

REMIT A, 2016

(Clerks of Assembly, Rec. No. 7, p. 287, 40)

Re: Book of Forms sections 65-80.2, regarding overtures and petitions

Remit A, 2016 re Book of Forms sections 65-80.2 regarding overtures and petitions

That the following revision of Book of Forms sections 65–80.2, regarding overtures and petitions, be approved and remitted to presbyteries under the Barrier Act. (Clerk’s of Assembly, Rec. No. 7, p. 287, 40)

See Clerks of Assembly report p. 287–88 for legislation.

You are asked to approve or disapprove this change.

PREAMBLE

(A&P 2016, p. 286–88)

BOOK OF FORMS SECTIONS 65–80.2

Petitions, Memorials and Overtures – revision

The Clerks of Assembly reported to the 2015 General Assembly that there is some confusion in the church regarding the meaning and use of overtures, petitions and memorials. The confusion mostly relates to petitions and memorials but also stems from the somewhat disorganized manner in which this section of the Book of Form is set out. The Clerks of Assembly were granted permission to circulate proposed legislation designed to simplify and clarify this portion of the church’s governance.

The proposed legislation describes the overture in four paragraphs.

1. The definition of an overture.
2. Who may initiate an overture.
3. The information an overture should include.
4. How an overture is transmitted from one court to another.

The legislation provides the same information for a petition.

By way of a reminder, an overture is a formal proposal to a church court requesting a change in legislation, doctrine, policy or another action that is of general interest. A petition is a formal request made to a church court initiating specific business concerning the petitioners.

Because a memorial, which is a submission of facts presented to a court, is rarely used and its purpose can easily be fulfilled by either an overture or a petition, the Clerks of Assembly are of the view that no harm would be done, and greater clarity gained, if the church discontinued the use of memorials in the Book of Forms.

The legislation was sent to the church for its consideration. Feedback was encouraged. A total of 17 presbyteries and 13 sessions offered comments. One presbytery noted, “The proposed changes would clarify and simplify the rules regarding the courts of the church use of these two important vehicles for change.” Fourteen (14) other presbyteries and all the sessions echoed this opinion. Only two presbyteries indicated a concern about the removal of memorials.

The Clerks believe nothing of the original legislation is lost in this proposal and significant clarity is gained. In view of the enthusiastic support of 28 of 30 responses, no changes have been made this year to the proposed legislation.

Current Book of Forms section 80.2 reads as follows:

80.2 The Clerks of Assembly and other agencies, committees and task forces of the Assembly are instructed to ensure that all study papers, referrals and questionnaires addressed to presbyteries and/or sessions are in the hands of the respective clerks three full months in advance of the deadline for response back to the agency, committee or task force of General Assembly. (see Appendix A–6)

(Note for information: Appendix A–6 is a template for a presbytery response to a General Assembly referral. Appendix A–7 will be revised to provide overture and petition templates for the use of the church.)

REMIT A 2016

Since this section relates to a broad range of papers that may be submitted to the General Assembly, and not just overtures and petitions, the Clerks recommend that it become a new section 300 in the General Assembly chapter of the Book of forms.

Recommendation No. 7 (adopted, p. 40)

That the following revision of Book of Forms sections 65–80.2, regarding overtures and petitions, be approved and remitted to presbyteries under the Barrier Act.

OVERTURES

Definition

65. An overture is a formal proposal to a church court requesting a change in legislation, doctrine, policy or another action that is of general interest. It cannot be used in place of judicial process. The request, if granted, must be within the jurisdiction of the court to which it is addressed, and would be binding on all within the jurisdiction of that court.

Initiation

66. Anyone may prepare an overture, but it must be adopted by a court of the church in order for it to be considered by the court to which it is addressed.

Form

67. An overture must be in respectful language and it should contain: the name of the court to which it is addressed, the rationale for the proposal and the proposal itself. If addressed to the General Assembly, the overture may also contain a request that it be referred to a particular standing committee for consideration in advance of the next General Assembly. The General Assembly may change the referral.

Transmission

68. Once a court has adopted an overture, a motion must be adopted to transmit it to the court to which it is addressed. This is normally the General Assembly. Overtures from presbyteries and synods may be transmitted directly to the General Assembly. Session overtures must be transmitted through the presbytery. The presbytery transmits the overture with one of the following designations: with approval, with disapproval, or without comment. If the transmission is refused on grounds of not being in proper form the overture shall receive no further consideration unless those presenting the overture amend it for resubmission or commence a corrective case (see sections 381ff).

69. An overture intended for the General Assembly that contains a request for referral is to be sent by the clerk of the lower court to be received by the Clerks of Assembly by February 1 so that the committee to which it is referred has time to consider it before its report to the General Assembly is due. If no referral is requested it must be received prior to April 1 and the General Assembly will determine how it shall be considered or where it shall be referred.

70. An overture received by the Clerks of Assembly after April 1 will be held for the next General Assembly with the provision that the court initiating the overture may request that it be referred to a standing committee in the meantime.

PETITIONS

Definition

71. A petition is a formal request made to a church court initiating specific business concerning the petitioners. A petition is one of the primary ways that members of the church have access to the courts of the church. A petition may begin, but not replace judicial process (see sections 324–392).

Initiation

72. A petition may be made by a lower court, or by one or more church members. A petition must be presented to the lowest court that has oversight of the petitioners and a petition by members of the church must first be presented to their session.

Form

73. A petition must be in respectful language and it should contain: the name of the court to which it is addressed, the rationale for the request and the specific request. The petition may include a request that it be transmitted to a higher court provided that court has jurisdiction in the matter raised in the petition.

74. A petition may not be used to bring the proceedings of a lower court under the review of a higher court. Corrective cases and appeals are used for that purpose.

Reception and Transmission

75. The court to which a petition is presented decides whether to receive or not receive it based on whether or not it is in proper form. If there is no request for further transmission, the court shall decide what action is to be taken. If the petition is received with a request that it be transmitted to a higher court, it shall be sent on with one of the following designations: with approval, with disapproval, or without comment.

76. A petitioner may be given the opportunity to speak in advance of the decision whether or not to receive it and must be given the opportunity to speak to the petition at any court that agrees to receive it.

77. If a court decides to not receive a petition it shall be returned to the petitioner and the matter ends unless the petitioner chooses to amend and resubmit the petition. The petitioner, subject to section 383 regarding standing, may commence a corrective case, but only based on the court's refusal to receive the petition. A petition may be presented directly to a higher court, but only if the lower court refuses to consider the corrective case. The higher court must hear from the lower court before deciding whether or not to receive the petition.

78. Petitions to the General Assembly must be received by the Clerks of Assembly prior to February 1.

79. When considering how to act on a petition, a court may give any who might be affected by the petition the opportunity to be present.

80. Deleted

80.1 Deleted

80.2 Added to section 300.

Recommendation No. 8 (adopted, p. 40)

That Book of Forms section 80.2 become the new section 300 as follows:

300. The Clerks of Assembly and other agencies, committees and task forces of the Assembly are instructed to ensure that all study papers, referrals and questionnaires addressed to presbyteries and/or sessions are in the hands of the respective clerks three full months in advance of the deadline for response back to the agency, committee or task force of General Assembly. (see Appendix A-6)