

MINUTES OF THE GENERAL ASSEMBLY

CASE 2017-02

***RE CHARLES POSTLES
VS.
HERITAGE PRESBYTERY
DECISION ON COMPLAINT***

August 30, 2017

I. SUMMARY OF THE FACTS

- 05/10/2016 Heritage Presbytery (HP) appointed a committee “to investigate the health of the relationship between congregants and the leadership at New Covenant Presbyterian (NCPC)”. The motion directs “(t)he committee on investigation is to report back to presbytery at the September 2016 meeting.”
- 09/10/2016 At the September 10, 2016 Meeting of HP, the “Concluding Report to Presbytery” and the Addendum dated 9/9/2016 was read to HP in executive session. The minutes of that meeting note that “The Committee had not had time to meet between the Addendum preparation and the presbytery meeting to approve in a physical meeting the Addendum and its implications, but committee members individually agreed that the August 23, 2016 report without the Addendum leaves presbytery with a misimpression of the state of relations between the congregants, the pastor and remaining Session members.”

The minutes of executive session note that after the report was read HP engaged in intense debate about the accuracy of the report, the issues raised by the report and what course of action could or should be pursued.

After debate, HP passed to following motion:

for the committee to continue its mandate to inquire into the relations between congregants and the Pastor and remaining officers at NCPC, investigate the reported facts, and based on that continuing work propose recommended actions for presbytery.

APPENDIX T

11/12/2016 At the November 12, 2016 the Stated meeting, the Committee presented their report and recommendations. One of the recommendations made by the committee was:

And, whereas the Committee is convinced that there is a strong presumption of the TE's guilt;

Therefore, the Ad Interim Committee for NCPC recommends Heritage Presbytery bring charges against the TE for breaking his ordination vows...,

To this end, the Committee further recommends the HP appoint a prosecutor to prepare the indictment against the TE for breaking ordination vows 6 and 7...

After discussion and debate on the recommendations of the Committee, HP passed the following motion:

The HP charge the TE with violation of Ordination Vow 6 and of Ordination Vow 7 and that a prosecutor be appointed by the Moderator to investigate the offenses charged and if necessary to prepare the indictment to be served on the accused.

12/16/2016 RE Postles and RE Dailey filed their Complaint against the action taken by HP at the November 12, 2016 meeting.

01/28/2017 HP considered and denied the Complaint.

01/31/2017 RE Postles and RE Dailey filed their Complaint with General Assembly. While the case was pending, RE Dailey requested that his name be removed from the Complaint.

05/31/2017 SJC Panel conducted the hearing.

II. STATEMENT OF THE ISSUE

Did Heritage Presbytery err at the November 12, 2016 Stated Meeting when, acting upon the recommendation of a committee, they charged a TE with offenses and appointed a prosecutor to investigate the charges

III. JUDGMENT

No.

IV. REASONING AND OPINION

The Complaint alleges that the Ad Interim Committee's investigation and recommendation and the actions that Heritage Presbytery took on the Committee's recommendation were in violation of the Constitution of the Church.

The Committee Investigation and Recommendation

The Complainant alleges that the investigation was a violation because "the Ad Interim Committee was not appointed to conduct an investigation that envisioned any form of judicial action or process."

The Record of the Case clearly demonstrates that the Committee was given instructions by HP to conduct an investigation. On May 10, 2016, HP appointed the Ad Interim Committee "to investigate the health of the relationship between congregants and the leadership at New Covenant Presbyterian (NCPC)" On September 10, 2016, HP extended the work of the Committee and specifically directed that committee, in part, to "investigate the reported facts."

We find no requirement in the Constitution that a committee must be given special or specific instruction before the committee can make a recommendation that includes a recommendation of judicial action or process. In general, "a committee is appointed to examine, consider and report..." (*BCO 15-1*). Complainant's citation of *Malone vs Metropolitan New York Presbytery*³⁹ is out of context and in contradiction to the ruling by the SJC in that case. The *Malone* ruling only indicates a Commission appointed under *BCO 15-3* may not take judicial action, such as "render a judgment or censure", unless authorized by presbytery to do so. In the case before us, HP asked the committee to investigate and report and the committee only made *recommendations* based on the findings of their investigation. (emphasis supplied) A recommendation is not the equivalent of an action, such as rendering a judgment or a censure.

The Complainant has failed to demonstrate that the investigation and recommendation of the Ad Interim Committee violated any provision of the Constitution.

³⁹ Malone v. Metropolitan New York Presbytery (SJC 2007-02); M36GA2008, pp.99-107

Actions on the Committee's Recommendation

Complainant alleges that HP followed a process that was a clear violation of the Constitution when HP acted upon the recommendation of the Committee and instituted process against the TE.

In this case, the Committee reported to HP that the Committee had conducted an investigation and that the Committee had verified some of the reported events. The Committee also reported that, as result of the investigation, the “Committee is convinced that there is a strong presumption of the TE’s guilt.” Consistent with that report, the Committee recommended that charges be brought and that a prosecutor be appointed.

The minutes of November 12, 2016 reflect that upon hearing the report and recommendation of the Committee, HP engaged in debate and discussion about the recommendations of Committee. The final result of the debate and discussion was the following motion:

That HP charge the TE with violation of Ordination Vow 6 and of Ordination Vow 7 and that a prosecutor be appointed by the Moderator to investigate the offenses charged and if necessary to prepare the indictment to be served on the accused.

In support of the allegation of error, the Complainant offered three alleged violations of the Constitution: a) there was no written committee report b) the approach was contrary to the steps outlined in *BCO* 31-2 and c) the imprecise, non-*BCO* language used.

- a) We can find no Constitutional requirement for a written report.
- b) The steps outlined in *BCO* 31-2 calls for 1) an investigation, 2) the establishment of a strong presumption of guilt, 3) the appointment of a prosecutor. The Record of the Case demonstrates that HP followed these steps. While it may have been more precise to use the words “appoint a prosecutor to prepare the indictment and to conduct the case” (*BCO* 31-2), there is no clear violation of the Constitution in the language used by HP. The instruction “to investigate the offenses charged and if necessary to prepare the indictment to be served on the accused” does not do any damage to the integrity of the

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Rules of Discipline nor violate the rights of the accused. The instructions were narrow in scope—“investigate the offenses charged”; the prosecutor was constrained to conduct his investigation only on the offenses charged. It seems reasonable and prudent for the prosecutor to “double check” the work of the Committee before drawing the indictment. Such caution helps to protect the accused by possibly avoiding an unfounded indictment. Also, there is no question that the language used by HP was sufficient to institute process. In *Payne v. Western Carolina Presbytery*, the SJC ruled that “Process begins with appointment of a prosecutor (or when the court directs the appointment of one)⁴⁰”

The Complainant has failed to demonstrate that the actions taken by HP in the conduct of the investigation and the institution of process against the TE violated the Constitution of the Church. Therefore, the Complaint is denied.

The proposed decision drafted by RE Nusbaum and edited by the Panel. The decision was further edited and approved by the SJC as follows:

Bankson, <i>Concur</i>	Duncan, <i>Concur</i>	Neikirk, <i>Concur</i>
Bise, <i>Dissent</i>	Evans, <i>Concur</i>	Nusbaum, <i>Concur</i>
Cannata, <i>Concur</i>	Fowler, <i>Concur</i>	Pickering, <i>Concur</i>
Carrell, <i>Dissent</i>	Greco, <i>Absent</i>	Terrell, <i>Concur</i>
Chapell, <i>Dissent</i>	Jones, <i>Concur</i>	Waters, <i>Concur</i>
Coffin, <i>Dissent</i>	Kooistra, <i>Absent</i>	White, <i>Concur</i>
Donahoe, <i>Concur</i>	McGowan, <i>Concur</i>	Wilson, <i>Concur</i>
Dowling, <i>Concur</i>	Meyerhoff, <i>Dissent</i>	

⁴⁰ *Payne v. Western Carolina Presbytery* (SJC 2009-05); M38GA2010, p. 208