

CASE Nos. 2023-06 and 2023-08¹

TE KNOX BAIRD et al.

v.

GRACE PRESBYTERY

DECISION ON COMPLAINTS

March 7, 2024

CASE SUMMARY

These cases came before the SJC on the Complaints of TE Knox Baird and several other members of the Session of First Presbyterian Church of Hattiesburg, Mississippi (“FPCH”) against Grace Presbytery (“GP”) arising out of actions by GP in response to multiple requests for review or investigation of actions by the Session of FPCH (“the Session”).

I. SUMMARY OF THE FACTS

- 05/18/22 By a vote of 17-0 the Session voted to engage a third-party mediator to assist in identifying and resolving conflicts within the church. Session minutes indicate that this followed a period of “many trials and difficulties,” and note “disagreement between members of the staff.”
- 05/25/22 The Session voted 13-4 to engage the Blue Hen firm as a mediator.
- 05/31/22 TE Jim McCarthy, Senior Pastor of FPCH wrote the Session indicating that he “[could not] participate in this ‘Blue Hen’ process,” noting that he believed the proposed process was contra-Biblical.
- 06/03/22 A complaint by RE Hugh Bolton and seven other FPCH members against the May 25 action of the Session was addressed to the

¹ These two Cases were assigned to the same Panel under RAO 17-3(d). The Panel heard and decided the Cases together because they involve the same parties and present interconnected questions of fact.

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Stated Clerk of the Session. The Clerk later indicated that RE Bolton instructed him to “hold the Complaint.”

- 06/22/22 The Session approved a motion to: (1) request assistance from GP’s standing Advisory Committee “to promote the peace, purity and unity within the leadership of the church,” (2) request that the Advisory Committee co-receive the report of Blue Hen, and (3) “that the Advisory Committee of GP provide counsel and coaching where needed, and identify action plans to assist in the restoration of damaged relationships.”
- 07/19/22 RE Bolton addressed another complaint against the Session’s actions concerning Blue Hen to the Stated Clerk of the Session. Documents produced by the Session indicate that Mr. Bolton instructed the clerk to “hold” the complaint and that this complaint was not known to the Session until it was produced as an attachment to a Dec. 22, 2022 complaint to GP by FPCH member Mr. Charles Wilson.
- 07/20/22 At the Stated Session Meeting, the Session passed a Motion to suspend the activities of The Blue Hen Group for three (3) months. A timeline produced by the Session further indicated that TE Toby Holt, Chairman of the Presbytery Advisory Committee, proposed “3 months of peace” when the Session would not discuss nor take any action related to disputed matters. That timeline also indicated that RE Hugh Bolton addressed the Session to inform the Session members that he had prepared a Complaint against the Session for its engagement with The Blue Hen Group and that RE Bolton told the Session that he had instructed the Clerk of Session to hold the Complaint and not file it. Note that these timeline items do not appear in Session minutes.
- 09/21/22 A representative of Blue Hen hand-delivered a check to FPCH refunding the fee previously paid, less its out-of-pocket costs.
- 10/19/22 GP’s Advisory Committee produced a “Preliminary Report” in which it summarized its understanding of the history of conflict and offered five options for FPCH: reconciliation, church

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planting, judicial process, congregational meeting, and departure of parties.

- 11/30/22 Charges were filed against nine members of the Session by 27 members of FPCH. The charges included “making accusatory and slanderous statements …untrue [statements] concerning [FPCH’s Senior Pastor], … [attempt[ing] to go outside the church to settle disputes, and violat[ion of] their vows.” (“Charges #1”)
- Special Called Session Meeting by RE Greg Powell and RE Randy Henderson to discuss reconciliation among the Session. All options/alternatives for pathways forward as suggested by the GP Advisory Committee from its report dated October 19, 2022, were discussed. At the conclusion, TE McCarthy told the Session that he did not know why it wouldn't call a Congregational Meeting to resolve these matters as the Session had the votes to do so.
- 12/02/22 Eleven (11) Ruling Elders of the Session filed a request for the Session to call a Congregational meeting to vote to dissolve the call of TE McCarthy should he not resign by December 28.
- 12/07/22 Called Session meeting called by TE McCarthy to bring up the matters in Charges #1. The nine (9) Ruling Elders named in Charges #1 were not allowed to attend the meeting based upon Moderator McCarthy's unilateral decision made prior to the meeting that (a) process had immediately begun against the nine (9) Ruling Elders by the accusers reducing the charges to writing and delivering same to the Session, and (b) that Charges #1 constituted a single, collective charge of slander against nine (9) men. The remaining members of the Session (exclusive of the nine (9) men) met separately and dismissed Charges # 1.
- 12/09/22 Called Session meeting, moderated by TE Jim Misner, to receive the request of the Eleven (11) Ruling Elders to call a Congregational Meeting for the purpose of voting to dissolve the call of TE McCarthy. No action was taken at this meeting. The meeting was concluded when RE Hugh Bolton requested that he and two (2) other Ruling Elders be allowed to speak privately with TE McCarthy about his resignation. Note that this timeline item

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does not appear in Session minutes, however, the minutes of a meeting on December 14 characterized that meeting as “a resumption of the Called Meeting begun on December 9, 2022.”

- 12/10/22 Request for Review on Dismissal of Charges based on *BCO* 40-5 filed with GP by FPCH member Charles Wilson and 24 others for the dismissal of Charges #1. The Session indicated it did not receive a copy of said Request for Review until January 24, 2023, when received from GP’s First Pres Committee/ Commission.
- 12/11/22 Complaint by FPCH Member Wade Walker filed with the Clerk of the Session alleging that he was improperly excluded from worship originating from his disruption of Communion during the FPCH Worship Service on November 22, 2022.
- 12/13/22 Charges # 2 dated Dec. 10, 2022 for Bribery/Extortion against Eleven (11) Ruling Elders filed by Charles Wilson and 24 others were received by the Session.
- 12/14/22 Request for Review filed with GP by Wade Walker and Frances Allston related to issues originating from Mr. Walker’s disruption of Communion during an FPCH Worship Service. The Session has indicated it did not receive a copy of said Request for Review until January 24, 2023, when received from GP’s First Pres Committee/Commission.

Called Session meeting where RE Hugh Bolton delivered TE McCarthy’s resignation proposal that was agreed to by the Session.
- 12/21/22 Complaint filed with GP by Charles Wilson and 19 others pursuant to *BCO* 43-1 concerning the Session’s use of Blue Hen. The Session has indicated it did not receive a copy of this Complaint until January 24, 2023, when received GP’s First Pres Committee/Commission.
- 12/22/22 TE McCarthy sent a letter to the members of FPCH informing them of his resignation.

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Request of Review on Lack of Action based on *BCO 40-5* filed with GP by Charles Wilson and 24 others for lack of action on Charges #2. The Session has indicated it did not receive a copy of this Request until January 24, 2023 when received from Presbytery's First Pres Committee/Commission.

- 12/26/22 The Session mailed a letter calling a congregational meeting to act upon the resignation of TE McCarthy.
- 01/01/23 Charges # 3 dated December 27, 2022 for Slander against RE John Kosko by Charles Wilson was received by the Session.
- 01/08/23 The FPCH congregation voted 273-92 to accept the resignation of TE McCarthy.
- 01/09/23 Three (3) Complaints against the Session were filed by FPCH RE Grant Bennett. (Complaint 1- Excluding 9 Elders from the called meeting of December 9, 2022; Complaint 2- Not proceeding with judicial process on Charges #2; Complaint 3- Not acting in a timely manner at the "next Session meeting" on Charges #3.) All three (3) Complaints were later sustained by the Session on January 18, 2023.
- 01/10/23 GP acted to dissolve the pastoral relationship between FPCH and TE McCarthy. Also, the Presbytery voted to appoint the First Pres Committee/Commission.
- 01/18/23 The Session initiated judicial process on the Twenty-One (21) Charges pursuant to Charges # 1 dated Nov. 30, 2022 for Slander, Charges # 2 dated December 10, 2022 for Bribery/Extortion, and Charges # 3 dated December 27, 2022 for Slander. Prosecutors were appointed for each set of Charges with instructions for indictments to be drawn and delivered to each accused.
- 01/24/23 GP's Committee/Commission wrote the FPCH Clerk of Session directing certain documents be made part of the Record, including individual communications among elders and church members.

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- 02/06/23 *BCO* 43-1 Complaint by Charles Wilson and Ed Allegretti dated February 4, 2023, signed February 5, 2023. was received by the Session.
- 02/22/23 Letter from the GP's First Pres Committee/Commission was received by the Session. This letter responded to a request for extension of time to produce documents, alerted the Session to a 40-5 complaint concerning the conduct of slander trials ("Charges #1"), and asked that the Session notify the FPCH congregation of the committee-commission's ongoing work.
- 02/22/23 The Session received pleas from each accused on the Twenty-One (21) indictments, set trial dates, and appointed a Judicial Committee to coordinate same. The Session also acted on the *BCO* 43-1 Complaint of Charles Wilson and Ed Allegretti received on Feb. 6, 2023. Additionally, the Session instructed Church Administrator Arrington Rhett to email the requested Session minutes to the Committee/Commission.
- 02/23/23 FPCH Church Administrator emailed the First Pres Session Minutes for the years 2021 and 2022 to the Presbytery's First Pres Committee/Commission.
- 03/02/23 FPCH Church Administrator emailed the Session Minutes for the January 2023 Session meeting to the Presbytery's First Pres Committee/Commission.
- 03/06/23 FPCH elders filed their First Complaint with GP seeking the dismissal of the Blue Hen Complaint and the dissolution of the GP Commission on procedural grounds. ("First Complaint") On the same date the FPCH elders filed their Second Complaint with GP seeking the dismissal of the *BCO* 40-5 Requests for Reviews and the dissolution of the GP Committee on procedural grounds. ("Second Complaint")
- 03/07/23 GP Commission issued a Stay of pending trials.
- 03/30/23 GP met in a called meeting and denied the First Complaint and the Second Complaint and further directed that all related matters at

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the Session level and at the Presbytery level be held in abeyance until decisions are rendered by the higher court.

- 04/20/23 FPCH elders elevated the First Complaint and the Second Complaint to the General Assembly by filing notice with the Office of the Stated Clerk.
- 04/24/23 FPCH elders filed their Third Complaint with GP, seeking to vacate the Stay order issued by the GP Commission, thereby allowing FPCH Session to conduct trials.
- 05/09/23 At its stated meeting GP denied the Third Complaint.
- 05/17/23 FPCH elders filed with the General Assembly, escalating the Third Complaint.
- 08/29/23 SJC cases 2023-06 and 2023-08 were assigned to a panel consisting of RE John Bise (convener), TE Rhett Dodson, RE Jack Wilson, and alternates RE John Maynard and TE Mike Ross.
- 10/25/23 The Panel conducted a Hearing on the Record of the Case and subsequently finalized the ROC.
- 12/20/23 The Panel conducted the Hearing.

II. STATEMENT OF THE ISSUES

1. Did Grace Presbytery err under *BCO* 43-8 in appointing the Commission to hear December 21 Blue Hen complaint due to that complaint being administratively out of order and otherwise untimely per *BCO* 43-3?
2. Did Grace Presbytery err under *BCO* 43-8 in appointing the Commission to hear December 21 Blue Hen complaint due to that complaint being moot and thereby administratively out of order under *BCO* 43-3?

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3. Did the GP Commission violate *BCO* 11-4, 13-9, and 43-6 and grossly exceed its authority when it directed the Clerk of Session and the Session to produce personal communications of individual Session members?
4. Did the Commission violate *BCO* 11-4, 13-9, and 43-6 and grossly exceed its authority when it directed the Session to inform the FPCH congregation of the Commission's work?
5. Did Grace Presbytery err under *BCO* 11-4, 13-9, 40-3, and 40-5 when it appointed the Committee to address three Requests for Review that were already the subject of complaints filed with the Session?
6. Did the Commission exceed its authority in staying the pending trials?
7. Was the Commission's Stay of Pending Trials unconstitutional because the Commission demonstrated it is not impartial respecting FPCH?

III. JUDGMENTS

1. Yes
2. Yes
3. Yes, in part.
4. Yes
5. No
6. Yes
7. Not reached or decided

IV. REASONING AND OPINION

Issues 1 & 2 - The appointment and work of the Commission to hear the “Blue Hen Complaint.”

In May 2022, the Session voted to hire the Blue Hen Group to assist in identifying and mediating relational, administrative and personnel issues. A ruling elder in active service on the FPCH Session presented a written complaint (joined by other church members) against this action to the FPCH Clerk and instructed him to “hold” it. In June 2022, the Session requested

assistance from GP's standing Advisory Committee. In July 2022, the same ruling elder wrote to the Session regarding his Complaint. On July 20, 2022, the Session approved a motion to suspend the activities with the Blue Hen Group pending further interaction with the Presbytery's Advisory Committee. In September 2022, the Session terminated the engagement with Blue Hen.

The FPCH Session contends the "Blue Hen Complaint" was never properly presented to it because of the filer's instructions to the Clerk to "hold" it, and that it became moot when the engagement with Blue Hen was terminated. Session minutes for 2022 do not indicate that the ruling elder who initiated the "Blue Hen Complaint" ever released his "hold" or took other action to request a hearing or obtain a decision from the Session. However, in December 2022, he presented the Complaint to GP and contended that the Session had failed to act on it. GP assigned the matter to the Commission for adjudication.

The Record clearly demonstrates that the original Complaint was never formally filed (because the filer requested it to be "held" and never instructed the Clerk to present it to the Session) and was thus never considered by the FPCH Session. In intervening months, the action of the Session to abandon and terminate the engagement with the mediator/consultant rendered the issues presented in the Complaint moot. The effect of the termination was to take the same action (namely, terminating the engagement) as the relief sought in the Complaint. For these reasons, the questions presented in the "Blue Hen Complaint" were subsequently rendered moot. As to this issue these issues, the Complaint is sustained.

Issue 3 - The GP directive for the FPCH Clerk to provide communications not in his possession.

In January 2023, while the charges against ruling elders were pending trial in the lower court, GP's Committee/Commission directed that the Clerk of FPCH's Session transmit the following to be made a part of Committee/Commission's Record:

1. Complete Session Minutes, including unredacted Executive Session Minutes touching on the conflict leading to the resignation of TE Jim McCarthy, from 01-01-2021 through 01-10-2023...

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2. All communications (letters, emails, text messages) among the FPC teaching and ruling elders touching on the conflict leading to the resignation of TE Jim McCarthy, from 01-01-2021 through 01-10-2023;
3. All communications (letters, emails, petitions, and text messages) presented by the FPC teaching and ruling elders at FPC Session meetings touching on the conflict leading to the resignation of TE Jim McCarthy, from 01-01-2021 through 01-10-2023;
4. All communications (letters, emails, petitions, and text messages) from FPC members to the FPC teaching and ruling elders, touching on the conflict leading to the resignation of TE Jim McCarthy, from 01-01-2021 through 01-10-2023, whether read at Session meeting or not shared by the Clerk with the Session;
5. Lists of FPC members contacted by each FPC elder touching on the conflict leading to the resignation of TE Jim McCarthy, from 01-01-2021 through 01-10-2023; numbering from original.
6. All communications (letters, emails, text messages) between the ITC teaching and ruling elders and The Blue Hen, either the entity or individuals working with or for The Blue Hen
7. All minutes, reports, and communications between the members of the FPC Session committee recommending the employment of The Blue Hen;
8. All communications (letters, emails, text messages) between the FPC teaching and ruling elders and the Presbytery Advisory Committee, including any individual members of the Advisory Committee; and
9. Any other information or documentation touching on the conflict leading to the resignation of TE Jim McCarthy, from 01-01-2021 through 01-10-2023 believed to be relevant.

The requests for Minutes, papers presented to Session, etc. (i.e. items 1, 3, 6, 7, 8, 9) were appropriate. With regard to the other items the Committee/Commission went too far. Here GP's Committee/Commission demanded that the Clerk obtain documents not in his custody or control from individuals against whom several charges were pending at the time of its request. The request was not limited to Session records and actions. Instead, it sought "all communications," including individual communications and messages among elders and from members "touching on the conflict."

Clerks of Sessions and Presbyteries have a duty to keep accurate records of the proceedings of their respective courts (*BCO* 12–7, 13–11). In the case of a trial, the minutes of the trial, consisting of the charges, the answer, record of the testimony, and all such acts, orders, and decisions of the court relating to the case, form the Record of the Case (*BCO* 32–18). When the case is removed from the lower court by appeal or complaint, it is the duty of the lower court to provide the Record of the Case to the higher court, along with the notice of appeal or complaint and the reason(s) for said action (*BCO* 32–18, 42–5, 43–6). Nothing outside this Record may be taken into consideration by the higher court (*BCO* 32–18).

In the case of investigations, both Sessions and Presbyteries have a duty, which they are to exercise with due diligence and great discretion, to demand from those under their care satisfactory explanations concerning reports affecting their Christian character (*BCO* 31–2). If such an investigation results in raising a strong presumption of guilt, then the court is to initiate process (*BCO* 31–2).

Applying those provisions to these cases, we reach three conclusions regarding the Committee / Commission's directive for the Clerk of Session to submit documents:

First, the Presbytery's Committee/Commission directed the FPCH Clerk of Session to make "all communications (letters, emails, text messages) between the FPC teaching and ruling elders and the Presbytery Advisory Committee, including any individual members of the Advisory Committee; and any other information or documentation touching on the conflict leading to the resignation of TE McCarthy from 01–02–2021 through 01–10–2023" a part of the Record. This directive was, in the first place, unduly broad and sweeping in its range. The Clerk could not reasonably be assumed to have in his possession or have access to "all communications (letters, emails text

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messages)" among individual members of the session, members of the church, and a committee of Presbytery etc. Furthermore, *BCO* 32–18, 42–5, and 43–6 define the contents of the Record. Those contents consist of the official records of the court and do not extend to or include personal communications except those voluntarily submitted as evidence in the course of an investigation or trial. The foregoing *BCO* provisions should not be understood to impose a duty on the clerk of the lower court to obtain documents, even from members of the court, that the clerk does not already have in his possession. The obligation for the clerk of the lower court to assemble the record of the case should not be interpreted as a subpoena power by the higher court. When the Presbytery Commission requested the FPCH Clerk of Session submit the relevant documents, he submitted to the Commission all the relevant Session minutes and documents in his possession. The *BCO* requires him to deliver no further documents.

Second, had Presbytery followed the required procedure of *BCO* 40–5 and in the first instance cited "the court alleged to have offended to appear before the court having appellate jurisdiction, or its commission," then the Committee/Commission could have requested personal communications directly from the individuals involved rather than addressing a sweeping directive to the FPCH Clerk of Session. Moreover, the demand that correspondence among individuals be made a part of the "record of the case", suggests an intention to use these communications as part of a formal investigation and subsequent proceedings, even though those individual communications were not part of the Session's records and could not, by definition, evidence or reflect any official acts of the Session. The Committee/Commission confused its pastoral or shepherding function (acting as a committee, in part at the invitation of the Session) with its quasi-judicial function (acting as a commission investigating under *BCO* 40-5). This confusion was compounded by GP's failure to first cite the Session to appear and explain its actions as directed by *BCO* 40-5. The Session requested an informal meeting with the Committee/Commission, and the Committee/Commission declined that request.

Third, while a court or its commission may make a reasonable request for pertinent information in order to form a more complete picture of the situation which it is called to investigate or adjudicate, at no point, either with regard to investigations or trials does the *BCO* authorize a court to compel the submission of personal correspondence in any form (e.g. texts, emails, letters,

etc.). A court may request personal correspondence in the course of an investigation, especially in a case like this one, where specific charges have been filed and said correspondence is likely to bear directly on the accused's guilt or innocence. In addition, a party may willingly submit personal correspondence as evidence in an investigation or trial (see *BCO* 35). But no court has the right to compel or force the submission of such correspondence.² The Committee/Commission exceeded its authority when it issued its directive.

When a Session or Presbytery receives a report affecting the Christian character of one of its members, the court, "shall with due diligence and great discretion demand from such persons satisfactory explanations" (*BCO* 31–2), but such a demand is only a request, however strongly, authoritatively, or urgently it may be made. No court may force or compel an explanation. Two convincing reasons exist that lead to this interpretation of the term *demand*. First, this sense becomes clear when *BCO* 31–2 is read in the historical context of the proposed 1858 revisions to the Book of Discipline. The committee of ten members who worked on the revision (including Charles Hodge and James Henley Thornwell) originally proposed the text read as follows: "Nevertheless, each church court has the inherent power, to demand and receive satisfactory explanations from its members concerning any matters of evil report." Though courts have the right to demand satisfactory reports, the phrase "and receive," raised great concerns. The church's power is "wholly" (*BCO* 3–2) and "exclusively spiritual" (*BCO* 3–4) and as such is "only ministerial and declarative" (Preliminary Principle 7) and can, in no sense, be coercive.

Second, the term *demand* must be read as a request because "the accused party is allowed, but shall not be compelled, to testify" in giving evidence (*BCO* 35–2). Members of the church are free from self-incrimination. If *demand* meant to compel or force satisfactory explanations, then one could be compelled to testify in violation of *BCO* 35–2 and thus forced into self-incrimination. The phrase "and receive" was, therefore, dropped from the proposed revision of 1858, and the essential reading of *BCO* 31–2 as we have it today was adopted.³

² This decision does not involve and does not reach any questions related a court's right to demand explanations or documents from individuals for issues not related to pending charges. Similarly, this decision should not be misunderstood to foreclose the possibility that a member's declining to respond to such inquires or requests, in the absence of pending charges, could form the basis for further action by the court. See *BCO* 35–14.

³ For helpful articles, see <https://www.pcahistory.org/bco/pcusa/1858/rod.pdf> (accessed 1 January 2024); <https://www.pcahistory.org/bco/articles/hodge-1858-revisedbook.pdf> (accessed 1 January 2024). J. H. Thornwell defended the inclusion of "demand and receive"

Courts can seek, request, and even demand information, but they cannot compel the submission of any documents other than those which rightfully compose the Record of the Case as defined by the *BCO* (32–18, 42–5, 43–6). Presbytery could have requested, but was in error to direct, the submission of additional documents, and its directive is vacated. As to this issue, the Complaint is sustained. This decision does not reach any questions related to whether such communications, if obtained by a prosecutor, could be used as evidence in a trial.

Issue 4 - The GP directive for the Session to inform the congregation.

The Presbytery consists of the teaching elders and congregations accepted by it within its geographical bounds (*BCO* 13–1). The Presbytery has responsibility for said elders and congregations, and to carry out that responsibility, the Presbytery has certain powers which *BCO* 13–9 outlines. None of its powers, however, allow Presbytery to demand or compel Sessions under its care address their congregations.

As with Issue 3 above, the Presbytery may request and even urge the Session to inform the congregation of its activity, or the Presbytery may itself inform the congregation of its activity (*BCO* 13–9.f). But the Presbytery does not have the right to demand the Session communicate with the congregation. As to this issue, the Complaint is sustained.

Issue 5 - GP's appointment of a committee to review *BCO* 40-5 Reports

The Session in June 2022 requested assistance from GP's standing Advisory Committee for three purposes, all related to conflict within the Church and its leadership. Based upon the information known to the Advisory Committee, the complaints lodged with GP, and the complexity of the situation, it was not unreasonable for GP to assign consideration of the "Requests" which were in the nature of "report with respect to the court next below of any important delinquency or grossly unconstitutional proceedings of such court" (*BCO* 40-5) to a committee. As of the January 10, 2023 Called Meeting of GP at which the Committee was appointed, GP did not have minutes of the Session for the

(see <https://www.pcahistory.org/HCLibrary/periodicals/spr/v13/13-1-1.pdf>) (accessed 1 January 2024), but it was R. L. Dabney's view that prevailed (see <https://www.pcahistory.org/HCLibrary/periodicals/spr/v12/12-1-3.pdf>) (accessed 1 January 2024).

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relevant meetings since those minutes were not sent until February 23 and March 2, 2023. [ROC 170] Those “Requests” and statuses as of the January 10, 2023 appointment of the Committee were:

Request 1 was filed December 10, 2022 and related to the dismissal of Charges #1 against nine of the REs of the Session. [ROC 83-84] On January 9, 2023, RE Grant Bennett complained against the Session “for the Session’s delinquency and failure to properly act in its meeting on December 7, 2022 in relation to charges filed by members” As of the January 10 Committee appointment date, there was no indication that any further action had been taken by the Session since the dismissal of the underlying charges on December 7 and there is no indication in the ROC that GP had any knowledge of the then recently filed complaint by RE Bennett. We note that Session minutes from a meeting on January 18, 2023 indicate that the Session initiated judicial process on these Charges #1 by appointing a prosecutor, ordering that indictments be drawn and served upon the accused men with lists of witnesses, and that each accused be cited to appear to enter his plea. Those actions were interrupted by the filings of 40-5 Reports, the actions of GP, and suspending of process pending rulings by the SJC.

Request 2 was filed by FPCH member Wade Walker on December 14, 2022, relating to the Session’s action ordering him to abstain from worship following his disruption of a worship service on November 27, 2022. Mr. Walker submitted an apology to the Session on November 27, 2022, requesting forgiveness by the Session. He had complained to the Session against this action on December 11, 2022. That Complaint was not included in the ROC, but reference to it appears in Session minutes of December 14, 2022. In the same meeting of December 14, the Session voted to sustain Mr. Walker’s December 11 complaint. There is no indication in the ROC that GP had knowledge of these facts or of actions by the Session as of January 10, 2023. Request 3 was filed by FPC member Charles H. Wilson and 24 others on December 22, 2022. This request related to the Session’s failure to act on Charges #2 brought against 11 ruling elders of the Session by Mr. Wilson and 24 others. Charges #2 were dated December 10, 2022 and received by the Session on December 13, 2022. The Session held a called meeting on December 14, 2022 to act upon other matters. There is no indication in the ROC that GP had knowledge of these facts or of actions in response by the Session as of January 10, 2023. As was the case with Request 1, Session minutes from a meeting on January 18, 2023 indicate that the Session initiated

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judicial process on these Charges #2 by appointing a prosecutor, ordering that indictments be drawn and served upon the accused men with lists of witnesses, and that each accused be cited to appear to enter his plea. Those actions were interrupted by the filings of 40-5 Reports, the actions of GP, and suspending of process pending rulings by the SJC.

GP had a duty to examine the reports, an important aspect of which would have been determinations as to the appropriateness for GP to “take up” any action on the basis of the reports. It was entirely appropriate for GP to assign responsibility to examine to a committee. As of the date of the Complaint by FPC, neither GP’s FPC Committee nor GP had taken any complainable action such as a premature intervention in a matter properly before the Session.

For these reasons, as to this issue, this Complaint is denied.

Issues 6 & 7 - The stay of trials scheduled in the lower court.

BCO 40-5 permits a higher court to stay the actions of a lower court when a 40-5 report is pending, but only after the higher court has cited the lower court to appear to answer the issues reported.

40-5. When any court having appellate jurisdiction shall receive a credible report with respect to the court next below of any important delinquency or grossly unconstitutional proceedings of such court, *the first step shall be to cite the court alleged to have offended to appear before the court having appellate jurisdiction, or its commission, by representative or in writing, at a specified time and place, and to show what the lower court has done or failed to do in the case in question.* (emphasis supplied)

The court thus issuing the citation may reverse or redress the proceedings of the court below in other than judicial cases; or it may censure the delinquent court; or it may remit the whole matter to the delinquent court with an injunction to take it up and dispose of it in a constitutional manner; or it may stay all further proceedings in the case; as circumstances may require.

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The GP Committee/Commission failed to issue such a citation or afford the lower court an opportunity to be heard prior to entering its stay order. In staying the trials without following the procedures outlined in *BCO 40-5*, GP's Committee erred.

This decision does not require the SJC to rule on Issue 7 presented by the Complainants, since the GP Commission has no jurisdiction to conduct the trial of the cases. At the hearing, GP's representatives conceded that GP is not aware of grounds that would allow it to assume original jurisdiction over the pending trials at this time.

For these reasons, the Complaint is sustained and the "stay" is annulled. The trials should proceed in the court of original jurisdiction (FPCH) in accordance with the Constitution. Should any errors arise in the conduct or outcome of the trials, those may be addressed through the appeal or complaint process. Should any improper proceedings occur to which *BCO 40-5* applies, those matters may be presented to GP by report or in the review of the Session's records by GP.

The Case Summary and Statement of Facts were drafted by Panel Chairman Bise. The Reasoning and Opinion was drafted by all Panel members, edited by the Panel, and adopted unanimously. The SJC reviewed each part of the January 30, 2024 proposed decision and approved the final version of the Decision by vote of **17-0**, with one disqualified, four recused, and two absent.

Bankson	<i>Concur</i>	S. Duncan	Disqualified	Maynard	<i>Concur</i>
Bise	<i>Concur</i>	Eggert	<i>Concur</i>	Neikirk	<i>Concur</i>
Carrell	<i>Concur</i>	Evans	Absent	Pickering	<i>Concur</i>
Coffin	<i>Concur</i>	Garner	<i>Concur</i>	Sartorius	<i>Concur</i>
Dodson	<i>Concur</i>	Greco	<i>Concur</i>	Ross	Absent
Donahoe	Recused	Kooistra	Absent	Waters	Recused
Dowling	<i>Concur</i>	Lee	<i>Concur</i>	White	<i>Concur</i>
M. Duncan	Recused	Lucas	Recused	Wilson	<i>Concur</i>

RE Sam Duncan was disqualified because he is a member of a church in this Presbytery.

MINUTES OF THE GENERAL ASSEMBLY

RE Mel Duncan indicated he recused "because of a close prior relationship to the former S Minister of FPC Hattiesburg. I was the Calvary Presbytery approved mentor to Rev. McCarthy and my children made professions of faith under his ministry as a Youth Director in my home church."

RE Donahoe indicated he recused because he was aware of facts not in the Record and did not believe he could be sufficiently impartial.

TE Lucas indicated he recused because he is the former senior pastor of FPC Hattiesburg.

TE Waters indicated that he recused from this case because of prior correspondence with a member of Grace Presbytery regarding a procedural question that TE Waters, in hindsight, believes touched on issues related to this Case.

CONCURRING OPINION

Case Nos. 2023-06 & 2023-08: *TE Baird et al. v. Grace*

TE David F. Coffin, Jr.,

joined by RE Pickering, TE Greco, RE Neikirk, TE Bankson

March 27, 2024

I concur with the decision of the Standing Judicial Commission (SJC) in this case, to sustain, in the main, the Complaint. That concurrence notwithstanding, I believe the SJC erred in failing to redact the Complainant's Brief for cause. In my judgment, the Brief should have been redacted, first by the Panel, and then, failing that, by the Commission, for the use of intemperate language and for failing the rules of decorum in debate. In each of six instances, veiled accusatory language or insinuations are gratuitously made with respect to the Clerk of Grace Presbytery. Whatever his failings may or may not have been, he should not be indicted or put on trial in a brief. The error is compounded in that this setting provides the Clerk no opportunity to respond to the claims and accusations.

In my judgment the material I object to does not in the least advance any legitimate purpose of the brief, i.e., to set forth sound and compelling

APPENDIX Q

arguments demonstrating why a court did or did not err in a given matter. I am not asserting that each instance of objectionable language in the brief is separately and equally culpable, but rather that each one is tied to the other as a part of a narrative, a narrative that begins mildly in the first instance and then progressively builds to something more bold and intemperate, drawing the reader in by degrees. Thus, properly, they all should have been redacted. They all appear to be part of one strategy to gradually undermine the Clerk in a way that violated Roberts's Rules of decorum in debate, and the requirement that all debate be germane to the question at hand. For my part, I am confident, that should such a speech have been offered on the floor of the General Assembly, the moderator would have rightly ruled it out of order on those grounds.

The SJC has a responsibility to its mission—seeking truth and justice through a civil, adversarial process—to police strictly violations of order. In correcting violations of its deliberative code, the Commission works to prevent the breakdown of the whole. In so doing, the SJC sustains a culture among its members that upholds the Commission's values and prepares members to uphold the same in the heat of proceedings in cases. At its October 2023 meeting, the SJC redacted, for intemperance, parts of a Brief filed by the Representative of the General Assembly in another Case. This decision is one in a chain of unbroken precedents in such matters, a chain that encourages consistency and impartiality. A link is now missing. It is my hope that the Commission will be restored to its accustomed care to maintain exacting standards of decorum in all of the deliberations that are before it.