

MINUTES OF THE GENERAL ASSEMBLY

TE Paul D. Kooistra           Concur     RE John B. White Jr.       Concur  
RE Thomas F. Leopard       Concur     RE W. Jack Williamson   Concur  
Adopted: 22 concurring, 0 dissenting, 0 disqualified, 1 recused, 0 abstained  
and 1 absent.

**JUDICIAL CASE 2004-7**  
**COMPLAINT OF THE SESSION OF 1<sup>ST</sup> PC, AUGUSTA, GA.**  
**VS.**  
**SAVANNAH RIVER PRESBYTERY**

**I. SUMMARY OF THE FACTS**

1. The Session of First Presbyterian Church, Augusta, GA (hereafter referred to as “the Session”) received a petition from members of the congregation on August 13, 2003, requesting the Session to call a Congregational Meeting in accordance with *BCO* 25-2. The petition set forth five specific requests:
  - A. That consideration be given to the process by which elders had been examined in the past and the integrity of the election process.
  - B. That the “other side” of the disputes within the Session that were addressed at the congregational meeting of July 16, 2003 be heard.
  - C. That the congregation consider the following resolution: “that examination of persons nominated by members of this church to be considered for the office of elder shall be limited to the qualifications stated in Holy Scripture”.
  - D. That the Session, in keeping with *BCO* 25-4, appoint someone other than the Senior Pastor to moderate this particular congregational meeting.
  - E. That the Senior Pastor be required to be present at the Congregational Meeting so that he might respond to questions put to him by ruling elders or members of the congregation.
2. In response to the petition, the Session on August 26, 2003 made the following decisions:
  - A. To call a Congregational Meeting for September 10, 2003 for the following 2 purposes:
    1. To explain at the Congregational Meeting the Presbyterian form of church government and its’ process for nomination and election of officers; and to respond to issues identified in the August 13, 2003 petition.
    2. To recommend to the congregation that it, in accordance with *BCO* 24-6, request the Session to consider dissolving the

official relationship, without censure, between the church and certain ruling elders in light of the fact that they may have become unacceptable in the discharge of their official capacity.

- B. A committee was appointed to prepare a one- page position paper on major points of difference within the Session.
3. The congregation, at its meeting on September 10, 2003, voted by a margin of 503 to 229 to request the Session to consider dissolving the official relationship, without censure, between certain ruling elders and the church in light of the fact that they may have become unacceptable in the discharge of their official capacity. The congregation specified, by ballot, that eleven elders be considered under the provision of *BCO* 24-6.
  4. On September 25, 2003 the Session voted to dissolve the official relationship between the congregation and nine of those ruling elders. On October 5, 2003 the Session voted to dissolve the relationship between the congregation and the two additional ruling elders.
  5. Between September 7, 2003 and October 4, 2003 a series of Complaints, by several persons, with a total of three specifications were filed against the Session concerning how the Session responded to the August 13, 2003 petition, the actions of the congregation at that meeting related to *BCO* 24-6, and all related subsequent actions of the Session related to the Congregational Meeting. The Session heard and denied all Complaints on November 20, 2003.
  6. On December 10, 2003 a Complaint against the Session was filed with Central Georgia Presbytery in accordance with *BCO* 43-3. It was received by the newly formed Savannah River Presbytery of which First Presbyterian Church, Augusta is a member. A Commission was appointed to hear the Complaint.
  7. On July 16, 2004, Savannah River Presbytery adopted the following findings of the Commission:
    - A. That the Session did not err in the manner with which they responded to the specific requests of the petitioners.
    - B. That the Session did err by adding to the call of the Congregational Meeting their own recommendation that the congregation request the Session to consider dissolving the official relationship, without censure, between the church and certain ruling elders (*BCO* 25-2 & *BCO* 24-6).
    - C. That the Session did err in acting to dissolve the official relationship with the eleven ruling elders (*BCO* 24-6).
    - D. That the action of the congregation requesting the Session to invoke the provisions of *BCO* 24-6 is annulled; and that the subsequent

actions of the Session on September 25 and October 5, 2003 to dissolve the relationship with the ruling elders in question is annulled (*BCO* 43-10), re-instating the ruling elders in question.

8. On July 27, 2004, TE Paul Fowler, RE Eugene Betts (FPC Augusta), and RE Tom Harley (FPC Augusta) “on behalf of the Session” filed a Complaint against the Savannah River Presbytery. The presbytery waived its right to hear this complaint, instead referring it to the Standing Judicial Commission, Presbyterian Church in America. (*BCO* 41-3, SJC Man 13.1).

## II. STATEMENT OF THE ISSUES

1. Did the Presbytery err in rejecting the Sessions right to add items to the agenda of a congregational meeting called in response to a petition from members of the congregation [*BCO* 25-2]?
2. Did the Presbytery err in rejecting the Session’s right to inform the members of the congregation of the rights afforded to them by *BCO* 24-6 and to recommend that the members of the congregation exercise those rights; and then in annulling the subsequent actions of the Session as indicated in Statement of the Facts 7:c and d?

## III. JUDGMENT

1. Yes. *BCO* 25-2 does not prohibit a Session from adding additional agenda items to a congregational meeting conducted pursuant to a petition from the congregation, and as announced in the call for the meeting.
2. Yes. *BCO* 24-6 does not prohibit a Session from placing a congregation’s right to seek dissolution of its official relationship with certain ruling elders before the congregation through a recommended course of action, nor to take subsequent action based on that vote.

## IV. REASONING AND OPINION

The critical issues in this dispute arise from the September 10, 2003, congregational meeting at First Presbyterian Church of Augusta, Georgia (“FPC”). Specifically, Savannah River Presbytery (“Presbytery”) concluded that *BCO* 24-6 (dissolving official relation without censure) proceedings initiated against eleven elders by a vote of the congregation at that meeting violated *BCO* 25-2 and *BCO* 24-6. The Presbytery asserted two grounds for this supposed error: first, that the Session of FPC violated *BCO* 25-2 when it added the issue of *BCO* 24-6 proceedings to a congregational meeting called in response to a petition from members of the congregation (ROC15-16); and, second, that *BCO* 24-6 prohibits the Session from putting the question of *BCO* 24-6 proceedings before the congregation on its own initiative (ROC 16-17). Neither conclusion is supported by the Constitution.

*BCO 25-2 does not prohibit the FPC Session's actions*

*BCO 25-2* does not give members of the congregation an unfettered right to require the session to call a congregational meeting to conduct business of the congregation's choosing. The session, under our Constitution, retains the responsibility to determine whether the business proposed by the petition conforms to the requirements of our Constitution. Where the proposed business would violate the Constitution, it is the responsibility of the session to preclude the congregation from such action. (*BCO 11-2*, Church courts charged to preserve the order of the church and *BCO 12-5*, Spiritual oversight of the Session). Failure to do so would properly subject a session to correction by the presbytery (*BCO 13-9b*, presbytery charged to redress actions of the session contrary to order or failing to observe the Constitution).

In the present matter, the Complainants and the Respondents agree that the Session of FPC acted within its duty and discretion when it refused to allow the business proposed by the petition received on August 13, 2003. Further, they agree that the Session fulfilled its responsibility to the petitioning congregants when it called the meeting and, as the first item of business, scheduled a presentation explaining the ways in which actions sought in the petition violated the Constitution of the Church.

Where the parties disagree is whether, in addition to making that response, the Session had the further authority to add an agenda item that the petitioners had not sought. *BCO 25-2,3,4*, and 5 clearly afford the session that authority.

*BCO 25-2* directs the session to call, set the agenda for, and provide notice of congregational meetings. *BCO 25-3* charges the session with determining that the proper quorum is present for such meetings. *BCO 25-4* directs the session as to the proper moderation of the meeting, and *BCO 25-5* provides for the orderly maintenance of records of the meetings by the session. The clear intent of the Constitution is that the session would exercise leadership in the life of the church through the planning and execution of these meetings. Precluding the session from exercising this responsibility by adding agenda items it believes are "in the best interests of the church" would violate this clear intent.

The 11<sup>th</sup> General Assembly received a constitutional inquiry as to whether, "[c]ongregational meetings may be called for other purposes than stated in the question [posed by the petition]?" The Assembly's response was that "*BCO 25-2* states that a congregational meeting may be called for anything which 'is in the best interest of the church.'" (1983, p.98, 11-36, III.34). The clear implication of this advice is that a session is required to exercise its discretion

and best judgment to determine what is in the best interest of the church and to act on that determination. Higher courts are required to exhibit great deference to lower courts when the issue before them concerns a lower court's exercise of such discretion and judgment. *BCO* 39-3(3).

At the time of this congregational meeting there was deep division within the congregation and Session. The Session determined, in the exercise of its discretion and judgment, that the best interest of the church would be served by informing the congregation of its rights under *BCO* 24-6 and recommending that the congregation act as it saw fit. Respondents question whether this was the best decision. The pastoral concern of the Presbytery is commendable and bodes well for future relationships within Savannah River Presbytery. However, our Constitution does not allow a higher court to substitute its judgment for a lower court's on an issue of discretion and judgment. In the absence of a clear violation of *BCO* 25-2, the Presbytery incorrectly determined that the Session acted improperly.

***BCO 24-6 does not prohibit the FPC Session's course of action.***

Presbytery also erred when it determined that the language of *BCO* 24-6 prohibits the Session's course of action in this matter. Respondents argue that the process contemplated by *BCO* 24-6 may only be initiated through a personal motion from a member of the congregation. Nothing in the language of *BCO* 24-6 imposes such a limit.

*BCO* 24-6 provides a process for dissolving the official relationship between a ruling elder and the congregation that elected him to office, where that elder is not chargeable with any offense and is unwilling to voluntarily demit the office. In providing for such a remedy where the congregation considers such an elder "unacceptable in his official capacity," the Constitution balances the perpetual nature of the office of elder (*BCO* 24-6) with Preliminary Principle 6 (power to elect those exercising authority resides in society to be governed).

Respondents argue that the phrase, "in such a case the church may take initiative..." means that only a member of the church, acting in his or her private capacity as a member, may make the motion that initiates the process. Such a narrow interpretation is not required by the language of the provision and fails to recognize the ordinary and practical means by which a session must often guide a congregation.

*BCO* 24-6 requires an act, i.e. a vote, of the congregation as the first step in dissolving the official relationship between the congregation and one of its ruling elders. The session, after such a vote, carefully examines the elder and

exercises its best judgment and discretion as to whether the dissolution is prudent. This simply means that a majority congregational vote, not a vote of the session, begins the process.

A session does not usurp this right of the congregation by informing the congregation that it has the right and recommending that it exercise the right. In fact, it is a common practical requirement that the elders of the church inform the congregation of rights it does have. Under our Constitution, the congregation, by its own vote, decides to purchase or dispose of property (*BCO 25-6a*), to elect a pastor (*BCO 20-3ff*), to elect its ruling elders (*BCO 24-1ff*), and to affiliate or break affiliation with a larger body of believers (*BCO 25-11*). Without the ability to inform congregations of these rights and recommend courses of action related to them, sessions would be divested of their ability to provide critical leadership to the church. *BCO 24-6* does not preclude a session from exercising such leadership by outlining the requirements of *BCO 24-6* and recommending a course of action to the congregation.

The critical issue is whether the congregation, after receiving a recommendation, considers its options and freely acts as the consciences of members may require. The record clearly demonstrates that that is exactly what happened in this matter. The Session of FPC did inform the congregation of its rights under *BCO 24-6*, recommend that they take action under it, and provide a draft ballot for the vote. However, the congregation clearly made its own decision. Numerous questions were asked about the process. Several members of the congregation offered personal motions pertaining to the recommendation, including motions to postpone consideration of the issue, to modify the ballot, and to amend the recommendation. Each was defeated by congregational vote. The recommendation itself was moved and seconded by members of the congregation. After substantial debate, the congregation approved its motion by a vote of 503 for and 229 against. (ROC 402-407). The congregation clearly made its own decision and asked the Session of FPC to dissolve the official relationship between the congregation and eleven ruling elders. The Presbytery's application of *BCO 24-6* to this situation was incorrect.

This judgment is the unanimous decision of the panel. The decisions rendered in this matter make the other relief sought by the Complaint moot and reinstate the original actions of the Session of FPC.

Statement of the facts drafted by TE McGowan, the balance of the judgment drafted by TE Burkhalter. The entire judgment carefully reviewed, revised, and adopted by the panel.

TE Charles E. McGowan, RE M.C. Culbertson, TE Howell A. Burkhalter

MINUTES OF THE GENERAL ASSEMBLY

The vote on the Case 2004-7 was:

TE Dominic A. Aquila	Recused	RE J. Grant McCabe	Concur
TE Howell A. Burkhalter	Concur	TE Charles E. McGowan	Concur
TE Stephen M. Clark	Concur	TE D. Steven Meyerhoff	Concur
RE M. C. Culbertson	Concur	RE Frederick Neikirk	Concur
RE Perry Denniston	Concur	RE Steven T. O'Ban	Absent
RE J. Howard Donahoe	Concur	TE Michael M. Rico	Dissent
RE Samuel J. Duncan	Concur	TE G. Dewey Roberts	Concur
TE Robert M. Ferguson Jr.	Concur	TE Michael F. Ross	Recused
TE William W. Harrell Jr.	Concur	TE Robert D. Stuart	Concur
RE Terry L. Jones	Concur	RE John Tolson	Concur
TE Paul D. Kooistra	Concur	RE John B. White Jr.	Recused
RE Thomas F. Leopard	Concur	RE W. Jack Williamson	Recused

Adopted: 18 concurring, 1 dissenting, 0 disqualified, 4 recused, 0 abstained and 1 absent.

**JUDICIAL CASE 2004-9**  
**APPEAL OF RE SCOTT ROBAR**  
**VS.**  
**CENTRAL CAROLINA PRESBYTERY**

The full SJC concurred with the panel that the case be found judicially out of order in that it was not properly filed according to *BCO* 42-4.

The vote on the Case 2004-9 was:

TE Dominic A. Aquila	Concur	RE J. Grant McCabe	Concur
TE Howell A. Burkhalter	Recused	TE Charles E. McGowan	Concur
TE Stephen M. Clark	Concur	TE D. Steven Meyerhoff	Concur
RE M. C. Culbertson	Concur	RE Frederick Neikirk	Dissent
RE Perry Denniston	Dissent	RE Steven T. O'Ban	Absent
RE J. Howard Donahoe	Recused	TE Michael M. Rico	Concur
RE Samuel J. Duncan	Dissent	TE G. Dewey Roberts	Concur
TE Robert M. Ferguson Jr.	Concur	TE Michael F. Ross	Concur
TE William W. Harrell Jr.	Concur	TE Robert D. Stuart	Dissent
RE Terry L. Jones	Concur	RE John Tolson	Concur
TE Paul D. Kooistra	Concur	RE John B. White, Jr.	Concur
RE Thomas F. Leopard	Concur	RE W. Jack Williamson	Concur

Adopted: 17 concurring, 4 dissenting, 0 disqualified, 2 recused, 0 abstained and 1 absent.