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the church. Under these circumstances, therefore, the Session was within its authority to instruct Complainants not to disseminate the letter, which it believed would disturb the peace of the church.

This decision was written by TE Dominic Aquila, with RE Grant McCabe and RE John Tolson concurring.

November 13, 2006

The vote on SJC 2006-6 was:

TE Dominic A. Aquila, Concur	RE Marvin C. Culbertson Jr., Concur
TE Howell A. Burkhalter, Concur	RE Perry Denniston, Concur
TE Alton Craig Chapman, Absent	RE J. Howard Donahoe, Absent
TE Stephen M. Clark, Concur	RE Samuel J. Duncan, Concur
TE Paul B. Fowler, Concur	RE Terry L. Jones, Absent
TE William H. Harrell Jr., Concur	RE Thomas F. Leopard, Disqualified
TE Paul D. Kooistra, Concur	RE J. Grant McCabe, Concur
TE John M. McArthur Jr., Concur	RE Jay Neikirk, Concur
TE Charles E. McGowan, Concur	RE Steven T. O'Ban, Concur
TE D. Steven Meyerhoff, Concur	RE John Tolson, Concur
TE Michael M. Rico, Concur	RE John B. White Jr., Recused
TE Michael F. Ross, Concur	RE W. Jack Williamson, Absent

18 - Concur; 4-Absent; 1-Recused; 1-Disqualified

**STANDING JUDICIAL COMMISSION CASE 2006-7
APPEAL OF TE MICHAEL CHASTAIN
VS.
HERITAGE PRESBYTERY**

The Appeal of TE Chastain (SJC 2006-7) is judicially out of order. On May 8, 2006, TE Chastain renounced any jurisdiction of the Presbyterian Church in America over him. Therefore, all proceedings after May 8, 2006, in this matter are moot, and the decision in SJC 2005-1 remains in effect.

The Secretary called the roll. The vote on SJC 2006-7 was:

TE Dominic A. Aquila, Concur	RE Marvin C. Culbertson Jr., Absent
TE Howell A. Burkhalter, Concur	RE Perry Denniston, Concur
TE Alton Craig Chapman, Absent	RE J. Howard Donahoe, Absent
TE Stephen M. Clark, Dissent	RE Samuel J. (Sam) Duncan, Concur
TE Paul B. Fowler, Concur	RE Terry L. Jones, Absent
TE William H. Harrell Jr., Concur	RE Thomas F. Leopard, Concur

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TE Paul D. Kooistra, Absent	RE J. Grant McCabe, Concur
TE John M. McArthur Jr., Concur	RE Jay Neikirk, Dissent
TE Charles E. McGowan, Concur	RE Steven T. O'Ban, Dissent
TE D. Steven Meyerhoff, Concur	RE John Tolson, Concur
TE Michael M. Rico, Concur	RE John B. White Jr., Concur
TE Michael F. Ross, Concur	RE W. Jack Williamson, Absent

15 – Concur; 6 - Absent; 3 – Dissent

CONCURRING OPINION STANDING JUDICIAL COMMISSION CASE 2006-7 TE MICHAEL CHASTAIN VS. HERITAGE PRESBYTERY

For various reasons, the majority opinion fails to fully and clearly address a couple of issues. First, does the majority decision support the proposition that a court must cease the discipline process when one flees the court's jurisdiction or asks to be removed from the membership roll? Second, assuming the court is not barred from continuing the discipline process, what is the status of the case?

I. SUMMARY OF THE FACTS

Introduction

This case arises out of events surrounding a previous judicial case by Heritage Presbytery (HP) against one of its members, TE Michael Chastain (TE Chastain). HP's decision in that case was rendered on January 8, 2005, and found TE Chastain guilty of "divisive behavior" and imposed the censures of indefinite suspension from office and the Sacraments and a charge to meet these findings with a positive attitude and a heart willing to repent. TE Chastain appealed that decision to the General Assembly's Standing Judicial Commission (SJC) (Case 2005-01). The SJC rejected TE Chastain's appeal in Case 2005-01. HP took certain actions as a result of the SJC's decision, from which TE Chastain now appeals.

Facts

01-08-05 The HP Commission presented the following actions to Presbytery, to wit: Charge 1 - Violations of the Ninth Commandment/Frugality with the Truth (Not Guilty/

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Dismissed), Charge 2 - Harsh Treatment of Brothers (Dismissed), Charge 3- Divisive Behavior (Guilty of Specifications 3.1 [TE Chastain attempted to divide the TOCS Board from the Headmaster and a faculty member concerning Mel Gibson's movie *The Passion of the Christ*], 3.2 [TE Chastain's divisive behavior by speaking to the Congregation concerning the divided Session - the only division was his from the rest of the Session], and 3.4 [using a report to take his case of divided views with Session members to members of the Congregation, in spite of warnings from other elders in regard to the divisive nature of such actions]; and Not Guilty of Specification 3.3), and Charge 4 - Failure to Properly Shepherd (Dismissed). The Commission also found that TE Chastain needs to be reconciled with the CPC Ruling Elders and Teaching Elders before TE Chastain can be restored, as well as counseling. Presbytery received a Report/Judgment from the Commission, which was adopted (32 yea - 2 nay - 3 abstaining). This Report/Judgment contained a censure of indefinite suspension from office and the Sacraments and a charge to meet these findings with a positive attitude and a heart willing to repent. Presbytery erected a "Reconciliation Commission" to work toward reconciliation of all parties at CPC. TE Chastain announced his intention to appeal the decision and provided the Presbytery Clerk with a letter to that effect; thereby suspending the Judgment of the Court pursuant to *BCO* 42-6. Presbytery, in accord with *BCO* 42-6 and to promote peace in the local church and provide TE Chastain with time to consider how to best achieve reconciliation with his brothers, suspended TE Chastain from the Lord's Table and from office, not as a censure but for the reasons cited (27 yea - 1 nay - 2 abstaining). Note: It is from this action that Chastain appealed to the General Assembly/SJC in Case 2005-01.

06-25-05 At a Called Meeting, HP received and adopted a report from the Reconciliation Commission. The report was based on TE Chastain's witnessed contrition and confession for [only] those sins he believed he had committed, i.e. TE Chastain had not repented from all of the sins of which he had been found guilty. This action included the restoration of TE Chastain to "the Lord's Supper (effective immediately)" and reinstatement of TE Chastain "to full privileges as Moderator of Session"

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but “not to the pastoral aspects of his ministry.” The report making this recommendation made reference to *BCO* 42-6. The Moderator of HP ruled that this action was a reversal of “restraints imposed by [HP] under *BCO* 42-6.b.” After the action was taken, the Moderator ruled that the “suspension of TE Chastain from the Sacraments as imposed pending resolution of his appeal (*BCO* 42-6.b) is lifted” and that TE Chastain “may resume his ministerial role as Moderator of the Session of Christ Presbyterian Church, but no other Pastoral responsibilities pending the outcome of his GA Appeal.” It is clear that HP did not find TE Chastain had repented from all of his sins and remove the censures, pursuant to *BCO* 30-3.

- 09-10-05 At a meeting of HP, TE Chastain moved that the “restrictions of *BCO* 42-6 imposed upon him” be lifted. This motion was defeated. TE Chastain then moved that “he be allowed to ‘labor out of bounds at Christ Presbyterian Church of Elkton.’” This motion was ruled out of order. TE Chastain then requested the “he be transferred to the ‘American Covenant Reformed Presbyterian Church’ and that this take effect as of their reception of him.” This motion was defeated.
- 03-02-06 The full SJC adopted the decision of its Panel to reject TE Chastain’s Appeal in 2005-01.
- 03-14-06 The SJC’s decision was forwarded to HP and TE Chastain.
- 03-22-06 E-mail from TE Chuck Betters (Moderator of HP) to TE Chastain which states: “[i]t seems to me Mike that now is the time for you to admit to the sins for which you have been found guilty, seek forgiveness from the appropriate parties, and do everything in your power to reconcile with your brothers.”
- 03-29-06 E-mail from TE T. David Gordon, TE Chastain’s counsel in Case 2005-01, to various members of HP which states that “I think the logjam now is that Heritage [HP] believes Mike [Chastain] must repent of an action that he does not deem to be unscriptural, and which he therefore cannot conscientiously repent of.”
- 04-17-06 E-mail from TE Chuck Betters (Moderator of HP) to TE Chastain which states: “[t]he problem as I see it is that throughout this process you have chosen to repent of only those actions you deemed sinful. This is despite the fact that your brethren in the Lord, to whom you promised to submit

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yourself, and now the SJC, have all deemed you to be guilty of much more than you care to admit. You claim to face a matter of conscience even above the concerted wisdom of your brothers gathered as trial and appellate courts.” Further, TE Betters writes that: “Mike you have been found guilty of acting divisively in the Church by informing the congregation of division amongst the leadership, accusing brothers of sin to members of the congregation at large without benefit of process, and in so doing have served to separate brothers. Throughout these actions you have failed to heed the advice and counsel of your fellow elders, and have failed to show repentance for these sins.”

- 04-27-06 Agenda for the May 9, 2006 Stated Meeting is forwarded to the commissioners. TE Chastain is not on the proposed Docket.
- 05-03-03 Letter from TE Jeff Black, Clerk of Covenant Presbytery, Reformed Presbyterian Church in the United States (RPCUS), to the Stated Clerk of HP advising that TE Chastain had applied for transfer to Covenant Presbytery and requesting the record of the case against TE Chastain and the documents forwarded to the SJC concerning Case 2005-01.
- 05-04-06 E-mail from TE Chastain to Stated Clerk of HP requesting the above request be honored and that he had made application to be transferred to Covenant Presbytery of the RPCUS. E-mail from Stated Clerk of HP to TE Chastain stating that: “The SJC report is final and Presbytery is finished with your case. You are not on the docket. The Moderator wrote you a pastoral letter urging you to repent. The ball is entirely in your court, so to speak. Our duty is to pray for your heartfelt repentance.”
- 05-05-06 E-mail from TE Chastain to various members of HP which states that “I would like to ask you to assist me with something. I do not want any unrepented of sin in my life. Indeed our Confession says we must repent, specifically of specific sins. That being the case, may I ask, please: What, specifically, in your judgment, must I do to be reconciled to you? What are the things which, if I can agree to say and do them, you will consider to be true repentance and we will be reconciled? My questions are NOT rhetorical. I am serious about this.”
- 05-06-06 E-mail from TE Chuck Betters (Moderator of HP) to TE Chastain, and various others, which states: “I want to make

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one thing clear as the moderator. Heritage presbytery will not transfer Mike Chastain to any denomination unless or until Heritage presbytery is satisfied that there has been genuine time-tested repentance on Mike's part and that the censures imposed by presbytery are lifted. He is not a member in good standing and cannot be transferred without due repentance of the sins for which he has been convicted and censured." TE Betters also writes: "Mike, you are under censure. I would suggest that you follow the counsel of my previous pastoral letter and begin to reconcile and receive the counseling you so need. I will rule out of order any attempt to circumvent the SJC report and findings. I will also rule out of order any effort to transfer you that may come up at presbytery. We cannot transfer someone who is not a member in good standing."

- 05-08-06 E-mail from TE Chastain to HP (four (4) page letter) which states: "[n]ow that Heritage Presbytery has been upheld, I have requested that I be told what steps are necessary to satisfy this Court. No objective path has been laid, only vague generalizations that can only be assessed subjectively. In spite of my trying at every turn to achieve reconciliation biblically and in spite of my having complied at every turn with what was required of my (sic) without violating my conscience, the moderator informed me that, 'You have not demonstrated that the requirements of *BCO* 34-8 or 37-8 have been anywhere close to being fulfilled.....' and that until I satisfy their subjective standards as to what I have done wrong, I am not going to be allowed to exercise my calling." TE Chastain further states that: "since this part of the PCA is not properly practicing church discipline, since I have no expectation of receiving justice or mercy, and because the PCA is structured in such a way that erring Presbyteries are autonomous and are not corrected or even resisted when they violate Scripture except by way of review after the damage is done, lives destroyed, and ministers ruined, and because at this time the PCA church at large is not correcting the problem, but, in fact, protects such violations of faith, I have no choice but to seek another part of the church at large that will faithfully display the marks of a true church. I formally renounce the jurisdiction of the Presbyterian Church in America effective May 8, 2006. May God have mercy on us all."

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- 05-09-06 HP noted the reception of the foregoing letter from TE Chastain and that he was “currently under censure of Indefinite Suspension from the Sacraments & his office.” In response thereto HP took the following action:
“In view of the letter received by the Heritage Presbytery of the PCA (05/08/06) from C. Michael Chastain in which he seeks to elevate his sense of conscience over the combined wisdom of his brethren at both local and appellate levels and in which he purports to renounce their combined jurisdiction, Heritage Presbytery finds this writing and his failure to reconcile with his brothers coupled with his failure to show genuine repentance for the sins of which he was previously convicted show genuine repentance for the sins of which he was previously convicted despite pastoral counsel display such a continuing contumacy and impenitence so as to indicate incorrigibility in regard to these sins.”
and
“Heritage Presbytery finds Charles Michael Chastain, a teaching elder of this Presbytery, by sufficient evidence to be guilty of the sins of contumacy, and failure to be in subjection to his brethren, in addition to its previous findings in regard to his divisive actions and therefore we the Heritage Presbytery do adjudge him disqualified for the office of Christian ministry and do hereby in the name and by the authority of the Lord Jesus Christ, depose from the office of teaching elder the said C. Michael Chastain, and do prohibit him from exercising any of the functions thereof. We do moreover, by the same authority, exclude the said C. Michael Chastain from the Sacraments, and cut him off from the fellowship of the Church. (*BCO 36-7*)”
- 05-11-06 Letter from Stated Clerk of HP to TE Chastain stating that: “Several years ago you told me in a conversation that you believed that, biblically speaking, there were only three ways to leave a church, 1) death, 2) transfer to another biblical church, 3) excommunication. Heritage Presbytery chose option 3 for you.”

II. STATEMENT OF THE ISSUES

1. Did Heritage Presbytery err on May 9, 2006, in excommunicating and deposing TE Chastain?

III. JUDGMENT

1. Yes

IV. REASONING AND OPINION

Does the majority decision support the proposition that a court must cease the discipline process when one flees the court's jurisdiction, by renouncing the court's jurisdiction or asking to be removed from the membership roll?

While such a reading of the majority opinion is possible, it is not the only possible outcome. On what then is the finding that TE Chastain's Appeal is moot based?

One possible answer is just that, when a person in the discipline process renounces a court's jurisdiction or asks to be removed from the roll, the renunciation/request is honored, the discipline process is stopped and the member is removed from the roll. This action may be prudent and wise, based on certain civil laws that might require such an action, as a result of the voluntary nature of church membership. An exception to this, under civil laws, might be when a session or presbytery could demonstrate that it teaches its members that it practices discipline in this manner, regardless of such a renunciation/ request, and the session or presbytery is consistent in practicing discipline in this way.

Certain civil laws, unless certain exceptions are found, could award monetary damages against a religious body for failing to stop the discipline process and honor a request to remove a person from the membership roll. Accordingly, stopping the discipline process and removing a person from the roll after such a request may be prudent and wise, as well as practical under the circumstances.

The real question is whether this action is required under our ecclesiastical law. The clear answer to this is no. *BCO* 38-3 states that “[b]ut if at the time of the attempt to withdraw there is a record of an investigation in process (*BCO* 31-2), or there are charges (*BCO* 32-3) concerning the member or minister, the court of original jurisdiction may retain his name on the roll and conduct the case . . .” It should be noted that this ecclesiastical right to proceed with discipline must be tempered with the realities of our civil justice system, which could impose monetary damages for improperly refusing to honor the renunciation/request. Such a determination must be made by the court of original jurisdiction.

This case is further complicated by TE Chastain renouncing HP's jurisdiction over him, basically moving his membership into independency, without transfer to another body. The record indicates TE Chastain appears to hold to the position that such a request is not legitimate, i.e. such a request is not one of the authorized ways in which a person can leave a church, i.e. death, transfer to another biblical church or excommunication. If TE Chastain does hold this view, it would appear that his renunciation is not consistent with his views and/or legitimate. Such a determination must be made by the court of original jurisdiction.

On what other basis then could the finding that TE Chastain's Appeal is moot be based?

First, *BCO* 42-2 provides that “[o]nly those who have submitted to a regular trial are entitled to an appeal.” While TE Chastain submitted to a regular trial in regard to the charge of “divisive behavior,” by subsequently renouncing HP’s jurisdiction, he has clearly not submitted to a regular trial in connection with his failure to repent of his divisive behavior.

This failure to repent is the subject of subsequent trial, as discussed herein and answers the second question, i.e. assuming the court is not barred from continuing the discipline process, what is the status of the case? The answer to this question is that if a trial on TE Chastain’s failure to repent is not required, then he has submitted to a trial and his appeal is not moot on this basis. On the other hand, if such a trial is required, then TE Chastain has not submitted to a trial on the failure to repent issue and his appeal is moot.

Second, *BCO* 43-1 states that “[i]t is the right of any communing member of the Church in good standing to make complaint against any action of a court” TE Chastain is clearly not in good standing by virtue of the censures previously imposed on him. Accordingly, he is not entitled to file a complaint.

TE Chastain has not submitted to a regular trial on the charge that he has not repented and is not in good standing. Assuming that such a trial is required, he does not have standing to bring this case, making it judicially out of order, whether it is designated an Appeal or a Complaint.

Now in order to review whether or not a trial is required, one must examine the censures of excommunication and deposition from office.

But before addressing excommunication and deposition from office, it should be noted that the central issue to be reviewed is TE Chastain’s refusal or inability to repent of the sin of “divisive behavior.” TE Chastain continues to maintain that “divisive behavior” is not a sin, and therefore, is not something from which he needs to or can repent. This is

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the case even after HP and the General Assembly, through the SJC, have found that his “divisive behavior” was sinful.

The question is how should a presbytery deal with a sinner, after an adjudication as such, all appeals are final and the conviction is affirmed, and the sinner continues to maintain his innocence and that his conduct was not sinful.

BCO 36-6 provides that the censure of excommunication is only appropriate “after much admonition and prayer, [and the sinner] obstinately refuses to hear the Church, and has manifested no evidence of repentance.”

BCO 36-7 provides that the censure of deposition from office is only appropriate after being found guilty of a particular sin and the court “adjudge[s] him disqualified for the office of the Christian ministry.”

The question now becomes, at this stage of the proceeding, can a court merely adopt a resolution to the effect that TE Chastain has obstinately refused to hear the Church and failed to manifest evidence of his repentance and base a censure of excommunication on said resolution or should a court conduct a judicial proceeding, giving the accused an opportunity to refute the charge of his refusal and manifest evidence of repentance?

BCO 27-3 states that discipline is necessary to maintain the “keeping and reclaiming of disobedient sinners.” In this case, TE Chastain has been finally adjudicated to be a disobedient sinner. As a result of this, the censures of indefinite suspension from office and the Sacraments and a charge to meet these findings with a positive attitude and a heart willing to repent were imposed.

BCO 30-1 provides that when one convicted of a particular sin “satisfies the court as to his repentance and make such restitution as is appropriate,” the court may administer the censures of admonition or definite suspension from office. In this case, there is no evidence that TE Chastain has satisfied HP as to his repentance.

BCO 30-1 goes on to state that if the one convicted remains impenitent, the censures of indefinite suspension or excommunication shall be administered. In this case, TE Chastain was convicted and received the censure of indefinite suspension. This censure was upheld by the SJC in Case 2005-01.

BCO 30-3 provides that the censure of indefinite suspension is “administered to the impenitent offender until he exhibits signs of repentance, or until by his conduct, the necessity of the greatest censure be made manifest.” This means that if a sinner, after his conviction, does not exhibit signs of repentance, then the court will be forced to consider imposing the greatest censure of excommunication.

BCO 30-4 states that “excommunication is the excision of an offender from the communion of the Church. This censure is to be inflicted only on account of gross crime or heresy and when the offender shows himself incorrigible and contumacious.” In this case, TE Chastain’s sin, “divisive behavior,” was not a gross crime or heresy; therefore, the censure of excommunication would not have been appropriate at the time of his conviction. However, TE Chastain’s continued refusal or failure to repent at some point may become a gross crime and evidence an incorrigible and contumacious spirit. How a court reaches this decision is the issue in this case.

The *BCO* is not clear as to what procedure a court should follow if one adjudicated to be a sinner refuses or fails to repent of the sin.

BCO 32 outlines the general provisions applicable to all cases of process. *BCO* 32-2 states that process shall not commence unless a charge is made or the court finds it necessary to conduct a *BCO* 31-2 investigation. If such an investigation, however originating, results in raising a strong presumption of the guilt of the party involved, then the court should institute process. In this case, it appears that HP has determined, without a specific finding, that TE Chastain’s refusal or failure to repent has become a gross crime and contumacious. Accordingly, HP should clarify its finding of a presumption of guilt and follow the procedures set forth in *BCO* 32-3, i.e. appoint a prosecutor, order an indictment drawn, cite the accused, and conduct a trial, pursuant to *BCO* 32 and 34, on the issue of TE Chastain’s refusal and failure to repent.

BCO 34-4.b provides that “if after further endeavor by the court to bring the accused to a sense of his guilt, he persists in his contumacy; he shall be deposed and excommunicated from the Church.” This section provides further instruction that a determination must be made to the effect that the convicted man fails to acknowledge his guilt and persists therein, prior to a man being deposed and excommunicated.

While the foregoing has dealt primarily with the censure of excommunication, the censure of deposition from office is only appropriate after being found guilty of a particular sin and the court “adjudge[s] him disqualified for the office of the Christian ministry.” Likewise, this provision seems to require a trial to judge one to be disqualified for the office. What would grounds for such a finding be? At some point, most men have acted divisively. That alone is not a basis upon which to depose someone; however, unrepented divisiveness could be grounds for such a censure.

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While there is no comparable provision in the *BCO* for teaching elders, *BCO* 24-7 states that a ruling elder or deacon cannot “be degraded from either office, but by deposition after regular trial.” This clearly indicates a trial is necessary to depose a ruling elder or deacon.

In summary, HP, without specific and clear guidelines in the *BCO*, acted to excommunicate and depose TE Chastain without having first gone through the judicial procedures set forth in *BCO* 32 and 34 to determine if excommunication and deposition were warranted.

Based on the foregoing, Case 2001-25, Complaint of TE Anthony Dallison vs. North Florida Presbytery was wrongly decided.

Upon my election to the Standing Judicial Commission, I took vows to, among other things: a) judge without respect to persons, b) judge not according to appearances, c) judge according to the Constitution of the Presbyterian Church in America, and d) recuse myself from such a case, if I cannot conscientiously apply the Constitution (*BCO* 15-1).

Dallison was represented by Frank J. Smith, a Teaching Elder who was formerly a member of the Presbyterian Church in America. Some might say that TE Smith was not popular and/or outside of the mainstream of the PCA. The majority opinion in Dallison, to which the undersigned concurred, seems, in my view, to have reached its result based on the people and issues involved, instead of the Constitution. The undersigned believes his vote in Dallison was a violation of his vows to judge without respect to persons or according to appearances, for which he asks for forgiveness.

This Concurring Opinion was drafted by RE Samuel J. Duncan.

DISSENTING OPINION STANDING JUDICIAL COMMISSION CASE 2006-7 TE MICHAEL CHASTAIN VS. HERITAGE PRESBYTERY

The undersigned respectfully dissent from the decision of the majority of the Standing Judicial Commission that determined SJC 2006-7 (*Appeal of TE Michael Chastain vs. Heritage Presbytery*) to be judicially out of order. In so doing we express no opinion on the merits of the arguments presented by the parties. The SJC took no position on the merits of the case. As such, we confine ourselves to the issues raised by the decision of the majority to

declare the case to be judicially out of order because the appellant “renounced the jurisdiction of the PCA.” It is the contention of the minority that the decision of the majority is without Constitutional authority and is inconsistent with the doctrine of ordination. In addition, and perhaps most importantly, the decision undercuts the exercise of biblical church discipline and thus has unfortunate implications for both the teaching elder and the Presbytery.

BCO 38-3 recognizes the possibility that a teaching elder may seek unilaterally to withdraw from the PCA by affiliating with some other branch of the visible church (*BCO* 38-3.a). It even recognizes that a teaching elder may withdraw from the PCA by affiliating with “a body judged by the court of original jurisdiction as failing to maintain the Word and Sacraments in their fundamental integrity” (*BCO* 38-3.b). Neither of these situations, however, is on point with SJC 2006-7. In the current situation the teaching elder is not seeking to renounce jurisdiction by affiliating with some other body. Rather, he is renouncing jurisdiction without having placed himself under the jurisdiction of some other body.

In that sense, the situation in the present case is more analogous to what is covered by *BCO* 38-4. In that paragraph provision is made for one who, in a sense, renounces the jurisdiction of the Church by making it clear that he “has no intention of fulfilling the church vows.” However, unlike *BCO* 38-3, *BCO* 38-4 applies only to members of particular churches. There is no provision for applying the form of “pastoral discipline” of *BCO* 38-4 to teaching elders.

In short, there is no provision in the *Book of Church Order* that allows the PCA to give ecclesiastical recognition to the decision of a teaching elder to unilaterally renounce the jurisdiction of the PCA unless he has done so by joining another body. We suggest this is not an accident. A unilateral decision to renounce jurisdiction to go into “nothingness” is incompatible with our doctrine of ordination and with the vows taken by a teaching elder.

Ordination to the office of teaching elder is not a unilateral act on the part of the man. It is an action of a court of the Church to authoritatively admit the man to office in the Church in recognition of the man’s inward and outward call (*BCO* 17-1,2). In the same way it is only through a court of the Church that a man’s status can be changed or his ordination ended. Thus, for example, it is Presbytery that must act to declare a man to be honorably retired or medically disabled (*BCO* 23-2). Similarly, when a teaching elder believes he is no longer called to the Gospel ministry it is Presbytery that must act to divest him from office. It is not a unilateral act on the part of the man (*BCO* 38-2). Thus, any decision that affords ecclesiastical recognition to a teaching elder’s attempt to withdraw from the PCA without having joined another body undercuts our doctrine of ordination and the authority of the courts of the Church with regard to ordination.

Moreover, when a teaching elder is ordained, he vows that he approves “of the form of government and discipline of the Presbyterian Church in America, in conformity with the general principles of Biblical polity.” He further vows that he will be in subjection to his brethren in the Lord. (*BCO* 21-5, 3,4). It is the view of the minority that a unilateral renunciation by a teaching elder of the jurisdiction of the PCA when he has not joined another body is inconsistent with those vows, particularly when our Constitution does not provide for such an action. As such, this action ought not to be granted ecclesiastical recognition by the PCA.

Thus, it is our contention that the majority has exceeded its constitutional authority by recognizing TE Chastain’s “letter of withdrawal” as a basis for declaring the case to be judicially out of order. There is no constitutional authority for granting ecclesiastical recognition to such a unilateral withdrawal (and the majority decision cites none), and such recognition is inconsistent with the doctrine of ordination and the vows taken by each teaching elder. In acting to declare this case to be judicially out of order the majority has, in essence, added a new provision to *The Book of Church Order*. This is inconsistent with *RAO* 15-1.4.

The decision of the majority also seriously undercuts the practice of biblical church discipline. The majority argues that TE Chastain’s letter renouncing the jurisdiction of the Presbyterian Church in America renders moot all proceedings (i.e., actions of Presbytery) in the matter taken after the date of that letter. But this reasoning is inconsistent with the clear language of *BCO* 38-3.a. That provision stipulates that if one seeks to withdraw from the PCA by joining another church and there is an investigation in progress or there are charges concerning the member or teaching elder the court of original jurisdiction may retain the person’s name and conduct the case. The point of this provision is to allow the court of original jurisdiction to prevent a person from “fleeing discipline” simply by joining another church. The majority’s reasoning undoes this safeguard. The precedent here established appears to allow any member of the Presbyterian Church in America to avoid discipline by renouncing the jurisdiction of the PCA. The majority’s reasoning would mean that the lower court must immediately end all proceedings against the member. Any actions taken by the court of original jurisdiction after the renunciation of jurisdiction would be moot. The member would then remain in good standing and could later join another evangelical church without being under any censure. Clearly this eviscerates the rights of lower courts under *BCO* 38-3.a.

Of course, *BCO* 38-3.a does not apply directly here in that TE Chastain was not renouncing the jurisdiction of the PCA by joining another branch of the visible church. But as we have said above, renouncing the authority of the

Church without joining another branch of Christ's Church is incompatible with a biblical understanding of the obligations of membership. If the lower court has the right under *BCO* 38-3.a to retain ecclesiastical jurisdiction over a member seeking to affiliate with another branch of the visible church until process against that person is complete, it follows that there is an even greater right to retain jurisdiction over one who is renouncing jurisdiction but not affiliating with another branch of the visible church.

Moreover, the situation in this case goes beyond an investigation or charges. The purpose of an investigation and charges is to impose the appropriate censure to recover the wayward member and protect the purity and peace of the church if the individual is guilty of wrongdoing. Once a person is found guilty, as was the case here, the obligation of the court of original jurisdiction does not end. The Presbytery now has the right and responsibility to determine if repentance has taken place and thus the censure should be removed (*BCO* 37), or to decide by appropriate Constitutional processes whether a greater censure is necessary (*BCO* 30-3). Thus, for example, *BCO* 34-4 states that the court after imposing suspension retains authority over a contumacious minister to increase the censure to deposition if he does not repent. The majority's decision stands for the proposition that a court's authority under *BCO* 34-4 may be nullified by an unrepentant minister simply renouncing the court's jurisdiction.

Additionally, a minister vows to be in submission to his brethren. It seems plain to the minority that a minister under censure breaks that vow when he refuses to submit to the discipline of the Church. Thus, the majority decision severely undercuts the vow by holding, in effect, that a minister may unilaterally release himself from that discipline without ecclesiastical consequence.

In sum, the decision of the majority undercuts biblical church discipline because it provides a precedent whereby a member of the Presbyterian Church in America can avoid proper disciplinary process and/or censure by taking the step of renouncing the jurisdiction of the PCA. Nothing in *BCO* 38, or any other section of the *BCO*, mandates that a Presbytery must give up ecclesiastical jurisdiction over one who is censured and who subsequently renounces the jurisdiction of the PCA. In ruling this case judicially out of order on the basis of the teaching elder's letter seeking to renounce the jurisdiction of the PCA the majority has created a constitutional mandate where there is none, has undercut the force of *BCO* 30-3, 34-4, 37, and 38-3.a, and has undercut the rights and responsibilities of courts of original jurisdiction within the PCA.

We note also that the decision of the majority is problematic not only because it lacks constitutional foundation but because it has unfortunate

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results for both the man and the Presbytery. The decision means that the teaching elder is denied “the benefits” of discipline (*BCO* 27-2). Whether a proper decision would be to sanction the man or to vindicate him is beside the point. The issue is that the teaching elder has been deprived of a benefit that is mandated by Scripture (Mt 18:12-17; *BCO* 27-3). Similarly, the Presbytery is denied their right and responsibility to use proper discipline (subject to review by the higher court) to vindicate the honor of Christ, to promote the purity and general edification of the Church, and to provide for the spiritual good of a man under their authority (*BCO* 27-3).

We recognize, of course, that from a civil standpoint there is nothing the PCA can or should do to prevent a teaching elder from unilaterally renouncing the jurisdiction of the Church. That point is clearly and properly made by Preliminary Principle 8 and *BCO* 3-4. But the issue here is not whether the PCA can “stop” the teaching elder from leaving if he chooses to do so. Rather, the issue is whether the PCA should “legitimize” that effort to “withdraw into independency” and avoid the censure placed on him by those to whom he has vowed to be in subjection by recognizing it, and by making it the basis for declaring the case to be judicially out of order and for staying all actions after May 8, 2006. In our judgment the answer is “No.”

Finally, we reiterate that the question we are addressing is not whether Heritage Presbytery acted properly in this case. Rather, the issue is the decision of the majority of the Standing Judicial Commission to declare this case to be judicially out of order on the grounds that the appellant “renounced the jurisdiction of the PCA.” We contend there is no constitutional basis for this decision, that it is inconsistent with the doctrine of ordination, that it undercuts biblical church discipline, and that it undercuts the rights and responsibilities of both the teaching elder and the Presbytery. For all these reasons we respectfully dissent.

/s/ TE Stephen Clark /s/ RE Frederick Neikirk /s/ RE Steven O’Ban

IV. THE OFFICERS OF THE SJC CHOSEN FOR NEXT YEAR ARE:

Chairman	TE Dominic A. Aquila
Vice chairman	TE Paul B. Fowler
Secretary	RE John White Jr
Assistant Secretary	TE John M. McArthur Jr.

Respectfully submitted,

/s/ TE Dominic A. Aquila, Chairman /s/ TE Steven Meyerhoff, Secretary