

MINUTES OF THE GENERAL ASSEMBLY

This Decision was written jointly by RE Dan Carrell, TE Grover Gunn, and RE Frederick Neikirk and adopted as amended by the full SJC.

The Roll Call vote on Case 2010-26.

Adopted: 19 concurring, 2 dissenting, 1 not qualified, 1 disqualified, and 1 absent.

TE Dominic A. Aquila, Concur
RE E.C. Burnett, Concur
RE Daniel Carrell, Concur
TE Bryan Chapell, Concur
TE David F. Coffin, Jr., Concur
RE M. C. (Cub) Culbertson, Concur
RE Howie Donahoe, Dissent
RE Samuel J. (Sam) Duncan, Absent
TE Paul Fowler, Concur
TE Fred Greco, Concur
TE Grover E. Gunn, III, Concur
RE D. W. Haigler, Jr., Dissent

TE Jeffrey Hutchinson, Concur
RE Terry L. Jones, Absent
TE Brian Lee, Disqualified
RE Thomas F. Leopard, Not Qual
TE William R. Lyle, Concur
TE Charles E. McGowan, Concur
TE D. Steven Meyerhoff, Concur
RE Frederick J. Neikirk, Concur
RE Jeffrey Owen, Concur
TE Danny Shuffield, Concur
RE Bruce Terrell, Concur
RE John B. White, Jr., Concur

In accord with *OMSJC* 2.10.e, a member subject to disqualification shall disclose on the record the basis of the member’s disqualification. TE Lee was disqualified because he is a member of a court (Presbytery) which is a party to the case (*OMSJC* 2.10.d(3)ii). RE Leopard was not qualified because he could not certify that he had read the necessary portions of the Record of the Case. (*OMSJC* 2.3.b)

COMPLAINT 2010-27
MR. MATT RUFF
VS.
NASHVILLE PRESBYTERY

The Complaint is Judicially Out of Order (*OMSJC* 10.5.a.) for the following reasons:

1. A “complaint is a written representation made against some act or decision of a court of the Church.” (*BCO* 43-1)
2. A timely filed complaint “shall be filed . . . within thirty (30) days following the meeting of the court.” (*BCO* 43-2)

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3. The Complaint of Mr. Matt Ruff¹ before Nashville Presbytery (NP), filed on October 27, 2010, was against “lack of action” on the part of NP in connection with certain self-styled “preliminary charges” against a teaching elder of NP.
4. In order to construe “lack of action” as an act or decision of a court, as required by the definition of a complaint in *BCO* 43-1, there must be a meeting of the court in view where the court fails to act.
5. In order for the thirty day filing period of *BCO* 43-2 to be enforced there must be a meeting of the court in view to start such time period.
6. The nearest meeting of NP, antecedent to the filing of the Complaint, was on August 18, 2010. At this meeting NP took no action with respect to Mr. Ruff’s “preliminary charges.”
7. The filing date for the Complaint (October 27, 2010) is clearly beyond the thirty (30) day limit begun on August 18, 2010.

For these reasons the Complaint is found Judicially Out of Order. As this defect cannot be cured, the Case is dismissed. (*OMSJC* 10.6)

¹ We note that Mr. Ruff had standing to bring this Complaint because he was the party who first brought these matters to the attention of the Court (*see* *SJC* case 2009-28).

This Decision was drafted by TE David Coffin and adopted as the Decision of the full *SJC*.

The Roll Call vote on Case 2010-27.

Adopted: 18 concurring, 1 disqualified, and 5 absent.

TE Dominic A. Aquila, Absent
RE E.C. Burnett, Concur
RE Daniel Carrell, Concur
TE Bryan Chapell, Concur
TE David F. Coffin, Jr., Concur
RE M. C. (Cub) Culbertson, Concur
RE Howie Donahoe, Concur
RE Samuel J. (Sam) Duncan, Absent
TE Paul Fowler, Concur

TE Jeffrey Hutchinson, Concur
RE Terry L. Jones, Absent
TE Brian Lee, Concur
RE Thomas F. Leopard, Concur
TE William R. Lyle, Concur
TE Charles E. McGowan, Disqual
TE D. Steven Meyerhoff, Concur
RE Frederick J. Neikirk, Absent
RE Jeffrey Owen, Concur

MINUTES OF THE GENERAL ASSEMBLY

TE Fred Greco, Concur
TE Grover E. Gunn, III, Concur
RE D. W. Haigler, Jr., Concur

TE Danny Shuffield, Concur
RE Bruce Terrell, Concur
RE John B. White, Jr., Absent

In accord with *OMSJC* 2.10(e), a member subject to disqualification shall disclose on the record the basis of the member's disqualification. TE McGowan was disqualified because he is a member of a court (Presbytery) which is a party to the case (*OMSJC* 2.10(d)(3)(ii)).

COMPLAINT 2010-27
MR. MATT RUFF
VS.
NASHVILLE PRESBYTERY
OBJECTION

While not expressing an opinion as to the merits of the Complaint, I must object to a finding that the Complaint is Judicially Out of Order.

In my view, the dispute in this case should not be decided on when a complaint was or was not filed in the lower court, but by the provisions of BCO 39-3.1. Further, the Judicially Out of Order finding is inherently unfair as to Mr. Ruff.

On July 9, 2008, Mr. Ruff, who is not a deacon or an elder, forwarded a letter to Nashville Presbytery ("NP"), which seemed to both file charges and ask for the presbytery to undertake an investigation of alleged offenses committed by two (2) Teaching Elders. NP focused on only one of the two Teaching Elders, which resulted in SJC Case 2009-28, which ruled that NP had erred by failing to conduct an adequate investigation pursuant to BCO 31-2 after receiving an adverse report concerning the character of one of its members and when, on the basis of the evidence before it, it failed to find a strong presumption of guilt as to offenses allegedly committed by one of its members.

On July 22, 2010, Mr. Ruff, in following up with the NP Stated Clerk in regard to the SJC's Decision that NP had erred in its handling of the first Teaching Elder (Case 2009-28) and the ordered investigation of him, inquired as to the investigation of the second Teaching Elder. Mr. Ruff was advised that there were no plans to investigate the second Teaching Elder. Mr. Ruff was not advised that NP would be meeting on August 18, 2010 and that he should attend and bring forth any questions or concerns that he might have concerning the second Teaching Elder.

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On August 18, 2010, NP met and did not take any action in regard to the second Teaching Elder. Mr. Ruff was not timely advised that no action had been taken in regard to the second Teaching Elder.

On October 27, 2010, Mr. Ruff filed a Complaint against NP's failure to act in regard to his request concerning the second Teaching Elder. On November 9, 2010, NP denied Mr. Ruff's Complaint because his July 9, 2008 letter "did not clearly articulate any accusations or grounds upon which Presbytery should act." Mr. Ruff's failure to file a Complaint within 30 days of the August 18, 2010 meeting of NP was not cited as grounds or a reason for its action.

On November 30, 2010, Mr. Ruff filed the Complaint that is the subject of this proceeding with the Stated Clerk of the General Assembly and NP. Accordingly, this case is Administratively in Order, i.e. it was filed with the General Assembly and NP within 30 days of the November 9, 2010 meeting of NP at which time his Complaint was denied.

The Judicial Out of Order finding is based upon Mr. Ruff not filing his Complaint within 30 days from the August 18, 2010 meeting of NP, at which time it did not take any action in regard to an investigation of the second Teaching Elder. I object to this ruling for the following reasons:

1. The grounds upon which the Judicially Out of Order finding was made (Complaint was not filed 30 days after the August 18, 2010 meeting) was not raised by NP, either when the Complaint was denied by NP on November 9, 2010 or before the SJC.
2. BCO 39-3.1 would seem to require a higher court reviewing a case to limit itself to the issues raised by the parties in the lower court, i.e. the failure of NP to raise this issue as grounds for not adjudicating Mr. Ruff's Complaint prevents the SJC from sua sponte ruling the case Judicially Out of Order on this basis.
3. NP, by failing to base its denial of Mr. Ruff's Complaint on not being filed within 30 days after the August 18, 2010 meeting, has waived the same as an irregularity and should be estopped from benefiting from its apparent ratification of the same, i.e. this irregularity should not prevent the SJC from exercising jurisdiction in this case.
4. It is inherently unfair to require Mr. Ruff to file a complaint based on a presbytery's lack of action, when he was not placed on notice when

NP was going to meet, was not advised that he should attend the August 18, 2010 meeting to raise any questions or concerns that he might have in regard to the second Teaching Elder, and was not timely advised that NP had not acted on August 18, 2010.

5. This inherent unfairness is also manifested by the July 9, 2008 letter, which, although asking for an investigation, could be construed as bringing specific BCO 32-3 charges against the second Teaching Elder, which must be adjudicated in light of SJC Case 2010-26:

Yet TE Lee did not bring an alleged bad report to the Presbytery; he brought specific charges against the two Teaching Elders. In that situation, the Presbytery is obligated (subject to the caveats noted below) to commence process; i.e., to have a trial to determine the guilt or innocence of those under the Presbytery's authority against whom charges have been brought (BCO 32-2).

/s/ RE Samuel J. Duncan

COMPLAINT 2010-28
TE STEPHEN GONZALES
VS.
GREAT LAKES PRESBYTERY

I. SUMMARY OF FACTS

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| 2006 | TE Stephen Gonzales was received by Great Lakes Presbytery (GLP) with a call to Christ Church, Grand Rapids, MI. |
| 12/2008 | Brenda Gonzales confessed her infidelities to her husband, TE Steve Gonzales, who then informed the Christ Church Session and Great Lakes Presbytery. On December 17, 2008, Mrs. Gonzales wrote a letter of confession to the Christ Church elders. The Christ Church Session excommunicated Mrs. Gonzales in 2009. |
| 3/2009 | The GLP Church & Ministerial Welfare Committee met with TE Gonzales after learning of his wife's infidelities and recommended that he take an extended leave. |