

MINUTES OF THE GENERAL ASSEMBLY

CASE No. 2022-23

TE MICHAEL WOODHAM
v.
SOUTH FLORIDA PRESBYTERY

DECISION ON COMPLAINT

October 20, 2023

I. SUMMARY OF THE FACTS

- 02/09/21 The resignation of TE [Name Redacted] as Associate Pastor of [Congregation Redacted] was reported to South Florida Presbytery ("SFP").
- 05/18/21 The congregation's approval of TE [redacted]'s resignation was reported to SFP.
- 05/28/21 TE [redacted] drafted and sent a letter declaring that his "attempts to keep my views and vows in the PCA are becoming disingenuous," and that he has made the "decision to step down from pastoral ministry and demit my credentials in the PCA."
- 08/17/21 The Minister and Church Relations Committee (MCRC) reported to SFP its "ongoing ministry to TE [redacted]."
- 10/08/21 SFP's Judicial Commission (JC) discussed SFP "Case No. 21-01" regarding TE [redacted].
- 11/23/21 SFP's JC "reached tentative agreement" that TE [redacted] "be censured with the (*sic*) Deposition from office ...," and "that a final decision and motion be withheld pending a meeting (to be set) with TE Halleran to discuss the role of the MCRC in deposed TE's (*sic*) generally, and then specifically in this case, given that the censure, once delivered, concludes the judicial process (*BCO* 30-1)."
- 01/12/21 SFP's JC met to continue to discuss censures regarding TE [redacted].

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- 02/16/22 SFP's JC agreed to consult with TE [redacted] regarding proceeding with the Case under *BCO* 38-1.
- 05/10/22 SFP, upon report of SFP's JC, "approve[d] the judgment of the JC as the decision of the Presbytery," namely, "to depose TE [redacted] and to suspend him from the Sacraments of the Church." TE Halleran then reported to SFP "that he, on behalf of the MCRC, will continue to endeavor to bring [name redacted] to a sense of his guilt and repentance." Presbytery Minutes then indicated that "the JC retained jurisdiction of the case to monitor any progress and, if necessary, to impose additional discipline."
- 08/02/22 SFP's JC "discussed the Presbytery's attempts to work with TE [redacted] (through the MCRC) and the complete lack of any progress." JC thereupon acted to "impose the final censure (excommunication)," and to bring this action "to the floor of Presbytery for final approval."
- 08/08/22 It is reported to SFP that "MCRC [is] working with Mr. [redacted] on an ongoing basis." Presbytery minutes then indicate "[d]iscussion on Mr. [redacted]'s church oversight, ruled out of order as he has not been led to repentance and will be excommunicated later in this meeting (*BCO* 46). (Mr. [redacted] has been under the care of MCRC in regard to this matter.)" SFP then acted "to accept ruling of JCOM (*sic*) to excommunicate Mr. [redacted]," and proceeded to inflict the censure of excommunication upon Mr. [redacted].
- 08/12/22 TE Michael Woodham filed complaint with SFP for having "erred in taking this action [i.e., excommunicating Mr. (redacted)] by failing to assign Mr. (redacted) to membership in some particular church as required by *BCO* 46-8."
- 09/26/22 SFP's JC issued its "Final Decision and Report" regarding TE Woodham's August 12, 2022 Complaint, acting to deny in whole TE Woodham's Complaint.

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- 11/08/22 JC reported to SFP its action to deny TE Woodham's Complaint, and SFP "approves" the matter.
- 11/14/22 TE Woodham carried his Complaint to the General Assembly.
- 06/20/23 The Hearing was held via videoconference before a Panel, composed of TE Guy Waters (chair), RE Melton Duncan, and RE Jim Eggert. Both parties had previously filed timely briefs. The Complainant, TE Woodham, was present and was assisted by TE Dominic Aquila. TE Damon Palmer represented Presbytery.

II. STATEMENT OF THE ISSUE

Did South Florida Presbytery err when, after deposing a Teaching Elder from office and not yet having assigned him to membership in some particular church, it subsequently excommunicated him?

III. JUDGMENT

No

IV. REASONING AND OPINION

This case involves a Teaching Elder whom South Florida Presbytery (SFP) both deposed and suspended from the Sacraments of the Church on May 10, 2022. At its next stated meeting, on August 8, 2022, South Florida Presbytery acted to excommunicate this TE. At neither meeting (nor at any point in the interim) did Presbytery act to assign Mr. [redacted] "to membership in some particular church, subject to the approval of the Session of that church" (*BCO* 46-8).

Complainant argues that "the one and only proper action SFP should [have] take[n] under our constitution after deposing Mr. [redacted] from office was to assign him to membership in some particular church." When SFP acted to excommunicate TE [redacted], Complainant continues, it therefore acted "contrary to *BCO* 46-8," since "Mr. [redacted] was no longer a teaching elder member of SFP, and no longer under its judicial oversight." Complainant requests that that the "censure of excommunication [be] annulled," and that "South Florida Presbytery assign Mr. [redacted] to membership in some

particular church, subject to the approval of the Session of that Church per *BCO* 46-8.”

Two matters are necessary to the resolution of this case. The first concerns the constitutional question of the nature and extent of Presbytery’s jurisdiction over a Teaching Elder whom it has deposed from the ministry. The second concerns the factual question of South Florida Presbytery’s actions, in light of *BCO* 46-8, relating to Mr. [redacted] in the window of time between his deposition and excommunication.

Presbytery’s Jurisdiction

The *Book of Church Order* stipulates that “when a Presbytery shall ... depose [a minister] without excommunication, it shall assign him to membership in some particular church, subject to the approval of the Session of that church” (*BCO* 46-8). In view in this provision is the transfer of a deposed minister from the jurisdiction of one court (Presbytery) to a lower court (Session). Having been judicially removed from the ministry, a deposed man is no longer eligible to maintain his membership in Presbytery. He is therefore assigned to membership in a particular church.

While the action of *BCO* 46-8 is obligatory, *BCO* 46-8 specifies neither a timeframe within which Presbytery must complete this action, nor the particular means or mechanism by which this action must be accomplished. Presbytery, therefore, has Constitutionally delimited discretion in the manner in which it implements this provision to those men to whom this provision applies.

Until such a man is transferred to the membership in some particular church, he remains under the jurisdiction of Presbytery, his deposition notwithstanding. This principle is reflected elsewhere within the *Book of Church Order*.

Members of one church dismissed to join another shall be held to be under the jurisdiction of the Session dismissing them until they form a regular connection with that to which they have been dismissed (*BCO* 46-3).

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When a Presbytery shall dismiss a minister, licentiate or candidate, the name of the Presbytery to which he is dismissed shall be given in the certificate, and he shall remain under the jurisdiction of the Presbytery dismissing him until received by the other (*BCO* 46-6).

And, in the case of “a member of a particular church [who] has willfully neglected the church for a period of one year, or has made it known that he has no intention of fulfilling the church vows,” that member remains under the jurisdiction of his Session and subject to its discipline (*BCO* 38-4).

Once a man is transferred to the jurisdiction of a lower court, Presbytery’s jurisdiction over the man does not altogether terminate. Should a Teaching Elder, deposed and suspended from the sacraments, profess his repentance to Presbytery and furnish satisfactory evidence of the same to Presbytery, it is *Presbytery* and not his local Session that is tasked with removing the censure(s) and, if applicable, restoring him to office. This is the express testimony of *BCO* 37-9(a).

If the censure(s) does not include excommunication, the presbytery inflicting the censure(s) shall retain the authority to remove the censure(s) and, at its discretion, restore him to office. This authority is retained by the presbytery even when a divested or deposed minister is assigned, under the provisions of *BCO* 46-8, to a session.

While these circumstances envisioned in *BCO* 37-9(a) did not take place in this particular Case, this hypothetical example illustrates the ongoing jurisdictional power of Presbytery over a man, deposed and assigned to membership in a particular church, with respect to his restoration and the removal of censure(s). Presbytery retains this power in light of the fact that it rendered judgment in this particular case (whether with or without process).¹

¹ Complainant argued that a previous SJC ruling, *Randy C. Stringer v. Mississippi Valley Presbytery* Case No. 90-7, *M19GA*, 1990, pp. 533-5, is “a precedent case quite similar to this one” (Complainant’s Brief, 2). In *Stringer*, the SJC found that Presbytery erred when, having deposed a minister and not having assigned him to a particular church, it subsequently excommunicated him. SJC then ruled that Presbytery “should take no other action but to assign Mr. Stringer to a particular church according to *BCO* 46-8” (*M19GA* 1990, p. 534). Setting aside the question whether SJC correctly adjudicated that particular case in 1990, we note that *BCO* 37-9 was subsequently added to the *BCO* in 1994 (*M22GA*, 1994, p.61). *BCO*

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If a Teaching Elder, deposed and suspended from the sacraments, were to continue impenitent, it would therefore be the same court – Presbytery – that would be tasked with taking action with respect to this man. Presbytery is the appropriate court to inflict, if warranted, the higher censure of excommunication upon this man, should the sin continue. We note that the question of the process by which a presbytery would move to excommunication was not before us, so we make no comment on that procedure. Such an action would simply constitute the conclusion of a particular case that had originated within and had been conducted by the Presbytery.

It is for these reasons, contrary to the claim of Complainant, that South Florida Presbytery retained jurisdiction to inflict the censure of excommunication upon a Teaching Elder whom it had deposed from the ministry. Having acted to depose and to suspend from the sacraments Mr. [redacted], South Florida Presbytery did not altogether forfeit its jurisdiction over Mr. [redacted]. It was not, therefore, constitutionally barred from inflicting the censure of excommunication upon Mr. [redacted] on August 12, 2022.

South Florida Presbytery’s Actions in Light of *BCO* 46-8

The second matter necessary to the resolution of this case concerns the actions that South Florida Presbytery took with respect to Mr. [redacted] in light of *BCO* 46-8. The Parties are factually agreed that Presbytery took no action to assign Mr. [redacted] to membership in a particular church, neither on May 10, 2022, August 12, 2022, or at some point in the interim. It is important, therefore, to review from the Record what actions Presbytery and its committees did take in this time period regarding Mr. [redacted].

The minutes of South Florida Presbytery for May 10, 2022 (the date on which SFP deposed and suspended from the sacraments Mr. [redacted]) indicate that a member Teaching Elder of SFP, acting on behalf of Presbytery’s Minister and Church Relations Committee (MCRC), would “continue to bring [redacted] to a sense of his guilt and repentance.” Simultaneously, the Presbytery’s Judicial Commission “retained jurisdiction of the case to monitor

37-9(a) affirms explicitly that Presbytery continues to have jurisdiction over a deposed minister, even when that minister has been assigned to a session per *BCO* 46-8.

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any progress and, if necessary, to impose additional discipline.” The minutes for Presbytery’s Judicial Commission’s meeting of August 2, 2022 indicate that the Commission “discussed the Presbytery’s attempts to work with TE [redacted] (through the MCRC) and the complete lack of any progress.” It was this discussion that occasioned the Commission’s recommendation to SFP that the censure of excommunication be inflicted upon TE [redacted]. The September 26, 2022 Report of Presbytery’s Judicial Commission in response to the Complaint of TE Woodham against SFP, a Report that was subsequently approved by SFP on November 8, 2022, in its statement of the facts of the case, described the work of the MCRC subsequent to “Mr. [redacted] [having been] formally advised of the censures in writing by the Judicial Commission.”

MCRC (through TE Halleran) then continued try (*sic*) to minister to Mr. [redacted] including trying to place him with a PCA church. Mr. [redacted] made it very clear that he would not start going to any such church whether South Florida Presbytery “assigned” him to one or not” (emphasis and quotation marks original). MCRC reached the point where in their opinion, any such further efforts would be futile and so advised the Judicial Commission. The MCRC’s opinion was consistent with what the Judicial Commission had also witnessed concerning Mr. [redacted]’s most recent thoughts on the PCA. During the course of these efforts, Mr. [redacted] did advise that he was attending a non-PCA church and this was corroborated by his social media posts and other Teaching Elders.

This factual summary, drafted by SFP’s Judicial Commission and presented to the Presbytery, met with no objection from Presbytery, so far as the Record indicates. This Summary documents the efforts of the two bodies – the Minister and Church Relations Committee (MCRC) and the Judicial Commission (JC) – that Presbytery had tasked with pursuing Mr. [redacted] subsequent to its censuring of Mr. [redacted] in May, 2022. This summary reflects sincere efforts on the part of SFP’s MCRC to assist Presbytery in fulfilling its *BCO* 46-8 mandate to assign Mr. [redacted] to membership in some particular church. Mr. [redacted]’s intransigent resistance to membership in a member congregation of the PCA prompted the MCRC to conclude any further efforts to assign him to be “futile.” The MCRC’s conclusion was “consistent with” what the JC had itself “witnessed” regarding Mr. [redacted]

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and was also confirmed by evidence of [redacted]'s attendance at a non-PCA church.

Thus, it is clear that SFP undertook efforts to implement the provision of *BCO* 46-8. It did so through its MCRC and its JC. MCRC – and ultimately Presbytery itself – halted those efforts when it became clear that Mr. [redacted] would not cooperate with Presbytery in its endeavors to implement *BCO* 46-8, and when Presbytery's JC determined to recommend to SFP that the censure of excommunication be inflicted upon Mr. [redacted]. It should be remembered that this committee and commission undertook and concluded their work rapidly, within the space of three months. Neither the committee nor the commission could be fairly faulted with undue delay in taking up the matters that Presbytery had set before it.

In evaluating Presbytery's factual determinations regarding Mr. [redacted] in light of *BCO* 46-8, the provisions of *BCO* 39-3(2) and 39-3(3) apply. In the first place, the SJC must "exhibit great deference" to SFP "regarding those factual matters which the lower court is more competent to determine," and thus "should not reverse a factual finding of a lower court, unless there is clear error on the part of the lower court." (*BCO* 39-3(2)) In the second place, the SJC must "exhibit great deference" to SFP "regarding those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties," and thus "should not reverse such a judgment by a lower court, unless there is clear error on the part of the lower court." (*BCO* 39-3(3))

In light of the above, we conclude that nothing in the Record indicates "clear error" on the part of South Florida Presbytery's efforts to implement *BCO* 46-8. On the contrary, SFP made the effort to implement *BCO* 46-8 and ceased those efforts only when it concluded that circumstances bound them to do so. The SJC therefore has no basis upon which to reverse the lower court's findings and judgments in this matter.

Conclusion

Complainant claims that a Presbytery is constitutionally disbarred from inflicting the censure of excommunication upon a minister whom it has deposed and suspended from the sacraments, that South Florida Presbytery erred in so doing, and that South Florida Presbytery should only have assigned

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Mr. [redacted] to membership in a particular church. But a Presbytery retains jurisdiction over a deposed minister until the transfer of that jurisdiction to a lower court is concluded, and, even after that conclusion, retains a measure of jurisdiction over that man. Furthermore, the Record indicates that South Florida Presbytery undertook efforts to implement the provisions of *BCO* 46-8 with respect to Mr. [redacted]. Complainant has demonstrated from the Record no clear error on the part of Presbytery with respect to the actions in question. It is for these reasons that the Complaint is denied.

The Panel's proposed decision was written by TE Guy Prentiss Waters, amended by the Panel, and adopted by the Panel by vote of 2-1 on 7/7/23. The SJC reviewed each part of the proposed decision. The SJC approved the amended Decision on the following **18-2** vote, with four absent.

Bankson	<i>Concur</i>	S. Duncan	Absent	Maynard	<i>Concur</i>
Bise	<i>Concur</i>	Eggert	<i>Concur</i>	Neikirk	<i>Concur</i>
Carrell	<i>Concur</i>	Evans	<i>Concur</i>	Pickering	<i>Dissent</i>
Coffin	<i>Concur</i>	Garner	Absent	Sartorius	<i>Concur</i>
Dodson	<i>Concur</i>	Greco	<i>Concur</i>	Ross	<i>Concur</i>
Donahoe	<i>Concur</i>	Kooistra	Absent	Waters	<i>Concur</i>
Dowling	<i>Dissent</i>	Lee	<i>Concur</i>	White	Absent
M. Duncan	<i>Concur</i>	Lucas	<i>Concur</i>	Wilson	<i>Concur</i>

CONCURRING OPINION

Case No. 2022-23: *TE Woodham v. South Florida*

RE Howie Donahoe

November 9, 2023

I concurred in this Decision but believe some brief, additional clarification of *BCO* 46-8 is warranted. And I feel conscience bound to comment further on my understanding of whether a presbytery can excommunicate a man after it has already deposed him.

BCO 46-8. When a Presbytery shall divest a minister of his office without censure, or depose him without excommunication, it shall assign him, to membership in some particular church, subject to the approval of the Session of that church.

Grammar & *BCO* 46-8

Some might argue *BCO* 46-8 requires *immediate* assignment which, practically speaking, probably means two options. Either a motion to divest/depose will contain the name of the church to which the man is assigned, or the assignment motion will immediately follow the adoption of a motion to divest/depose. However, the SJC's Reasoning understands the "when" conjunction more broadly. In short, it means "in the event that ..." rather than "at the same time that ...". The SJC rightly contends:

While the action of *BCO* 46-8 is obligatory, *BCO* 46-8 specifies neither a timeframe within which Presbytery must complete this action, nor the particular means or mechanism by which this action must be accomplished.

I agree. The opening word "When" in *BCO* 46-8 is a conjunction that connects a subordinate clause (divest/depose) and a main clause (assign). But the conjunction itself doesn't indicate whether the action in the main clause (assign) occurs "at the same time," or simply, "in the event of" the action in the subordinate clause (divest/depose). Several provisions in the *BCO* open with the conjunction "When" and are later followed by the imperative "shall." In those instances, "when" is best understood as "in the event of." Put another

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way, the conjunction "when" does not require the subsequent "shall" action to be understood as "shall, *at the same moment*," Below are some examples. All emphasis is added.

14-3. *When* an emergency shall require a meeting of the General Assembly earlier than the time to which it stands adjourned, the moderator *shall* issue a call for a special meeting at the request or with the concurrence of ten percent (10%) of the commissioners who had seats in the Assembly at its preceding meeting,

24-9. *When* a ruling elder or deacon cannot or does not for a period of one year perform the duties of his office, his official relationship *shall* be dissolved by the Session and the action reported to the congregation.

32-18. *When* a case is removed by appeal or complaint, the lower court *shall* transmit "the Record" thus prepared to the higher court with the addition of the notice of appeal or complaint, and the reasons therefor, if any shall have been filed.

38-1. *When* any person shall come forward and make his offense known to the court, a full statement of the facts *shall* be recorded and judgment rendered without process.

See also *BCO* 5-9.c, 8-4, 13-2, 13-10, 20-9, 21-1, 24-8, 25-2, 36-1, 38-4 & 57-3.

Granted, there are a few instances in the *BCO* where "When" means "at the same time as" or perhaps "hastily," but in those instances the timing is explicitly clarified later in the sentence.

21-2. *When* an intern has completed his internship to the satisfaction of the Presbytery, and has accepted a call, the Presbytery shall take *immediate* steps for his ordination.

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33-2. *When* an accused person is found contumacious (cf. 32-6), he shall be *immediately* suspended from the sacraments (and if an officer from his office) for his contumacy.

34-4.a. *When* a minister accused of an offense is found contumacious (cf. 32-6), he shall be *immediately* suspended from the sacraments and his office for his contumacy. [cf. *BCO* 34-7]

I can't find any instance in the *BCO* where there is a "when ... shall" arrangement that indicates immediacy unless the explicit timing is also specified, as in the four instances above.

At the same time, a Presbytery is ordinarily expected to ensure a divested/deposed minister is promptly and officially transferred to the jurisdiction of an individual church. Such a transfer would probably work best if it was mutually satisfactory to both the Session and the divested/deposed minister, but that's not constitutionally required. And if a Presbytery assigned a divested/deposed minister to membership in ABC PCA Church, with that Session's consent, that would not prevent him from soon thereafter requesting the Session to transfer his membership to DEF PCA Church - or even to XYZ ARP Church.

And if the Session of ABC PCA Church can later transfer a deposed minister to XYZ ARP Church, at his request, soon after Presbytery assigns his membership in the PCA Church, I don't see why the Presbytery couldn't transfer his membership to XYZ ARP Church in the first place. That would seem prudent, and doing something like that might have avoided the turmoil in this Case. The main goal of *BCO* 46-8 seems to be to get the man under the jurisdiction of the government of a Bible-believing individual church ASAP.¹

The Record in this present Case indicated a Presbytery committee reported the deposed minister did not want to be assigned membership in a church in the Presbytery that deposed him. That's probably not an uncommon, or even an unreasonable, sentiment amongst deposed PCA ministers. *BCO* 46-8 doesn't

¹ The SJC Decision noted that Presbytery's Ministers & Church Relations Committee concluded there was "evidence of [redacted]'s *attendance at a non-PCA church*." [Emphasis added.] The Record doesn't indicate the name or denomination of that non-PCA church.

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explicitly require assignment to membership in a PCA church (though one might argue it seems implied).

The original Complaint in this Case was more concerned with Presbytery's excommunication after deposition, than the speed at which membership assignment was made, though they were related. In the excerpt below, the original Complaint grants that immediacy is not required by *BCO* 46-8.

Following the infliction of the censure of deposition, SFP should have acted to assign [the deposed minister] to membership in some particular church. Since SFP did not act to assign him to membership at the May 10, 2022 meeting, it could have appointed a committee or commission to carry out the requirement of *BCO* 46-8. Or, it could have concluded the requirements of *BCO* 46-8 at its next meeting on August 9, 2022.

Jurisdiction Regarding Post-Deposition Censure

In the 20 days since I concurred in denying this Complaint, I've begun to have reservations. I'm no longer sure that a presbytery has any jurisdiction over a man after the moment he is divested or deposed (unless, perhaps, while those actions are held in abeyance during an appeal.)

BCO 37-9 explicitly addresses the jurisdiction of presbyteries vs. sessions regarding the *removal* of censures imposed on a minister and the *restoration* of a minister. The provision says nothing about the jurisdiction to increase censure.

- BCO* 37-9. In the case of the *removal* of censures from, or the *restoration* of, a minister, jurisdiction shall be as follows:
- a. If the censure(s) does not include excommunication, the presbytery inflicting the censure(s) shall retain the authority to *remove* the censure(s) and, at its discretion, restore him to office. This authority is retained by the presbytery even when a divested or deposed minister is assigned, under the provisions of *BCO* 46-8, to a session.

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- b. If the censure includes excommunication, the penitent may only be *restored* to the communion of the church through a session (*BCO* 1-3; 6-4; 57-4; 57-5; 57-6). Once the penitent is restored, and therefore a member of a local church, the authority to remove any other censure(s) in respect to office, *concurrently imposed with that of excommunication* shall belong to the court originally imposing such censure(s). [Emphasis is added here, and throughout this Opinion.]

A fair reading of *BCO* 37-9.b. concludes that if excommunication is warranted, it is imposed *concurrently* with deposition. That did not occur in this Case. I can find no *BCO* statements giving a presbytery authority to subsequently increase, or add, a censure to a divested or deposed minister.

As reported in the SJC Decision, Presbytery's Minutes of May 10, 2022 indicated the Presbytery Judicial Commission "retained jurisdiction of the case to monitor any progress and, if necessary, to impose additional discipline." Similarly, footnote 1 in the SJC Decision ends with: "*BCO* 37-9(a) affirms explicitly that Presbytery continues to have jurisdiction over a deposed minister, even when that minister has been assigned to a session per *BCO* 46-8."

I now believe that *BCO* 37-9 only affirms a Presbytery's authority to *lift or remove* censures related to office, but not to impose some censure after deposition. *BCO* 37-9.a. only affirms a presbytery's right to *remove* and *restore* in a non-excommunication situation. And *BCO* 37-9.b. only affirms a presbytery's authority to decide what to do *about office* if a man has been restored by a church post-excommunication. Nothing is said in *BCO* 37-9 about increasing a censure.

BCO 30-3 specifies: "Indefinite suspension [from office] is administered to the impenitent offender until he exhibits signs of repentance, or until by his conduct, the necessity of the greatest censure be made manifest." There is no similar *BCO* paragraph specifying that deposition is imposed until the necessity of the greatest censure be made manifest.

BCO 36-7 stipulates: "The censure of deposition shall be administered by the moderator in the words following: ... If the censure *includes* suspension or

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excommunication, the moderator shall proceed to say: ..." *BCO* 30-5 mentions similar timing: "Deposition is the degradation of an officer from his office and may or may not be *accompanied with* the infliction of other censure." ²

BCO 34-4.b stipulates: "If after further endeavor by the court to bring the [contumacious minister already suspended from office] to a sense of his guilt, he persists in his contumacy, he shall be deposed *and* excommunicated from the Church." Neither *BCO* 34-4 nor any other provision in the *BCO* stipulates something like the following: *If after further endeavor by the Presbytery to bring a deposed minister to a sense of his guilt, he persists in his contumacy (or impenitence), Presbytery shall excommunicate him from the Church.* Yet that seems to have been the situation in this Case.

The legislative history of *BCO* 37-9 sheds some light on this. Over three decades ago, in 1989, Delmarva Presbytery overtured the Assembly regarding *BCO* 37 and the overture was referred to the Committee on Judicial Business ("CJB"). (*M17GA*, p. 166) The following year, no action was recorded. In 1991 and again in 1992, the matter was referred to the Committee on Constitutional Business ("CCB", which was the new name of the CJB.) In 1993, the CCB recommended adding what was to become *BCO* 37-9, and the Assembly in Columbia, SC adopted it. (*M21GA*, pp. 80, 281). Presbyteries then voted 45-4 to approve, and in 1994, the 22nd GA in Atlanta, moderated by TE Will Barker, enacted the change (*M22GA*, p. 61). Nothing in the legislative history of *BCO* 37-9 supports the interpretation that a presbytery can excommunicate a man at some point after it has deposed him. The history of *BCO* 37-9 demonstrates the matter in question involved jurisdiction in the process of *restoring* an excommunicated or a deposed teaching elder.

² *BCO* 30-5 dates to 1879 and stipulates: "Deposition is the degradation of an officer from his office and may or may not be accompanied with the infliction of other censure." That's confusing. Does that mean suspension from sacraments? I doubt it. In his 1898 comments on this provision, F.P. Ramsay simply writes: "Courts should be careful not to suspend indefinitely from office unless in cases in which deposition should follow if there is not repentance." I believe it is unfair for a presbytery to impose the censure of suspension from the sacraments on a minister *being deposed*. It is unfair, and frankly, I think a bit strange to give a presbytery jurisdiction to continue that suspension over a man who is no longer under its jurisdiction. I believe that demonstrates a failure to trust a session. And I believe it's an inaccurate reading of *BCO* 37-9. If I am wrong, I hope the PCA will revise that paragraph.

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I apologize for not preparing better for this Case when it was heard by the SJC. I regret not raising these arguments during the SJC meeting. Because our SJC Rules say that should ordinarily be done, I fully understand if the SJC puts an Answer to this Concurrence.

/s/ RE Howie Donahoe

CONCURRING OPINION

Case No. 2022-23: *TE Woodham v. South Florida*

RE Jim Eggert

November 3, 2023

I concur with the result of the Court's Decision but not with all its reasoning.

I disagree with the Decision's assessment that "two matters are necessary to the resolution of this case." Per the Decision those two matters are: (1) "the constitutional question of the nature and extent of Presbytery's jurisdiction over a Teaching Elder whom it has deposed from the ministry and (2) "the factual question" of the Presbytery's "actions," considering *BCO* 46-8 relating to "the window of time between his deposition and excommunication."

Although my reasoning is somewhat different from that of the Decision, I believe that the answer to the former question is entirely dispositive, and therefore evaluation of the latter question is not necessary to the resolution of this case. Furthermore, with respect to the latter question, I disagree with the Decision's deferential approach to the Presbytery's *BCO* 46-8 activities.

I believe that the issue presented is simple: the Complainant maintained that "the one and only action" that Presbytery could take after deposing the minister "was to assign him to membership in some particular church" pursuant to *BCO* 46-8. Put another way, the Complainant effectively maintained that the Presbytery, having deposed the minister and suspended him from the Sacraments, lacked continuing jurisdiction over him to elevate that censure to excommunication, such jurisdiction being exercisable only by a Session to whom the deposed minister should have been assigned. I maintain that the

Complainant's contentions were incorrect and therefore the complaint should be denied on that basis alone.

I. Presbytery's Limited Jurisdiction

The Decision asserts that until a deposed minister "is transferred to the membership in some particular church, he remains under the jurisdiction of Presbytery, his deposition notwithstanding."

I disagree with the breadth of the Decision's framed statement. For the reasons set forth below, I am convinced that the Constitution affords Presbytery limited jurisdiction to elevate censure in an adjudicated case regarding the minister but assigns no general residual jurisdiction to Presbytery.

Citing a "principle" that is "reflected elsewhere in the *Book of Church Order*," the Decision, in part, supports Presbytery's retained general jurisdiction over deposed ministers on analogical reasoning and inferences from *BCO* 46-3 (relating to the residual jurisdiction of Sessions over dismissed members); *BCO* 46-6 (relating to residual jurisdiction of Presbyteries over dismissed ministers); and *BCO* 38-4 which prescribes the power of Sessions to remove members from the roll when they have neglected the church for a period of one year.

My disagreement with the Decision's use of the above provisions turns on my interpretational approach to our Constitution. The Constitution assigns different roles to each of the Session, Presbytery, and General Assembly such that they are "limited by the express provisions of the Constitution" (*BCO* 11-4). Because the respective jurisdictions of the courts are "limited," we consult the Constitution to resolve any question about the boundaries of power between Sessions and Presbyteries, which are "distinctly defined" so that the courts may collectively achieve an "orderly and efficient dispatch of ecclesiastical business" (*BCO* 11-4).

With respect to the general jurisdiction of Presbytery over deposed ministers, *BCO* 46-3, *BCO* 46-6, and *BCO* 38-4 (cited by the Decision) do not expressly assign such jurisdiction to Presbytery over deposed ministers. To the contrary, the fact that *BCO* 46-3 and *BCO* 46-6 explicitly retain jurisdiction in the case of *dismissals* supports the *opposite* inference in cases like *BCO* 46-8 governing the deposition and *assignment* (not *dismissal*) of deposed ministers. Unlike *BCO* 46-3, *BCO* 46-6, and *BCO* 38-4, *BCO* 46-8 directs assignment of a

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deposed minister to a local church and Session but does *not* state that Presbytery retains any *general jurisdiction* over the deposed minister. Therefore, in the absence of other language in the Constitution, Presbytery is assigned no jurisdiction over a deposed minister at all.

Whereas a *dismissal* of a minister from one Presbytery to another involves transfer of like kind, the *deposition* of a minister from office instantly degrades the former minister's association with and spiritual relationship to the Church from one tier of the courts of the Church (Presbytery) to another (Session).

The jurisdiction of deposed ministers is constitutionally assigned to a Session, not the minister's former Presbytery. The constitutional rule is simple: "Process against all church members, other than ministers of the Gospel, shall be entered before the Session of the church to which such members belong, except in cases of appeal" (*BCO* 33-1). Being "other than a minister of the Gospel," process against a deposed minister is, unless prescribed otherwise, to be entered against him only before the Session to whom he is assigned pursuant to *BCO* 46-8. *BCO* 46-8 does not grant (or even mention) residual jurisdiction to Presbytery over a deposed minister.

Notably, however, the Constitution does provide a *limited exception* to the general rule that a Session rather than Presbytery has sole jurisdiction over deposed ministers. *BCO* 37-8 (governing "The Removal of Censure") provides, "In the restoration of a minister who is under indefinite suspension from the Sacraments, and/or his office, or has been deposed, it is the duty of the Presbytery to proceed with great caution." In other words, it is specifically and solely the duty of *Presbytery* to "proceed" in the restoration of the minister regarding any case in which the Presbytery censured a minister. *BCO* 37-8 further provides the method for restoration: the Presbytery (not a local Session) "should first admit him to the Sacraments, if he has been debarred from them." Thus, our Constitution assigns exclusively to Presbytery (rather than his Session) the power to restore the deposed minister to the Sacraments.

Further, *BCO* 37-8 prescribes that the case of the deposed minister for which he was censured "shall always be under judicial consideration until the declaration of restoration has been pronounced." The "judicial consideration" in view is that of the Presbytery, not a local Session, and is indefinite in duration since it is the task of the Presbytery to conclude the judicial case either by restoration or by elevation of the censure.

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What is more, *BCO* 37-9 was added in 1994 and settled any previous doubt about Presbytery's continuing jurisdiction over a minister suspended from the Sacraments," despite his *BCO* 46-8 assignment to a Session. It reads as follows:

In the case of the **removal of censures** from, or the **restoration** of, a minister, jurisdiction shall be as follows:

a. If the censure(s) does not include excommunication, the presbytery inflicting the censure(s) shall retain the authority to remove the censure(s) and, at its discretion, restore him to office. **This authority is retained by the presbytery even when a divested or deposed minister is assigned, under the provisions of *BCO* 46-8, to a session.** [emphasis added].

Since Presbytery "retains authority" to restore a deposed minister, it must also, by necessary implication, retain sole authority to *elevate* the censure in the judicial case in question since such a matter remains specifically under its "judicial consideration" (*BCO* 37-8). This brings harmony to the relationship between the courts. If the power to elevate censure to excommunication in the case were assigned to a local Session, such would contradict Presbytery's express obligation to "proceed with great caution" in the matter. Moreover, the assigned Session, having the power to excommunicate the deposed minister, could both interdict and deprive the Presbytery of its constitutionally assigned sole authority to "first admit him to the Sacraments, if he has been debarred from them" (*BCO* 37-8).

Therefore *BCO* 37-8 and *BCO* 37-9 together implicitly assign exclusive (if *limited*) jurisdiction to Presbytery to not only restore a deposed minister whom it has censured with suspension from the Sacraments, but also to *elevate* his censure to excommunication. This is a *limited residual jurisdiction* in favor of Presbytery, contrary to the broad assignment of residual jurisdiction to Presbytery expressed by the language adopted in the Decision. In my view, all jurisdiction outside the case adjudicated against the deposed minister is assigned to a Session, and Presbytery retains no residual jurisdiction to consider such other matters.

This is why I agree with the result reached by the Decision. Contrary to the argument of the Complainant, the Presbytery had the power to elevate the minister's censure in this case to excommunication, which is exactly what Presbytery did. Since that *limited* jurisdiction was exclusive to Presbytery, the complaint must be denied on this ground alone, and, being totally dispositive of all questions, this is the only issue that needed to be addressed.¹ I agree with the Decision's conclusion that Presbytery had power to elevate the censure, but merely think that the Decision has framed that jurisdiction too broadly when it asserts that until a deposed minister "is transferred to the membership in some particular church, he remains under the jurisdiction of Presbytery, his deposition notwithstanding."

II. South Florida Presbytery's Actions in Light of BCO 46-8

Having answered in the negative that "the one and only action" that Presbytery could take after deposing the minister "was to assign him to membership in some particular church" pursuant to *BCO* 46-8, the second half of the Decision (titled "South Florida Presbytery's Actions in Light of *BCO* 46-8") proceeds to evaluate Presbytery's application of *BCO* 46-8. For the reasons stated above, I believe that the Decision's evaluation of this question is unnecessary, Presbytery's elevation of its prior censure to excommunication having made this consideration irrelevant to the outcome of this case. But I would add that I believe that the latter half of the Decision is not only superfluous; it is also mistaken.

While conceding Presbytery's obligation to assign the deposed minister to a local church, the Decision makes two assertions: (1) "*BCO* 46-8 specifies neither a timeframe within which Presbytery must complete this action, nor the particular means or mechanism by which this action must be accomplished" and (2) that Presbytery possesses a "Constitutionally delimited discretion in the manner in which it implements this provision to those men to whom this provision applies."

I disagree with both assertions.

¹ I would add that the complaint did not raise the question of whether the censure could be elevated without further process, a question that I leave for another day. (See *BCO* 39-3: "A higher court, reviewing a lower court, should limit itself to the issues raised by the parties to the case in the original (lower) court").

A. BCO 46-8 Assignments Should be Made Contemporaneously with Deposition from Office.

With respect to timing, *BCO* 46-8 plainly states that the assignment to a local church is to occur “[w]hen a Presbytery shall depose [a minister] without excommunication.” While it is true that the word “when” affords a range of meaning, including, “in the event that” or “if” (e.g., “a contestant is disqualified when he disobeys the rules”), the word “when” is most reasonably understood in *BCO* 46-8 to specify that the assignment is to be made *at the same time* as the deposition. This interpretation is preferable because it advances the apparent purpose of the assignment, namely, to afford continued oversight and jurisdiction over a deposed minister concerning his spiritual life outside the limited residual matter framing the ground of his censure still pending before Presbytery (*BCO* 37-8 & *BCO* 37-9). As explained in the previous section, upon his deposition, a deposed minister is no longer a minister or member of Presbytery, and Presbytery retains only that residual jurisdiction over him afforded to it under *BCO* 37-8 and *BCO* 37-9 pertaining to the case still under judicial consideration, but nothing more. That is why the assignment to a local church is directed to be made “*when*” (i.e., *at the time*) the minister is deposed. Such an assignment is both urgent and needful for the deposed minister who is otherwise jurisdictionally adrift under our Constitution, particularly bearing in mind that original jurisdiction of the deposed minister of everything in his life other than the case adjudicated against him in Presbytery is constitutionally assigned to a Session (*BCO* 33-1).

Consequently, I disagree with the Decision’s claim that *BCO* 46-8 specifies no timeframe within which Presbytery must assign the minister to a church. It must do so immediately.

B. Presbyteries Are Owed no Deference in Delaying the Mandatory BCO 46-8 Assignment.

The Decision, holding that there is no “particular means or mechanism” by which the assignment must be accomplished, recounts the “sincere efforts” of Presbytery to fulfill its obligation to assign, noting that it only “halted those efforts when it became clear that the deposed minister would not cooperate with Presbytery in its endeavors to implement *BCO* 46-8,” the deposed minister’s “intransigent resistance” making any further efforts “futile.” The

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Decision, invoking the discretionary standard of *BCO* 39-3.2, maintains that the minister's resistance presented "factual matters" which the Presbytery was more competent to determine, finding that the court owes "great deference" to the Presbytery on such points since they are matters of Presbytery's "discretion and judgment." I disagree.

Since the requirement to assign the deposed minister to a local church is coincident with the deposition of the minister, I believe the Decision's claim that Presbytery "made the effort to implement *BCO* 46-8," which Presbytery delayed (and ultimately never implemented at all) is not supported by the Record.

In my view, the fact that a *BCO* 46-8 assignment is "subject to the approval" of the assigned Session does not afford an extension of time to Presbytery to make an assignment; it only makes that assignment defeasible by the assigned Session.

If an assigned church Session declines its assignment, Presbytery is obligated to assign the deposed minister to another church, subject to the approval of the Session of that church. There is no reason to complicate the simple procedure prescribed by *BCO* 46-8 which neither requires nor authorizes "means or mechanisms" of assignment as suggested by the Decision. Of course, any Presbytery would be well served by deliberating carefully when it makes the assignment and, if possible, coordinating that effort with a member church together with or in anticipation of a decision to depose a minister to ameliorate the risk that an assigned Session might decline the same.

But *BCO* 46-8 unequivocally states that the assignment is due "[w]hen a Presbytery shall depose a minister without excommunication." Presbyteries and their member Sessions should act with comity, cooperation, and compassion as coordinate courts of the Church. The expectation not only of our Constitution but of the Church's Chief Shepherd is that some Session (and perhaps more than one) will be willing to accept the assignment of a deposed minister for both the good of the Church and the obvious need of the deposed minister to be a member of a particular congregation and subject to the jurisdiction of a court of the Church.

A Presbytery's election to assign a deposed minister to one church rather than another is certainly a matter of discretion to which this court would owe "great

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deference,” but no such deference is owed to the *failure to assign* the deposed minister at all – which is what happened in this case.

The deposed minister’s reported “intransigent resistance” to the assignment purportedly making any further efforts to assign him “futile” is irrelevant. *BCO* 46-8 does not require the consent or cooperation of the deposed minister; the only “approval” prescribed by *BCO* 46-8 is the Session’s. In my view, any judgment about a minister’s alleged “intransigent resistance” would belong to the assigned Session, not to Presbytery which, by virtue of the minister’s deposition, loses jurisdiction to adjudicate and censure such alleged conduct, assuming that “resistance” (“intransigent” or otherwise) is censurable.

The Decision’s deference would apparently grant discretionary power to Presbytery to indefinitely augment its jurisdictional power over the minister by deciding to delay exercising its *BCO* 46-8 obligation to assign the deposed minister to a Session, the only proper judicatory for the governance of his spiritual life outside the limited parameters of the case over which Presbytery has constitutional authority. Therefore, I think the Decision’s deference to Presbytery’s discretion as to when the assignment should be made is facially contrary to the *BCO* 46-8 assignment framework.

Presbytery had no jurisdiction over the unadjudicated claim referenced in the Decision that the deposed minister “would not cooperate with Presbytery in its endeavors to implement *BCO* 46-8,” a claim for which no formal process was ever afforded to the minister before he was excommunicated (presumably on other grounds). Alleged offenses of a minister after he is deposed from office and distinct from the residual case still under Presbytery’s judicial consideration per *BCO* 37-9 are the exclusive prerogative of a Session with jurisdiction over the man, not the Presbytery that deposed him.

I therefore disagree with the Decision’s reasoning that finds no “clear error” in Presbytery’s conclusions about the deposed minister’s alleged lack of cooperation with the Presbytery’s “efforts to implement,” *BCO* 46-8. The coordination of jurisdiction between Sessions and Presbyteries prescribed by our Constitution requires a coincident assignment of a deposed minister to a local church at the time he is deposed. The local Session, not the Presbytery, is in the best position to assess whether the minister is cooperative with the assignment, and therefore our Constitution assigns the local Session (not Presbytery) jurisdiction over such matters, including the power to initiate

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formal process if the deposed minister refuses to cooperate with the Session's assigned jurisdiction.

Thus, while I concur in the result, for the reasons and to the extent set forth above, I disagree with the form of the Decision.

/s/ RE Jim Eggert