

APPENDIX S

Finally, it is important to underscore the SJC's closing observation in the decision:

Complainant still has recourse with respect to the substance of his complaint. *BCO* 40-5 provides for a credible report of "any important delinquency or grossly unconstitutional proceedings" of a lower court to be brought before the court next higher, before which the court alleged to have offended must give an account of what it has done or failed to do. After such a hearing the higher court has power to "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. . . ."

CASE 2019-10 AND CASE 2019-12 COMPLAINTS OF TE JOHN EVANS and RE ALAN PITTS, ET AL.

**v.
ARIZONA PRESBYTERY**

DECISION ON COMPLAINTS July 20, 2020

I. CASE SUMMARY

These cases came before the SJC through the Complaints of TE John Evans (2019-10) and RE Alan Pitts and three others: TEs John Kelley and William Phillips and RE David Campbell (2019-12). Upon motion by Arizona Presbytery ("AZP") and without objection, the two cases were joined (with a consolidated record) for review by the SJC per *OMSJC* 18.3.a.

TE Evans was pastor of Covenant Presbyterian Church ("CPC") in Sun City West, Arizona, where he had settled with his family in the fall of 2017, after 20 years of missionary service abroad. RE Pitts was serving as Clerk of the CPC Session. RE Campbell served on the Administrative Commission ("AC") of the AZP and also on AZP's Shepherding Team ("ST"). TE Kelley was an Honorably Retired member of AZP, and TE Phillips was an Assistant Pastor at another church within the Presbytery. Both TEs Kelley and Phillips also served on the ST.

MINUTES OF THE GENERAL ASSEMBLY

Both Complaints challenged the action of AZP on April 26, 2019, when the Presbytery, in response to a written confession and report (including a statement of facts) submitted by TE Evans, voted to depose him from the office of Teaching Elder. The SJC concluded that AZP failed to adhere to the requirements of *BCO* 38-1, sustained the Complaints, annulled the action of Presbytery, and remanded the case of TE Evans to the Presbytery for further action consistent with this Decision.

II. SUMMARY OF THE FACTS

- 9/02/18 TE John Evans read a letter, dated 8/30/2018, to the CPC congregation reporting that his wife, Elizabeth, had left him.
- 9/06/18 TE Evans, on behalf of the CPC Session, asked for assistance from the ST.
- 9/15/18 Three members of the ST, TE Phillip Glassmeyer with TEs Kelley and Phillips, met with the CPC Session.
- 9/27/18 Chaired by TE Mark Lauterbach, the ST met by conference call to discuss the situation, after which they wrote to TE Evans.
- 9/27/18 TE Evans and his wife began marriage counseling.
- 10/17/18 TE Evans met with two members of the ST, TEs Phillips and Glassmeyer.
- 10/25/18 ST recommended a course of action and care for TE Evans.
- 11/21/18 TE Evans met again with TEs Phillips and Glassmeyer, when they discussed the recommendations of the ST.
- 11/23/18 By email TE Evans conveyed to TEs Phillips and Glassmeyer his questions and concerns in response to the recommendations.
- 11/27/18 ST presented its recommendations by letter to the CPC Session. These recommendations included a paid leave of absence from CPC with time for TE Evans and his wife to focus on reconciliation.

APPENDIX S

- 12/17/18 The CPC Session met with the ST at Desert Palms Church and petitioned the ST to consider specified procedures for future shepherding.
- 1/14/19 RE Pitts wrote to the ST to express thanks for the agreement reached at the December meeting, which was to “set aside misunderstandings and restart the process in 2019.” He then summarized the Session’s proposals at the meeting regarding procedures for further shepherding efforts.
- 1/17/19 The ST responded to the January 14 letter.
- 1/25-26/19 AZP held its winter stated meeting when TE Lauterbach reported on the efforts of the ST and on the status of TE Evans. The ST met with the CPC Session to update them on its work with TE Evans and his wife.
- 2/7/19 TE Evans learned from his counselor that his wife was no longer willing to participate in marriage counseling.
- 2/25/19 Elizabeth filed for divorce, and TE Evans “immediately informed” the ST.
- 3/3/19 TE Evans informed the congregation after worship of the impending divorce.
- 3/12/19 TE Evans informed AZP, through its Moderator, that he and his wife were separated and divorce was pending.
- Early March The Moderator, through the AZP Administrative Committee, appointed an “Investigation Team” or “Investigating Committee” or “Investigative Committee” (IC) per *BCO* 31-2, consisting of TE Gray Ewing and REs Dave Price and Rob Withem, and possibly TE Glassmeyer.
- 4/19/19 During this week, the IC met with TE Evans for over three hours.
- 4/23/19 TE Evans requested, through the Moderator of AZP, that he be allotted time at the forthcoming meeting of AZP in which he might, per *BCO* 38-1 (“Cases Without Process”), come forward and make his offenses known to the court.

MINUTES OF THE GENERAL ASSEMBLY

- 4/23/19 After setting forth three “observations” describing its understanding and characterization of certain instances of TE Evans’s conduct, the IC approved a recommendation to AZP that “TE John Evans be deposed from his office due to sins of failing to manage his household well in addition to not honestly disclosing these issues to the presbytery, without any other censure (*BCO* 30-1, 30-3) and without process (*BCO* 38-1) and that his pastoral relation be dissolved (*BCO* 34-9) in order to demonstrate fruit in keeping with repentance.”
- 4/26/19 In AZP Executive Session, TE Evans read two documents to the court: one titled “My Confession” and the other “Report to Arizona Presbytery Regarding the Evans Marriage” (together sometimes referred to as the “Confession”). TE Evans then stated, according to the AZP minutes, that it was “his intent that the two documents taken together be considered his confession per *BCO* 38- [sic] and that it was his intent to confess and permit the court to render judgment without process.” TE Evans was then dismissed so that Presbytery could deliberate in his absence. Although the Confession itself set forth numerous facts, in his Report TE Evans stated that because *BCO* 38-1 requires “a full statement of the facts,” he was submitting “the following record of events as a contribution to such a statement.”
- 4/26/19 The IC then reported to AZP, stating it “did not challenge or add to TE Evans’ written confession.” The IC received questions from the court and then moved “That TE John Evans be deposed from his office due to sins of failing to manage his household well in addition to not honestly disclosing these issues to the presbytery, without any other censure (*BCO* 30-1, 30-3) and without process (*BCO* 38-1) and that his pastoral relation be dissolved (*BCO* 34-9) in order to demonstrate fruit in keeping with repentance.” The motion passed, apparently without a counted vote. The Moderator then read the following statement to the court: “Whereas, John Evans, a teaching elder of this Presbytery, has been proved, by sufficient evidence to be guilty of the sin of failing to manage his household well in addition to not honestly disclosing these issues to presbytery, we, the Arizona Presbytery, do adjudge him disqualified for the office of the Christian ministry, and therefore we do hereby, in the name and by the authority of the Lord Jesus Christ, depose from

APPENDIX S

the office of a teaching elder (or ruling elder or deacon) [*sic*] the said John Evans, and to prohibit him from exercising any of the functions thereof.”

- 5/3/19 TE Philip Kruis, AZP Recording Clerk, wrote to TE Evans: “We need a signed copy of the Confession and Statement of Facts that you presented to Presbytery.”
- 5/6/19 TE Evans provided signed documents while questioning how the action taken fit the requirements of *BCO* 38-1.
- 6/4/19 TE Evans filed his Complaint against AZP alleging that it failed to properly follow the express provisions of *BCO* 38-1 upon which it invoked the censure of deposition.
- 6/17/19 RE Pitts and others filed their Complaint substantially on the same grounds.
- 7/30/19 The AZP Moderator, TE Josh Hahne, moved by email to appoint a commission to respond to the two Complaints. TE Kruis was to be the convener, with other members to be TE Ewing, RE Price, and RE Richard Wolfe (AZP Stated Clerk), with RE Withem as an alternate. The motion was adopted. It appears that TE Glassmeyer was later added as a second alternate.
- 8/8/19 The Judicial Commission met by Zoom video for an hour and a quarter to consider the Complaint of TE Evans. It elected TE Kruis as Chairman and Clerk. Its minutes reveal that he had already drafted a response “based on counsel given by the Stated Clerk’s office.” They state that the Commission denied the Complaint, pointing out that it “affirmed that Presbytery accepted Mr. Evans’ ‘Confession’ and ‘Report’ as the full statement of facts. The Presbytery, through the IC, added nothing and did not challenge Mr. Evans’ statement of facts.” After edits to the Kruis draft, it was approved as the Commission’s “final draft.”
- 8/22/19 The Judicial Commission met for 45 minutes to consider the Complaint of RE Pitts and others. It proceeded to deny that Complaint.

MINUTES OF THE GENERAL ASSEMBLY

- 8/23/19 At its stated meeting, AZP approved the judgments of the Judicial Commission in denying the two Complaints. The votes were 24-4-1 on the Evans Complaint and 24-1-1 on the Pitts Complaint.
- 9/6/19 By memorandum of September 4, 2019, TE Evans filed his Complaint with the SJC.
- 9/19/19 By memorandum of September 13, RE Pitts, on behalf of himself and his three co-complainants, filed their Complaint with the SJC.
- 3/3/20 A hearing on the joined Complaints was conducted electronically (through GoToMeeting) by a Panel of the SJC, consisting of TE Paul Bankson, Chairman; TE Fred Greco, Secretary; RE Dan Carrell, and Alternates TE Ray Cannata and RE Bruce Terrell. Both TE Evans and RE Pitts appeared, but they were assisted by TE Dominic Aquila, who was the primary spokesman for the Complainants. Also appearing were Complainants TE Kelley, TE Phillips, and RE Campbell, and Respondent representatives TE Kruis and RE Wolfe.

III. STATEMENT OF THE ISSUE

Did AZP err when it took action under *BCO* 38-1 on April 26, 2019, to depose TE Evans from office?

IV. JUDGMENT

Yes, AZP erred procedurally in deposing TE Evans from office. The Complaints are sustained, the action of AZP is annulled, and the matter is remanded to AZP for further action consistent with this Decision.

V. REASONING and OPINION

The *Book of Church Order (BCO)* provides two mechanisms for dealing with matters of discipline with regard to a member. The first is a “case of process,” in which there are an accuser and the accused (*BCO* 31-3) and procedures under the Rules of Discipline, including the appointment of a prosecutor, the drawing of an indictment, the citation of the accused, and a trial (*BCO* 32). The second mechanism is a “case without process,” in which a person may

APPENDIX S

“come forward and make his offense known to the court,” in which case “a full statement of the facts shall be recorded and judgment rendered without process” (*BCO* 38-1). A case without process does not require a trial or a finding of guilt, because the accused has admitted guilt by coming forward and making his offense known.

Cases without process do, however, protect certain rights of the accused. The primary safeguard is that the accused must “intend to confess and permit the court to render judgment without process” (*BCO* 38-1). To ensure that the accused’s confession is genuinely his own, the *BCO* further provides that “[s]tatements made by him in the presence of the court must not be taken as a basis of a judgment without process **except by his consent**. In the event a confession is intended, a full statement of the facts **should be approved by the accused**, and by the court, before the court proceeds to a judgment” (emphasis added).

There may be different methods of ensuring that the accused approves a full statement of the facts, with the clearest being written evidence of his approval. The same is true of the court. In any event, there should be one statement of facts approved by both parties, with no additions after the fact.

Complainants allege that AZP approved a statement of facts that was different from that presented by TE Evans to AZP in his Confession. In particular, TE Evans alleges that the introduction of the IC Report of April 23, 2019 (IC Report), contained additional facts that he had not approved. Complainants also contended at oral argument that *BCO* 38-1 requires the court to meet with the accused and to discuss the statement of facts in order to ensure that the accused approves of the statement.

We find no express provision in *BCO* 38-1 that requires a court to meet with the accused or to discuss in detail the statement of facts that is to be the ground for a confession and judgment in a case without process. We do find, however, that there must be evidence of the accused approving the statement of facts. Such evidence exists with respect to the Confession of TE Evans. He drafted the Confession and submitted it to AZP, which made no modifications or amendments. The Confession was distributed to AZP, and TE Evans read it aloud during the April 2019 meeting. Had AZP voted on the case without process using the Confession as the full statement of facts, the procedure required by *BCO* 38-1 would have been followed.

MINUTES OF THE GENERAL ASSEMBLY

That, however, did not happen. After AZP received the Confession, TE Evans was dismissed from the meeting so that Presbytery could consider the report from the IC, a report that the IC had approved three days before, prior to the Confession even having been written. This report included not only a recommendation (essentially a 38-1 motion for AZP to approve) but also three “observations” presenting additional facts. TE Evans had no opportunity to approve, disapprove, or modify these additional facts. As such, he never approved the “full statement of the facts” required by *BCO* 38-1.

We have no way of knowing what action AZP would have taken had the additional facts from the IC report not been before its members. But we do know that *BCO* 38-1 requires unequivocally that the one offering his confession approve “a full statement of the facts.” This did not occur, either orally or in writing. TE Evans was not even present when the additional facts were presented, and therefore had no opportunity to either agree with or offer modifications to the additional facts.

Based on several of its documents, AZP contends that it treated TE Evans’s two documents as the complete statement of facts required by the *BCO*. For example, as noted above, the minutes of its April 26 meeting state that the IC “did not challenge or add to TE Evans’ written confession and report and attached the documents to these minutes.” That is true, but the minutes never addressed whether TE Evans agreed to the facts contained in the motion that Presbytery approved (which he never did), not to mention the fact that no vote was taken to adopt the Confession as the *BCO* 38-1 statement of facts. Indeed, the minutes never identify any document as the required statement of facts, and the Panel is not aware of one.

Even a cursory comparison of the Evans documents with the IC Report reveals stark differences. Moreover, it is of interest that the AC itself, which develops and approves the minutes of Presbytery, engaged in several email exchanges in order to arrive at what it finally approved as the text describing the action taken and its basis. Apparently, it had no recording of the April meeting.

In sum, the requirements of *BCO* 38-1 were not met, and the court could not make its judgment in a Constitutional manner. We, therefore, annul the judgment of AZP and remand this matter to AZP for action consistent with the requirements of the *BCO* and this Decision. Nothing in this Decision, however, affects the underlying matter before AZP with respect to TE Evans. AZP could adjudicate the underlying matter as a case without process, a case

APPENDIX S

of process, or a case to be dismissed entirely. However it acts, AZP must precisely follow the requirements of the *BCO*.

The Summary of the Facts of this Proposed Decision was primarily drafted by TE Bankson, and the balance of the document primarily by TE Greco, each with the editorial assistance of RE Carrell. The full SJC sustained the Complaint and approved the written decision on the following roll call vote:

Bankson, <i>Concur</i>	Duncan, M., <i>Concur</i>	Neikirk, <i>Concur</i>
Bise, <i>Concur</i>	Duncan, S., <i>Concur</i>	Nusbaum, <i>Concur</i>
Cannata, <i>Dissent</i>	Ellis, <i>Absent</i>	Pickering, <i>Concur</i>
Carrell, <i>Concur</i>	Greco, <i>Concur</i>	Ross, <i>Dissent</i>
Chapell, <i>Absent</i>	Kooistra, <i>Dissent</i>	Terrell, <i>Absent</i>
Coffin, <i>Concur</i>	Lee, <i>Concur</i>	Waters, <i>Concur</i>
Donahoe, <i>Concur</i>	Lucas, <i>Concur</i>	White, <i>Concur</i>
Dowling, <i>Concur</i>	McGowan, <i>Concur</i>	Wilson, <i>Concur</i>
(18-3-0)		

CASE 2019-10 AND CASE 2019-12
COMPLAINTS OF TE JOHN EVANS and RE ALAN PITTS, ET AL.
v.
ARIZONA PRESBYTERY

CONCURRING OPINION
August 22, 2020

RE Howard Donahoe

I concur with the Judgment, sustaining the Complaint for procedural reasons and annulling the censure, but have concern about fairness implications in the remanding, excerpted below.

The Complaints are sustained, the action of AZP is annulled, and the matter is remanded to AZP *for further action* consistent with this Decision. (Emphasis added.)

Nothing in this Decision, however, affects the underlying matter before AZP with respect to [the minister]. AZP could *adjudicate* the underlying matter as a case without process, a case of process, or a case to be dismissed entirely. (Emphasis added.)

While the Decision doesn't directly affect the underlying matter, "further action" has been affected by Presbytery's error. Because the principle of *BCO* 38-1 was violated when adverse information was presented outside the minister's confession document, it's questionable whether he could now get a fair judgment on his original document, or even on a revised document. And it's questionable whether he could now get a fair trial, given that he's already testified against himself in writing, relinquishing his *BCO* 35-1 right, after receiving assurance the matter would be properly handled as a case without process. Given the procedural error, the men of this Presbytery might regard his "time served," and the consequences of his 15-month deposition, to be a sufficient censure. If so, no motion or further action is needed.

To avoid confusion in the future, perhaps *BCO* 38-1 and 42-2 could be amended as below.

BCO 38-1. When any person shall come forward and make his offense known to the court, or confess to an offense during investigation or after indictment, a full statement of the facts shall be recorded, and judgment rendered without further process. In handling a confession of guilt, it is essential that the person intends to confess and permit the court to render judgment without further process. Statements made by him in the presence of the court must not be taken as a basis of a judgment without process except by his consent. In the event a confession is intended, a full statement of the facts should be approved by the accused and by the court before the court proceeds to a judgment consideration of censure, which approval shall be evidenced by an agreement signed by both parties and appended to the minutes of the meeting of the court (or its commission) at which its approval was rendered. The accused has the right of complaint against the judgment. The censure may be appealed.

BCO 42-2. Only those who have submitted to a regular trial are entitled to an appeal, and those appealing a censure in a *BCO* 38-1 case without process.¹

¹ The first sentence of *BCO* 38-1 dates to the 1879 PCUS Book. The last four were added in 2000. The author of this Concurrence drafted Overture 11 from Pittsburgh Presbytery which proposed those additions. (M27GA, p. 164.) The proposed language came from F. P. Ramsay's 1898 *Exposition of the Form of Government and of the Rules of the PCUS*. The Overture was amended by the 1999 GA Bills & Overtures Committee, adding the phrase, *and*

The *BCO* uses six chapters to stipulate procedures for formal judicial process, but there is really only *one paragraph* addressing procedures for confessions.²

To help interpret those scant procedures, we'll address six areas: timeline/types of confessions, approving confession documents, deciding censures, *BCO* v. plea bargains, considerations for court & confessor, and finally, errors in this Case.

Timeline & Types of Confessions - Generally, there are three periods during which a minister might confess an offense: prior to any inquiry, during an investigation, or after Presbytery orders an indictment. We could refer to these confessions as Unsolicited, Investigated, and Post-indictment (pleading guilty as charged or to part of a charge). Investigated confessions probably comprise the majority of confessions in the PCA. While the Unsolicited most closely reflects the present language in *BCO* 38-1, inquiries sometimes prompt confessions, some of which will be genuine, and some perhaps less so, and church officers must exercise judgment and discernment when evaluating them. (*BCO* 30-1; *WCF* 15)³

Approving a Confession Document ("CD") - Regardless of when it occurs, a confession should be in writing, and signed. There are three procedural scenarios for how a presbytery could decide whether a CD is a full statement of the facts, i.e., one that satisfactorily presents the pertinent facts and provides a sufficient basis on which to consider any censure motion.

by the court, and by substituting the right to *complain* instead of appeal. The amendment was then adopted by 92% of the Presbyteries, and enacted in 2000 by the GA in Tampa. (M28GA, p. 59.).

² The last sentence of *BCO* 31-7 references a post-indictment confession, but without specifying any procedures: "When the prosecution is instituted by the court [i.e., an indictment is ordered], the previous steps required by our Lord in the case of personal offenses are not necessary. There are many cases, however, in which it will promote the interests of religion to send a committee to converse in a private manner with the offender, and endeavor to bring him to a sense of his guilt, before instituting actual process [i.e., before commencing the trial]."

³ The current *BCO* paragraphs applying most directly to each type confession are these: unsolicited (38-1), investigated (31-2), and post-indictment (31-7, 32-3, 34-7). In post-indictment confessions, the court should be careful to ensure it understands precisely to what the accused is pleading guilty. He might be pleading guilty to only part of the charge and disputing some of the "specifications." This would presumably have a bearing on the consideration of censure. Clear and specific indictments are important. General ones like, "failing to manage his household well" or "failing to walk with exemplary piety" are usually not helpful. Regardless, to avoid misunderstandings, a defendant's post-indictment plea should be in writing and signed by him and the prosecutor.

MINUTES OF THE GENERAL ASSEMBLY

Floor Motion - In a presbytery meeting, any commissioner, including the confessing minister, could move the minister's signed, proposed CD be accepted as a "full statement of the facts." Ordinarily, this isn't the most prudent because it's unlikely many presbyters will have enough information to judge if it's a factually-sufficient statement on which to base censure (especially if it's related to a marriage).

Committee Recommendation - Either a standing committee or an ad hoc investigating committee could discuss the matter with the minister, reach an agreement on a specific CD, and recommend presbytery judge it to be a "full statement of the facts," sufficient for considering censure. This is more prudent than a floor motion, but it is also problematic because a committee recommendation is usually debatable and amendable, and any Q&A or debate would likely introduce facts and opinions not already in the CD.

Commission Decision - A presbytery could appoint an ad hoc commission with authority to render presbytery's judgment on whether any CD is sufficient. Or, it could have a standing commission with authority to do so, or a standing rule authorizing an existing committee to act as a commission to do so.

The *Commission Decision* scenario seems the most prudent.^{4 5}

Deciding Censure - While the *BCO* doesn't require discussion of censure with a confessor prior to his signing a CD, doing so could encourage confessions—and avoid complaints.⁶ Granted, some confessing ministers

⁴ Pacific Northwest Presbytery has a standing, five-man Preliminary Investigation Committee with commission authority to render Presbytery's judgement on whether a CD is a "full statement of the facts," but it can only recommend a censure. The excerpt from Pacific Northwest's standing rules can be found [here](#) or

<https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:86513631-5356-4980-9c792fcc61dca1ad>
<https://www.dropbox.com/s/kabrsxlzhpjxxh9/PIC%20Rules%20and%20Guidelines.pdf?dl=0>

⁵ In addition to a commission approving a CD as sufficient, there's some debate on whether a presbytery can also authorize a commission to approve and impose a censure in a non-trial, case-without-process.

⁶ There were 3 other cases this year involving review of matters involving confessions (Cases 2019-04, 2020-03 and 2020-07/08). See also Case 2007-02: *TE Malone v. Metro NY*, where SJC unanimously sustained Complaint against faulty

APPENDIX S

might be willing to accept *any* censure imposed by the presbytery. But he should understand that nothing prevents the court from suspending him from office for an offense he believes only warrants admonition, or deposing him for an offense he believes only warrants admonition.

Therefore, a confessing person might consider delaying agreement on a CD until a censure discussion occurs, and it might be prudent to include something like the following in any mutually-agreed-upon CD:

I understand the Commission is recommending the censure of _____, and I have read the Commission's reasons for that recommendation in the CD above. If Presbytery imposes that censure, I don't plan to seek higher court review of the censure. I've also read, in the CD above, what the Commission recommends the Moderator read to me when imposing the censure. (*BCO* 36-5, -6, or -7)⁷

If a censure motion is debated, the moderator should ensure no Q&A, committee/commission comments, or speeches add to what is confessed in the CD. If the CD is insufficient for rendering a decision on censure, then the committee or commission missed an important opportunity and either agreed to a deficient CD or is recommending an unsupportable censure. A censure motion could be considered without debate, and such a procedural motion could be made by a committee, a commission, or any voting member at the presbytery meeting.

BCO v. "Plea Bargains" - There are important differences between civil plea bargains and confessions in the PCA. Here's one description of plea bargains in civil courts.

In most jurisdictions and courthouses, plea bargaining can take place at virtually any stage in the criminal justice process ... Plea deals can be struck shortly after a defendant is arrested and before the prosecutor files criminal charges. Plea negotiations may culminate in a deal as a jury returns to a courtroom to announce its verdict. If a trial results in a hung jury, in which the jurors are

BCO 38-1 procedures, annulling a TE's 12-month suspension from office. (M36GA, 2008, p. 99.)

⁷ Evidence of repentance, or lack thereof, can be included in a CD, as long as both parties agree.

split and cannot make the unanimous decision required, the prosecution and defense can (and frequently do) negotiate a plea rather than go through another trial. And plea deals are sometimes reached after a defendant is convicted while a case is on appeal.⁸

A state prosecutor will often propose, to an arrested person before indictment or to a defendant after indictment, that he plead guilty to a lesser charge with assurance he will not prosecute on a greater charge. The accused is aware of the lesser sentence because crimes usually have a sentencing-range stipulated by law. But the *BCO* doesn't have codified penalties for specific offenses. It provides three censures imposable on anyone (admonition, suspension from sacraments, and excommunication) and two more for church officers (suspension from office and deposition). Unlike state courts, however, the *BCO* doesn't tie these censures directly to specific offenses. A church court can always impose whatever censure it deems warranted.⁹

Another difference is seen in the Federal Rules of Evidence, which declare as inadmissible any evidence of a guilty plea agreement, or a nolo contendere plea, and even statements made by the defendant during those discussions. While fairness would seem to require the same in the PCA, the *BCO* is silent on such protections.¹⁰

Considerations for Court & Confessor - Clarity on confession procedures is important, partly because avoiding trials can be beneficial for the Church. In addition to the spiritual benefit of confession to the offender, few sessions or presbyteries have elders or ministers who are also experienced prosecutors, and, of those few, even less have the time required for prosecuting a trial well and defending the court on appeal. Granted, some prosecutions may be simple, but churches and presbyteries often experience significant turmoil in judicial process—relationships are strained, transcription is costly, and many man-hours are expended. In addition, a high

⁸ See [here](#) at Nolo.com. See also [this](#) at Law.Cornell.edu

⁹ When imposing indefinite suspension from office, some presbyteries have found it helpful to add something like, "the suspension will be reviewed hereafter at each stated meeting in the report of the XYZ Committee."

¹⁰ Federal Rule 410 - https://www.law.cornell.edu/rules/fre/rule_410_nolo_contendere - The defendant does not accept or deny responsibility for the charges but agrees to accept punishment. (www.law.cornell.edu)

APPENDIX S

number of sessions and presbyteries are reversed on complaint or appeal.¹¹ Litigation is not always the wisest path for justice.

In some instances the *BCO* might actually hinder efforts to persuade someone to confess. Pending indictment, if a man has no assurance his punishment will be lessened if he confesses, he might think it's rational to go to trial. And if he's convicted at trial, he can appeal at no cost, and his censure would normally be suspended during his appeal.

A confessing person voluntarily waives part of his *BCO* 35-10 right against self-incrimination and admits to offenses he understands could result in censure. If he isn't confident the censure will be based solely on the CD, he runs a risk because he can only file a complaint, which must be filed first with the original court, so a final SJC decision could take many months.¹² And finally, there's no censure imposable on a court that fails to adhere to the principles or procedures of *BCO* 38-1.¹³

However, a minister should also understand that if goes to trial, he could be administratively suspended from office during the period between indictment and verdict. (*BCO* 31-10) And if he is convicted, it only takes a simple majority, with reasons recorded, to administratively suspend him from office during an appeal. (*BCO* 42-6). These non-disciplinary suspensions could be in force for some time, and his church might not be able to continue his compensation and that of his temporary replacement during that time.

Courts and confessors might consider options that don't involve official censures. Sometimes a minister might choose to, or be encouraged to, take a sabbatical, enter counseling, resign his pastorate, or even demit his office in lieu of formal judicial procedures and censures (the latter two being similar to a *nolo contendere* plea). And while the *BCO* requires a confession or conviction to impose the *formal* censure of admonition, nothing precludes a presbytery committee, or the presbytery itself, from warning a minister or telling him he has exercised poor judgment, or lacked discernment, or neglected his office in some way. Such non-judicial communications need to

¹¹ This past year, session or presbytery censures were annulled in three other cases: 2018-01 *Mapes v. Metro NY*, 2019-01 *Dodson v. Ohio*, & 2019-08 *Ganzel v. Central Florida* (SJC 2020 Report, pp. 2, 11, 73)

¹² In this Case, the censure was annulled 15 months after it was imposed. In another confession or plea-related complaint this year, an SJC decision wasn't rendered until over 20 months after censure. (Case 2019-04)

¹³ *BCO* 40-5 permits censuring lower courts, but *BCO* 42-9 & *BCO* 43-10 do not mention that option.

MINUTES OF THE GENERAL ASSEMBLY

be careful, and their will likely depend on the "aggravations" of the matter (WLC 151), evidence of repentance, and evaluation of the man's future usefulness in the ministry.¹⁴

Given these considerations, ministers should consider seeking counsel early, and presbytery committees should consider recommending he do so. (*BCO* 32-19)

Errors in this Case - Did this Presbytery allow material to be presented or distributed prior to the vote on censure, that was additional to the CD and unfavorable to the minister? Yes.

The interactions between the minister and Presbytery began like the Unsolicited Confession scenario, with Presbytery's Shepherding Team, and after the minister's wife filed for divorce, it changed to more closely resemble the Investigated Confession scenario. At the conclusion of its *BCO* 31-2 investigation, the Investigative Committee ("IC") recommended Presbytery approve a four-page document as the "full statement of the facts," referencing *BCO* 38-1. The document had a 1,153-word "Confession" and a 1,092-word "Report to Arizona Presbytery Regarding [the TE's] Marriage." After the document was read to Presbytery, the IC reported it "did not challenge or add to [the TE's] written confession." But the IC added a 243-word "Report of Investigative Committee," which included three unfavorable "observations." The following also appeared in the IC's censure recommendation. (Emphasis added.)

That [the minister] be deposed from his office due to sins of failing to manage his household well *in addition to not honestly disclosing these issues to the presbytery ...*

With reference to that censure recommendation, the pertinent question is not whether the man withheld information in a transfer interview with a Presbytery committee some years prior. The pertinent question is whether he confessed any sin related to this in his CD, and if not, why did the IC believe it could add it at the Presbytery meeting?

¹⁴ *BCO* 34-5 "Heresy and schism may be of such a nature as to warrant deposition; but errors ought to be carefully considered, whether they strike at the vitals of religion and are industriously spread, or whether they arise from the weakness of the human understanding and are not likely to do much injury."

APPENDIX S

In its brief to the SJC, Presbytery "denies that the three paragraphs listed as 'observations' were intended or in any way treated by the Presbytery as additional offenses." But regardless of intent, there's little way to know what effect the additions may have had on the 36 presbyters who considered the motion to impose the censure of deposition. If those "observations" were important, the IC should have secured the minister's approval to add it to the CD *before* finalizing the agreement and presenting the document to Presbytery. Also in its brief, Presbytery asserted "the IC recommendation at the end of its Report added nothing new to his Confession." If that were true, then why include it? *BCO 38-1* stipulates, "Statements made by him in the presence of the court must not be taken as a basis of a judgment without process *except by his consent.*" If his own words can't contribute to the basis without his consent, then nothing from an investigating committee or commission should be allowed to do so. By allowing this additional material to be presented, Presbytery erred.

/s/ RE Howard Donahoe

CASE 2019-11
COMPLAINT OF DAN AND ANGELIA CROUSE
v.
NORTHWEST GEORGIA PRESBYTERY

DECISION ON COMPLAINT
July 21, 2020

I. SUMMARY OF THE FACTS

June-July 2018 The Session of Midway Presbyterian Church provided notice to the congregation for an election of officers and took nominations from the congregation.

7/15/2018 The Complainant, then serving as an elected Deacon, was nominated for election to serve an additional term as a Deacon.

11/19/2018 After examining the candidates, the Session determined that the Complainant's nomination would not proceed and that his name would not appear on the ballot for election to a new term as a Deacon.