

JOURNAL

part of its grounds for denying the complaint of TE Jones gives the appearance that Presbytery is supportive of views such as those noted above, and it reinforces the concern that Presbytery has failed to meet its Constitutional obligations as noted above. It is for these reasons that the complaint is sustained and the judgment noted above is entered.

This opinion was written by TE Howell Burkhalter, TE Paul Fowler, TE Stephen Clark, TE Dewey Roberts, RE Frederick Neikirk, RE Steven O'Ban and RE Tom Leopard, October 19, 2007

The vote on SJC 2007-08 was:

TE Dominic A. Aquila, Concur	TE John M. McArthur Jr., Concur
TE Howell A. Burkhalter, Concur	RE J. Grant McCabe, Absent
TE Alton Craig Chapman, Concur	TE Charles E. McGowan, Concur
TE Stephen M. Clark, Concur	TE D. Steven Meyerhoff, Concur
RE M. C. (Cub) Culbertson, Concur	RE Frederick (Jay) Neikirk, Concur
RE Perry Denniston, Concur	RE Steven T. O'Ban, Concur
RE J. Howard Donahoe, Recused	RE Calvin Poole, Concur
RE Samuel J. (Sam) Duncan, Concur	TE G. Dewey Roberts, Concur
TE Paul B. Fowler, Concur	TE Michael F. Ross, Concur
TE William W. Harrell Jr., Concur	RE Olin L. Stubbs, Concur
RE Thomas F. Leopard, Concur	RE John Tolson, Concur
TE William R. (Bill) Lyle, Concur	RE John B. White Jr., Concur
22 - Concur; 1 -Absent; 1 -Recused	

COMPLAINT OF TE JOHN GRADY VS. SOUTHWEST FLORIDA PRESBYTERY SJC 2007-12

I. SUMMARY OF THE FACTS

1. On May 8, 2007, The Southwest Florida Presbytery (hereafter SWFP), at their regular stated meeting, received a report of the Shepherding Committee regarding TE John Grady and approved a motion that this report be read into the minutes. This report included allegations of improper conduct on the part of TE Grady. Based upon the report, SWFP approved the following four actions recommended by the committee:

MINUTES OF THE GENERAL ASSEMBLY

- a. That TE Grady resign from the ministry of Faith Presbyterian Church and place himself under the oversight of the Shepherding Committee.
- b. That the Presbytery request a congregational meeting of Faith/Sarasota take place to formally ask the Presbytery to establish a commission of elders to serve as their session.
- c. That the Presbytery give the Shepherding Committee temporary status of a Commission only in this exceptional circumstance where the congregation finds itself without Ruling Elders.
- d. That the portion of this report regarding TE John Grady and Faith/Sarasota be read into the minutes of the Presbytery, and that this report be read to Faith/Sarasota by a member of the Shepherding Committee and that the Shepherding Committee be available to the church to answer questions.
2. On June 1, 2008, TE Grady submitted a complaint to SWFP opposing the court's actions of May 8, 2007, particularly the reading into the minutes of the text of the Shepherding Committee report.
3. On September 7, 2007, at their stated meeting of SWFP, the stated clerk reported receipt of TE Grady's Complaint. A Judicial Committee was appointed to consider the complaint and to present its recommendations later in the meeting. The committee recommended that the complaint be denied, and the recommendation was carried. No reasons for this recommendation or for its approval are recorded in the minutes.

II. STATEMENT OF THE ISSUES

Did Southwest Florida Presbytery err when it read into its minutes of the May 8, 2007, stated meeting the Shepherding Committee's report which contained a finding of "sins and errors" concerning TE Grady?

III JUDGMENT

Yes.

Southwest Florida Presbytery erred by reading into the minutes of its May 8, 2007, stated meeting the report of the Shepherding Committee which contained a finding of "sins and errors" based on unsubstantiated and unproven opinions about TE Grady in violation of his due process. Therefore, SWFP is directed to expunge the Shepherding Committee's report from their minutes for May 8, 2007.

IV. REASONING AND OPINION

In this particular case, the actions of SWFP on May 8, 2007 effectively imposed the censure of admonition without due process (*BCO* 30-2).

We recognize that a committee of Presbytery may reach, without judicial process, an opinion that a teaching elder has engaged in “sins and errors” (see for example *BCO* 31-2), and we recognize that such an opinion may even be included in the minutes of Presbytery as the opinion of the committee. However, in this case Presbytery appeared to adopt or endorse the findings of the committee by “concur[ring]” in the recommendation of the committee, “effectively making it the recommendation of presbytery as a whole.” Further, Presbytery directed that the committee report be read to the teaching elder’s congregation. In so making the committee’s recommendation the action of Presbytery and in making the report public, without making clear that Presbytery had not adopted the portions of the report alleging sin by the teaching elder, Presbytery has effectively admonished the teaching elder without due process.

Statement of Facts written by RE Perry Denniston.

Statement of Issues and Judgment written by RE M.C. Culbertson.

Reasoning and Opinion was edited and approved by the entire Standing Judicial Commission.

Each section of the Decision in Case 2007-12 having been approved *seriatim*, the Secretary called the roll.

The vote on the decision Case was:

TE Dominic A. Aquila, Disqualified	TE John M. McArthur Jr., Absent
TE Howell A. Burkhalter, Dissent	RE J. Grant McCabe, Absent
TE Alton Craig Chapman, Absent	TE Charles E. McGowan, Concur
TE Stephen M. Clark, Concur	TE D. Steven Meyerhoff, Concur
RE M. C. (Cub) Culbertson, Concur	RE Frederick Neikirk, Concur
RE Perry Denniston, Concur	RE Steven T. O’Ban, Absent
RE J. Howard Donahoe, Dissent	RE Calvin Poole, Concur
RE Samuel J. (Sam) Duncan, Concur	TE G. Dewey Roberts, Concur
TE Paul B. Fowler, Absent	TE Michael F. Ross, Absent
TE William W. Harrell Jr., Absent	RE Olin L. Stubbs, Concur
RE Thomas F. Leopard, Absent	RE John Tolson, Concur
TE William E. Lyle, Absent	RE John B. White Jr., Concur
12 concur, 2 dissent, 1 disqualified and 9 absent	

MINUTES OF THE GENERAL ASSEMBLY

**CONCURRING OPINION
COMPLAINT OF TE JOHN GRADY
VS.
SOUTHWEST FLORIDA PRESBYTERY
SJC 2007-12**

I concur in the result reached by the majority, based on the Issue, as stated in the Majority Opinion, but believe that the Issue, as framed and expanded by the Standing Judicial Commission in the Majority Opinion, goes beyond that stated by the parties.

TE Grady complained that Southwest Florida Presbytery erred in deciding that "the portion of this report (from the Shepherding Committee) regarding TE John Grady and Faith PCA be read into the minutes of Presbytery." Southwest Florida Presbytery did not err in merely recording the Shepherding Committee Report in the Minutes.

In my view, if the Standing Judicial Commission had used the issue, as proposed by TE Grady, then the Judgment would be different, in that the Judgment should have been that the Presbytery did not err by including the Shepherding Committee Report in the Minutes.

BCO 39-3(1) states that "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."

Accordingly, in my opinion, the Standing Judicial Commission expanded the Issue to include a finding that the Shepherding Report "contained a finding of 'sins and errors' concerning TE Grady," and thereby seems to be in conflict with *BCO* 39-3(1).

/s/ Samuel J. Duncan

**PRESBYTERIAN CHURCH IN AMERICA
VS.
LOUISIANA PRESBYTERY
SJC 2007-14**

I. SUMMARY OF THE FACTS

1. In case 2006-2, Part 2, the Standing Judicial Commission found that Louisiana Presbytery failed to reach a decision consistent with the Constitution of the Presbyterian church in America when it found "no strong presumption of guilt in any of the charges contained [in the