

Roll call in 2009-2:

TE Dominic A. Aquila, Concur	TE William R. Lyle, Concur
TE Howell A. Burkhalter, Concur	RE J. Grant McCabe, Concur
RE E.C. Burnett III, Disqualified	TE Charles E. McGowan, Concur
TE David F. Coffin, Jr., Concur	TE D. Steven Meyerhoff, Concur
RE Marvin C. Culbertson, Concur	TE Timothy G. Muse, Concur
RE J. Howard Donahoe, Concur	RE Frederick J. Neikirk, Concur
RE Samuel J. Duncan, Concur	RE Steven T. O'Ban, Absent
TE Fred Greco, Concur	RE Jeffrey Owen, Concur
TE Grover E. Gunn III, Concur	RE Calvin Poole, Concur
TE William W. Harrell Jr., Concur	TE G. Dewey Roberts, Concur
RE Terry L. Jones, Concur	TE Danny Shuffield, Concur
RE Thomas F. Leopard, Disqualified	RE John B. White Jr., Concur

21 Concur, 2disqualified, 1 absent

**CASE 2009-05 COMPLAINT OF TE MARTIN PAYNE  
2009-08 COMPLAINT OF JAMES R. LINTON,  
2009-09 COMPLAINT OF KIRK D. LYONS, AND  
2009-10 COMPLAINT OF ROBERT C. WOODWARD  
VS.  
WESTERN CAROLINA PRESBYTERY**

**I. SUMMARY OF FACTS**

This Complaint alleges Presbytery erred when it did not find a strong presumption of guilt of TE Craig Bulkeley, pastor of Faith Presbyterian Church, Black Mountain, NC. Complainants also contend *BCO* 31-2 was violated by an alleged undue delay in investigation and because the accusers were not interviewed by Presbytery's investigating committee.

In 2008, the church had a four-man Session composed of TE Bulkeley and REs Payne, Linton and Pellom. Conflict arose primarily between TE Bulkeley and RE Payne regarding Payne's views related to race and IQ and some material Payne had circulated. Eventually, there was a congregational meeting on June 1, 2008 where a motion was adopted to dissolve RE Payne's call. The four-man Session referred this and other matters to Presbytery per *BCO* 41, which Presbytery accepted on June 17 and formed a Commission to fulfill the Session's duties of *BCO* 24-10 and 31-2.

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2008

- June 1 Congregational meeting. Votes against dissolving the call of TE Bulkeley. Votes to ask the Session to dissolve the call of RE Payne.
- June 17 Presbytery called meeting (1 hour 23 minutes). In response to a Reference from the Session, Presbytery appointed a *BCO* 15-1 Commission (chaired by TE Inman) to conduct *BCO* 31-2 investigations of reports on several individuals (including two TEs and two REs) and to determine whether or not there is a strong presumption of guilt.
- July 15 Inman Commission acted on the first two of its four assignments, which included their finding that there was a strong presumption of guilt for RE Payne in the manner in which he held his views, and for TE Bulkeley “in that he has failed to adorn the profession of the Gospel in his manner of life, and to walk with exemplary piety before the flock of which God has made him an overseer, contrary to his ordination engagements (*BCO* 21-5.7).”

Commission’s Rationale: Without in any way diminishing an understandable concern to correct error and dissociate both the gospel and the church from the opprobrium and odium attaching to racist views and practices, TE Bulkeley published his disagreement with a fellow elder far and wide, both in Internet correspondence and in conference with others, despite counsel to the contrary, without applying the directives of Matthew 18 and the provisions of *BCO* 27-5. An elder must set an example in both speech and conduct (1 Timothy 4:12; WLC 129), neither of which requirements TE Bulkeley has fulfilled in addressing his concerns surrounding RE Payne’s views, thus failing to avoid such things as procure an ill name for himself and others (WLC 145)”.

- Aug 2 Presbytery Stated Meeting. Prior to Presbytery instituting process based on the Commission’s finding, TE Bulkeley confessed and Presbytery handled it as a case without process per *BCO* 38-1. Presbytery voted to impose the censure of admonition on TE Bulkeley, having been “satisfied with his repentance.” (RE Payne also confessed per *BCO* 38-1 and he was indefinitely suspended from office.) Bulkeley’s confession is below:

I, Craig Bulkeley, intend to confess my guilt, and I approve this confession of guilt to be a full statement of the facts on the basis of which I intend to permit

Presbytery to render judgment without process, per the provisions of *BCO* 38-1.

Without in any way relinquishing my concern to correct error and dissociate both the gospel and the church from racism, with its ungodly contempt, disrespect and scorn for those of different tribes and tongues, I confess that I have published my disagreement with a fellow elder, both in Internet correspondence and in conference with others, far and wide, despite counsel to the contrary, without applying adequately the directives of Matthew 18 and the provisions of *BCO* 27-5. In this I have failed to adorn the profession of the Gospel in my manner of life, and to walk with exemplary piety before the flock of which God has made me an overseer, contrary to my ordination engagements. An elder must set an example in both speech and conduct, neither of which requirements have I fulfilled in addressing my concerns surrounding the view of my fellow elder, thus failing to avoid such things as may procure an ill name for myself and others.

- Aug 6 Session called meeting (the evening before congregational meeting). Votes 2-1 to cancel the Aug 7 congregational meeting. TE Bulkeley voted against cancellation.
- Aug 7 Congregational meeting convened by TE Bulkeley. REs Linton and Pellom not present. Among other things, congregation votes to dissolve calls of REs Linton and Pellom and ask Presbytery to fulfill the Session responsibility of *BCO* 24-7 in considering such requests to dissolve.
- Aug 19 Presbytery called meeting (3 hours 16 min)  
Present: 35 TEs & 25 REs  
Motion to declare meeting out of order failed. Motion to find call in order, passed 30-20. TE Bulkeley gave a “speech to Presbytery.” It is not clear from minutes how this was delivered. He asked Presbytery to find the Session’s actions on August 6 [seeking to cancel the congregational meeting of Aug 7] to be “not wise, equitable, or suited to promote the welfare of the Church, or in accordance with the Constitution.” He also asks Presbytery to find that the congregational meeting of August 7 was in order.

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Presbytery took the following actions:

The actions of the Session at its called meeting on Aug 6 (regarding cancelling the congregational meeting the next day) were deemed “to not be wise, equitable, suited to promote the welfare of the church or in accordance with the Constitution.”

Motion was defeated that sought to cite Session to appear and answer questions per *BCO* 40-2 regarding a “credible report of disorder.” Motion was also defeated that sought to have the moderator appoint a committee to review the church’s records.

Took original jurisdiction under *BCO* 13-9 to act on FPC request to dissolve the relationship of REs Linton and Pellom. Appointed a non-judicial commission per *BCO* 15-1 & 2 to “deliberate and act upon the congregation’s request for the dissolution between REs Linton and Pellom under the provisions of *BCO* 24-7, paragraph 2.” Six men were appointed: TEs Sealy, Bancroft, Osborne, REs Griffith, Leissing, and Maney (hereafter called the Sealy Commission).

Postponed consideration of congregation’s call to TE Neville as Associate until after the Sealy Commission reports.

Aug 19 (Same day as called Presbytery meeting)

Four page letter (hereafter, the “Grievance Letter) signed by 19 members of FPC addressed to Presbytery alleging things about their pastor, TE Bulkeley, asking Presbytery to investigate per *BCO* 31-2. Signers included REs Linton and Pellom and members from seven families: Linton (6), Lyons (5), Payne (3), Tate (2), Mahaffey, Pellom, and Woodward. (The letter in the Record indicates it was “modified with permission of signatories on Sep 11, 2008.”)

Six “illustrations” alleged that TE Bulkeley:

1. Convened an illegal congregational meeting on August 7. [later an issue in Case 2008-15]
2. Violated the 9th commandment regarding giving church membership roll to Session.
3. Violated the 9th commandment regarding a mailbox key, and spread or allowed to be spread a rumor about the racial views of Neill Payne.
4. Failed to control his wife’s speech and e-mail.

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5. Abandoned pastoral functions: lack of attendance at Boy Scout meetings and men's prayer meeting, neglect of visitation, and neglected to notify Session of death of an elder emeritus.
  6. Caused [unspecified] further divisions in the church.
- Sept 9 TE Martin Payne (pastor of Lakey Gap PCA in Black Mountain, NC, about 3 miles from FPC) e-mails WCP clerk and moderator urging attention to the Grievance Letter and its allegations. Also copies Richard Hicks, TE Inman, TE Smith, RE Linton, Mr. Lyons, and Neill Payne (no relation to TE Payne).
- Sept 10 WCP Clerk TE Gillikin responds with brief e-mail, copied to same men.
- Sept 11 TE Payne e-mails again. Clerk responds that the matter would need to wait until the Nov 7 stated meeting, unless the requisite number of presbyters asked for a called meeting.
- Nov 6 Bulkeley files with WPC Clerk a 10-page Response to Request for Investigation (hereafter, RRI) asking Presbytery to "accept it as a 'satisfactory explanation' of the reports affecting my Christian character and conclude that there is no strong presumption of guilt on my part for the grievances therein."
- Nov 7 Presbytery Stated Meeting at Ridge Haven. Moderator appoints a six-man Committee (TE Basham convener) and referred to them several items related to FPC to report later that meeting. The meeting adjourned until Nov 18, with unfinished business, including consideration of the Aug 19 Grievance Letter.
- Nov 12 Letter from Kirk Lyons and Charles and Betty Tate, to WCP Clerk asking that "charges against TE Bulkeley be acted on immediately." The two-page letter had 10 pages of attachments, and listed six items, alleging that TE Bulkeley:
1. Initiated counseling with Charles and Betty Tate.
  2. Humiliated the Tates from the pulpit.
  3. Made tacit assumptions about the Tates and entered them in Presbytery's record.
  4. TE Neville admitted Tates into membership 12 years ago.
  5. From the pulpit, accused Kirk Lyons of asking him to lie in sermons.
  6. Circularized presbyters with his rebuke of Kirk Lyons

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Nov 14 E-mail from Robert Woodward, a member of FPC. In the Record, it is addressed to RE Linton, but the body of the e-mail addresses the WCP Clerk. E-mail accuses TE Bulkeley of “spreading misinformation about me and doing so in an unbiblical manner (disregarding Matthew 18)” with regard to something Bulkeley wrote in his Nov 6 RRI. He denied ever saying what Bulkeley alleged he said in a conversation prior to the June 1 congregational meeting.

Nov 18 Continuation of Nov 7 Presbytery meeting, now at Covenant Reformed Church. Among considering many other matters and complaints related to FPC, Presbytery instructs Moderator to appoint a Committee to investigate TE Bulkeley in accord with *BCO* 31-2.

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Jan 5 WCP Moderator notifies presbyters by e-mail that he has appointed the Bulkeley Investigation Committee (BIC).

Jan 9 BIC meeting 1 lasts one hour. Present were TEs Phillis (chair), Drake & McGinn and REs Brown & Russell (RE Cook absent). BIC minutes record “... all the documents pertaining to this matter, as forwarded by the clerk of Presbytery, had been reviewed by the committee members prior to the meeting.”

Jan 30 BIC meeting 2 lasts two hours ten minutes. All present, including TE Bulkeley, who was dismissed halfway through the meeting. After further discussion and upon motion, “the committee determined that no strong presumption of guilt could be found with him regarding the alleged grievances.”

Feb 28 Presbytery Stated Meeting at Dillingham PCA. TE Phillis reported for BIC. Their report was titled “Attachment G” but is not in Record. On motion, report of BIC was received and Presbytery accepted its finding that there was not a strong presumption of guilt with regard to the alleged grievances.

Mar 30 Four Complaints are filed with Presbytery Clerk.

TE Martin Payne files 23-page complaint with Presbytery, asking Presbytery to:

1. Reconsider its finding of Feb 28 of no strong presumption of guilt.
2. Vote against BIC recommendation of no strong presumption of guilt.

3. Refer the 31-2 investigation to the SJC.
4. Urge SJC to do “full eye-to-eye interviews with the 19 Aggrieved Members of FPC.”
5. “Admit her fault of withholding due process from the 19 Aggrieved Members and make a sincere, public, Presbytery-in-full-session apology to the 19.”
6. “Rebuke the BIC for their incomplete and poor adjudication of this serious matter, and be dismissed without thanks.”

RE James Linton files a one-page “Complaint” with Presbytery, signed only by him but indicating it was “on behalf of and with permission of RE Pellom, Charles and Betty Tate, Neill Payne, Elizabeth, Margaret and Duncan Linton, and others.” The Complaint alleges the BIC failed to investigate the grievances fully, offering the following reasons:

1. Complainants were denied due process in that they were not contacted, consulted or allowed to give evidence in any fashion before the BIC or Presbytery.
2. The BIC declined to receive proper evidence and thus failed in their duty of due diligence as required by *BCO* 31-2.
3. The BIC and Presbytery after delaying 5 months, hurried to a decision before any evidence of the Complainants was taken.
4. In declining to hear the aggrieved parties, the BIC appears to manifest extreme prejudice.
5. The judgment is manifestly unjust.
6. The decision was made without Christian love and in violation of Matthew 18.
7. By denying the Complainants a proper and fair hearing, the Committee is guilty of screening TE Bulkeley in his sin per *BCO* 34-2.

Kirk Lyons files one-page “Complaint” with Presbytery with 13 pages of attachments. He alleges Presbytery erred in accepting the finding of the BIC on Feb 28 and in their “defacto denying the charges of public sin” that he alleged in his letter of Nov 12. He presented the following reasons:

1. He was given no opportunity to present evidence for the charges he made in the Nov 12 letter.
2. He requested a formal hearing to present his evidence.

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3. He was denied fundamental due process by not presenting his evidence.
4. Presbytery and the BIC declined to receive proper evidence and thus failed in their duty of due diligence required by *BCO* 31-2.
5. Presbytery and BIC hurried to a decision before evidence was taken.
6. Presbytery and BIC appears to manifest prejudice in declining to hear evidence.
7. The judgment is manifestly unjust.
8. The decision was made without Christian love and in violation of Matthew 18.
9. By denying Complainant a proper and fair hearing, the BIC is guilty of screening TE Bulkeley in his sin per *BCO* 34-2.

Robert Woodward files two-page “Complaint” with Presbytery, alleging he was never given an opportunity to present his evidence or to be heard (regarding his November 14 e-mail accusing TE Bulkeley of spreading misinformation.) Items 2-9 in his complaint are the same as in Kirk Lyons’.

May 5 Presbytery Stated Meeting at Arden PCA. A Judicial Business Committee was appointed to consider and report (at this meeting) recommendations on “Attachments B, C, D and E” – the four complaints. JBC included TEs Kreitzer, Litchfield & Russ and REs Roberson, Wilson & Cook (convener). Later in the meeting, RE Cook reported for the JBC. A motion to rescind Presbytery’s action of Feb 28 (which did not find a strong presumption of guilt against TE Bulkeley) failed by vote of 31-20 (i.e., 60%, but lacking the 2/3 required to rescind something previously adopted without prior notice).

A motion to answer all four complaints by appointing a new committee to examine the charges against TE Bulkeley giving all parties a full hearing and reporting back to the next stated meeting of Presbytery failed by a vote of 20-32. Separate motions to deny each of the four complaints were then adopted by votes shown: Payne (32-16). Linton (32-17), Lyons (31-17) and Woodward (34-18).

May 8 Payne complaint received by PCA. (2009-05)

May 19 Linton complaint received by PCA (2009-08).

May 26 Lyons complaint received by PCA (2009-09).

Woodward complaint received by PCA (2009-10).

## **II. STATEMENT OF ISSUES**

1. Did Presbytery err in how it conducted the 31-2 investigation of accusations related to TE Bulkeley?
2. Did Presbytery err at its stated meeting on February 28, 2009 when it judged there was not a strong presumption of guilt related to accusations made against TE Bulkeley?

## **III. JUDGMENTS**

1. No.
2. No.

## **IV. REASONING, OPINION AND AMENDS**

Complainants allege two primary irregularities with the process Presbytery followed, arguing the conclusion would have been different if a different process had been followed. They allege (1) it was error for the Investigating Committee not to interview any of the people who sent grievance letters to Presbytery and (2) the process took far too long.

*BCO* 31-2, however, does not specify any particular procedures for a court to follow for investigations. It enjoins them to use “due diligence” but also affords them “great discretion.” It does not stipulate a timeline, composition of the investigating body, interview requirements, etc.

31-2. It is the duty of all church Sessions and Presbyteries to exercise care over those subject to their authority. They shall with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character. This duty is more imperative when those who deem themselves aggrieved by injurious reports shall ask an investigation.

If such investigation, however originating, should result in raising a strong presumption of the guilt of the party involved, the court shall institute process, and shall appoint a prosecutor to prepare the indictment and to conduct the case.

In different situations, prudence and wisdom may dictate different procedures. It is up to the investigating court to determine those procedures, subject to review by a higher court. We do not here find evidence sufficient to warrant a finding of clear error that would lead us to question the deference to which the lower court is ordinarily entitled. (*BCO* 39-3.3)

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A court has far more flexibility during the investigation phase than it does after it has instituted process. A person under investigation is not “under process.” Process begins with the appointment of a prosecutor (or when the court directs the appointment of one). This is noted in the quote below from F.P. Ramsay’s 1898 *Exposition of the Book of Church Order*. However, once a person is under process, *BCO* 32 and the chapters following outline specific details on how the court proceeds. But no details are stipulated for the investigation.

The court institutes process by appointing a prosecutor. It is the duty of the prosecutor thus appointed to prepare the indictment and to conduct the case; that is, the court, after the appointment of the prosecutor, is simply a judge, and the whole responsibility of representing the Church as an accuser is on the prosecutor. (Ramsay, 1898)

Regarding the timeliness of investigation, Complainant seems to think the Presbytery Clerk or Moderator had authority to initiate a 31-2 investigation of accusations against a TE. But the *BCO* does not give them that authority. Whenever accusations are made against a TE, the Presbytery will usually receive the accusations at the next stated meeting and, if an investigating committee is appointed, Presbytery will hear, consider, and act on their report and recommendation regarding indictment at the subsequent stated meeting. This is what occurred in this case. However, it could go quicker if Presbytery’s standing rules stipulate a different process, such as giving authority to a Shepherding Committee or Presbytery officers to investigate and report. And it could go quicker if there are called meetings of Presbytery to address the matter.

Complainant contends Presbytery erred by delaying to investigate the accusations. In his brief, he alleges the “delay of action” on this matter was “contrary to Scripture precedent (1 Cor 5) . . . and that set forth by Jesus Christ our Lord and Savior (Matt 7:12).” However, if the matter was as urgent as the Complainant contends, it is unclear why neither he nor any of the three REs who signed the August 19 letter took any actions such as the following:

- a. ask for a called Presbytery meeting between August 19 and November 7 (a span of more than 11 weeks).
- b. seek to amend the Nov 7 docket making the Grievance Letter a special order of the day.

- c. ask for a called Presbytery meeting soon after the Nov 18 meeting to hear and act on the report of the investigating committee which the Moderator was instructed to appoint.

For example, it does not appear that the TE Complainant or any of the RE Complainants took the initiative to call a Presbytery meeting to address the August 19 accusations. The 11 weeks between the August 19 Grievance Letter and Presbytery's November 7 stated meeting would have been sufficient time to (a) announce and convene a called meeting , (b) allow Presbytery to appoint an investigating committee, and (c) report their finding to the November 7 meeting. That would have addressed the matter 16 weeks earlier than the February 28 stated meeting. It is not clear why the Complainants did not call such a meeting, given the alleged sense of urgency.

Regarding the Complaints of Mr. Lyons (2009-09) and Mr. Woodward (2009-10), the Standing Judicial Commission finds neither had standing to bring a complaint because they were not under the jurisdiction of said Court. (*BCO* 43-1 and 11-4)

Therefore, since there is no Constitutional error, we give great deference to Presbytery in accordance with *BCO* 39-3 since this involves a factual matter which the lower court is more competent to determine, because of its proximity to the events in question and because of its knowledge and observation of the parties and witnesses involved (39-3.2). It is also a matter of discretion and judgment that is best addressed by the court most acquainted with the events and parties (39-3.3).

This Decision was drafted by the Panel (Dominic Aquila, Howard Donahoe, and Grover Gunn) and amended by the full Standing Judicial Commission.

Roll call in 2009-5, 16, 17, and 18:

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TE Howell A. Burkhalter, Concur	RE J. Grant McCabe, Concur
RE E.C. Burnett III, Disqualified	TE Charles E. McGowan, Concur
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21 Concur, 2 disqualified, 1 absent