve as an
13 interim Session, its actions are the actions of a Session, not a Presbytery. Every
14 commission of a Presbytery or Session must submit complete minutes and a report of its
15 activities at least once annually to the court which commissioned it.

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17 **15-5. a.** In the cases committed to it, the Standing Judicial Commission shall have the
18 judicial powers and be governed by the judicial procedures of the General Assembly. ~~The~~
19 ~~decision of the Standing Judicial Commission shall be the final decision of the General~~
20 ~~Assembly except as set forth below, to which there may be no complaint or appeal.~~
21 Members of the Standing Judicial Commission may file concurring or dissenting
22 opinions, or a minority report as set forth in (c) below. The General Assembly may direct
23 the Standing Judicial Commission to retry a case if upon the review of its minutes
24 exceptions are taken with respect to that case.

25 b. In each case the Standing Judicial Commission shall issue a summary of the facts, a
26 statement of the issues, its judgment and its reasoning, together with any concurring or
27 dissenting opinions. ~~all of which shall be entered on the minutes of the General Assembly~~
28 ~~and shall be reported by the Stated Clerk to the next General Assembly. The judgment~~
29 ~~shall be effective from the time of its announcement to the parties. The General~~
30 Assembly without debate shall approve or disapprove of the judgment, or may refer, (a
31 debatable motion), any strictly constitutional issue(s) to the Committee on Constitutional
32 Business. In the case of referral, the Standing Judicial Commission shall either dismiss
33 some or all of the specific charges raised in the case or decide the case only after the
34 report of the Committee on Constitutional Business has been heard and discussed. If the
35 General Assembly approves, the judgment of the Standing Judicial Commission shall be
36 final and shall be entered on the minutes of the General Assembly as the action. If the
37 General Assembly disapproves, it may assume original jurisdiction at the point of the
38 original complaint or indictment, and/or assign the case back to the Standing Judicial
39 Commission, with or without the assumption of original jurisdiction, and/or appoint,
40 through the moderator, a special commission to hear the case again, with or without the
41 assumption of original jurisdiction. In all cases, the level of informedness required on the
42 part of commissioners participating in said judicial deliberations shall be equal to that
43 required of the full Commission of the SJC when reviewing a proposed and
44 recommended decision made by an SJC panel as stated in SJC Manual 17.8.b. That is, the

1 Moderator will poll each commissioner of the General Assembly present as to whether or
2 not they have read the following: 1) The SJC's proposed decision; 2) All briefs timely
3 filed by the parties; 3) Those portions of the Record of the Case such commissioner feels
4 is necessary to understand the issues of the case. Any commissioner who is not able to
5 certify affirmatively to these inquiries shall not be eligible to participate in discussion or
6 vote in the case at hand.

7 If approved, these three sections would read as follows:

8 15-1. A commission differs from an ordinary committee in that while a committee is
9 appointed to examine, consider and report, a commission is authorized to deliberate upon
10 and conclude the business referred to it, except in the case of judicial commissions of a
11 Presbytery appointed under BCO 15-3 and the case of the Standing Judicial Commission
12 of the General Assembly appointed under BCO 15-4. A commission shall keep a full
13 record of its proceedings, which shall be submitted to the court appointing it. Upon such
14 submission this record shall be entered on the minutes of the court appointing, except in
15 the case of a presbytery commission serving as a session or a judicial commission as set
16 forth in BCO 15-3 and in the case of the Standing Judicial Commission of the General
17 Assembly appointed under BCO 15-4. When a commission is appointed to serve as an
18 interim Session, its actions are the actions of a Session, not a Presbytery. Every
19 commission of a Presbytery or Session must submit complete minutes and a report of its
20 activities at least once annually to the court which commissioned it.

21 **15-5. a.** In the cases committed to it, the Standing Judicial Commission shall have the
22 judicial powers and be governed by the judicial procedures of the General Assembly.
23 Members of the Standing Judicial Commission may file concurring or dissenting
24 opinions, or a minority report as set forth in (c) below. The General Assembly may direct
25 the Standing Judicial Commission to retry a case if upon the review of its minutes
26 exceptions are taken with respect to that case.

27 b. In each case the Standing Judicial Commission shall issue a summary of the facts, a
28 statement of the issues, its judgment and its reasoning, together with any concurring or
29 dissenting opinions. The General Assembly without debate shall approve or disapprove
30 of the judgment, or may refer, (a debatable motion), any strictly constitutional issue(s) to
31 the Committee on Constitutional Business. In the case of referral, the Standing Judicial
32 Commission shall either dismiss some or all of the specific charges raised in the case or
33 decide the case only after the report of the Committee on Constitutional Business has
34 been heard and discussed. If the Assembly approves, the judgment of the Commission
35 shall be final and shall be entered on the minutes of the Assembly as the action. If the
36 General Assembly disapproves, it may assume original jurisdiction at the point of the
37 original complaint or indictment, and/or assign the case back to the Standing Judicial
38 Commission, with or without the assumption of original jurisdiction, and/or appoint,
39 through the moderator, a special commission to hear the case again, with or without the
40 assumption of original jurisdiction.

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