

1 “Amend BCO 43 to direct complaints to higher court”

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3 **BE IT RESOLVED**, that the General Assembly of the Presbyterian Church in America amend
4 BCO 43 with the following (additions are underlined, deletions are struck through):

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6 **43-1.** A complaint is a written representation made to a higher court against some act or decision
7 of a lower court of the Church. It is the right of any communing member of the Church in good
8 standing to make complaint against any action of a court to whose jurisdiction he is subject, except
9 that no complaint is allowable in a judicial case in which an appeal is pending.

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11 **43-2.** A complaint shall first be made to the next court higher than the court whose act or decision
12 is alleged to be in error. Written notice of complaint, with supporting reasons, shall be filed with
13 the clerk of the higher court and the clerk of the lower court within sixty (60) days following the
14 meeting of the lower court. The higher court shall consider the complaint at its next stated meeting,
15 or at a called meeting prior to its next stated meeting. No attempt should be made to circularize
16 the court to which complaint is being made by either party.

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18 **43-3.** If, after considering a complaint, the higher court ~~alleged to be delinquent or in error~~ is of
19 the opinion that ~~it~~ the lower court has not erred, and denies the complaint, the complainant may
20 take that complaint to the next higher court. In addition, if the first higher ~~If the lower~~ court fails
21 to consider the complaint ~~against it~~ by or at its next stated meeting, the complainant may take that
22 complaint to the next (second) higher court. Written notice thereof shall be filed with both the
23 clerk of the ~~lower~~ higher court and the clerk of the next higher court within thirty (30) days of
24 notification of the last court’s decision. Notification shall be deemed to have occurred on the day
25 of mailing (if certified, registered or express mail of a national postal service or any private service
26 where verifying receipt is utilized), the day of hand delivery, or the day of confirmed receipt in the
27 case of e-mail or facsimile. Furthermore, compliance with such requirements shall be deemed to
28 have been fulfilled if a party cannot be located after diligent inquiry or if a party refuses to accept
29 delivery.

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31 **43-4.** Notice of complaint shall not have the effect of suspending the action against which the
32 complaint is made, unless the notice of complaint is announced at the meeting when the action is
33 taken, and one-third (1/3) of the members present at that meeting ~~when the action was taken~~ shall
34 vote for its suspension. In that instance, the action against which the complaint is made is
35 suspended until the final decision in the higher court.

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37 **Rationale:**

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39 The BCO currently requires a complainant to file a complaint first with the court alleged to have
40 erred (BCO 43-1). This current process is confusing to many and has caused complaints to be
41 untimely filed. The natural tendency is to assume that the filing should be made with the
42 appellate court. That is the process for our civil and criminal court systems.

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44 Further, the current process delays the resolution for complaints by requiring a filing with a court
45 most likely to deny a complaint. This causes delays of filing periods, as well as the time between
46 meetings of the various courts. Such delays do not serve the cause of justice and peace.

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1 Finally, a court ordinarily has the opportunity to correct an erroneous decision by a simple
2 motion to rescind or amend something previously adopted (RONR (12th ed.) 35). In fact, any
3 member of the court could make such a motion after the filing of a BCO 43 complaint.