

APPENDIX T

CASE 2015-09

**BRAD BUMGARNER
VS.
THE PRESBYTERY OF THE MISSISSIPPI VALLEY**

**DECISION ON *BCO* 40-5 APPLICATION
MARCH 3, 2016**

The Standing Judicial Commission (SJC) finds the Request/Application Administratively Out of Order and cannot be put in order (OMSJC 9.1.a.) because it deals with proceedings in a judicial case, and that the case be dismissed pursuant to OMSJC 9.2(d). See *BCO* 40-3: “Proceedings in judicial cases, however, shall not be dealt with under review and control when notice of appeal or complaint has been given the lower court.” Further, the claimant stated on November 1, 2012 upon withdrawing a complaint on this matter: “Please consider this my official request to withdraw my complaint...I understand that once my complaint is withdrawn it cannot be resubmitted.”

The SJC approved this decision on the following roll call vote:

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|------------------------|-------------------------|--------------------------|
| Barker, <i>Concur</i> | Duncan, <i>Concur</i> | Meyerhoff, <i>Concur</i> |
| Bise, <i>Concur</i> | Evans, <i>Concur</i> | Neikirk, <i>Concur</i> |
| Burnett, <i>Absent</i> | Fowler, <i>Concur</i> | Nusbaum, <i>DisQual</i> |
| Cannata, <i>Absent</i> | Greco, <i>Concur</i> | Pickering, <i>Concur</i> |
| Carrell, <i>Concur</i> | Gunn' <i>Recused</i> | Fowler, <i>Concur</i> |
| Chapell, <i>Concur</i> | Jones, <i>Concur</i> | Terrell, <i>Concur</i> |
| Coffin, <i>Concur</i> | Kooistra, <i>Concur</i> | White' <i>Absent</i> |
| Donahoe, <i>Concur</i> | McGowan, <i>Concur</i> | Wilson, <i>Concur</i> |

MINUTES OF THE GENERAL ASSEMBLY

**CONCURRING OPINION
CASE 2015-09
BUMGARNER
VS.
MISSISSIPPI VALLEY PRESBYTERY**

March 15, 2016

Concurring Opinion of RE Howard Donahoe.

I concur with the SJC Decision in this Case, but believe fuller explanation is warranted. This Case is administratively out of order for two reasons. First, in his August 2015 letter to the PCA, the claimant essentially seeks to re-file his previously filed Complaint, which he withdrew almost three years prior on November 1, 2012. To allow this would be to disregard the filing deadlines stipulated by the *BCO*.

Second, his letter seeks the reversal of a judicial censure via the avenues of *BCO* Chapter 40. But *BCO* 40-3 stipulates, "*no judgment of a lower court in a judicial case shall be reversed except by appeal or complaint.*" In his letter, he mistakenly asserts the following: "While the court can not overturn a judicial case, this was not a judicial case as I was deposed without a trial despite requesting one." But it was a judicial case and he is seeking reversal of the censure via *BCO* 40, which cannot be done.

According to the Record, in 2012 the claimant was a ruling elder on leave of absence. That summer, the Session encouraged him to resign, noting that if he declined, the Session would likely proceed to indictment. He declined to resign, and the Session indicted him on four charges. At the arraignment on August 5, 2012, the Session regarded his response to two of the charges as being guilty pleas. To one charge, he responded, "Yes, I have fallen short in this area." And to another charge he responded, "I have certainly fallen short in this area, too." The Session considered these responses as admissions of guilt, advised him of such at the arraignment, and proceeded that evening to impose the censure of deposition from office.

He filed a Complaint against that censure in September 2012. But on November 1, 2012, he withdrew his Complaint, acknowledging, "I understand that once my complaint is withdrawn it cannot be resubmitted." Over 30 months later, in July 2015, he filed what he purported to be a *BCO* 40-5 letter asserting Presbytery was guilty of grossly unconstitutional proceedings and important delinquency for allegedly failing to investigate his August 2012 deposition. Presbytery rightly judged the matter to be closed and his letter to be administratively out of order for reasons similar to the SJC's.

/s/ RE Howard Donahoe