CASE 2016-01

TE DON AVEN
VS.
OHIO VALLEY PRESBYTERY

DECISION ON COMPLAINT
October 20, 2016

SUMMARY OF THE CASE

TE Charles Hickey notified his Presbytery his view had changed on Larger Catechism 177, now disagreeing with the final clause regarding the admission requirement for the Lord's Supper ("... only to such as are of years and ability to examine themselves.") Presbytery adopted a recommendation from its Credentials Committee and judged the minister's difference as being "more than semantic, but neither striking at the vitals of religion nor hostile to our system of doctrine." TEs Don Aven and David Dively filed a complaint against that judgment, Presbytery declined to sustain it, and the two then filed a complaint with the SJC. In March 2015, the full SJC heard that complaint as Case 2014-01, and in June 2015 declined to either sustain or deny due to an insufficient Record, and sent the matter back to OVP "to hear further from TE Hickey regarding his stated difference in order to create a more comprehensive Record." Subsequently, TE Hickey submitted additional material to Presbytery on his view. TEs Aven and Dively complained that Presbytery failed adequately to comply with the Judgment of Case 2014-01. Presbytery considered and denied the Complaint, and TE Aven carried it to the PCA SJC, which now denies the Complaint.

I. SUMMARY OF THE FACTS

12/04/13 TE Charles Hickey, Pastor of Trinity Presbyterian Church of Florence, KY, officially notified Ohio Valley Presbytery (OVP) of a change in his view regarding the final clause in the answer to Larger Catechism question 177. He included a 700-word statement of his difference and rationale.

05/20/14 At its May 2014 Stated Meeting, OVP judged the difference as "more than semantic, but neither striking at the vitals of religion nor hostile to our system of doctrine."

07/18/14 Revs. Aven and Dively filed a complaint with OVP against Presbytery's May 2014 judgment on the confessional difference.

10/21/14 At its October 2014 Stated Meeting, OVP considered the complaint and denied it.

11/07/14 Revs. Aven & Dively filed that complaint with the SJC.

03/05/15 The full SJC conducted the Hearing in Atlanta, and a committee was appointed to draft and recommend a proposed Decision.

06/09/15 The SJC considered the Committee's recommendation, and after amendment, adopted its Decision in Case 2014-01 by a vote of 15-0-1, which included this Statement of the Issue and Judgment:

> Issue: Should the Complaint be sustained, which alleges Presbytery erred on May 20, 2014, when it granted an exception to TE Hickey's stated difference as to Larger Catechism 177, with respect to limiting participation in the Lord's Supper to those "such as are of years and ability to examine themselves," as being more than semantic but neither striking at the vitals of religion nor hostile to our system of doctrine?
>
> Judgment: The Complaint is neither Sustained nor Denied. The Commission cannot render judgment because the Record is insufficient regarding this minister's *particular expression* of his view. Therefore, the Commission sends the matter back to OVP to hear further from TE Hickey regarding his view in order to create a more comprehensive Record. (Emphasis in original.)

The Complainants and Presbytery received this Decision in late June 2015. It was included in the SJC's 2016 Report to the 44th General Assembly in Mobile, Alabama.

10/20/15 At its October 2015 Stated Meeting, Presbytery received the Report of its Representatives in Case 2014-01, which contained

nine-pages of material TE Hickey presented to Presbytery to create the more comprehensive Record. It included four pages with 16 sets of affirmations and denials, three pages of exegesis on 1 Cor 11:28, and a two-page list of questions from TE Aven with answers from TE Hickey, from March 2014 (but which had not been included in the Record of Case 2014-01.)

TEs Aven and Dively proposed a two-page motion describing a plan for a Moderator-appointed committee to reexamine TE Hickey and to present its "findings." The motion failed.

11/04/15 TE David Dively and TE Don Aven filed a four-page Complaint with OVP related to the decisions made at the October 2015 Stated Meeting.

01/09/16 At its January 2016 Stated Meeting, Presbytery considered the Complaint but declined to sustain it, by vote of 23-7.

01/19/16 TE Aven took the complaint to the General Assembly.

02/19/16 The Record of the Case was received by PCA Clerk's office (173 pages). It included new material, the SJC Decision in Case 2014-01, and the entire Record from that previous Case. In the conclusion of the Decision in Case 2014-01, the SJC stipulated:

> Finally, if this matter comes back to the SJC, the Record shall include the 133-page Record from Case 2014-01, and any additional material considered by Presbytery when it hears the matter, including any supplemental or clarifying material submitted by TE Hickey.

04/15/16 SJC Panel received the Record. Neither party objected to the Record, and both parties filed Preliminary Briefs. Below are the Statement of Issues proposed by the Parties.

Complainant - Did Ohio Valley Presbytery err when, at its October 20, 2015, Stated Meeting, it failed "to hear further from TE Hickey regarding his change in view" in any of the five (5) areas the SJC listed under the heading of "The Record was insufficient in the following respects:" in its Decision in Case 2014-01?

Respondent - Did Ohio Valley Presbytery satisfy the directive of the Standing Judicial Commission in Case 2014-01?

Did TE Hickey's written statement demonstrate that OVP was justified in characterizing his view as being "more than semantic, but neither striking at the vitals of religion nor hostile to our system of doctrine"?

06/21/16 Panel Hearing in Mobile, AL, with RE Terry Jones, TE Will Barker, and RE Howie Donahoe. Panel alternates TE Charles McGowan and RE Bruce Terrell were present. TE Larry Hoop was Respondent's representative, and Complainant TE Aven was present with his representative, TE Dominic Aquila, and both TE Aven and TE Aquila spoke.

III. STATEMENT OF THE ISSUE

Did Presbytery fail to comply with the directive from the Standing Judicial Commission's Decision in Case 2014-01 to "hear further" from the minister regarding his view?

IV. JUDGMENT

1. No.

V. REASONING

The Complainant seems to argue as if the SJC had sustained his original Complaint in Case 2014-01, annulled Presbytery's action on judging the minister's difference, and remanded for a re-examination. But that is not the case. The SJC "declined to either sustain or deny" Complaint 2014-01 and wrote, "The Commission cannot render judgment because the Record is insufficient regarding this minister's *particular expression* of his view." (Emphasis in original.)

The SJC's Judgment in 2014-01 ended with, "Therefore, the Commission sends the matter back to OVP to hear further from TE Hickey regarding his stated difference in order to create a more comprehensive Record." But the SJC declined to describe any particular procedure by which Presbytery might "hear further from TE Hickey," and declined to describe any particular procedure to use to give him "an opportunity to provide a fuller statement of his view . . . should he desire to do so."

Rev. Aven's four-page Complaint, which Presbytery denied in January 2016, frequently used the verbs "examine," "reexamine," and "investigate," as well as the nouns "reexamination" and "directive." But the SJC Decision in Case 2014-01 never used any of those words in its Judgment or Reasoning. The SJC merely observed, ". . .certain statements in TE Hickey's [original] rationale require further explanation in the Record" and "we remand this case to the Presbytery *to hear further from* TE Hickey regarding his change in view." (Emphasis added.) The SJC did not specify how that was to be done.

Presbytery did "hear further" from the minister. He submitted nine pages of material related to his particular confessional difference, including four pages with 16 sets of affirmations and denials (A/D), three pages of exegesis of 1 Cor 11:28, as an example of his views, and a two-page list of questions from Rev. Aven that Rev. Hickey answered in March 2014 (but which had not been included in the Record of Case 2014-01). This constitutes "hearing further from."

The Complainant contends the SJC "directed" Presbytery to procure answers from TE Hickey on the five areas delineated in SJC Decision 2014-01. Respondent asserts there was no such directing, but even if there was, TE Hickey addressed each of the five areas, at least in some degree.

1) Explanation of his use of the term "infant faith"
   - March 2014 Questions and Answers with Rev. Aven, especially Answers 1, 6, 7.
   - A/D 1, 7, 13
2) Related Differences with Larger Catechism 170-175
   - Respondent's Brief contends TE Hickey believes as covenant children mature, they are to manifest all of those qualities spoken of in WLC 170-175.
3) Reasons why he holds his view
   - A/D 2, 3, 5, 6, 8, 9, 10, 11, 12, 14, 15, 16
4) Exegesis of 1 Corinthians 11:27-29
   - A/D 4
   - three-page exegesis of 1 Corinthians 11: 28
5) Compliance with *BCO* restrictions on admission to the Supper
   - Respondent's Brief argues that the minister's ordination vows bind him to comply, and he has fulfilled his vows faithfully so far, including coming forward and informing Presbytery of his change in views.

Thus, the Complaint is denied.

The Panel included RE Terry Jones (chairman), TE Will Barker, and RE Howie Donahoe. All three members concurred in the decision, which RE Donahoe drafted. This opinion was amended and approved by the SJC on October 20, 2016, on the following roll call vote (16 Concur, 6 Dissent, 2 Absent):

Bankson, *Concur*	Dowling, *Concur*	Meyerhof, *Concur*
Barker, *Concur*	Duncan ,*Dissent*	Neikirk, *Dissent*
Bise, *Dissent*	Evans ,*Dissent*	Nusbaum, *Concur*
Cannata, *Concur*	Fowler, Absent	Pickering, *Concur*
Carrell, *Dissent*	Greco, *Dissent*	Robertson, *Concur*
Chapell, *Concur*	Jones, *Concur*	Terrell, *Concur*
Coffin, *Concur*	Kooistra, *Concur*	White, Absent
Donahoe, *Concur*	McGowan, *Concur*	Wilson, *Concur*

CONCURRING OPINION ON CASE 2016-01
RE Howard Donahoe

I concur with the SJC Decision in this case, but believe the SJC could also have judged whether Ohio Valley erred when it judged TE Hickey's confessional difference with Larger Catechism 177 was <u>not</u> hostile to our system of doctrine.

While *BCO* 39-3.1 stipulates, "a higher court should limit itself to those issues raised by the parties to the case in the original (lower) court," this issue was raised by the parties in the previous Aven Complaint, both in Presbytery and before the SJC (*Case 2014-01 Aven v. Ohio Valley*).[11] But the SJC declined to render a judgment in that Case, due to an insufficient record. Then, at the hearing on this present Case, both parties expressed their desire to see this issue adjudicated now, should the SJC believe the record is now sufficient for doing so. Furthermore, in its previous decision in *2014-01*, the SJC stipulated the record of that case should be included in any future record. Such stipulation reasonably led the parties to expect this issue would be adjudicated in any future related complaint. Thus, it is not a new or an un-raised issue.

The combined records of the two cases now present sufficient information for the higher court to render a judgment on whether Presbytery erred in its judgment on the minister's confessional difference. In *2014-01*, the SJC noted

[11] Case 2014-01, *M44GA*, p. 499

the following as a deficiency in the record of that case: "It is that underlying exegesis and reasoning that will evidence how the man and the court is understanding the Constitution of the Church and thus should be an important part of the higher court's review of the lower court's decision." The minister has now provided his "underlying exegesis and reasoning." The record is now sufficient to review Presbytery's judgment. And the record does not demonstrate sufficient reason to reverse that judgment.

Apart from other reasons why, generally, a difference with the final clause of LC 177 does not rise to the level of something that is hostile to our system of doctrine, or to the level of something that strikes at the vitals of religion, any presbytery's judgment on a confessional difference with LC 177 should be informed by actions of the General Assembly – most recently, the 41st GA in Greenville in 2013 and the 43rd GA in Chattanooga in 2015. Here is a summary.

In June 2013, the 41st GA in Greenville adopted a recommendation from the Committee on Review of Presbytery Records and judged a response from Pacific NW as "satisfactory." PNW was responding to a citation from the 39th GA in Virginia Beach regarding PNW's ordaining a candidate who expressed a difference with LC 177 related to "paedocommunion." Previously, at the Greenville GA, the Assembly declined to adopt a recommendation from a 20-member RPR minority that recommended GA find the PNW response "unsatisfactory."[12]

Two years later, in June 2015 in Chattanooga, there were two separate actions of the 43rd GA related to "paedocommunion" views. RPR recommended (unsuccessfully) that the GA cite Susquehanna Valley with an exception of substance, and also rule Eastern Pennsylvania's response to a previous exception of substance citation as "unsatisfactory." Neither was adopted.

On Susquehanna Valley, the RPR contended:

> Presbytery incorrectly judged transferring [PCA] TE's stated difference as more than semantic but "not out of accord with any fundamental of our system of doctrine" vs. "out of accord," that is, "hostile to the system" or "striking at the vitals of religion" dealing with Sacraments.

[12] *M41GA*, p. 22. PNW Response, pp. 500-514; RPR Grounds, pp. 464-465; RPR Minority Report, pp. 487-491. http://pcahistory.org/ga/41st_pcaga_2013.pdf

However, a 69% majority of the Chattanooga GA adopted a motion from an 18-member RPR minority and declined to issue any citation.[13]

On Eastern PA, the RPR recommended (unsuccessfully) that GA rule Presbytery's 350-word response to a citation as being "unsatisfactory." Previously, Eastern PA had sustained a November 2011 ordination exam in which the candidate expressed a difference with LC 177 on the admissibility of covenant children to the Lord's Supper. Presbytery's response contained five points, including these two:

> (3) According to our Standing Rules when a candidate is granted an exception, he may teach his exception, but he must be able and willing to do so in a manner that will not disturb the peace of the church. He must make clear that his teaching in this particular case differs from the standards of the church and he must be able and willing to explain the position of the standards with sympathy and respect. This does not give the candidate the right to practice his exception. When he was later ordained, the candidate took vows promising to approve the form of government and discipline of the PCA and to be in subjection to his brethren in the Lord. Thus, we believe the exception is not hostile to our system of doctrine. We believe such teaching may even be helpful.
>
> (4) As to striking at the vitals of religion, we believe that this exception hardly does that, knowing from the records of the PCA that the issue of paedo-communion is one that has been discussed in several General Assemblies through the years, indicating that a number of people in the denomination hold this view. If the General Assemblies considered that paedo-communion was a view that struck at the vitals of religion, such persons would have been removed from the denomination.

A 63% majority of the Chattanooga GA adopted a recommendation from a 20-member RPR minority and ruled Eastern PA's response as "satisfactory." [14]

In sum, it appears Ohio Valley Presbytery gave "due and serious consideration" to those three GA deliverances, as prescribed by *BCO* 14-7 – especially in

[13] *M43GA*, 2015 Chattanooga, pp. 31 and 477-479.
http://pcahistory.org/ga/43rd_pcaga_2015.pdf
[14] *M43GA*, 2015 Chattanooga, pp. 32 and 433-436.

view of the fact that the two Chattanooga decisions occurred between the SJC Decision in the first Aven Complaint and the filing of his current Complaint.[15]

/s/ RE Howard Donahoe

DISSENTING OPINION ON CASE 2016-01
REs John Bise, Dan Carrell, Sam Duncan, and Frederick Neikirk
TEs Brad Evans and Fred Greco

The undersigned respectfully dissent from the decision of the Standing Judicial Commission in Case 2016-01. In so doing, we argue that Presbytery erred in its application of the directives of the SJC in Case 2014-01. By this failure Presbytery committed a clear error in discretion and judgment that the SJC could have and should have reversed under *BCO* 39-3(3 and 4). We also write to point out the present posture of the Complaint in Case 2014-01.

In the antecedent case, 2014-01 (*Aven and Dively v. Ohio Valley Presbytery*), the Complainants argued that Presbytery had erred in finding that TE Hickey's changed view did not violate any fundamental of the system of doctrine. The Standing Judicial Commission remanded that matter to Presbytery, stating that the Commission could not render a judgment on the matter because "the Record is insufficient regarding this minister's *particular expression* of his view" (emphasis in original). The purpose of the remand was so that OVP could "hear further from TE Hickey regarding his stated difference in order to create a more comprehensive record."

In explaining its decision in 2014-01 the SJC made the following observation with regard to how lower courts are to deal with men who report changes in their views.

> Our polity related to our system of doctrine depends on the diligence and integrity of our ministers to identify fundamental changes in their views and to make them known to the presbytery (*BCO* 21-5.2). Once such a disclosure is made, our *BCO* does not provide express procedural guidance in dealing with the matter. However, by analogy the court should be guided by *BCO* 21-4.e and 21-4.f.

[15] *BCO* 14-7. Actions of the GA pursuant to the provision of *BCO* 14-6 such as deliverances, resolutions, overtures, and judicial decisions are to be given due and serious consideration by the Church and its lower courts when deliberating matters related to such action.

Respondent in Case 2016-01 argues that the *BCO* does not mandate any procedure with regard to how Presbyteries are to carry out these responsibilities under *BCO* 21, and that the SJC did not mandate any such procedure. As a result, Respondent contends that there cannot be a "clear error in judgment" with regard to how Presbytery examined the teaching elder regarding his change in views.

We agree with the Respondent's contention that the *BCO* does not mandate any specific procedure that a Presbytery must follow as it seeks to determine whether a teaching elder's views are out of accord with any fundamental of our system of doctrine (*BCO* 13-6; 21-4(e and f). At the same time, however, the *BCO* gives to higher courts responsibilities that can be met only if the lower court provides a clear and sufficient record, particularly where substantial matters of doctrine are concerned. Examples of these responsibilities of higher courts are found in *BCO* 40-2 (2 and 3) that mandate that higher courts must determine whether actions of lower courts are "regular and in accordance with the Constitution" and whether "they have been wise, equitable, and suited to promote the welfare of the Church." This responsibility is heightened for the General Assembly (and its Standing Judicial Commission) in that the General Assembly has particular responsibility to "bear testimony against error in doctrine" (*BCO* 14-6(a)) and to "suppress schismatic contentions and disputations" (*BCO* 14-6(g)).

The SJC clearly recognized the import of these responsibilities in Case 2014-01. There the Commission stated:

> When reviewing whether a man's stated difference is "out of accord with any fundamental of our system of doctrine" (i.e., because it is "hostile to the system [or] strikes at the vitals of religion"), the court will ordinarily need to consider more than the man's mere citation of the confessional section, and in many cases, even more than a summary statement of the difference. The court will often need also to consider the Biblical and Confessional exegesis, and the theological reasoning that is used to support the difference. It is that underlying exegesis and reasoning that will evidence how the man and the court is understanding the Constitution of the Church and thus should be an important part of the higher court's review of the lower court's decision.

Case 2014-01 underscored this understanding in the five broad areas cited by the SJC as evidence of the incomplete nature of the Record. The Decision in 2014-01 raised questions such as the following (these being in summary form, one should consult the Reasoning in 2014-01 for the full text of the issues):

- the nature of "infant faith;"
- whether the stated difference with LC 177 does not also require differences with LC 171-175;
- whether the minister reached his conclusions solely on the basis of his understanding of I Corinthians 11:27-29, or whether there were other theological reasons for his particular difference;
- how the minister's views and exegesis fit with "remembrance passages" such as Luke 22:19 and I Corinthians 11:24-25; and
- how the stated differences affect the minister's approval of the PCA's form of government and discipline as being in conformity with the general rules of biblical polity, especially in light of the distinctions made in our polity between communicant and non-communicant members.

Moreover, the SJC's stated concern was that the Record needed to show "how Presbytery understood these statements," and whether Presbytery required or received from the teaching elder the kinds of expanded explanations noted in the five areas set forth above (emphasis added). Such a record is required by *BCO* 40-2(1) and is especially significant in matters respecting doctrine (see *BCO* 14-6(a, g, i, and k)).

Given the above material from Case 2014-01, it is reasonable to conclude that Presbytery was responsible for making sure that the Record in this matter clearly showed how Presbytery understood the teaching elder's views, particularly as they relate to the specific areas of deficiency noted above. Unfortunately, Presbytery did not provide material that shed much light on these specifics. The new material consisted of four pages of affirmations and denials authored by the teaching elder, an article from another PCA teaching elder dealing with the exegesis of I Corinthians 11:28, and two pages of written responses from the teaching elder to questions posed to him by the Complainant in 2014. While these responses did shed some additional light on the teaching elder's views, they did not respond directly to many of the specific issues raised and they did not clarify how Presbytery understood those views or why they found them to be acceptable. In fact, we note that when the SJC reports that the teaching elder "addressed each of the five areas" it a) qualifies that with the phrase "at least to some degree," and b) often has to rely

on inferences as the clear reading of the Record shows that the teaching elder generally did not respond explicitly to the questions posed.

In our judgment, the error of Presbytery, and of the Standing Judicial Commission, is compounded by a conflating of various parts of the Decision in 2014-01. The Respondent and the SJC rest their arguments on the fact that 2014-01 did not require a reexamination of the teaching elder and that the focus of the directives in 2014-01 was on hearing further from TE Hickey, particularly if TE Hickey desired to provide a fuller statement. In point of fact, however, there were three particular directives contained in the Decision in 2014-01. In the order they appear in the Decision they were as follows:

1) "[T]o hear further from TE Hickey regarding his stated difference in order to create a more comprehensive Record" [regarding his particular expression of his views] (see the Judgment in 2014-01 and the next to the last paragraph in the Reasoning of that case).
2) "Apart from his statement of difference, certain statements in TE Hickey's rationale require further explanation for the Record. It is not clear from the Record how Presbytery understood these statements, or whether Presbytery required or received such further explanation." (See paragraph 6 of the Reasoning in 2014-01 - significantly, this is the lead-in paragraph to the five areas of concern noted above.)
3) "Further, before the SJC renders a judgment, TE Hickey should have an opportunity to provide a fuller statement of his view than what is contained in the Record, should he desire to do so." (Again, see paragraph 6 of the Reasoning in 2014-01.)

It is clear to us that the logical reading of these quotes is that they present three separate requirements in logical sequence. First, Presbytery was to hear further from the TE regarding his particular expression of his view. Then, Presbytery, using that material and material from the Record of Case 2014-01, was to provide a clear Record with regard to how it understood the TE's views, particularly relating to the five areas of concern noted above (compare the last paragraph of the Reasoning in 2014-01). Finally, Presbytery was to give the TE an opportunity to provide a fuller statement should he desire to do so. In other words, the phrase "should he desire to do so" does not modify the totality of the requirements. Presbytery was to require further information and it was to make a record of how it understood key aspects of the TE's views. Then, as a matter of charity, if the TE wanted to provide a fuller statement he was to be given the opportunity to do so.

Of course, it is true that the Decision in 2014-01 did not mandate how Presbytery was to go about seeking further information from the TE and making a record of how it understood the TE's views at key points. But that did not change the fact that it was required to accomplish those steps. Further, whether or not the TE wanted to provide a fuller statement did not change the fact that Presbytery was required to hear further about his views and make a record of how it understood those views impacting broader aspects of the system of doctrine. By accepting the Respondent's flawed reading of Case 2014-01, the SJC in Case 2016-01 turned the reasoning in the prior case on its head, allowed Presbytery to avoid clarifying its understanding of how the TE's views fit within the system of doctrine, and, if the original Complainants were correct in Case 2014-01, failed to bear necessary testimony against an error in doctrine.

Aside from these deficiencies in the SJC's Decision, it never addressed what is now the current posture of the Complaint in the underlying case, 2014-01. The sole issue framed by the SJC in Case 2016-01 was as follows: "Did Presbytery fail to comply with the directive from the Standing Judicial Commission's Decision in Case 2014-01 to 'hear further' from the minister regarding his view?" In response, the Judgment was "No." Consequently, the SJC denied TE Aven's Complaint in 2016-01. In doing so, however, it never touched the consequence of its Decision.

Recall that the SJC, in Case 2014-01, said that the Record was insufficient to allow the original Complaint (on the merits of the TE's view) to be adjudicated. Presbytery returned with an expanded Record that added little to clarify the TE's views and did not include any new information on how Presbytery saw those views in light of the five areas of concern expressed in 2014-01. In and of itself, that was unacceptable. Nevertheless, the SJC has now found the slightly expanded Record sufficient. Having done so, it must now return to the task of determining whether the Aven-Dively Complaint in 2014-01 is meritorious.

In sum, the SJC should have found that Ohio Valley Presbytery committed a clear error in judgment and discretion (*BCO* 39-3(3)) because it did not develop for the Record a sufficiently clear understanding of the TE's views, particularly given the centrality of a proper understanding of the Sacraments to our system of doctrine, and because it did not comply with the clear instructions from the SJC in 2014-01.

Further, even if one agrees that OVP did fulfill its responsibilities to create a sufficient Record, the 2014-01 Complaint with respect to the TE's views must now be addressed on its merits. Finally, we note that nothing in the SJC's decision in this case prevents anyone with standing from filing charges against the teaching elder should that be deemed necessary. We share this not to advocate the filing of charges, but to point out that what we judge to be an erroneous conclusion on the part of the SJC does not preclude further action with regard to the TE and his views.

/s /REs John Bise, Dan Carrell, Sam Duncan, and Frederick Neikirk
/s/ TEs Brad Evans and Fred Greco

CASE 2016-02

TE ARNOLD ROBERTSTAD
VS.
NORTH TEXAS PRESBYTERY

DECISION ON COMPLAINT
October 20, 2016

The Standing Judicial Commission (SJC) finds the above-named Complaint Administratively Out of Order and that it cannot be put in order for failure to comply with the filing requirements of *BCO* 43-3. The case is administratively out of order because it was initially filed via e-mail rather than by hard copy. It was filed by hard copy after the thirty-day deadline. The Fortieth General Assembly gave initial approval to amendments to *BCO* 42-4 and 43-3 to clarify how and when notification of a court's decision could be given to parties to a case (*M40GA*, pp. 72-73, 697-698). After receiving the required affirmative votes of Presbyteries, the Forty-first General Assembly gave final approval to the proposed amendments to *BCO* 42-4 and 43-3 (*M41GA*, p.17). An examination of the minutes of the Fortieth General Assembly indicate that the purpose of the amendments was only to change the time frame for carrying a case to a higher court, from the date of the lower courts action to the date at which parties were notified of the action. Though many are not aware of the historical context of the amendment, the meaning is clear from the context of the wording used. Both *BCO* 42-4 and 43-3 state "within thirty (30) days of notification of the last court's decision" and then go on to state how the lower court may notify parties. The language of notification of a decision was drawn from *OMSJC* 18.10.c, which also relates to courts' notifying parties. Neither *BCO* 42-4 nor 43-3, understood in historical or literary context, provide for