

2019-2020
BCO AMENDMENTS SENT DOWN TO PRESBYTERIES
BY THE 47th GENERAL ASSEMBLY
FOR VOTING, and for ADVICE AND CONSENT

ITEM 1: Amend *BCO 42-4, 43-2, and 43-3* Regarding Method and Deadlines of Filing Cases as follows (proposed additional wording underlined):

42-4. Notice of appeal may be given the court before its adjournment. Written notice of appeal, with supporting reasons, shall be filed by the appellant with both the clerk of the lower court and the clerk of the higher court, within thirty (30) days of notification of the last court's decision.

Notification of the last court's decision shall be deemed to have occurred on the day of mailing (if certified, registered or express mail of a national postal service or any private service where verifying receipt is utilized), the day of hand delivery, or the day of confirmed receipt in the case of e-mail or facsimile. Furthermore, compliance with such requirements shall be deemed to have been fulfilled if a party cannot be located after diligent inquiry or if a party refuses to accept delivery. No attempt should be made to circularize the courts to which appeal is being made by either party before the case is heard.

[NOTE: There is no change to 43-2.]

43-3. If, after considering a complaint, the court alleged to be delinquent or in error is of the opinion that it has not erred, and denies the complaint, the complainant may take that complaint to the next higher court. If the lower court fails to consider the complaint against it by or at its next stated meeting, the complainant may take that complaint to the next higher court. Written notice thereof shall be filed with both the clerk of the lower court and the clerk of the higher court within thirty (30) days of notification of the last court's decision.

Notification of the last court's decision shall be deemed to have occurred on the day of mailing (if certified, registered or express mail of a national postal service or any private service where verifying receipt is utilized), the day of hand delivery, or the day of confirmed receipt in the case of e-mail or facsimile. Furthermore, compliance with such requirements shall be deemed to have been fulfilled if a party cannot be located after diligent inquiry or if a party refuses to accept delivery.

Grounds: The amendments proposed by Overture 9 give helpful clarifying language that it is the notification of the last court's decision that starts the running of the clock on complaints and appeals without definitively prohibiting electronic filings to all courts.

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ITEM 2: *BCO* 32-8, 32-13, and 35-10 to Allow for Video Testimony by Witnesses

32-8. When the offense with which an accused person stands charged took place at a distance, and it is inconvenient for the witnesses to appear before the court having jurisdiction, that court may either (a) appoint a commission of its body, or (b) request the coordinate court contiguous to the place where the facts occurred, to take the testimony for it, or (c) have the testimony taken by videoconference, which shall employ technical means that ensure that all persons participating in the meeting can see and hear each other at the same time, and which allows for live cross-examination by both parties. The accused shall always have reasonable notice of the time and place of the meeting of this commission or coordinate court.

32-13. In order that the trial may be fair and impartial, the witnesses shall be examined in the presence of the accused (as permitted by *BCO* 32-8), or at least after he shall have received due citation to attend. Witnesses may be cross-examined by both parties, and any questions asked must be pertinent to the issue.

35-10. When it is not convenient for a court to have the whole or perhaps any part of the testimony in any particular case taken in its presence, a commission shall be appointed, or coordinate court requested, to take the testimony in question, which shall be considered as if taken in the presence of the court.

Due notice of the commission or coordinate court or videoconference, and of the time and place of its meeting, shall be given to the opposite party, that he may have an opportunity of attending. If the accused shall desire on his part to take testimony at a distance for his own exculpation, he shall give notice to the court of the time and place at which it shall be taken, in order that a commission or coordinate court, as in the former case, may be appointed for the purpose. Testimony may be taken on written interrogatories by filing the same with the clerk of the court having jurisdiction of the case, and giving two weeks' notice thereof to the adverse party, during which time he may file cross-interrogatories, if he desire it. Testimony shall then be taken by the commission or coordinate court in answer to the direct and cross-interrogatories, if such are filed, and no notice need be given of the time and place of taking the testimony.

Grounds: The amendments proposed by Overture 17 give courts the option to use modern technology to take testimony from witnesses, in addition to creating a commission or using a coordinate court. The Overture Committee's amendments to this overture addressed the concerns of CCB about consistency in application in two other sections of the *BCO*.