

This dissent acknowledges that if the issue in this case had been framed differently we and the majority in this decision would concur that a candidate for ordination would be found out of accord with the third ordination vow if he did not affirm the following: (1) that the office of deacon is an “ordinary and perpetual office of the church” (e.g., BCO 1-4, 4-2, 7-2); (2) that he would proactively and exclusively train, nominate and ordain qualified men as deacons; (3) that only men can be elected by the congregation and be ordained to serve on the Board of Deacons; and (4) that women are not eligible to be elected as deacons, they are not to be commissioned as deacons, and they are not to serve on the Board of Deacons with men.

This dissent believes the SJC ruled incorrectly on this complaint and it should have been sustained.

/s/ TE Dominic Aquila /s/ TE Grover E. Gunn III /s/ RE Olin Stubbs

**COMPLAINT OF THE SESSION OF RED MOUNTAIN
PRESBYTERIAN CHURCH
VS.
EVANGEL PRESBYTERY
SJC 2008-09**

I. SUMMARY OF THE FACTS

On January 18, 2007 Dr. Carl Walker, a ruling elder member of the Session of Red Mountain Presbyterian Church repeatedly struck his wife, Melanie Walker. On the same date RE Walker appeared before his Session, informed them of the incident and resigned as an active ruling elder in that church.

On February 15, 2007 the Session of Red Mountain Church determined that it was not convinced that Melanie Walker, who was pursuing divorce, had adequate grounds for divorce and asked her to cease her divorce proceedings and to engage in a process designed to bring a positive resolution to the marital conflict. In the following months, the Session dealt with Dr. and Mrs. Walker pastorally with intention of restoring some measure of trust and reconciliation between the Walkers. However, the Session determined that Dr. Walker’s lack of repentance was a substantial barrier to reconciliation. For example, on one occasion Dr. Walker requested and the Session agreed to permit Dr. Walker to meet with Mrs. Walker in a public place. During the meeting, Mrs. Walker discovered that Dr. Walker was secretly audio-taping their discussion.

MINUTES OF THE GENERAL ASSEMBLY

On March 7, 2007 Dr. Walker requested that the Session rule that his wife's divorce suit against him was un-biblical. On March 15, 2007 the Session voted to communicate to Melanie Walker that it was no longer asking her to stop her pursuit of a divorce at that time. It subsequently, on September 23, 2007, decided not to prosecute Melanie Walker, rejecting Dr. Walker's March 7 request, but prohibited her from re-marriage as long as Dr. Walker is a member in good standing under the discipline of Red Mountain Church or any other PCA congregation to which the Session releases him.

On October 27, 2007 the Session, by means of a pastoral letter to Dr. Walker, explained the rationale for its decision.

On November 26, 2007 Dr. Walker filed a Complaint with the Session of Red Mountain Church for having failed to act as he had requested. The Session denied the Complaint on January 17, 2008.

On January 21, 2008 Dr. Walker filed a Complaint with Evangel Presbytery against the Session of Red Mountain Church setting forth the following specifications:

1. That the Session failed to rule biblically, specifically and authoritatively on whether or not the divorce suit brought by Melanie Walker was biblical or non-biblical.
2. That the Session requirement that Melanie Walker remain unmarried after divorce implies that she pursued an un-biblical divorce which contradicts the Session decision.
3. The Session has been more permissive than scripture, the Westminster Confession of Faith, and the official PCA position paper on divorce and re-marriage.
4. That the Session exerted insufficient effort in seeking to achieve reconciliation between him and Melanie Walker and was negligent in failing to use appropriate use of constructive discipline prior to its decision not to prosecute the charge of un-biblical divorce.
5. That the Session was in error to base its decision in part on the conclusion that there was not a strong presumption of guilt on the part of Melanie Walker regarding the charge of un-biblical divorce.

On May 13, 2008, Evangel Presbytery responded with the following judgment to the five specifications in the RE Carl Walker Complaint against the Session of Red Mountain Church.

1. The Complaint is affirmed.
2. The Complaint is denied

3. The Complaint is denied
4. The Complaint is denied
5. The Complaint is affirmed.

In summary, Evangel Presbytery judged that Melanie Walker did not have grounds for divorce and instructed the Session of Red Mountain Church pastorally to engage Melanie Walker in accordance with Matthew 18:15-18 and the constitution of the Presbyterian Church in America.

On June 11, 2008 the Red Mountain Church Session filed a Complaint against the May 13, 2008 action of Evangel Presbytery with respect to the Presbytery's ruling on the Walker Complaint. On August 12, 2008, at its next stated meeting, Evangel Presbytery determined not to act on the Complaint, but rather to let the matter proceed to the Standing Judicial Commission. The Complaint was found by the SJC officers to be administratively in order and a panel was appointed.

II. STATEMENT OF THE ISSUES

1. Did Evangel Presbytery err when it determined that in response to Dr. Carl Walker's charge of March 7, 2007, the Red Mountain Session failed to rule biblically, specifically, and authoritatively on whether or not the divorce suit brought by Melanie Walker violated the Scripture?
2. Did Evangel Presbytery err when it determined that the Red Mountain Session improperly based its decision, in part, on a finding that there was no strong presumption of guilt that Mrs. Walker's suit violated the Scripture?
3. Did Evangel Presbytery err in the way it handled its judicial commission report to the presbytery.
4. Did Evangel Presbytery err when, by its adoption of the Presbytery Commission's revised report, it found that Melanie Walker did not have biblical grounds for divorce?

III. JUDGMENTS

1. Yes.
2. Yes.
3. Yes.
4. Yes.

IV. REASONING AND OPINION

1. *Did Evangel Presbytery err when it determined that in response to Dr. Carl Walker's charge of March 7, 2007, the Red Mountain Session failed to rule biblically, specifically, and authoritatively on whether or not the divorce suit brought by Melanie Walker violated the Scripture?*

At the May 13, 2008 stated meeting Evangel Presbytery heard and approved the report of its judicial commission concerning Dr. Carl Walker's Complaint against his Session at Red Mountain PCA. The first issue of the Complaint, affirmed by the judicial commission was that the Session failed to rule on the March 7, 2007 request of Dr. Walker biblically, specifically, and authoritatively.

Regarding the determination by Evangel Presbytery that the Red Mountain Session failed to rule on this matter biblically, we find that the Session gave due attention to the passages of Scripture that speak to the matter of divorce, and sought to articulate its understanding to those passages to Dr. Walker as well as to Evangel Presbytery. Even so, the Session never did rule that Mrs. Walker had biblical grounds for divorce. Rather in its view, Dr. Walker's manifest violence against his wife, coupled with his persistent lack of repentance, led session to conclude that she *may have had* biblical failure to repent of his grounds for divorce in due time, should it become the case that Dr. Walker's prolonged alleged sins be considered his willful desertion of his wife. In the words of the Session's Brief, submitted to Evangel Presbytery as part of the Session's answer to Dr. Walker's January 21, 2008 Complaint, the Session declared:

We tried diligently through many hours of work to care for Complainant's family during this time and to counsel him and call him to repentance. During the first several weeks, we believed that Melanie Walker probably did not have grounds to divorce her husband, and so we counseled her in two separate meetings . . . We were preparing for a third approach, which, had she not listened, probably would have led to a decision by us to prosecute her, when Complainant's actions and continued hostility toward his wife caused us to re-examine our position. We determined that, given his actions and hostility, we could no longer ask her to stop pursuing divorce "at this time," but that we still held out hope that Complainant would make it possible for us to do so again. By September 23, 2007, we believed that a

“sufficient time” had passed for us to determine the situation, and we determined that we could not in good conscience prosecute Melanie Walker for unbiblical divorce since there existed substantial possibility that she has Biblical grounds (ROC p. 40).

Furthermore, in the same Brief, the Red Mountain Session writes:

. . . in recognition of the uncertainties of this case and the absence of a trial and ruling that her divorce is Biblical, we have not given her permission to remarry. This solution permits her to be as free of danger from her husband as humanly possible, but also gives him the freedom to pursue the reconciliation with her that he desires.(ROC p. 41).

Regarding the assertion of Evangel Presbytery that the Red Mountain Session failed to rule specifically on this matter, the assertion appears to rest upon the Presbytery’s assumption that all Session interactions with members in difficulty must be conducted by the full Session (ROC p.10), rather than through deputed agents of the Session acting under the Session’s instructions and being accountable to the Session. We find that this assumption by Evangel Presbytery is too rigid, imposing, and, precisely in such painful, complex, and sometimes rapidly changing circumstances as the case at hand, would prove to be imprudent and unhelpful.

Regarding the assertion of Evangel Presbytery that the Red Mountain Session failed to rule authoritatively on this matter, we find that the Session could have been more forthright in communicating to both Dr. and Mrs. Walker the development as well as the final determination of Dr. Walker’s March 7, 2007 request. However, both the Record of the Case and the oral arguments of the Respondents for Evangel at the December 15, 2008 SJC Panel hearing of this Complaint fault the Session for a failure to declare unequivocally whether or not Mrs. Walker’s pursuit of a divorce was biblical. We find that, given the dynamic of the Walkers’ disintegrating marriage as indicated above, the Session did give a clear ruling that accorded with the reality of the situation at the time of the ruling.

2. *Did Evangel Presbytery err when it determined that the Red Mountain Session improperly based its decision, in part, on a finding that there was no strong presumption of guilt that Mrs. Walker’s suit violated the Scripture?*

Dr. Walker's November 26, 2007 Complaint represents a significant development from his March 7, 2007, request for a sessional ruling regarding Melanie Walker's pursuit of a divorce. In his March 7 request Dr. Walker asked ". . . that the Session issue a ruling that Melanie's divorce suit against Carl is un-biblical" (*ROC* p. 26). In his November 26 Complaint Dr. Walker charges the Red Mountain Session with "... the error and delinquency of the Session . . . not to prosecute the charge of un-biblical divorce in the case of Carl and Melanie Walker..." (*ROC* p. 15). It is apparent from this change that Dr. Walker himself expected the Red Mountain Session to investigate what he considered to be a charge against his wife and to find a strong presumption of guilt by which to prosecute her. While it is true that a Session may consider and express its ruling on a request apart from the provisions of *BCO* 31-2, the nature of the matter before the Red Mountain Session and the relief clearly expected by Dr. Walker who made the request, made the Session's consideration of this matter according to the provisions of *BCO* 31-2 reasonable and appropriate.

3. *Did Evangel Presbytery err in the way it handled its judicial commission report to the presbytery?*

BCO 15-3 specifies that when a Judicial Commission hears a Complaint and gives its report to the Presbytery, the judgment of the Commission shall, without debate, be approved or disapproved by the Presbytery. Our *BCO* precludes the action of Evangel Presbytery when it permitted the Commission to suspend the giving of its report, and return to the floor at a subsequent time with a motion to approve the report it had amended during the lunch break of the Presbytery meeting. The record of the case indicates that the Commission presented a partial report, and that the Commission modified its previously distributed written report during the lunch break, following discussions by the floor. Such action violates *BCO* 15-3.

4. *Did Evangel Presbytery err when it found that Melanie Walker did not have biblical grounds for divorce?*

The final point of the Red Mountain Session's Complaint specifies that Evangel Presbytery erred when it adopted the revised Commission report regarding the ruling on the Walker Complaint of January 21, 2008. In particular, the Red Mountain Session Complaint cites the revised portion of that adopted Commission report that declared that Mrs. Walker did not have biblical grounds for divorce, and instructed the Red Mountain Session to engage her in accordance

with Matthew 18:15-18. The precise wording of the revised Commission report, contained in the Brief of the Respondents for Evangel Presbytery, page 5, is as follows:

To bring additional clarification to the decision, the Commission finds the following:

- 1) *Based on the information gathered by the Commission, we find that Melanie Walker does not have biblical grounds for divorce.*
- 2 *We instruct the Red Mountain Session to pastorally engage Melanie Walker in accordance with Matthew 18:15-18 and the Constitution of the Presbyterian Church in America.*

In spite of the fact that the Respondents for Evangel Presbytery asserted in their Brief and in their oral arguments that the clarifying language above did not instruct the Red Mountain Session to charge Mrs. Walker with sin, we are unconvinced that the Presbytery could rightfully determine from the indirect evidence it had before it in the Walker Complaint that Mrs. Walker's divorce was in fact unbiblical. We also find ourselves in agreement with the Complainants' contention that the instruction for the Session to engage Mrs. Walker in accordance with Matthew 18 presupposes that she is in sin, and judges her apart from due process.

The Standing Judicial Commission accordingly sustains all four elements of the complaint and hereby reverses the action of the Presbytery in accordance with 43-10. By our ruling, we are neither affirming nor denying that Mrs. Melanie Walker had biblical grounds for her divorce from Dr. Carl Walker. What we are affirming is that on March 7, 2007, when Dr. Walker asked for a ruling from his Session on whether his wife's pursuit of a divorce was biblical or not, the Session acted in such a way that no clear error is manifested that would lead a higher court rightly to sustain a Complaint against that action in accordance with *BCO* 39-3, paragraphs 2, 3.

The vote on SJC 2008-9 was:

TE Dominic A. Aquila, Concur
TE Howell A. Burkhalter, Concur
RE E. C. Burnett, Concur
TE David F. Coffin Jr., Concur
RE Marvin C. Culbertson, Concur
RE J. Howard Donahoe, Concur

TE William R. Lyle, Concur
TE John M. McArthur, Jr., Concur
RE J. Grant McCabe, Concur
TE Charles E. McGowan, Absent
TE D. Steven Meyerhoff, Abstain
RE Frederick Neikirk, Concur

MINUTES OF THE GENERAL ASSEMBLY

RE Samuel J. Duncan, Concur
TE Paul B. Fowler, Absent
TE Grover E. Gunn III, Concur
TE William W. Harrell Jr., Concur
RE Terry L. Jones, Concur
RE Thomas F. Leopard, Absent

RE Steven T. O'Ban, Concur
RE Calvin Poole, Concur
TE G. Dewey Roberts, Concur
RE Olin L. Stubbs, Concur
RE John B. White, Jr., Concur

19 concur, 1 abstain, 3 absent

IV. PROPOSED AMENDMENTS TO THE MANUAL OF THE STANDING JUDICIAL COMMISSION (RAO 17.5)

The Standing Judicial Commission recommends that the Assembly amend the SJC Manual as follows:

1. In § 3.2, strike **mailed** and add **sent by mail or electronic means**.
2. In §§ 8.4 (a), (b), 13.10, 14.7, 15.7, 19.7 (a), (c), add **by mail or electronic means**.
3. In § 11.10 after “shall be mailed” add **or sent by electronic means**.
4. In § 11.11 (a) after “and mail” add **or send by electronic means**.
5. In § 19.6 after “shall mail” add **or send by electronic means**, after “the mailing,” add **or electronic notice**, after “ballot,” add **by mail or electronic means**.
6. In § 20.6 after “by mail” add **or electronic**.
7. That in light of the fact that *BCO 40-5* was amended in 2006 to delete any reference to a memorial, SJC Manual 16 be amended as indicated below:

Additions **bold**; deletions ~~strikethrough~~

16. PROCEDURE FOR HEARING A ~~MEMORIAL REPORT~~ **ARISING OUT OF GENERAL REVIEW AND CONTROL** (*BCO 40-5; RAO 16-10.c.*)

16.1 ~~The only Memorial which the Commission may entertain A Report arising out of General Review and Control~~ is one which purports to demonstrate an important delinquency or grossly unconstitutional proceeding of a lower court (*BCO 40-5*). When such a Report is submitted to the Commission it shall be first handled according to Section 10 of this Manual, as applicable.

(a.) ~~When such a Memorial is received by the Stated Clerk, a determination shall be made by chairman and secretary of the SJC as to whether or not the Memorial is found administratively in order.~~