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CASE 2004-8
COMPLAINT OF TE JAMES THORNTON
VS.
WESTMINSTER PRESBYTERY
STANDING JUDICIAL COMMISSION CASE 2004-8

I. SUMMARY OF THE FACTS

1. In 1993, TE James Thornton was installed by Westminster Presbytery as pastor of the Meadow Creek Presbyterian Church in Greeneville, Tennessee.
2. On April 15, 2001, the pastoral relationship between TE Thornton and the Meadow Creek Church was dissolved.
3. On October 27, 2001, the Shepherding Committee of Westminster Presbytery reported: "That TE Jim Thornton be recognized as on the roll of Presbytery without call effective April 21, 2001" (ROC, p. 141).
4. On October 27, 2001, Westminster Presbytery instituted process against TE Thornton (ROC p. 142). [Note: In SJC Cases 2003-2 and 2003-5, the respondents for Westminster Presbytery acknowledged "the violation of the *Book of Church Order* in appointing a prosecutor and beginning process without specific charges."] (ROC, p. 62).
5. On January 7, 2004, the Shepherding Committee of Westminster Presbytery sent a letter to TE Thornton stating that:

...the Shepherding Committee reviewed the matter of several Teaching Elders within the Presbytery being without call for an extended period as pertaining to chapters 13 and 34 of the Book of Church Order ... The Committee determined that the appropriate way to address your particular situation would be for you to seek the Lord's face and provide in writing to the return address a clarification of your call to the ministry as referenced in BCO 13-2 and 34-10. The Committee sees these referenced sections of the BCO as pastoral encouragement and trusts that this could be of benefit to you (ROC, p. 76).
6. On January 25, 2004, the Session of Memorial Presbyterian Church in Elizabethton, Tennessee issued a call to TE Thornton to serve as assistant pastor (ROC, pp. 42, 73).
7. April 17, 2004, Westminster Presbytery declined to place the call from the Memorial Church Session in TE Thornton's hands and began the process of BCO 34.10 by citing him to appear at the next stated meeting.. The following motion was adopted:

That Presbytery decline to place the call from Memorial PCA into the hands of TE Thornton according to BCO 20-10 as it shall appear to be most beneficial to the peace and edification for the church. That Presbytery proceed according to the BCO 34-10. That Presbytery, in accordance with the requirements of BCO 13-2,

1 cite Mr. Thornton to appear at the July, 2004, stated meeting, in order that he may
2 be heard per BCO 34-10" (ROC, pp. 15-16).

- 3
- 4 8. On April 20 2004, the Stated Clerk of Westminster Presbytery wrote TE Thornton citing
5 him to appear before Presbytery's next Stated Meeting on July 17, 2004 per BCO 34-10
6 (ROC, p. 78).
- 7
- 8 9. On May 10, 2004, TE Thornton filed a complaint against the actions of Westminster
9 Presbytery taken on April 17, 2004 (ROC, pp. 68-69).
- 10
- 11 10. On July 17, 2004, Westminster Presbytery denied TE Thornton's complaint. The
12 Presbytery took the following action in answering the complaint:

13

14 A point of order was made to proceed procedurally by dividing the complaint into
15 two parts; First, to deal with the Call from Memorial, and then to deal with the
16 part concerning the issue of citing him according to BCO 34-10 ... It was moved
17 that we deny that part of the complaint dealing with Presbytery's action to decline
18 handing the Call from Memorial into his hands ... The motion was discussed, and
19 the question called. The motion passed with the following grounds: "That BCO
20 20-10 gives Presbytery the option to decline placing the call into his hands as it
21 may appear to most for the peace and edification of the Church at large.
22 Therefore, there was no error on the part of the Presbytery." ... It was MSP that
23 we deny the complaint [the second part] on the grounds that BCO 13-2 requires
24 that "When a minister shall continue on the rolls of his Presbytery without a call
25 to a particular work for a prolonged period, not exceeding three years, the
26 procedure as set forth in 34-10 shall be followed" (ROC, p.49).

- 27
- 28 11. On August 6, 2004, TE Thornton carried his complaint to the SJC (ROC, pp. 5-9).
- 29

30 **II. STATEMENT OF THE ISSUES**

- 31
- 32 1. Did Westminster Presbytery err on July 17, 2004 in denying the complaint against its
33 action taken on April 17, 2004, by declining to place the call from Memorial PCA into
34 the hands of TE Jim Thornton."
- 35
- 36 2. Did Westminster Presbytery err on July 17, 2004 in denying the complaint against its
37 action taken April 17, 2004, by beginning the process of divestiture without censure
38 against TE Thornton per BCO 13-2 and BCO 34-10?
- 39

40

41 **III. JUDGMENT**

- 42
- 43 1. Yes.
- 44
- 45 2. Yes.
- 46

1 **IV. REASONING AND OPINION**

2
3 On April 17, 2004, Westminster Presbytery (“WP”) voted to begin the process divest TE
4 Thornton of his office without censure pursuant to the latter half of BCO 34-10. At the time of
5 this vote, the presbytery also had in its possession a duly issued call to TE Thornton from the
6 session of Memorial PCA. These circumstances preclude the application of BCO 34-10 against
7 TE Thornton.

8
9 BCO 34-10 envisions two possible courses of action by a presbytery against a minister remaining
10 on the roll of the presbytery for an extended period without call. First, where the presbytery
11 finds the member has violated his ordination vows by failing to diligently pursue the exercise of
12 his gifts, the presbytery may institute process against the member. Second, where the member
13 has diligently sought to exercise his gifts, but no church has agreed to receive him as a shepherd,
14 the presbytery has the power to administratively divest him, without censure, of his office – even
15 against his will. Westminster Presbytery did not institute judicial process against TE Thornton.
16 Instead, it invoked the latter, or “administrative remedy”, arguing that TE Thornton lacked
17 “acceptance to the Church.” The record does not support that claim.

18
19 The administrative remedy of BCO 34-10 arises from BCO 16-1 and Preliminary Principle 6.
20 BCO 16-1 states that calling to ecclesiastical office rests upon three joint affirmations – the
21 inward testimony of the minister’s conscience, the manifest approbation of God’s people, and the
22 concurrence of a lawful court of the church. The minister may renounce this calling by
23 voluntarily demitting his office (BCO 38-2). A presbytery removes its sanction by judicial
24 action (BCO 34-1 et seq and 38-1 et seq). Preliminary Principle 6 recognizes that the power to
25 elect those who have authority over a particular society rests in that society, and may be withheld
26 or removed by that society. Thus, the people may withhold their “approbation” of a minister’s
27 calling by refusing to issue a call. The latter half of BCO 34-10 gives effect to this by providing
28 the means for divestiture, without censure, of a minister who considers himself called and who is
29 in good standing with his presbytery, where the third necessary affirmation of BCO 16-1 is
30 lacking – there is no longer a testimony of manifest approbation from God’s people.

31
32 The record clearly demonstrates that Westminster Presbytery erred in its understanding and
33 application of BCO 34-10. The uncontradicted evidence in the record establishes that the
34 Session of Memorial PCA issued a valid call to TE Thornton and that presbytery had that call in
35 its hands at the time of its erroneous vote. Under these circumstances, the administrative remedy
36 of BCO 34-10 cannot be invoked. TE Thornton’s complaint should have been sustained, and
37 hereby is sustained, and the decision to divest TE Thornton of office, without censure, is hereby
38 reversed.

39
40 The second issue arises from the claim of Westminster Presbytery that it has unfettered
41 discretion to approve or disapprove of a duly issued call to one of its members. Presbytery
42 mistakenly cites BCO 20-10 as support for its decision. However, BCO 20-10 applies to
43 circumstances in which a call is issued to a minister currently serving another congregation. This
44 is clearly not the case in this matter. In its brief, presbytery argues that BCO 21-1 (the correct
45 provision regarding approval of a call to a minister without a call) contains the same essential
46 rights and that the errors of presbytery in this regard are inconsequential. Without addressing

1 whether or not this error was fatal to the decision of Westminster Presbytery, we conclude that
2 Westminster Presbytery erred in the exercise of its rights of review and approval, regardless of
3 whether the review occurs under 20-10 or 21-1.

4
5 Westminster Presbytery argues that the BCO gives it an absolute right to review calls to its
6 members (or prospective members) and to refuse to place those calls in the hands of its members
7 if, in its judgment, the call is not beneficial to the church. In support of this unfettered exercise
8 of discretion and judgment, WP points to BCO 39-3, which states that higher courts should
9 exercise “great deference to a lower court regarding those matters of discretion or judgment
10 which can only be addressed by a court with familiar acquaintance of the events and parties.”
11 However, BCO 39-3 goes on to state that the higher court is to reverse the lower court where
12 “there is clear error on the part of the lower court.” This is a case of clear error.

13
14 At the time this call was issued to TE Thornton, he was a member in good standing of
15 Westminster Presbytery. Prior process against him arising from his tenure at another church had
16 been abandoned by Westminster Presbytery. No new judicial proceedings were brought against
17 him. Representatives of WP argue that ongoing concerns about TE Thornton caused them to
18 conclude that he should not be given spiritual authority in another work. If that is the case, BCO
19 34-1 et seq mandates that process be brought, or that such opinions be kept privately, so that no
20 minister might be censured on slight grounds (BCO 34-2).

21
22 In effect, WP refused to approve this call so that it could invoke the provisions of BCO 34-10
23 against TE Thornton and remove him from office without judicial process. To do so was not an
24 exercise of its discretion; it was a violation of the Constitution. The Complaint of TE Thornton
25 against this action is sustained and the case is remanded to Presbytery with the direction that the
26 call of the Memorial PCA Session to TE Thornton be approved and placed in his hands, and that
27 a time be set for his installation.

28
29 The complaint is sustained and the case is remanded to Presbytery with the direction that the call
30 of the Memorial PCA Session to TE Jim Thornton be approved and placed in his hands, and that
31 a time be set for his installation.

32
33 Panel Members:

34 TE Stephen M. Clark
35 RE W. Jack Williamson
36 TE Dominic A. Aquila

37
38 Summary of the Facts, Statement of the Issues and Judgment were written by TE Dominic A.
39 Aquila. Revised Reasoning and Opinion written by TE Howell A. Burkhalter and approved by
40 the full SJC.

41
42 The vote on Case 2004-8 was:

| | |
|------------------------------------|--------|
| 43 TE Dominic A. Aquila | Concur |
| 44 TE Howell A. (Howie) Burkhalter | Concur |
| 45 TE Stephen M. (Steve) Clark | Concur |
| 46 RE M. C. (Cub) Culbertson | Concur |

| | | |
|----|----------------------------------|---------|
| 1 | RE Perry Denniston | Concur |
| 2 | RE J. Howard (Howie) Donahoe | Concur |
| 3 | RE Samuel J. (Sam) Duncan | Concur |
| 4 | TE Paul B. Fowler | Concur |
| 5 | TE William W. (Bill) Harrell Jr. | Concur |
| 6 | RE Terry L. Jones | Concur |
| 7 | TE Paul D. Kooistra | Absent |
| 8 | RE Thomas F. (Tom) Leopard | Concur |
| 9 | TE John M. McArthur, Jr. | Concur |
| 10 | RE J. Grant McCabe | Concur |
| 11 | TE Charles E. McGowan | Concur |
| 12 | TE D. Steven (Steve) Meyerhoff | Abstain |
| 13 | RE Frederick (Jay) Neikirk | Concur |
| 14 | RE Steven T. (Steve) O'Ban | Absent |
| 15 | TE Michael M. Rico | Concur |
| 16 | TE G. Dewey Roberts | Concur |
| 17 | TE Michael F. (Mike) Ross | Concur |
| 18 | RE John Tolson | Concur |
| 19 | RE John B. White, Jr. | Concur |
| 20 | RE W. Jack Williamson | Concur |

21

22 Adopted: 21 concurred, 0 dissent, 0 disqualified, 0 recused, 1 abstained and 2 absent

23

24

**CONCURRING OPINION - 1
JUDICIAL CASE 2004-8
COMPLAINT TE JAMES THORNTON
VS.
WESTMINSTER PRESBYTERY**

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30 In accordance with the Standing Judicial Commission Manual 19.8 (8) (k), we submit
31 this concurring opinion in SJC Case 2004-8 (Thornton vs. Westminster Presbytery). We believe
32 the case was properly decided and want to address other issues relevant to this case as it touches
33 on the PCA form of Presbyterian polity.

34 One of the issues in this case is the means by which pastoral calls are issued and
35 approved. In the PCA Book of Church Order (*BCO*), the congregation (or a Session in the case
36 of an assistant pastor) issues a call to a teaching elder and the Presbytery approves it and places it
37 in his hands. Assuming that a candidate is qualified by virtue of his Presbytery examination; can
38 a Presbytery decide not to approve a call from a congregation?

39 A review of the facts in this case appears to place competing provisions and principles in
40 the *BCO* at odds with one another. The issue raised in this complaint is that a Session voted to
41 extend a legitimate call to a minister already a member of the Presbytery to serve as an assistant
42 pastor. The Presbytery voted not to approve the call and place it in the minister's hand, citing as
43 its ground: "That Presbytery decline to place the call from Memorial PCA into the hands of TE
44 Thornton according to *BCO* 20-10 as it shall appear to be most beneficial to the peace and
45 edification for the church" (ROC, p. 16). The Presbytery then proceeded, in the same motion, to
46 summon the complainant to answer for being on the rolls of Presbytery without a call for three

1 years (*BCO* 13-2). The complainant argued that the call was in every way consistent with the
2 provisions in the *BCO* and should have been approved. The Presbytery argued that it had the
3 right under *BCO* 20-10 not to approve the call. In answering the complaint Presbytery stated:
4 "*BCO* 20-10 gives Presbytery the option to decline placing the call into his hands as it may
5 appear to most for the peace and edification of the Church at large" (ROC, p. 49).

6 In judging the facts in this particular case, we are confronted with what appear to be
7 competing provisions and principles in the Book of Church Order. However, these principles are
8 not really in competition once they are viewed in the light of the foundational principles
9 enumerated in the Preliminary Principles of the *BCO*. A foundational principle of the PCA form
10 of Presbyterianism is its grassroots nature. That is, it is a bottom-up not top-down denomination
11 in its form of polity. As a result of this grassroots structure, the PCA form of Presbyterianism
12 gives primacy and deference to the will of the congregation to choose its overseers. This
13 principle is unique to the PCA's polity and is in contrast to what may be referred to as historic
14 Presbyterian polity. This particular case must be understood in light of this foundational
15 principle.

16 Note the language of Preliminary Principles 6: "Though the character, qualifications and
17 authority of church officers are laid down in the Holy Scriptures, as well as the proper method of
18 officer investiture, *the power to elect persons to the exercise of authority in any particular*
19 *society resides in that society*" (emphasis added).

20 This same principle is stated again in *BCO* 16-2: "The government of the Church is by
21 officers gifted to represent Christ, and the right of God's people to recognize by election to office
22 those so gifted is *inalienable*. Therefore no man can be placed over a church in any office
23 without the election, or at least the consent of that church" (emphasis added).

24 In light of this foundational principle, the powers given and prescribed in the *BCO* to
25 higher courts are to be interpreted and understood through the lens of this principle. One of the
26 implications of this principle is that the right of PCA congregations to elect their overseers
27 precedes or is primary to the expressed rights of Presbyteries to prevent qualified men from
28 accepting legitimate pastoral calls and being placed in their ministries.

29 This foundational principle in no way prevents, hinders or restricts Presbyteries from
30 examining ministers to assure themselves that candidates are moral, biblical and confessional.
31 Presbyteries must assure themselves that ministers are qualified to shepherd the flock and to
32 engage in the gospel ministry. They may even counsel a man not to accept a call because to do so
33 may bring difficulty to himself, his family and/or the congregation. However, because of the
34 nature of the foundational principle expressed in the Preliminary Principles, when all reasonable
35 measures have been followed, and after Presbyteries have determined that candidates are
36 otherwise qualified morally, biblically and confessionally, they should give deference to and
37 accede to the will of congregations who have expressed themselves through the pastoral election
38 process.

39 This principle, that PCA congregations have the right to elect their overseers, has been
40 sustained a number of times in past judicial decisions.

41 For example, in SJC Case 92-2 (Virgil B. Roberts vs. New River Presbytery), the court
42 found that a Presbytery could not prevent a congregation from dissolving the pastoral
43 relationship between itself and the pastor. In its Reasoning and Opinion the court stated:

44 Much care should be exercised in taking the general provision in one section of
45 the *BCO* and applying to specific situations that are dealt with in a specific
46 section of the *BCO*. Dr. Morton Smith in his *Commentary on the PCA Book of*

1 *Church Order* notes that the Presbytery has authority to go beyond the specific
2 provisions that are spelled out in the *BCO* "so long as it is not in conflict with
3 it..."

4 The majority of the panel notes that a previous decision in case 91-2, the
5 Standing Judicial Commission and the General Assembly affirmed that "the
6 discretion given to a Presbytery under 23-1 does not give Presbytery power to
7 prevent the implementation of a valid decision of a congregation." That "valid
8 decision of a congregation" must be understood to include both the elections of
9 the pastor and the concurrence in his resignation. The fundamental right of a
10 congregation to elect its officers was noted by Dr. Morton Smith in an article in
11 the book *The Historical Birth of the Presbyterian Church in America*. He
12 concluded that it is a fundamental provision of our polity that "the office bearers
13 in the Apostolic church were chosen by the people ... On the basis of this (I
14 Timothy 5:1,7), we may conclude that the function of 'pastors and teachers' of
15 Ephesians 4:11 are included under the office of elder."
16

17 In *Preg, et. al., vs. Missouri Presbytery (M13GA, pp.127-130)*, the issue was whether a
18 higher court can take an action that affects a lower court in areas not expressly authorized by the
19 *BCO*. The specific issue in the complaint was whether Presbytery may require its shepherding
20 committee to visit a Session and congregation against its wishes. The Presbytery had taken its
21 action based on the expressed language of *BCO* 13-9f, which states in part, "...to visit churches
22 for the purpose of inquiring into and redressing the evils that may have arisen in them..." The
23 decision stated:
24

25 *BCO* 11-4 reads in part, "The jurisdiction of these courts is limited by the
26 express provision of the Constitution." In the opinion of the Commission, *BCO*
27 13-9 contains no express provision, which meaning is clear and undebatable, as
28 would permit a Presbytery to *require* the receiving of a Presbytery committee's
29 visit without a request or by a specific problem in the session or congregation in
30 question ... the Commission also wishes to protect lower courts from any
31 possible encroachment, implied or otherwise, by higher courts, and beyond the
32 express powers given to those higher courts in the *BCO* (emphasis in the
33 original).
34

35 With regard to Westminster Presbytery's answer in denying the complaint, it referred to a
36 portion of the last sentence of the first paragraph of *BCO* 20-10 as the ground for not approving
37 TE Thornton's call, to wit: "...as it shall appear to most for the peace and edification of the
38 Church at large" (ROC, p. 49). This phrase was taken out of context and does not mean what the
39 Presbytery interpreted it to mean. Note the whole of the first paragraph of *BCO* 20-10:
40

41 A congregation desiring to call a pastor from his charge, shall, by its
42 commissioners, to the Presbytery prosecute the call before its Presbytery. The
43 Presbytery, having heard all the parties, *may*, upon viewing the whole case,
44 *either* recommend them to desist from prosecuting the call; *or* may order it to be
45 delivered to the minister to whom it is addressed, with or without advice; *or* may

1 decline to place the call in his hands; as it shall appear most for the peace and
2 edification of the Church at large (emphases added).
3

4 According to this provision, when a Presbytery considers a call to a minister, if there are
5 any disputes about the call from members of the congregation [the parties], then the Presbytery
6 has a number of options: It may either (1) recommend them [the parties] to desist from
7 prosecuting the call; or (2) it may order it to be delivered to the minister to whom it is addressed,
8 with or without advice; or (3) it may decline to place the call in his hands. As it considers its
9 options when congregation members are disputing the call, the Presbytery may choose
10 whichever option "as it shall appear most for the peace and edification of the Church at large."
11 This last sentence does not stand alone; it is the conclusion of a section that gives direction and
12 options to a Presbytery on how to handle a dispute after a pastoral call has been issued when
13 members of a congregation are divided about prosecuting the call.

14 Since the stated ground that Westminster Presbytery gave in denying to place the call into
15 the hands of TE Thornton was *BCO* 20-10 (ROC, pp. 16, 49), we judge that the Presbytery
16 improperly interpreted and applied *BCO* 20-10 and its action based on this interpretation cannot
17 be sustained as a valid reason for its action. The ROC in this particular case clearly indicates that
18 TE Thornton was a member in good standing of the Presbytery, he had received a legitimate call
19 from the Memorial PCA Session, and there were no disputing parties to the call, which would be
20 a necessary precondition for invoking *BCO* 20-10. It is our judgment that in this instance,
21 invoking *BCO* 20-10 was inappropriate since there were no disputing parties from the calling
22 body.

23 So we ask again, under the PCA Constitution, does a Presbytery have the right to refuse
24 to approve a member-church's call of a pastor? The answer is "yes"; but not an unqualified "yes".
25 This privilege must be exercised in the light of other related provisions of the *BCO*, such as *BCO*
26 16-2 and Preliminary Principle 6. These provisions give to the local congregation the right to
27 choose who serves them as pastor-minister. Hence, absent some extraordinary issue, such as the
28 proposed minister's character deficiency or a theological aberration, the Presbytery should
29 normally accede to the wishes of the local church by approving the call to the teaching elder the
30 congregation requests and place the call in his hands.

31 The SJC is an appellate court of the PCA. *BCO* 32-18 provides as follows:

32
33 "Nothing which is not contained in this 'record' (ROC) shall be taken into
34 consideration by the higher court".
35

36 The only reason given by Westminster Presbytery for its refusal to place the proper call
37 of Memorial Presbyterian Church in the hands of TE Thornton was: "...as it shall appear to be
38 most beneficial to the peace and edification for the church" (ROC, p. 16).

39 These words and the remainder of the ROC state no specific facts that would support or
40 justify that it would be "most beneficial to the peace and edification for the church." No facts are
41 stated in the ROC that would support or justify this position. No reasons are given and no past
42 factual actions of TE Thornton are given for this appellate court to judge or evaluate the reasons
43 for such drastic action. This appellate court was given no facts in the ROC on which to make a
44 judgment as to whether or not the placing of this call in TE Thornton's hands would or would not
45 be "most beneficial to the peace and edification for the church." Without such supporting factual
46 evidence, we conclude that we cannot support, and therefore must declare as error, this action by

1 Westminster Presbytery in refusing to place this legitimate call of Memorial Presbyterian Church
2 in the hands of TE Thornton.

3 Our judgment on this issue is grounded in at least three (3) factors: (1) the foundational
4 principles enumerated in the Preliminary Principles are the lens through which the expressed
5 provisions of the *BCO* must be interpreted. There is nothing in the ROC of this particular case
6 that gave warrant for the Presbytery to deny placing the call into the hands of TE Thornton. (2)
7 The interpretation of *BCO* 20-10, which requires that there be disputing parties from the
8 congregation to a call as a precondition for it to be invoked. The ROC is clear that there were no
9 disputing parties from the congregation and there was no basis for *BCO* 20-10 to be invoked.
10 And (3) there was nothing in the ROC to indicate that TE Thornton was ever charged with
11 "habitually failing to discharge" his call to ministry, also there is no evidence in the ROC that he
12 ever received any counsel from Presbytery not to accept the call.

13 The complainant also raised a question about Westminster Presbytery beginning the
14 process of divestiture in accordance with *BCO* 34-10. It is clear from the ROC that TE Thornton
15 had received a call to a particular church in the Presbytery. The call from the Memorial PCA
16 Session was issued on January 25, 2004, about three months prior to the April 17, 2004 stated
17 meeting of Westminster Presbytery. Here was a teaching elder in good standing in the Presbytery
18 with a legitimate call from one of the churches in the Presbytery, and at the same meeting at
19 which the call is presented, not only does the Presbytery decline to approve the call, but also
20 moves to begin the process of divestiture from ministry without censure because he had been
21 without a call to a particular work for a period of time. It is our judgment that the provisions of
22 *BCO* 13-2 were not applicable to TE Thornton in this instance in the light of the call he had
23 received and was placed in the hands of Presbytery.

24 The primary requirement for the application of the provision of *BCO* 13-2 is, "When a
25 minister shall continue on the roll of Presbytery *without a call*." This prerequisite was not met in
26 this case; thus the appeal to *BCO* 13-2 was not applicable. The action by Westminster Presbytery
27 on April 17, 2004, against placing a legitimate call from Memorial Presbyterian Church, issued
28 January 25, 2004, in the hands of the Complainant, rendered the invoking of *BCO* 13-2
29 premature and not applicable in this case. This action of Westminster Presbytery, in this matter,
30 was hasty and misapplied.

31 Respondent, Westminster Presbytery, also insisted that *BCO* 34-10 supported its action
32 for refusing to place a legitimate call from one of its churches in the hands of the Complainant,
33 TE Thornton, and to begin the process of divestiture. Respondent argued that *BCO* 34-10 was the
34 proper support for its action of April 17, 2004.

35 We believe that, at this stage of the procedure, *BCO* 34-10 was not applicable to the
36 action taken by Westminster Presbytery on April 17, 2004. *BCO* 34-10 is a provision under the
37 *BCO* Rules of Discipline. It begins with the following prerequisite for its applicability, to-wit:

38
39 Whenever a minister of the gospel shall habitually fail to be engaged in the
40 regular discharge of his official functions, it shall be the duty of the Presbytery...

41
42 There are no facts in the ROC that indicate that TE Thornton had ever been charged with
43 'habitually failing to regularly discharge his official function,' or had ever been heard by
44 Westminster Presbytery on this matter, and certainly had never been found guilty of such a
45 charge by Westminster Presbytery. These are undisputed facts. The above stated prerequisite for
46 applicability has never been met. Therefore, that portion has been improperly claimed and used

1 by Westminster Presbytery as a basis of such charge against TE Thornton. The failure to meet
2 this prerequisite rules out the claim that *BCO* 34-10 can be the proper basis for the April 17,
3 2004 action by Westminster Presbytery against TE Thornton.

4 TE Thornton had been a faithful member of Westminster Presbytery for several years. As
5 a matter of fact he had been elected Chairman of Westminster Presbytery's Missions Committee.
6 In such capacity, he had served faithfully and without criticism. The ROC has many instances of
7 his service in other areas in the Presbytery.

8 Even if it were conceded that *BCO* 34-10 was applicable to this case, Westminster
9 Presbytery did not follow the procedure authorized by 34-10, which is, "... to institute judicial
10 proceedings against him [the minister] for breach of his covenant engagement."

11 We concur with the majority decision that Westminster Presbytery improperly used *BCO*
12 34-10 and concur that the complaint should be sustained.

13
14 TE Dominic A. Aquila
15 TE Stephen M. Clark
16 RE M. C. (Cub) Culbertson
17 TE Paul B. Fowler
18 TE Michael M. Rico
19 RE John B. White, Jr.
20 RE W. Jack Williamson

21
22 **CONCURRING OPINION - 2**
23 **JUDICIAL CASE NO. 2004-08**
24 **COMPLAINT OF TE JAMES THORNTON**
25 **VS.**
26 **WESTMINSTER PRESBYTERY**
27

28 We concur in the result reached by the majority, but believe that the Reasoning and
29 Opinion needs clarification.

30 An issue in the case was whether a presbytery has unfettered discretion to approve or
31 disapprove a duly issued call to one of its members. The majority found that Westminster
32 Presbytery erred in the exercise of this discretion.

33 Presbytery contends that pursuant to *BCO* 20-10, a presbytery "can disapprove a call if it
34 deems it best for the Church" and that the "reasons for such a disapproval are not required to be
35 given." Presbytery argued that this decision belongs solely to presbytery and is not subject to
36 review by the General Assembly or SJC. Presbytery states that in the exercise of this discretion,
37 it was "pry to information that came from two Commissioners that had been working with Mr.
38 Thornton and the Meadow Creek Church for several years." The specifics of this information
39 were not in the Record of the Case. Presbytery states that the *BCO* "does not require [it] to list
40 its reasons for disapproval" and for Presbytery to:

41
42 deny a call, the SJC should recognize that Presbytery must have had good
43 reasons. The SJC is not pry to all these reasons. But regardless, the place of the
44 SJC is not to judge the validity of the reasons, but to judge the validity of a
45 Presbytery acting within the parameters of *BCO* 21-1 for reasons the Presbytery
46 itself deems as being for the good of the Church.

1
2 In our view, a presbytery, when presented with a request to approve a Call or a pastoral
3 relationship, does not have to automatically acquiesce in the same.

4 When presented with such a request from a non-member, a presbytery should first
5 determine that the man is qualified to accept the Call, i.e. the ordination trials for an unordained
6 man (*BCO* 21) or the views examination for an ordained man (*BCO* 20). If presbytery determines
7 that a man is not qualified, this decision and the reasons supporting the same must be set forth in
8 the Minutes in order to allow the man a basis upon which to complain.

9 In this case, the request came from a member; therefore, absent specific reasons to the
10 contrary, the man is deemed qualified. No charges were pending against TE Thornton. No
11 specific reasons to support a finding that TE Thornton was not qualified were given.

12 Once this determination is made, a presbytery should then move to vote to approve or
13 disapprove the Call or pastoral relationship. The Call or pastoral relationship should be
14 approved, unless the presbytery can make objective, justifiable findings showing why the Call or
15 pastoral relationship should be disapproved. No specific reasons to support a finding that the
16 Call to TE Thornton was not "for the good of the Church" were given.

17 Presbytery argues that it does not have to specify reasons for its decision because the
18 *BCO* in this instance does not specifically state that reasons must be given. This argument must
19 fail. In order to afford appellate review of an action by a lower court, the lower court must
20 specify the reasons for taking the action. Without the specified reasons, a higher court has no
21 basis upon which to review the lower court's decision.

22 Presbytery stated that commissioners may make the decision for different reasons;
23 therefore, it is not practical to state the specific reasons for its decisions. It was suggested that
24 someone is not required to state the reasons one votes for or against a man in an election. While
25 this is true in an election, the disapproval of a Call is not an election. While commissioners may
26 have different reasons for their votes to disapprove a Call, the specific reasons for its decision to
27 disapprove a Call should be adopted by presbytery. If the specific reason of a particular
28 commissioner is not adopted by presbytery, the commissioner should either reconsider his vote
29 or have his specific reasons set out in the Minutes, so that an appellate court can properly review
30 any challenges to the action.

31 In our view, Presbytery failed to specify grounds that are sufficient to justify its decision
32 to disapprove TE Thornton's Call. Such a failure is error in the exercise of Presbytery's rights
33 and duties.

34 Our opinion in this case is consistent with the Concurring Opinion on SJC 2001-34 and
35 2002-3 signed by RE Samuel J. Duncan and Thomas F. Leopard, (*M33GA* p. 98) which dealt
36 with delay by a presbytery in approving the dissolution of a pastoral relationship. Presbyteries
37 must not abuse powers granted by the *BCO* by acting without good and sufficient reason to either
38 delay or deny a call or to approve a dissolution.

39
40 RE Samuel J. Duncan
41 RE Thomas F. Leopard
42 RE John B. White, Jr.
43 RE Steven T. O'Ban