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procedure not only removes the question of whether or not a strong presumption of guilt exists (*BCO* 31-2), but also allows a Court to directly try the issue raised in the “charge.” (*BCO* 32-3) Furthermore, this procedure will require an accurate record of the questions and answers, in that all testimony shall be recorded and become a part of the Record, should any person desire further review of the Lower Court’s Decision. (*BCO* 35-7) This will eliminate the problem of not having a complete or accurate Record upon which to judge and decide the Case.

/s/ Samuel J. Duncan

/s/ Grover Gunn

/s/ E. C. Burnett III

CASE 2009-28
COMPLAINT OF MATT RUFF
VS.
NASHVILLE PRESBYTERY

I. SUMMARY OF THE FACTS

1. In July of 2008 Matt Ruff forwarded a letter to Nashville Presbytery (“NP”) asking the Presbytery to undertake an investigation of alleged offenses committed by TE George Grant. The letter addressed a series of conflicts between Mr. Ruff and TE Grant while Mr. Ruff was a Member of Parish Presbyterian Church (“PPC”). It also reported similar conflicts between TE Grant and third Parties. The letter and supporting materials exceeded 45 pages.
2. The Shepherding Committee (“SC”) of Nashville Presbytery undertook an investigation of the matters raised by Mr. Ruff. The work of the Committee included individual meetings with Mr. Ruff and TE Grant, as well as meetings with the Sessions of Parish Presbyterian Church and Christ Community Church (which Mr. Ruff and his family began attending after leaving PPC). SC Members interviewed some, but not all, of the third Parties mentioned by Mr. Ruff in his July 2008 letter to Presbytery.
3. In a letter dated May 11, 2009, Mr. Ruff filed a Complaint alleging that Nashville Presbytery had failed to take adequate action in response to the matters presented in his letter of July 2008. This Complaint was subsequently denied by Presbytery at its Stated Meeting on August 11, 2009 (see No. 6, below), but is not the subject of the matter pending before the Standing Judicial Commission.
4. On or about August 4, 2009, the Shepherding Committee wrote to the Session of Parish Presbyterian Church concerning its “findings”

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regarding TE Grant. The letter stated that many of the concerns raised regarding TE Grant were “serious” and came from “credible sources.” It also noted that SC Members had witnessed TE Grant offer what seemed to be “humble and sincere apologies” to some of the offended Parties during meetings arranged by the SC. The letter concluded by listing four specific areas of TE Grant’s conduct that continued to be of concern to the Members of the SC. The letter made no statement as to whether the SC found a “strong presumption of guilt” as to whether one or more offenses had occurred.

5. The Shepherding Committee presented a verbal report regarding its investigation during an Executive Session at the Stated Meeting of Nashville Presbytery on August 11, 2009. The letter of the SC to the Session of PPC was read to Presbytery as a part of this report. No written report was prepared or presented by the SC. The verbal report of the SC concluded that it found “no chargeable offenses against TE Grant.” Presbytery voted to approve the report/findings of the SC.
6. Presbytery took two other actions during this Executive Session on August 11, 2009. First, it voted to deny the May 11, 2009 Complaint brought by Mr. Ruff which alleged the Presbytery failed to act on the Preliminary Charges submitted July 2008 because Presbytery had acted. Second, Presbytery instructed the Moderator to send a letter to Mr. Ruff stating that Presbytery “found no chargeable offenses against TE George Grant.”
7. September 9, 2009, Mr. Ruff complained against the actions of Nashville Presbytery on August 11, 2009, asserting: (1) Presbytery acted contrary to the evidence before it when it found that there were no chargeable offenses against TE Grant; (2) Presbytery, through its Shepherding Committee, failed to conduct an adequate investigation of the matters alleged against TE Grant; and, (3) the letter from the Shepherding Team to the Session of Parish Presbyterian Church was an inadequate and private response to a series of public offenses.
8. November 10, 2009, Nashville Presbytery denied Mr. Ruff’s September 9, 2009, Complaint without comment.
9. December 7, 2009, Mr. Ruff brought his Complaint (of September 9, 2009) to the General Assembly by filing it with the office of the Stated Clerk.

II. STATEMENT OF THE ISSUES

1. Did Nashville Presbytery err by failing to conduct an adequate investigation pursuant to *BCO* 31-2 after receiving an adverse report concerning the character of one of its Members?
2. Did Nashville Presbytery err when, on the basis of the evidence before it, it failed to find a strong presumption of guilt as to offenses allegedly committed by one of its members?

III. JUDGMENT

1. Yes.
2. Yes.

IV. REASONING AND OPINION

Church discipline has two aspects – the first consists of the general pastoral oversight the Church “maintains over its members, its officers, and its Courts” and the second exists within a “restricted and technical sense, signifying judicial process.” (*BCO* 27-1). Under the Standing Rules of Nashville Presbytery, the Shepherding Committee is charged with exercising both aspects of Church discipline – the general pastoral oversight of Presbytery Members and the judicial investigation of those Members when warranted. In its desire to deal “pastorally” with the matters raised in this Case, Nashville Presbytery failed to fulfill its equally important judicial responsibilities. Therefore, for the reasons stated below, we sustain the Complaint and remand this matter to Nashville Presbytery for further proceedings consistent with this opinion. (*BCO* 43-10).

1. The evidence in the Record of the Case concerning the *BCO* 31-2 investigation undertaken by the Shepherding Committee is incomplete and internally inconsistent.

Mr. Ruff presented his concerns to Nashville Presbytery in July of 2008. More than a year later, while a Complaint was pending before Nashville Presbytery concerning its failure to bring the investigation of those concerns to a conclusion, the Shepherding Team finally made an oral report to Presbytery. No written report was prepared or presented explaining or detailing the work of the Committee. The Minutes simply state that the Committee “found there were no chargeable offenses against TE Grant.”

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Ordinarily, the Standards of Appellate Review set forth in the *Book of Church Order* require a Higher Court to exhibit great deference to the factual findings of a Lower Court (*BCO* 39-3(2)). In such cases the Higher Court should only reverse the Lower Court where there is clear error. The well-documented *BCO* 31-2 investigation of a Lower Court would typically fall within this Standard.

However, the Record of the Case in this matter establishes that no written information was presented to Presbytery concerning the work of the Shepherding Committee. Thus there is no Record of the Facts leading Presbytery to conclude that the investigation had been satisfactorily completed. The Record of the Case contains a written timeline constructed by the Shepherding Committee laying out the work it performed. But that written timeline was not prepared until January of 2010, after Mr. Ruff's September 2009 Complaint had been denied by Nashville Presbytery and he had brought the matter to the General Assembly. Further, the written timeline dated January 2010 acknowledges that the Shepherding Committee did not meet with all the witnesses identified by Mr. Ruff, while the letter written by the Moderator to Mr. Ruff at the direction of Presbytery following the August 2009 Stated Meeting asserts that every witness identified by Mr. Ruff had been contacted. We do not suggest that *BCO* 31-2 requires the investigating Parties to contact everyone who might know something about allegations that have been made. We do assert that the deference required by *BCO* 39-3 toward a Lower Court's findings assumes that those facts will be present in the Record and that they will not be contradicted by the Court's own documents.

The only written document regarding the Report of the Shepherding Committee is the letter to the Session of PPC dated August 4, 2009, which was read to the August 11, 2009 Meeting of Presbytery during Executive Session. That letter affirmed the existence of serious ongoing issues continuing to plague the life and ministry of TE Grant. The statements were considered serious enough that Presbytery voted to apologize for allowing the letter to be read. That action explicitly contradicts the express responsibility of a Court to undertake a serious examination of a Member's conduct in fulfillment of its duties under *BCO* 31-2.

In the absence of a clear and uncontradicted Record of what was reported to Presbytery concerning the *BCO* 31-2 investigation conducted by its Committee, we cannot find that the Presbytery fulfilled its responsibilities to investigate the reports of Mr. Ruff

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- concerning TE Grant. A Presbytery must document, either through a written report or in its Minutes, the work conducted by its investigating body in order to satisfy its duties under *BCO* 31-2.
2. The work of a *BCO* 31-2 investigation is to determine whether there is a strong presumption of guilt that an offense has occurred.

BCO 31-2 requires a Presbytery to “with due diligence and great discretion demand from [those under their authority] satisfactory explanations concerning reports affecting their Christian character.” Further, if “such investigation, however originating, should result in raising a strong presumption of the guilt of the Party involved, the Court shall institute process....” (*BCO* 31-2). The purpose of this investigation is not to convict or absolve the person accused of a wrong. Its sole purpose is to determine whether or not there is a strong presumption of guilt that an offense has occurred.

Whether the offense alleged is great or small is also not the question at issue in a *BCO* 31-2 investigation. An offense is “anything in the doctrines or practice of a Church member that is contrary to the Word of God.” (*BCO* 29-1). If the investigating body determines that there is a strong presumption of guilt that an offense has occurred, *BCO* 31-2 requires the body to draw an indictment against the accused and to proceed with judicial process.

Nashville Presbytery appears to have operated under two mistaken assumptions as it proceeded in this matter. First, Presbytery’s representative asserted that Nashville Presbytery elected to proceed “pastorally” in this matter by seeking reconciliation among estranged Parties rather than proceeding “judicially”. We affirm Presbytery’s desire to act in a pastoral manner towards all who are under its care. However, the duty to proceed pastorally does not relieve the Presbytery of its responsibility to act Judicially as well. The two responsibilities are parallel and complementary, not contradictory and mutually exclusive.

The second mistaken assumption relates to what constitutes a “chargeable offense”. Presbytery’s representative correctly asserted that Nashville Presbytery could not be expected to search out and bring process against every possible sin in its boundaries. *BCO* 31-2 does not suggest that is required. *BCO* 32-2, in conjunction with *BCO* 31-2, does require for the “honor of religion”, that a Presbytery investigate alleged offenses reported to it and bring process when it is determined that a strong presumption of guilt exists. Presbytery’s representative also claimed that small offenses were not worthy of judicial process. Ministers are not to be screened for sins nor are they

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to be subjected to process on “slight grounds.” (*BCO* 34-2). However, when a concern is brought to the attention of Presbytery and the investigation shows that there is a strong presumption that in the particular matter alleged the life of the Member of Presbytery does not conform to the Word of God, Presbytery is required to begin process against that Member by drawing an indictment against the Member and proceeding to trial.

As stated earlier, the Record of the Case does not provide a full account of the Report of the Shepherding Committee to Presbytery. However, the letter of the August 4, 2009, Shepherding Committee was read during the Report, and that letter states:

- (1) “the Complaints against Dr. Grant are serious: deceit, manipulation, and schism … many come from credible sources, well known in our Presbytery…”;
- (2) “we seriously doubt Dr. Grant would have pursued these alienated Parties without being required to do so…”; and,
- (3) “Dr. Grant never apologized to our committee [Nashville Presbytery’s Shepherding Committee] for labeling us ‘Sanballat and Tobiah,’ i.e. Nehemiah’s enemies....”

The chairman’s summary of the Shepherding Committee’s work, dated January 8, 2010, states, “Dr. Grant has sinned. You can see our letter dated Aug.4th, 2009, for a summary of his sins and weaknesses.” It then continues, “we did not think his sins rose to the level of charges.” Sin is “any lack of conformity unto, or transgression of, the law of God.” (WSC 14). Neither the Shepherding Committee nor the Presbytery provides any explanation as to how a Member’s conduct could be described as “sin”, yet there be no strong presumption of guilt that an offense (i.e. any practice contrary to the Word of God) had occurred.

As stated earlier, the Record of the Case does not provide a clear account of what the Shepherding Committee reported to the Presbytery concerning its investigation. However, the Shepherding Committee’s letter dated August 4th, 2009, makes it plain that, at a minimum, there was evidence before the Presbytery raising a strong presumption of guilt that could not be dismissed without explanation. In the absence of any explanation by Presbytery as to why behavior described as sin was not an offense, the Complaint must be sustained.

For these reasons, the Complaint is sustained and the matter is remanded to the Presbytery for further proceedings consistent with this Opinion.

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This Proposed Panel Decision was drafted by TE Howie Burkhalter. It was amended by the Panel and adopted as the Decision of the Panel, TE Dominic Aquila, RE E.C. Burnett, and TE Howie Burkhalter, with amendments by the full Standing Judicial Commission.

The Roll Call vote on Case 2009-28:

TE Dominic A. Aquila, Concur	RE Terry L. Jones, Concur
TE Howell A. (Howie) Burkhalter, Concur	TE Brian Lee, Concur
RE E. C. Burnett III, Concur	RE Thomas F. Leopard, Absent
RE Daniel Carrell, Concur	TE William R. Lyle, Concur
TE Bryan S. Chapell, Absent	TE Charles McGowan, Disqualified
TE David F. Coffin Jr., Concur	TE D. Steven Meyerhoff, Concur
RE Marvin C. (Cub) Culbertson, Absent	RE Frederick J. Neikirk, Concur
RE Samuel J. (Sam) Duncan, Concur	RE Jeffrey Owen, Concur
TE Fred Greco, Concur	RE Calvin Poole, Concur
TE Grover E. Gunn III, Concur	TE Danny Shuffield, Concur
RE D. W. Haigler Jr., Concur	RE Bruce Terrell, Concur
TE Jeffrey D. Hutchinson, Concur	RE John B. White Jr. ,Concur

Adopted: 20 concurred, 1 disqualified, 3 absent

In accord with SJCM 2.10(e), a Member subject to disqualification shall disclose on the record the basis of the Member's disqualification. TE Charles McGowan was disqualified based on being a Member of Nashville Presbytery

CASE 2009-28 RUFF VS. NASHVILLE PRESBYTERY CONCURRING OPINION

I concur in the result reached by the majority on the narrow issue whether this Case must be remanded for further information from the Presbytery, but do not concur with the majority's rationale.

The majority notes there was a Presbytery finding of sin, without saying what the sin was, but the Presbytery held this unspecified sin did not rise to the level of an offense that warranted process.

BCO Chapter 34 allows a Presbytery discretion to determine a range of seriousness with sins by Ministers, all the way *from* "base & flagitious," requiring suspension or deposition, despite repentance, *BCO* 34-7, to not "striking at the vitals of religion" or "not likely to do much injury," *BCO* 34-5, in which case no adverse action might be taken.

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The problem with this Record is that we do not really know what sins, if any, were committed by the accused. The Record of the Case shows a letter of Aug. 4, 2009 of the Presbytery's Shepherding Committee was read to the Presbytery, stating that serious complaints were made against the accused, "deceit, manipulation, and schism ... many come from credible sources, well known in our presbytery..." (emphasis added) Page 5, lines 6-7. The Majority Opinion quotes the Presbytery Committee's Chairman's summary of Jan. 8, 2010, saying the accused "has sinned. You can see our letter dated Aug. 4, 2009, for a summary of his sins and weaknesses." Page 5, lines 14-15. So all we have is a summary of a summary.

I would rather view the accusations of "deceit, manipulation, and schism" as legal conclusions, not accusations of specific acts or beliefs that might violate the Word of God. For example, an allegation that might constitute deceit or heterodoxy might be, "the accused said or wrote X, and X is not true, or out of accord with the Constitution," and if a majority of the Presbyters felt that X was in fact true, or in accord with the Constitution, they could find no strong presumption of guilt of deceit or heterodoxy, and no process would issue. For all we know, there may have been a genuine difference of opinion on some theological issues over which reasonable Calvinists might differ, where the discussions got heated and names were called – which may have been imprudent, but not necessarily the kinds of things we would want endless trials over.

There may have been specific things alleged during the Executive Session of the Presbytery Meeting that those Presbyters felt were too shameful to even speak of in a public meeting or the Minutes. Eph. 5:12. It seems to me that our Presbyteries should have the discretion to make that determination. E.g., if a Minister is accused in Executive Session of something that DNA evidence shows conclusively is not the case, but the Elders feel that the bare accusation is salacious to the point of ruining his ministry and scandalizing the Church, never mind that the accusations are clearly not true, they should be able to seal such comments from public view, provided the rules on Executive Session are followed, and subject to appellate review.

Thus I feel that the preservation of meaningful appellate review would be the better rationale for this remand. I would rather have asked the Nashville Presbytery to supplement this record, pursuant to *BCO* 42-5 & 7, within a stated reasonable period of time, to provide the SJC with clear statements of what the accused was alleged to have done or said, so that we could make some informed judgment as to whether there was strong presumption of guilt and thus whether process should have issued.

/s/ Dave Haigler