

APPENDIX S

of their membership vows? Can only one member of the Session give this counsel (i.e., the pastor) or does the Session need to give such counsel jointly under its power of jurisdiction (*BCO* 3-2)? How does this not open the door to further litigation?

Likewise, the SJC offers as mitigating relief to this decision the ability to deal with “clearly or grievously disqualified nominees.” Such can be removed—but how and when? At the beginning of the process in a “prescreening” process? The Complainant’s Session tried to do this as it wrestled with 1 Timothy 3:2, determined that he was disqualified, and removed his nomination; yet, the SJC has ruled that such could only be done at the end of the “mandatory sequence” of *BCO* 24-1. The result is that “clearly or grievously disqualified” nominees can only be removed at the end of the process after examination. And so, the apparent mitigating relief is no true relief at all. What is actually here is an overreading of the constitutional requirements in *BCO* 24-1 by not allowing for the appropriate flexible, pastoral application of its mandatory aspects.

For these reasons, this dissent argues that the SJC should have answered its statement of the issue in the negative and supported the lower court’s ruling that the Complainant’s Session had not erred in their handling of the case. This dissent also warns concerning the potentially wide-ranging, negative effects of the SJC decision both pastorally and practically as Sessions seek to qualify men for office.

/s/ TE Sean M. Lucas

CASE 2019-06
THE PRESBYTERIAN CHURCH IN AMERICA
vs.
THE PRESBYTERY OF THE MISSISSIPPI VALLEY

DECISION ON BCO 40-5 REFERRAL
February 6, 2020

SUMMARY OF THE CASE

This Case arose from a July 18, 2016 arraignment at which a member (hereinafter referred to as the “Petitioner”) of Pear Orchard PCA Church in Ridgeland, MS, pled “not guilty” to the charge of “failing to submit to the government and discipline of the church.” She had filed for divorce, even

MINUTES OF THE GENERAL ASSEMBLY

though the Session had previously communicated to her its conclusion that she did not have biblical grounds for divorce.

A trial was never scheduled. One month after the arraignment, in August 2016, the Session met and approved the following motion: "For [two named elders] to draft and send a final letter to [the Petitioner], warning that if she continues to make it known that she has no intention of fulfilling her vows to submit to the authority of the Session, and she does not repent of that, per *BCO* 38-4, her name will be erased from the church roll."

Shortly thereafter, the Session, through the two Session members, sent the Petitioner a letter stating the Session was "ceasing formal judicial process against" her because it understood some of her comments at the July 18 arraignment to mean she did not recognize the Session's authority, and that she would not fulfill her membership vows. The Petitioner contended that her comments were not intended to indicate an intention not to submit. The minutes of the September 16, 2016 meeting indicate that the Session rescinded its indictment and formally erased the Petitioner's name from its membership roll under *BCO* 38-4. The Record does not indicate when or if this final erasure was communicated to the Petitioner.

Twelve months later, in September 2017, the Petitioner filed a *BCO* 40-5 report with the Presbytery of the Mississippi Valley (PMV), alleging the Session acted in a grossly unconstitutional manner when it erased her name from the membership roll without process. The Session filed a response to Presbytery in January 2018, and a Presbytery Commission met with Session representatives. At its February 2018 meeting, Presbytery adopted the recommendation of its Commission and ruled the Session had not acted unconstitutionally when it removed the Petitioner from membership via *BCO* 38-4. She then filed her *BCO* 40-5 letter with the General Assembly. The SJC began to consider it as Case 2018-02, but the SJC eventually ruled it administratively out of order and referred the matter to the General Assembly's Committee on Review of Presbytery Records. RPR recommended to the 47th GA in Dallas that the GA judge her report was credible and cite the Presbytery to appear before the SJC and "show what the lower court has done or failed to do in the case in question." (*BCO* 40-5)

Eventually, the SJC determined the following to be the Statement of the Issue: "Did Presbytery err in its response to the Petitioner's *BCO* 40-5 letter?" The SJC's Judgment is "Yes. The errors are addressed in the following Reasoning (*OMSJC* 15.6.a.)"

I. SUMMARY OF THE FACTS

- 03/16 The Session of Pear Orchard Presbyterian Church (POPC) counseled with the "Petitioner" and her husband regarding their marriage. Both were members of POPC.
- 04/18/16 The Petitioner's husband confessed to specific sins related to the marriage and his interaction with his wife. The Session received his confession, admonished him, and counseled the parties to remain married and to continue to seek counseling and assistance regarding their marriage.
- 05/10/16 The Petitioner informed the Session that she disagreed with its counsel and that she had filed for divorce.
- 05/24/16 The Session sent the Petitioner a citation, along with an indictment, to appear before the Session on June 27, 2016, to hear and receive a charge and specifications proffered against her and to enter a plea to the Charge. The charged offense was "failing to submit to the government and discipline of the church...." The Specification read:

That on the 19th day of April, 2016, a letter from the session of Pear Orchard Presbyterian Church was mailed to [the Petitioner] that specifically advised [her] not to pursue a divorce but rather continue to attend counseling both individually and with her husband, [name omitted], and exhorted both [the husband and wife] to keep their marriage vows before the Lord, to love and forgive one another, and to work toward reconciliation. The letter further reminded [her] that she took a vow to be a loving and faithful spouse in sickness and in health, in plenty and in want, in joy and in sorrow, and as long as she shall live; that [she] entered into a lifelong covenant with [her husband] and that covenant is still in effect. [The Petitioner] was therefore urged and implored to strive by the Holy Spirit's power to live with her husband in love, peace, faithfulness, and devotion to the Lord and to her husband. [She] was finally charged to leave her father and mother and cleave

MINUTES OF THE GENERAL ASSEMBLY

unto [her husband], to submit to him as the church submits to Christ, to respect him, to forgive him, to cease pursuit of a divorce, and to commit herself to reconciliation.

That despite and in direct repudiation of the foregoing counsel, on or about May 10, 2016, [the Petitioner] did file a petition for divorce and serve the same upon her husband, [name omitted].

- 06/30/16 After she did not appear at the June 27 arraignment, the Session cited her a second time to appear before the Session on July 18, 2016, to hear and receive a charge and specifications preferred against her for "... failing to submit to the government and discipline of the church;" and to enter a plea to the charge.
- 07/18/16 The Petitioner appeared before the Session and pled not guilty to the charge. The minutes of the called Session meeting indicate the Petitioner informed the Session that she had the right to plead not guilty and that she believed the Session was wrong in its conclusion that she did not have biblical grounds for divorce.
- 08/15/16 One month after the arraignment, the Session met and approved the following motion: "For [two named elders] to draft and send a final letter to [the Petitioner], warning that if she continues to make it known that she has no intention of fulfilling her vows to submit to the authority of the Session, and she does not repent of that, per *BCO* 38-4, her name will be erased from the church roll."
- 08/17/16 The Session sent the Petitioner a letter stating that the Session was dropping the charge against her "[cease formal judicial process against you]," because it understood her comments at the July 18 arraignment to mean she did not recognize the Session's authority, and that she would not fulfill her membership vows.
- 09/16/16 Two months after the arraignment, the Session rescinded its citation and formally erased the Petitioner's name from its membership roll under *BCO* 38-4. The Record of the Case does not indicate when or how this action was communicated to the Petitioner. At oral argument, the party representatives confirmed

APPENDIX S

that the Record does not indicate when or how the decision to erase was finally communicated.

- 09/06/17 Fourteen months after the arraignment, the Petitioner filed a *BCO* 40-5 report with the Presbytery of the Mississippi Valley (PMV), alleging the Session acted in a grossly unconstitutional manner when it erased her name from the membership roll without process.
- 11/07/17 PMV appointed a Judicial Commission to hear Petitioner's *BCO* 40-5 report.
- 01/30/18 The Judicial Commission conducted a hearing with POPC Session representatives to adjudicate the matter. The Petitioner was not present.
- 02/06/18 PMV received and approved the report of its Judicial Commission and adopted the following judgment recommended by the Commission.

"The judgment...is that the Pear Orchard Presbyterian Church Session acted constitutionally when it removed [the Petitioner] from the rolls of Pear Orchard Presbyterian Church per *BCO* 38-4."
- 05/03/18 Petitioner filed a *BCO* 40-5 report with the PCA Standing Judicial Commission:
"I request that the PCA GA, as the court having appellate jurisdiction over PMV, accept and review my credible report and reverse or redress the action arising out of an alleged grossly unconstitutional proceeding." The SJC Officers found the case administratively in order and referred it to a Panel as Case 2018-02.
- 07/20/18 The 48-page Record of the Case was finalized on July 20, 2018. TE Roger Collins served as the Presbytery's representative. The Petitioner was represented by TE Dominic Aquila.
- 09/10/18 An SJC Panel heard oral argument via GoToMeeting video-conference. Panel included RE Jack Wilson (chairman), TE Bryan

MINUTES OF THE GENERAL ASSEMBLY

Chapell, and TE Charles McGowan, with TE Paul Bankson and RE Sam Duncan attending as alternates.

- 09/17/18 The SJC Panel filed its Proposed Decision in Case 2018-02, recommending the following as the Statement of the Issue and the Judgment:

Did Presbytery err on February 6, 2018 when it adopted the recommended judgment from its judicial commission , thus ruling the Session had not erred?

Yes

- 02/17/19 At its Stated Meeting five months later, the SJC adopted a substitute for the Panel's Proposed Decision, adopting the following Decision by a vote of 17-6. There were one Concurring and two Dissenting Opinions.

The *BCO* 40-5 filing with the SJC is out of order. The only responsibility the SJC has with respect to Chapter 40 is upon referral of a matter from the General Assembly according to *RAO* 16-10.c. and as administered under Chapter 15 of the *OMSJC*.

The SJC notes the Record does not contain evidence that the Session provided [the Petitioner] with notice of its action erasing her name from the roll (*BCO* 38-4). If this notice was not properly given, [the Petitioner] remains a member in good standing of the church in question, unless she has joined another church. (M47GA, p. 562).

- 02/22/19 The PCA Stated Clerk forwarded the Petitioner 's *BCO* 40-5 letter and the Record of the Case to the GA Committee on Review of Presbytery Records ("RPR").

- 05/30/19 One month before the 47th General Assembly, RPR voted 50-0-6 to adopt the motion below.

Therefore, the CRPR recommends the 47th GA rule the allegation of [the Petitioner] is a

"credible report" involving "an important delinquency or grossly unconstitutional [proceeding]," and thus, per *BCO* 40-5, the 47th GA cites the Presbytery of the Mississippi Valley to appear before the PCA's Standing Judicial Commission, which the 47th GA constitutes its commission to adjudicate this matter, by representative or in writing, at the SJC's fall stated meeting, to "show what the lower court has done or failed to do in the case in question," following SJC Manual 15, the 47th GA directs the SJC Officers to appoint an SJC member to be the representative of the report. Specifically, the GA requests the Presbytery to at least answer these questions initially:

1. Where in the Session's or Presbytery's official record ("Record"), or elsewhere, is there record of a clear demonstration that [the Petitioner] "made it known she had no intention of fulfilling the church vows?" (*BCO* 38-4)
2. If a church member declines to follow advice or counsel from a Session, is that automatically evidence of failing to submit to the government and discipline of the church? (i.e., the offense for which the Session indicted her).
3. Where in the Record, or elsewhere, is there record of the Session fulfilling the "pastoral discipline/reminding" responsibility of *BCO* 38-4, which occurs after a member's expression of "no intention" but before the action of removal?
4. Where in the Record, or elsewhere, is there record of the Session providing [the Petitioner] formal and official notification of her *BCO* 38-4 removal

MINUTES OF THE GENERAL ASSEMBLY

after the Session took the action?" (RPR Recommendation 44.e, M47GA, pp. 485-486).

- 06/27/19 At the 47th GA in Dallas, a substitute for RPR's recommendation was moved from the floor proposing the Assembly dismiss the whole matter, but it failed by a vote of 323-802 (29-71%). An amendment to RPR's recommendation was adopted to allow the parties to add written documentation to the Record. GA adopted RPR's recommendation, as amended, by a voice vote. (M47GA, pp. 26-27).
- 10/02/19 Presbytery's Representative (and Clerk) TE Roger Collins submitted a four-page Brief, with a one-page attachment. Three additional pages were added to what had been the 48-page Record of Case 2018-02 (i.e., the Session's January 2018 letter to the Presbytery Judicial Commission).
- 10/14/19 The Assembly's Representative, RE Sam Duncan, filed his report with the SJC. (He was appointed to that role by the SJC officers, per GA instructions.)
- 10/17/19 The full SJC heard the *BCO* 40-5 Report in accordance with the General Assembly's direction. The representatives for Presbytery and the GA presented oral arguments and answered questions. After the post-Hearing discussion, the SJC adopted a motion instructing the SJC Chairman to appoint a drafting committee to present a recommended Decision to the SJC prior to the SJC's February Stated Meeting.
- 01/21/20 Drafting Committee of REs Dowling (chair), Donahoe, Neikirk and Wilson filed its report, along with a proposed decision.
- 02/07/20 SJC discussed the Committee's proposed decision and adopted a Decision.

II. STATEMENT OF THE ISSUE

Did Presbytery err in its response to the Petitioner's *BCO* 40-5 letter?

III. JUDGMENT

Yes. The errors are addressed in the following Reasoning. (*OMSJC* 15.6.a)

IV. REASONING

The Record, and the Presbytery's Response to the questions posed by the 47th General Assembly, present several concerns summarized as follows:

- A. *Indictment* - The Session alleged it was automatically sinful for the Petitioner to fail to heed its conclusion about her pending divorce. And the Session contended this was the equivalent to "failing to submit to the government and discipline of the church" which was the offense charged in the May 2016 Indictment. And Presbytery agrees.
- B. *Conflation* - The Session erred in considering the not guilty plea and continuing with the divorce as sufficient proof that the Petitioner had no intention to fulfill her membership vows.
- C. *BCO 38-4 Another Branch* - Even if the Petitioner unequivocally reported she had no intention of fulfilling membership vows, the Session erred by failing to determine whether the Petitioner would fulfill the duties of membership in another branch of the visible church. (Presbytery's response to Question 1 from the 47th GA indicates the pastor of POPC apparently knew she had been worshipping at a local Baptist church.)
- D. *BCO 38-4 Notification* - The Session erred in failing to notify the Petitioner when her name had been removed from the roll.
- E. *Case Without Process* - The Session erred by, in effect, proceeding to a "case without process" after dropping the initial charges.

A. *Indictment*

GA Question 2 to Presbytery - If a church member declines to follow advice or counsel from a Session, is that automatically evidence of failing to submit to the government and discipline of the church? (i.e., the offense for which the Session indicted her).

Presbytery Response - No. Not automatically. The action of the session was to "rule" that [the Petitioner] did not have a Biblical

MINUTES OF THE GENERAL ASSEMBLY

basis for divorce (ROC 13 l. 15ff.). That "rule" was communicated to remove any ambiguity as to what the session deemed obedient action for both [the husband and wife]. Knowing her expressed conclusions (ROC 12, l. 11) a clear scriptural decision and communication was approved by the session for [the Petitioner]. That was intended for her benefit.

Presbytery's answer concludes with the assertion below, which indicates that Presbytery, and perhaps the Session, believe the Petitioner only had two options: "obey" and stop the divorce, or file a Complaint.

The proper course of action for [the Petitioner], if her conscience would not allow her to obey, would have been to file a complaint against their ruling. The fifth vow of membership precludes summarily disregarding the session's communication." (ROC and ruling (*BCO* 57-5.5; ROC 12, 1.11)."

But there is at least one other option: to consider, but respectfully disagree with, the Session's conclusion. That would not, in itself, be a violation of membership vow 5 or *de facto* evidence of "failing to submit to the government and discipline of the church." Granted, in a situation like that, a Session might allege the person is divorcing without biblical grounds, and indict on those grounds, but that was not the Indictment against the Petitioner.

In addition, it is unclear what Presbytery means when it asserts the Petitioner "summarily" disregarded the Session's communication. That assertion is not demonstrated from the Record. Presbytery cites ROC 12, line 11, but that line simply reads: "[The Petitioner] considers [her husband's] behavior to be emotional abandonment, and in her mind, grounds for divorce." And the Record contains this statement from the Session: "Yes, [her husband] has sinned against her grievously (by his own admission)." The husband's confession was formally treated as a *BCO* 38-1 *Case Without Process* and the Session officially imposed the censure of Admonition.

The following sequence is important. A month after the Session adopted a resolution that she "does not have grounds for divorce and ought not to pursue divorce," she notified the Session she had filed for divorce. A week later, the Session adopted the following motion:

APPENDIX S

That the Session, in light of the strong presumption of [her] guilt of failing to submit to the government and discipline of the church (*BCO* 57-5, membership question #5; *WCF* 24.6; Hebrews 13:17; 1 Peter 5:5), proceed to institute process, appoint a prosecutor to prepare the indictment and to conduct the case (*BCO* 31-2, 32-3, Appendix G.1), and cite her to appear and be heard at another Session meeting (date TBD), not sooner than ten (10) days after the citation (*BCO* 32-3, Appendix G. 2).

It is important to note she was not being indicted for the sin of unbiblical divorce, but rather, for the alleged sin of "failing to submit to the government and discipline of the church." The concluding paragraph of the Session letter accompanying the indictment began with:

[Petitioner], it appears to us that you are guilty of failing to submit to the government and discipline of the church."

The indictment began:

In the name of the Presbyterian Church in America, the Session of Pear Orchard Presbyterian Church charges [Petitioner] with failing to submit to the government and discipline of the church, against the peace, unity, and purity of the Church, and the honor and majesty of the Lord Jesus Christ, as the King and the Head thereof.

In addition to citing *WCF* 24.6 on divorce, the indictment excerpted *BCO* 57-5, *WCF* 30.1, Hebrews 13:17, and 1 Peter 5:5, as shown below.

BCO 57-5, membership question #5 - "Do you submit yourselves to the government and discipline of the Church, and promise to study its purity and peace?"

Westminster Confession of Faith 30.1 - "The Lord Jesus, as King and Head of his church, hath therein appointed a government, in the hands of church officers, distinct from the civil magistrate."

MINUTES OF THE GENERAL ASSEMBLY

Hebrews 13:17 - "Obey your leaders and submit to them, for they keep watch over your souls as those who will give an account. Let them do this with joy and not with grief, for this would be unprofitable for you."

I Peter 5:5 - "You younger men [and by good and necessary consequence, women], likewise, be subject to your elders ... "

The Specification section ended with this sentence:

That despite and in direct repudiation of the [Session's] foregoing counsel, on or about May 10, 2016, said [Petitioner] did file a petition for divorce and serve the same upon her husband, [name omitted].

The Record also contains an email from the Session Clerk seeking advice from a PCA official:

It is looking like we will likely have a trial before our Session here at Pear Orchard - a wife who filed for divorce after the Session determined that she did not have biblical grounds; she is probably going to be pleading not guilty this evening of the charge against her (failing to submit to the government and discipline of the church).

... In some ways this case seems simple - we said she didn't have grounds, she filed anyway, we're charging her with not submitting to the government of the church. But she's going to want to say that we were wrong in our determination that we didn't have grounds. That seems more along the lines of a complaint, and she didn't file a complaint with us before filing for divorce in the civil courts. So, should the moderator allow questions along the lines of "The Session made an erroneous determination on whether I had grounds for divorce"? It does seem germane in one sense (if we had decided differently, her actions wouldn't be construed as disobedient), but irrelevant from another standpoint (our decision was made, and she flagrantly disregarded it anyway).²¹

²¹ A response from the PCA Clerk's office, included the following: "The accused may, however, use as a defense [at] her trial an argument that the Session's decision was erroneous."

APPENDIX S

The above demonstrates that the Session's charge of "failing to submit to the government and discipline of the church" was based on her continuing to pursue divorce despite the Session's counsel. The Session was wrong to equate the two, and Presbytery should have noted this.

Furthermore, whenever a Session offers such or similar counsel, a member is not required to file a *BCO 43* Complaint if the member declines to follow it (*contra* Presbytery's response to GA Question 2). A member's responsibility is to seriously and respectfully consider the counsel. But there may be many instances where a Session advises it regards something as sinful, without the member sinning by not following the advice. (The person's underlying action may indeed be sinful, but his *response to the advice* is not, in and of itself, sinful). This might include Session advice on: how the Lord's Day should be observed, whether parents should use books with depictions of Jesus, whether parents should baptize their infants (WCF 28:5), whether tithing is morally obligated, the permissible use of tobacco or alcohol, appropriate clothing standards, "undue delay of marriage" (WLC 139), "avoiding unnecessary lawsuits" (WLC 141), what constitutes "prejudicing the good name of our neighbor" (WLC 145). And if a Session believed an indictment was warranted in any such situation, the indictment should allege the underlying sin, not the person's decision declining to follow Session counsel.

B. *Conflation of not guilty plea with no intent to submit*

The Session erred in conflating the "not guilty" plea with a statement definitively indicating that the Petitioner had no intention to fulfill her vows. If, prior to the May 2016 Indictment, the Petitioner expressed she had no intention of fulfilling her membership vows, the Record does not indicate how or when she did. The arraignment was in July, but the indictment was issued two months earlier, in May, thus no statements made at the July arraignment could have been the basis for the May indictment.

The Petitioner's recollection of what she said at the July 2016 arraignment (as expressed in her September 2017 letter to Presbytery),

MINUTES OF THE GENERAL ASSEMBLY

is quite different than the Session's recollection (as expressed in its January 2018 Response to Presbytery, four months after her letter to Presbytery). Though it wasn't constitutionally required, the Presbytery Commission might have clarified the discrepancy by inviting her to appear at its January hearing.

Below are three excerpts from Session's January 2018 filing to Presbytery's Judicial Commission.

She stated plainly that she did not recognize our authority over her, and that she had no intention of dropping her pursuit of divorce from her husband, or of keeping her church vows, no matter what the Session said or did.

[Petitioner] had made it plainly known to our Session that she had no intention of fulfilling her church vows ...

We believe that our actions with regard to [the Petitioner] ... were fitting for her disregard for the authority of the elders of the Church of the Lord Jesus Christ (cf. Hebrews 13:17).

But four months earlier the Petitioner contended differently. (Presumably, the Session had a copy of her letter before they filed their response to Presbytery's Judicial Commission.). Below are three excerpts from her September 2017 letter to Presbytery.

[At the arraignment] there were some questions and discussion regarding whether I would submit to the Session's authority ... It was during this discussion that the Session misinterpreted some of my remarks that are reflected in the Session's August 17, 2016 letter. I contend that the Session erred when it inferred from my comments that I was pleading guilty.

The Session ... inaccurately interpreted my responses during our discussion to mean that I would not submit to the authority of the Session as an admission of guilt (even though I had already said I was "not guilty."

I maintain that I did respect church authority and took my membership vows seriously. I appeared before the Session to enter a not guilty plea with the intention of defending myself

APPENDIX S

at trial. I was following the *BCO* as much as I understood it; I did not attempt to escape jurisdiction.

The above discrepancy is likely why the 47th GA posed the following question to Presbytery.

GA Question 1 - Where in the Session's or Presbytery's official record ("Record"), or elsewhere, is there record of a clear demonstration that Ms. [name omitted] "made it known she had no intention of fulfilling the church vows?" (*BCO* 38-4)

Presbytery's October 2019 Response - The testimony of the Ruling and Teaching Elders of the Pear Orchard Presbyterian Church (POPC) Session is unequivocal in the Record of the Case (ROC 44, ll. 11-30; 3840 46-47). PMV's commission questioned them further and heard their representatives testify that the letter (ROC 44-45) sent to the PMV Judicial Commission as well as the entire ROC that they submitted was attested unanimously by the entire session of Pear Orchard. That ROC clearly asserts that all the session members present on July 18, 2016 heard [the Petitioner] make it known that she had no intention of fulfilling her church vows.

I have also confirmed that [the Petitioner] has not attended POPC since May of 2016 according to Sr. Pastor TE Carl Kalbercamp. In addition, POPC received notification in a letter dated March 27, 2019 that [the Petitioner] joined Broadmoor Baptist Church in Madison Mississippi. A copy of that letter is attached. (Italics original.)

Both the Petitioner and the Session representatives were trying to recall what was or wasn't said at a meeting 14-18 months prior. If a Session is going to pursue erasure via *BCO* 38-4, it should be scrupulous to record the basis, perhaps in writing from the member. (Note: Referencing the italics above in Presbytery's response, there's nothing in the Record indicating the Petitioner stopped attending POPC in May 2016. Thus, based on the Record, it would be inaccurate for anyone to assert the Session based any part of its May 2016 indictment or its July 18, 2016 erasure decision on two-months of non-attendance.)

The Session misinterpreted her report of continuing to pursue the divorce despite Session counsel as, per se, a "making it known [she] has no intention of fulfilling the church vows." (*BCO* 38-4). Or worse, the Session regarded her ignoring its counsel to be the equivalent of renouncing membership vow 5: "*Do you submit yourselves to the government and discipline of the Church, and promise to study its purity and peace?*"

- C. *BCO* 38-4 *Another Branch* - The Session erred by failing to determine whether the Petitioner could fulfill the duties of membership in another branch of the visible church.

BCO 38-4 requires a session to render a judgment on whether the member will fulfill membership obligations in *any* branch of the Church. The Record is silent as to whether the POPC Session evaluated this component of *BCO* 38-4 or made any such determination. This component of review wisely affords a session the opportunity to evaluate a member's actions and statements thoroughly, to determine, among other things, whether the member's actions are applicable only in one local PCA church, or more broadly, to any branch of the Church. In this case, evaluation of this component could have helped the Session understand more about the nature of the Petitioner's dispute. The Session and Presbytery have confirmed that in the time since she made the *BCO* 40-5 report, the Petitioner has joined another branch of the visible Church, indicating at least some willingness to fulfill membership obligations in that branch. Our churches should conform to the provision of *BCO* 38-4 and examine whether a member will fulfill membership obligations in another church prior to carrying out the erasure.

- D. *BCO* 38-4 *Notification* - The Session erred in failing to notify the Petitioner that her name had been removed from the roll.

BCO 38-4 requires that a member whose name is erased from the roll be notified, if possible. In this case, the Session and Presbytery admit that no such notice appears in the Record. The notice of erasure is a key component of the process outlined in *BCO* 38-4. In addition to affording a person a final opportunity to repent and return to fellowship, it also provides a time benchmark by which further action can be measured. In this case, the Petitioner claimed that since she was not notified after the Session's September 16, 2016 official erasure action, she had no avenue for a timely appeal or complaint. Her only recourse was the presentation

APPENDIX S

of a *BCO* 40-5 report. A proper following of *BCO* 38-4 would have at least afforded the Petitioner an opportunity for appeal or complaint. And having to go through a *BCO* 40-5 process, with its referral to the GA Committee on Review of Presbytery Records, has resulted in a 12-month delay in adjudication of this matter.

- E. *Case Without Process* - The Session erred by dropping the initial charges and summarily proceeding without process.

The core of the original dispute was the Petitioner's contention that she believed she had Biblical grounds for divorce while the Session concluded she did not. The Session charged the Petitioner with "failing to submit to the government and discipline of the church." [ROC 19, 23]. The Petitioner insisted her grounds were proper, and she pled not guilty to the charge of failing to submit. The Petitioner maintains the Session "misinterpreted" her remarks when she entered her not guilty plea. The Session noted, "The reason we did not schedule a trial that evening was because we were unclear how to proceed given her clear acknowledgement of guilt coupled at the same time with a disavowal of guilt." The Session apparently treated the Petitioner's insistence of her innocence, and argument that her grounds for divorce were proper, as a failure to submit. The Session reached this conclusion prematurely, and with no record of the Petitioner's rejection of the Session's authority.

The trial process and the protections secured by it help to ensure fairness in judicial proceedings. In ecclesiastical courts, it is particularly incumbent on elders, sitting as judges, to afford full constitutional protection to accused and aggrieved parties. We recognize a trial is often neither a convenient nor efficient method for resolving a dispute. We recognize the proper conduct of an ecclesiastical trial may be especially burdensome, creating taxing demands on limited resources, and sometimes even leading to congregational disruption. A properly conducted trial, however, provides for, and is a fair and reasonable method for, determining the truth in a disputed case when an accused party pleads not guilty.

When a church member pleads not guilty, and in so doing, asserts disagreement with a Session's counsel or indictment and declines to follow such advice, that announcement is not the equivalent of refusing to submit to the church's government and discipline. The Petitioner's willingness to answer the charge and participate in the trial process

MINUTES OF THE GENERAL ASSEMBLY

demonstrates some degree of willingness "to submit to the government and discipline of the church." The Session erred when it concluded that the mere fact of the Petitioner's decision to continue pursuing the divorce indicated that she had no intention of fulfilling her church vows. The Session's preliminary determination regarding the Petitioner's actions and the reasons for her behavior may have been entirely accurate, but in making that determination final, without affording the Petitioner a trial, the Session's determination was premature. A trial might have proved the Session's initial assessment to be correct regarding the lack of biblical grounds for divorce (if that had been the indictment.) Under the facts presented here, having brought formal charges (and then dismissed them), the Session should have afforded the Petitioner her constitutional privileges and processes described in *BCO* 38-4 before deciding to remove her name from the roll.

If a trial court could summarily convert a formal charge to a case without process when a defendant pled not guilty or strongly disputed the charge, many cases would never proceed to trial. Upon issuing formal charges, it is incumbent on a trial court to see the matter through to a proper conclusion, either by dismissal, confession, or formal adjudication.

The removal of a member from the roll of a church is a significant action requiring scrupulous conformity to the Constitution. Our churches are encouraged to follow the procedures outlined in *BCO* 38-4 carefully in dealing with our members.

The February 2019 Decision in SJC Case 2018-02 [*Petitioner v. PMV*] stated that "if this notice was not properly given, [Petitioner] remains a member in good standing of the church in question." Because notice was not properly given, the Pear Orchard Presbyterian Church Session should note that in its Minutes. And now, because Presbytery's October 2019 response indicated the Petitioner joined a Baptist Church, with written notification dated March 27, 2019, the Session should remove her from the POPC roll pursuant to *BCO* 38-3(a).

The Committee's proposed decision was drafted with input from all Committee members, and the Committee approved it by a vote of 4-0 on January 21, 2020. After adopting amendments, the SJC approved the above Decision by a vote of 16-0-0, with three absent and five disqualified.

APPENDIX S

Bankson, <i>Concur</i>	Duncan, M., <i>Disqualified</i>	Neikirk, <i>Concur</i>
Bise, <i>Disqualified</i>	Duncan, S., <i>Disqualified</i>	Nusbaum, <i>Absent</i>
Cannata, <i>Concur</i>	Ellis, <i>Concur</i>	Pickering, <i>Concur</i>
Carrell, <i>Absent</i>	Greco, <i>Concur</i>	Ross, <i>Disqualified</i>
Chapell, <i>Concur</i>	Kooistra, <i>Concur</i>	Terrell, <i>Concur</i>
Coffin, <i>Concur</i>	Lee, <i>Concur</i>	Waters, <i>Disqualified</i>
Donahoe, <i>Concur</i>	Lucas, <i>Concur</i>	White, <i>Absent</i>
Dowling, <i>Concur</i>	McGowan, <i>Concur</i>	Wilson, <i>Concur</i>

RE Bise disqualified himself, per *OMSJC* 2.10.d.3.iii: "A member shall disqualify himself in any proceeding in which ... a person within the third degree of relationship to [the SJC member], ... (iii) ... is a member of a congregation in the bounds of a presbytery party to a case." RE M. Duncan disqualified himself, per *OMSJC* 2.10.d.3.iii: "A member shall disqualify himself in any proceeding in which ... a person within the third degree of relationship to [the SJC member], ... (iii) is a member of a court which is party to the case." RE S. Duncan disqualified himself because he was appointed as, and served as, the Representative of the Report. TE Ross disqualified himself because he is familiar with the original reporting party and members of the Session. TE Waters was disqualified because he is a member of the Presbytery that was party to the Case (*OMSJC* 2.10.d.(3).iii).

**CASE 2019-07
MR. CHANDLER FOZARD
vs.
NORTH TEXAS PRESBYTERY**

**DECISION ON COMPLAINT
February 6, 2020**

I. SUMMARY OF THE FACTS

- 03/16/09 The Session of Fort Worth Presbyterian Church (FWPC) adopted a policy titled "General Policy-Integration of Special Case Felons." The policy prescribed how persons that have been incarcerated for committing exceptionally violent crimes or sexual offenses were to be integrated into FWPC.