

MINUTES OF THE GENERAL ASSEMBLY

of *BCO* 43-2. Concerning the meeting of presbytery on February 9, 2016, the Complaint is not against the act or decision of a court, inasmuch as it is a complaint against the activities of a committee of Presbytery, and therefore not a proper complaint.

Furthermore, all the specifications listed in the Complaint are against actions of a committee of Nashville Presbytery. As such the Complaint is judicially out of order and cannot be put in order.

The Complaint is dismissed.

The Proposed Decision was drafted by the Panel, and approved, as amended, by the SJC On the following roll call vote (21 Concur, 2 Absent, 1 Not Qualified):

Bankson, <i>Concur</i>	Dowling, <i>Concur</i>	Meyerhoff, <i>Concur</i>
Barker, <i>Concur</i>	Duncan, <i>Concur</i>	Neikirk, <i>Concur</i>
Bise, <i>Concur</i>	Evans, <i>Concur</i>	Nusbaum, <i>Concur</i>
Cannata, <i>Concur</i>	Fowler, <i>Concur</i>	Pickering, <i>Concur</i>
Carrell, Absent	Greco, <i>Concur</i>	Robertson, <i>Concur</i>
Chapell, <i>Concur</i>	Jones, <i>Concur</i>	Terrell, <i>Not qualified</i>
Coffin, <i>Concur</i>	Kooistra, <i>Concur</i>	White, <i>Concur</i>
Donahoe, <i>Concur</i>	McGowan, Absent	Wilson, <i>Concur</i>

TE McGowan was absent and disqualified because he is a member of a court which is party to the case. *OMSJC* 2.10(d)(3)(iii).

CASE 2016-08

MS. LAURIE LEE DOTY

VS.

NASHVILLE PRESBYTERY

DECISION ON COMPLAINT

March 3, 2017

This case is judicially out of order (*OMSJC* 10.6).

While the case was originally filed as a “Complaint” with Nashville Presbytery, the “Complaint” does not meet the requirements of a Complaint as defined in *BCO* 43-1: “A complaint is a written representation made against some act or decision of a court of the Church.” The Complainant filed with the

CPC Session what was called “the Charges document.” Complainant wrote, “I am appealing the decision of the session of Covenant Presbyterian Church taken at the Feb 15, 2016 Stated Meeting of the CPC Session. The Session recommended that no action be taken against the men detailed in the Charges document.” In fact, “the Charges document” was against a Teaching Elder, over whom the CPC Session does not have judicial authority. Basically, the Complainant attempted to file a request for investigation against a TE in the wrong court. The CPC Session could not take an action on a matter that was not and could not be properly before it.

The Complainant did have the right to file a report immediately with Nashville Presbytery which was the TE’s court of original jurisdiction. This right to file reports against a minister is allowed under *BCO* 31-2 and 34-1. Complainant, having filed reports against a minister in the wrong court, had the right to file these reports with the court with jurisdiction over him. While the Record of the Case shows that the term “Complaint” was used to file the matter with the next higher court, in fact, the filing was not a Complaint as defined by *BCO* 43-1. The filing of the report with Nashville Presbytery was a new filing of a report against a member of presbytery, this time with the court of original jurisdiction.

Nashville Presbytery treated the allegations as reports under *BCO* 31-2 and 34-1 and conducted an investigation and determined there was no evidence of a strong presumption of guilt. Since this was a new action of Nashville Presbytery, not an answer to a Complaint, only those with standing in the Presbytery could file a Complaint against that action. The original filer is not a member of Nashville Presbytery and does not have standing to file a new Complaint. *BCO* 43-1 defines who has standing to file a Complaint: “It is the right of any communing member of the Church in good standing to make complaint against any action of a court to whose jurisdiction he is subject....”

Even though the case was styled as a Complaint by the original filer, Nashville Presbytery treated it correctly under *BCO* 31-2, in that the original filer made reports about a member of Presbytery. Presbytery then acted to “with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character.” Nashville Presbytery investigated the reports/allegations under *BCO* 31-2 through its Committee on Judicial Business, which concluded that there existed no “strong presumption of guilt.” The Presbytery approved this recommendation and the matter was thus concluded. The original filer (i.e., “Complainant”) is not a member of that Nashville Presbytery and does not have standing under *BCO* 43-1 to file a Complaint against the action of Presbytery.

For these reasons, the case is judicially out of order and the defects cannot be cured under the provisions outlined in *OMSJC* 10.6.

The Complaint is dismissed.

The Proposed Decision was drafted by the Panel, and approved, as amended, by the SJC on the following roll call vote (11 Concur, 9 Dissent, 2 Abstain, 2 Absent):

Bankson, <i>Concur</i>	Dowling, <i>Dissent</i>	Meyerhoff, <i>Concur</i>
Barker, <i>Concur</i>	Duncan, <i>Dissent</i>	Neikirk, <i>Concur</i>
Bise, <i>Dissent</i>	Evans, <i>Concur</i>	Nusbaum, <i>Dissent</i>
Cannata, <i>Abstain</i>	Fowler, <i>Dissent</i>	Pickering, <i>Concur</i>
Carrell, <i>Abstain</i>	Greco, <i>Concur</i>	Robertson, <i>Dissent</i>
Chapell, <i>Absent</i>	Jones, <i>Concur</i>	Terrell, <i>Concur</i>
Coffin, <i>Concur</i>	Kooistra, <i>Dissent</i>	White, <i>Concur</i>
Donahoe, <i>Dissent</i>	McGowan, <i>Absent</i>	Wilson, <i>Dissent</i>

TE McGowan was absent and disqualified because he is a member of a court which is party to the case. *OMSJC* 2.10(d)(3)(iii).

DISSENTING OPINION ON CASE 2016-08

RE Howard Donahoe

Joined by TE Paul Fowler, TE Paul Kooistra, TE George Robertson,
RE John Bise, RE Steve Dowling, RE Sam Duncan, and RE E.J. Nusbaum

We respectfully dissent from the SJC’s out-of-order Ruling. Based on previous SJC decisions, and the filing of charges, the Complainant gained standing to complain against the Presbytery’s decision declining to indict, and to eventually carry the matter to the SJC for review.¹⁹

Below is the most problematic section of the SJC Reasoning.

Nashville Presbytery treated the allegations as *reports* under *BCO* 31-2 and 34-1 and conducted an investigation and

¹⁹ At the same time, it might have been challenging for the Complainant to demonstrate from the Record that Presbytery “clearly” erred in a matter of discretion and judgment – a matter in which the SJC must afford “great deference” to the Presbytery. This Dissent only addresses the SJC’s administrative Ruling.

determined there was no evidence of a strong presumption of guilt. Since this was a new action of Nashville Presbytery, not an answer to a Complaint, only those with standing in the Presbytery could file a Complaint against that action. . . . The original filer (i.e., “Complainant”) is not a member of that Nashville Presbytery and does not have standing under *BCO* 43-1 to file a Complaint against the action of Presbytery. (Emphasis added.)

However, because the February 2016 letter from the Complainant and 21 others contained “charges,” the SJC Ruling on standing is contrary to the principle decided by the SJC six years ago in a Decision involving the same procedural question - Case 2010-16: *Lyons v. Western Carolina*.²⁰ In *Lyons*, the SJC unanimously ruled:

[Western Carolina] Presbytery erred in its Judgment on May 4, 2010, because it failed to see that Complainant gained standing to complain by the filing of charges (*BCO* 32-2). With respect to this filing, Complainant came under the jurisdiction of the Presbytery, and thus met the standards of *BCO* 43-1. (Emphasis added.)

The current Record does not support the SJC’s conclusion that Nashville Presbytery treated the Complainant’s allegations only as “reports.” That word does not appear in Presbytery Minutes or in the report of Presbytery’s Committee on Judicial Business (CJB). And despite an irregular initial filing with the Session rather than the Presbytery, it is clear that all parties regarded the accusations as charges – including the Presbytery.

In a February 24, 2016 e-mail to Presbytery, the Complainant wrote: “Attached please find charges to be filed.” Twenty-one other members of the same church signed the document. In their four-page accusation/allegation/charging letter, they alleged several things against one of the ministers on the church’s staff.

- “disturbing the peace and purity of the church”
- “acts of misconduct which . . . continued for a 10-12 month period”
- “insubordination, gossip, slander”
- “bearing false witness”
- “planting seeds of mistrust . . . among the congregants”
- “violating the 8th commandment”

²⁰ *M39GA*, 2011 Virginia Beach, p. 594. http://pcahistory.org/ga/39th_pcaga_2011.pdf

They end their letter to Presbytery with the following. (All emphasis added.)

Charges:

Because [the Minister] ignored and repeatedly ignored Matthew 18: 15-17, *we charge* [the Minister] with behavior unbecoming of an ordained PCA Pastor including: bearing false witness (gossip), insubordination (toward his supervisor/Senior Pastor), and schismatic conduct.

[The Minister] has violated, at least, the following sections of the *Westminster Confession of Faith*, Larger Catechism . . .²¹

Based upon [the Minister's] egregious sins of insubordination, gossip, bearing false witness, undermining his superior, pro-active creation of a schism (first continuously and actively for a period of 9-10 months and thereafter continuously through the date of this Complaint), slander against Senior Pastor [name omitted], and a lack of adequate repentance since the time of misconduct, Complainants respectfully pray for the following relief from this tribunal:

- a) That this Court investigate this matter and institute process in accordance with *BCO* 31 and 34 as well as any other applicable provisions,

The undersigned Complainants, as congregants of [the specific] Church, bring this complaint against [the Minister] upon information and belief that [the Minister's] acts and omissions have and continue to be sinful, contrary to the inerrant Word of God, contrary to the *Westminster Confession of Faith* and a disturbance to the peace and purity of [the specific Church.]”

It is clear Ms. Doty and the 21 other signers were filing charges against the Minister, and that Presbytery regarded them as charges. And in a May 11, 2016 e-mail, the Presbytery Clerk pro tem notified the Complainant: “Also, the charges you filed against [the Minister] were dismissed in a called meeting of Nashville Presbytery which met on May 2nd.”²²

²¹ The charges reference Larger Catechism 123, 124, 125, 126, 127, and 128.

²² The accusation letter's use of the phrase “this complaint against” in its final paragraph is irrelevant. For example, in *BCO* 34-6, the verb “complain” is used to refer to accusations and charges: “If the Presbytery find on trial that the matter complained of ... ”

The minutes of that Called Meeting record: “CJB moved to dismiss complaint received against [the Minister]. The motion passed.” It is irrelevant that the CJB called it a “complaint” against the Minister.²³ It was a document containing specific, dated allegations against one of their ministers. This is even clearer from the CJB recommendations to Presbytery:

1. That the complainants have no standing to assert any “private” sin between other believers.
2. That the NP find that there is no basis for discipline against [the Minister], that the NP decline to commence process, and that the complaint be dismissed. (*BCO* 31-2, 34-1)

The CJB report reasoned:

Matthew 18:15 addresses this issue, “If your brother sins against you, go and tell him his fault, between you and him alone.” With respect to any “private” offenses, it is inappropriate (and potentially harmful) for the complainants to raise sin between two other believers – particularly when reconciliation has occurred. Because this is a judicial proceeding, it is also appropriate to apply sound legal principles to this complaint as well. Tennessee law has long held that a person whose rights or interests have not been affected has no legal “standing” and is not entitled to legal relief. Therefore, the complainants have no standing to assert “private” offenses against [the minister whom the Minister had allegedly offended]. He alone is the proper party to assert such a complaint, and he has not done so. Furthermore, he has stated that he has not encouraged its filing, nor did he have any prior knowledge of its filing.

The CJB never said these were not charges. And nothing in the Record indicates Presbytery ruled they were “reports” but not “charges” (whatever that distinction might be.) The CJB simply said the 22 accusers didn’t have standing to present/file those kinds of charges, i.e., the accusers purportedly did not have standing to “*assert any ‘private’ sin between other believers.*” It matters little whether CJB was correct in their biblical or constitutional interpretation. That’s not on the table. The fact remains, the CJB was dealing with charges – and believed it was. In the excerpt above, the CJB references sins, offenses, and judicial proceedings. It’s implausible for the SJC Ruling to

²³ Ibid. *BCO* 34-6.

contend these were just “reports,” butnot charges, and thereby rule the accuser had no standing to carry the matter forward for higher court review.²⁴

In the *BCO*, the word “reports” is only used judicially in *BCO* 31-2, and it is not defined there.

31-2. It is the duty of all church Sessions and Presbyteries to exercise care over those subject to their authority. They shall with due diligence and great discretion demand from such persons satisfactory explanations concerning reports affecting their Christian character. This duty is more imperative when those who deem themselves aggrieved by injurious reports shall ask an investigation.

There could be several definitions:

1. A “report” might be information that has become publicly known or generally reported.
2. A “report” might be non-public information about a minister of which the informer believes Presbytery should be aware, but not as a direct and specific accusation against the minister.
3. Perhaps a “report” could also refer to direct and specific accusations or charges.
4. Or perhaps “report” should just be regarded as a generic, umbrella term encompassing all three of the above.

The SJC Ruling implies the February letter from Ms. Doty and the 21 others only fell within category 1 or 2, and apparently nothing in their February letter could be regarded as “charges.” But the SJC does not provide an explanation, if that was its conclusion.

The SJC’s lack-of-standing Ruling is contrary to the procedural ruling eight years ago in Case 2009-28: *Ruff v. Nashville*.²⁵ In that Case, the SJC accepted and adjudicated a Complaint from a non-ordained church member who had sent a letter to his Presbytery asking it “to undertake an investigation of alleged offenses committed” by his minister. The letter also reported “similar conflicts between [the minister] and third Parties.” After Presbytery declined to indict, Mr. Ruff carried his Complaint to the SJC and the SJC accepted the Complaint as being in order.

²⁴ Likewise, it’s a distinction without a difference for anyone to say the Complainant only had standing to file a complaint that her accusations were not treated as charges by the Presbytery. If she had standing to do that, she had standing to eventually carry her Complaint to the SJC.

²⁵ *Ruff v. Nashville, M39GA*, 2011 Virginia Beach, p. 567

It is also contrary to a Case decided this year at the same March 2017 SJC meeting as *Doty*. In Case 2016-09: *Fordice v. Pacific Northwest*, the Complainant sent a letter to his Presbytery alleging sins of his pastor. Many of the allegations involved sins purportedly committed against others, which is very similar to the first reason why the Nashville CJB recommended against granting standing for Ms. Doty. It's difficult to understand how Mr. Fordice had standing to carry his Complaint to the SJC, but Ms. Doty did not.

Based on the standing granted *Lyons*, *Ruff*, and *Fordice*, Ms. Doty and the others gained standing to seek higher court review when they accused the minister of sins. When Presbytery declined to indict, the signers had standing to file a BCO 43-1 Complaint with Presbytery as the original court, seeking reconsideration of that dismissal. And if any were unsatisfied with Presbytery's action on that Complaint, they would have standing to carry that Complaint to the SJC.²⁶

The SJC Ruling raises questions about how the Court understands the practical differences between "reports" (BCO 31-2), "allegations" (OMSJC 16.1.b), "accusations" (BCO 29-1, 31-8, 32-9, 34-2, 34-4) and "charges" (BCO 31-9, 34-2, etc.).²⁷ It raises questions as to why the February letter from 22 members of the Nashville church did not fall within the Court's definition of "charges." In other words, it raises questions as to why Ms. Doty's letter was constitutionally different than the letters from Mr. Lyons and Mr. Ruff and Mr. Fordice. Perhaps the SJC might describe its understanding of the difference between those constitutional terms - if there is a difference - and clarify why Ms. Doty's February letter did not fall within the SJC's definition of "charges."²⁸

/s/ RE Howard Donahoe, TE Paul Fowler, TE Paul Kooistra, TE George Robertson, RE John Bise, RE Steve Dowling, RE Sam Duncan, and RE E.J. Nusbaum

²⁶ But this SJC Ruling seems to indicate the SJC does not believe she could *ever* file such a BCO 43-1 Complaint, on the ground that her February letter was merely a "report."

²⁷ In the technical sense, no individual can "charge" someone with sin anyway. The "charges" are simply the offenses alleged in an official indictment, which is prepared by the prosecutor appointed by the court. (See BCO 15-3, 32-3, 32-8, 32-18, 33-2, 35-3, 35-5, 38-3, and Appendix G-I.) And only the PCA can be the accusing party in an indictment. (See BCO 31-3 and 31-4.)

²⁸ Or, alternatively, the primary author of this Dissenting Opinion suggests the SJC might consider ruling that the SJC erred in its procedural rulings in *Lyons* and *Ruff* and *Fordice* on accusers gaining standing for higher court review. (WCF 31:4 - All synods or councils, since the apostles' times, whether general or particular, may err; and many have erred. Therefore they are not to be made the rule of faith, or practice; but to be used as a help in both.)