

**CASE 2016-09**

***MR. MARK FORDICE***

***VS.***

***PACIFIC NORTHWEST PRESBYTERY***

**DECISION ON COMPLAINT**

**March 3, 2017**

This case came before the SJC on the Complaint of Mark Fordice, a member of Evergreen Presbyterian Church (“EPC”) in Beaverton, Oregon, within the Pacific Northwest Presbytery (“PNW”). The hearing before a Panel of the SJC was held on December 9, 2016.

The Complainant, Mark Fordice, appeared for himself. RE Mike Pfefferle (of Tacoma, Washington) and TE E.C. Bell (of Chehalem Valley Presbyterian Church in Newberg, Oregon) appeared on behalf of the Respondent Presbytery.

Tensions and difficulties had affected the relationships between the EPC Pastor, TE Nathan Lewis, and various EPC members since 2012, well before the filing of Mr. Fordice’s Complaint in March 2016. In it he essentially challenged the process through which PNW addressed his September 2015 accusation that TE Lewis had engaged in a “serious pattern of ungodly behaviors that violate scripture.”

The SJC now sustains the Complaint and remands the case to PNW for further action in accord with this Decision.

**I. SUMMARY OF THE FACTS**

2012-2015 Issues arose within EPC that led to accusations against TE Lewis brought to PNW by two member couples of EPC in November 2014. This eventually led to the appointment by PNW’s own Standing Judicial Commission of an investigative committee under *BCO* 31-2 composed of three of the SJC members. That appointment was in January 2015; the following May the PNW SJC reported to the PNW its decision not to recommend an indictment of TE Lewis. It later reported (as of November 16, 2015) its reasoning, pointing to “1) an uncertainty whether the sins in question arose from ‘the weakness of the human understanding’ (*BCO* 34-5) or from definitive flaws of character; 2) a suspicion that only a broader field of evidence would illuminate the true nature of TE Lewis’ sins.”

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- 9/14/15 By letter of this date, Mr. Fordice submitted to the PNW and the PNW SJC a “formal accusation,” citing *BCO* 34-1, whereby he accused TE Lewis of having engaged in a “serious pattern of ungodly behaviors that violate scripture.” He set forth 18 specific accusations (some in multiple parts), categorizing each under at least one of three headings: “Deceptiveness,” “Authoritarian/Domination,” and “Divisiveness/ Destructiveness.” The specific actions he pointed to ran from January 13, 2015, to August 16, 2015.
- 9/18/15 TE Lewis responded, point by point, to the 18 sets of accusations, essentially contending that because “all of the accusations arise from, or are related to, the same events” that had previously been investigated, it would be “unfair, unwise, and unnecessary to re-investigate.”
- 9/22/15 The PNW SJC formed another investigative committee (“IC”), composed of those who had served on the earlier committee, plus one more.
- 9/24/15 The IC met with TE Lewis at the Fall meeting of the PNW.
- 10/19/15 The IC met for three hours with seven or more than a dozen witnesses listed by Mr. Fordice as having validated his account of TE Lewis’s actions underlying the accusations.
- 11/16/15 This is the date of the IC’s written report to the PNW SJC (the “IC Report”). It advised that after the meeting with TE Lewis on September 24 “the committee unanimously agreed that TE Lewis had not provided satisfactory explanations for Mr. Fordice’s allegations. If anything, it seemed that TE Lewis had validated the allegations about a ‘serious pattern of ungodly behaviors’ by acting and speaking in accord with the reports about his Christian character from Mr. Fordice.” Further, the IC Report said that the interviews with the witnesses “only substantiated the committee’s earlier suspicion that TE Lewis had indeed perpetrated a pattern of ungodly behavior.” It therefore expressed the IC’s belief that a “strong presumption of guilt” existed (the term of *BCO* 31-2) and its recommendation of process and preparation of a three-fold indictment.

## MINUTES OF THE GENERAL ASSEMBLY

The IC Report concluded by explaining its recommendation as follows: “Were Mr. Fordice’s allegations unique, there might be less urgency for judicial process. Had the committee not already investigated and sustained similar allegations (albeit without recommending process), process might be avoided now. But, given the longstanding nature of the allegations about TE Lewis, in the present situation the investigative committee sees no human means of attaining the goals of process apart from judicial action.”

- 11/25/15 The PNW SJC voted unanimously (13-0) to “sustain the IC’s report of a strong presumption of guilt, and to recommend that the Presbytery enter process against TE Lewis along the lines of the indictments recommended in section 3B of the report.” In other words, the vote was to recommend indictments that TE Lewis had failed to uphold his ordination vows 3, 6, and 7.
- 12/1/15 The PNW SJC Chairman informed TE Lewis of the recommendation.
- 1/7/16 In light of that recommendation, TE Lewis initiated discussions with the PNW SJC regarding the possibility of handling the matter as a *BCO* 38-1 case without process. He submitted a proposed statement of facts and confession.
- 1/20/16 The PNW SJC met by conference call to discuss and revise TE Lewis’s proposal.
- 1/25/16 TE Lewis sent a further revised proposal to the PNW SJC.
- 1/28/16 The PNW SJC met again to discuss the proposed revised statement of facts and confession. By a vote of 8-1, it approved both and then voted 9-0 to recommend the censure of admonition.
- 1/29/16 The PNW SJC reported its recommendations to the Presbytery, which voted to receive and approve the statement of facts and confession and to treat the matter as a *BCO* 38-1 case without process (hereafter the “Statement” and “Confession”). Rather than approve the recommended censure, however, Presbytery adopted a substitute motion that

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read as follows: “That Presbytery, having received Mr. Lewis’ statement of repentance, commends our brother, welcomes his repentance, rejoices in the Lord’s forgiveness, and judges the matter closed.”

- 3/21/16 Mr. Fordice filed his Complaint with the PNW, claiming that the PNW SJC “did not institute process as required,” that it had “failed to record a full statement of facts,” and that Presbytery had “accepted an unrelated confession without any reconciliation.”
- 5/19/16 The PNW SJC voted unanimously (10-0) to deny the Complaint “on the grounds that no new facts were provided; that the Presbytery has already judged sufficient TE Lewis’ statement of facts and confession; and that the Presbytery is satisfied it properly followed all relevant procedures in handling the original matter.”
- 5/20/16 PNW adopted the recommendation of its SJC denying the Complaint.
- 6/6/16 By letter of June 1, received by the Stated Clerk on June 6, Mr. Fordice brought his Complaint to the General Assembly.
- 12/9/16 A Panel of the SJC heard the Complaint electronically (by GoToMeeting). Serving on the Panel were RE Dan Carrell, Chairman; TE Paul Bankson, Secretary; RE Steve Dowling; and RE Sam Duncan, alternate. The other alternate, TE Ray Cannata, was unable to participate due to a conflict.

## II. STATEMENT OF THE ISSUE

Did Pacific Northwest Presbytery err on May 20, 2016, when it denied the Complaint in light of its having accepted TE Lewis’s statement of facts and related confession of guilt?

## III. JUDGMENT

Yes. The Complaint is sustained, and this case is remanded to Pacific Northwest Presbytery for further action consistent with this Decision.

#### **IV. REASONING and OPINION**

As indicated above, Mr. Fordice framed his Complaint under three specific issues: (1) an alleged “failure to institute process, as required by the *BCO*,” (2) an alleged “failure to record a full statement of facts,” and (3) an alleged acceptance of “an unrelated confession.” These will be addressed in sequence after considering the standard of review.

##### **Standard of Review**

Although it does not separately address the standard of review, through references in its Preliminary Brief and oral argument PNW has pointed to what it believes to be the standard here: whether there was “clear error” in the “exercise [of] its judgment and discretion.” Complainant’s Preliminary Brief is silent on the subject.

The well-known provisions of *BCO* 39-3 direct a higher court to “ordinarily exhibit great deference to a lower court regarding those factual matters which the lower court is more competent to determine . . . .” In those circumstances, the higher court is not to reverse the lower court “unless there is clear error on the part of the lower court.” (Subsection 2 of *BCO* 39-3) Similarly, such deference is also to be exhibited regarding “those matters of discretion and judgment which can only be addressed by a court with familiar acquaintance of the events and parties.” Again, clear error would be necessary for reversal. (Subsection 3) On the other hand, “the higher court has the duty and authority to interpret the Constitution of the Church according to its best abilities and understanding, regardless of the opinion of the lower court.” (Subsection 4)

This case does not turn on the accuracy of the allegations against the TE. Rather, the case turns on whether PNW has committed procedural error under *BCO* 39-3(3&4). As to Subsection A below, the applicable standard of review is *BCO* 39-3(4). As to Subsection B below, the applicable standard of review is *BCO* 39-3(4) as to what constitutes a “full” statement of facts under *BCO* 38-1, and *BCO* 39-3(3) as to PNW’s acceptance of the Statement and Confession. As to Subsection C below, the applicable standard of review is *BCO* 39-3(3 & 4).

##### **A. The Failure to Institute Process**

Complainant cites *BCO* 31-2 and OSMJC 16.5 in contending that a court must institute process upon a finding of “a strong presumption

of guilt.” Complainant fails to recognize that Section 16 of the *Operating Manual of the Standing Judicial Commission* applies only where the SJC exercises original jurisdiction over a case, which did not take place here. Although *BCO 31-2* does require process where an investigation results “in raising a strong presumption of guilt of the party involved,” Complainant has failed to focus on the relevant rule of the PNW. Under Section 4.59 of the PNW Standing Rules, its SJC “does not have authority to render a final determination on ‘strong presumption of guilt’ or to institute process . . . . It may only make recommendations in those areas.” Thus the PNW SJC is not a commission in the full sense of that word. It does have authority, under the Rule, to approve a *BCO 38-1* “full statement of the facts,” but it can only offer a recommendation as to a judgment and censure based on those facts. Indeed, even this lone authority appears less than absolute, for PNW itself voted to “*approve* Mr. Lewis’ statement of facts and confession of sin” at its meeting on January 29, 2016 (emphasis added).

What PNW did was turn a would-be recommendation of process into a case without process before process itself had actually begun. Although the thrust of *BCO 38-1* appears to contemplate a would-be accused coming forward to confess sin before it is actually charged or otherwise made known, *BCO 38-1* has never been limited to those circumstances. The wording is: “When any person shall come forward and make his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process.” Even where charges have already been made, they are nothing more than that – charges, accusations, alleged sins – until proven or confessed. If an individual is charged, he can make the offense “known to the court” by confession, which will obviate a trial that could only prove what has already been confessed.

PNW proceeded in a manner similar to the procedures of a sister presbytery addressed in SJC Case No. 2008-16, *Hutchinson & Bulkeley v. Western Carolina Presbytery*, M38GA, 173-74. There a commission of that presbytery, having found a strong presumption of guilt, assisted the accused in preparation of a confession, and presumably in preparing the related statement of facts. That case concerned disposition of sins beyond those confessed, but in a context different from what is before the SJC here.

The SJC has addressed similar circumstances. In *Ruff v. Nashville Presbytery*, Case No. 2011-18, *M41GA*, 566-570, the complainant appeared to argue that a *BCO* 31-2 investigation could not conclude through a *BCO* 38-1 confession. The SJC, however, opined that “when a person is prepared to make a confession, the Court may proceed to render a judgment without any formal process. This provision [38-1] is properly employed in any case where the facts to be established by trial are not in dispute, and the accused is willing to forgo formal proceedings.” *M41GA*, 568.<sup>29</sup> In other words, there would be no logic in requiring a trial simply to prove facts to which the accused is willing to confess, and where the 38-1 confession fairly covers all the issues raised in the charges.

In sum, PNW’s use of *BCO* 38-1 instead of proceeding to trial was not, by itself, an error.

## **B. The Failure to Record a Full Statement of Facts**

As mentioned above, this is a procedural case, and not one in which the SJC is to consider whether specific factual allegations are or are not true. Complainant’s concern is that most of his allegations are not addressed in the Statement to which PNW and TE Lewis agreed. He contends that only “three of the 21 allegations” are referred to in the Statement, and two of those are expressed as “alleged,” meaning that TE Lewis was not actually admitting to those. (The inference is that the “21 allegations” include the multiple parts of the 18 allegations separately presented in his Complaint.) Respondent, however, points out that the IC Report, and PNW SJC’s original recommendation based upon it, never say that the strong presumption of guilt to which they refer rested on each of the 18 allegations. Neither ever singled out just which of the allegations were believed to be true. It is in this context that the fullness of the Statement must be examined.

*BCO* 38-1 provides:

When any person shall come forward and make his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process. In

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<sup>29</sup> *Ruff* is cited by both parties and referred to as “*Ruff 2*” by the Respondent, for it was a sequel to an earlier version of the same case – No. 2009-28, *M39GA*, 567-574.

handling a confession of guilt, it is essential that the person intends to confess and permit the court to render judgment without process. Statements made by him in the presence of the court must not be taken as a basis of a judgment without process except by his consent. In the event a confession is intended, a full statement of the facts should be approved by the accused, and by the court, before the court proceeds to a judgment. The accused has the right of complaint against the judgment.

This provision applies when a party freely confesses an offense and consents to judgment without process. The application of *BCO* 38-1 to this case is somewhat strained, as it appears the TE hardly agrees with any of the allegations originally pointing to multiple offenses against several individuals. *BCO* 38-1 does not mandate that the statement of facts demonstrate complete agreement as to each and every underlying allegation; however, it does require a “full” statement of the facts. To satisfy this requirement, the approved statement of facts must fairly meet the alleged offenses. In this case, the proffered statement offered no adequate explanation for how the alleged offenses were subsumed into the three alleged violations of vows; which of the allegations were admitted and which were denied; which formed the basis of the finding of a strong presumption of guilt; and which, if any, could not be proved or prosecuted. A “full” statement of the facts in a case involving allegations of sin requires a correlation between the underlying allegations and the proposed statement of facts. In this case, PNWP clearly erred in approving a statement of facts under *BCO* 38-1 that was not full as to the underlying alleged offenses.

### **C. Acceptance of Unrelated Confession**

As mentioned above, Complainant brought to PNW a “formal accusation,” citing *BCO* 34-1, which begins with: “Process against a minister shall be entered before the Presbytery of which he is a member.” Thus, Complainant clearly was seeking process of some sort and, in effect, was lodging “charges,” the term used in *BCO* 32-2 as the prerequisite for process, and a term used by Complainant upon the filing of his Complaint. As also mentioned above, “charges” are simply accusations, allegations of wrongdoing, of sins, that are to form the basis for prosecution.



PNW treated the allegations as a “report affecting the Christian character” of TE Lewis, and therefore requiring an investigation under *BCO* 31-2. Although the SJC has opined that “in general *BCO* 32-2 requires that a Court commence process upon the filing of charges, the Court has some discretion with respect to three categories.” *Lyons v. Western Carolina Presbytery*, Case No. 2010-16, *M39GA*, 595. There the SJC continued by summarizing the provisions of *BCO* 31-8, *BCO* 34-2, and *BCO* 32-20.<sup>30</sup>

In other words, charges are a prerequisite for prosecution, but do not necessarily require it. *BCO* 32-3 points to the next step – that when “a charge is laid before” a court, “it shall be reduced to writing, and nothing shall be done at the first meeting of the court, unless by consent of the parties, except: 1. to appoint a prosecutor . . . .” Here, by consent of the parties (PNW and the accused, TE Lewis), *BCO* 38-1 became the chosen procedural route.

After all, *BCO* 31-8 requires “[g]reat caution” “in receiving accusations” from specified categories of individuals. Thus, a court in the exercise of great caution, or even caution generally, is not to be criticized for refusing to rush into a prosecution or for taking steps that properly avoid it.

Here, however, the IC’s investigation and Report revealed the allegations were meritorious at least to some extent and probably throughout. Although the IC did not specifically validate each allegation, nor could it in an investigative role, it never even suggested that any particular allegation was found wanting. By saying that “it seemed that TE Lewis had validated the allegations,” that the seven witnesses interviewed had “corroborated Mr. Fordice’s accounts of the events for which they were named witnesses” (other witnesses having not been interviewed), and concluding that the “interviews only substantiated the committee’s earlier suspicion that TE Lewis had indeed perpetrated a pattern of ungodly behavior,” one can only conclude that a strong presumption of guilt existed on which process could have proceeded. Although the PNW SJC later determined not to pursue process, which as explained above was not itself in error, at no time did the IC, the PNW SJC, or PNW itself ever reject the earlier finding of a strong presumption of guilt, or even cast doubt on it.

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<sup>30</sup> See also *Lyons v. Western Carolina Presbytery*, Case No. 2010-16, *M39GA*, 594-601 (concurring opinion at 597-601).

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Nevertheless, rather than pursue the specific accusations, the IC offered a recommended framework for an indictment that would have been more abstract. Had process been instituted, and a trial taken place, the three vows that would have been at issue perhaps are sufficiently broad as to have allowed testimony covering all the 18 allegations. Hardly any of those allegations, however, were addressed in the Statement or in the Confession

Numerous facts admitted bear little relationship to the substance of the Complaint. Several concern matters preceding the first action complained of, on January 13, 2015. And multiple factual entries are not factual findings but mere recitals of procedures leading to preparation of the final forms of the Statement and Confession.

The Confession also tends to avoid the specific accusations. Rather, it speaks to failings of wisdom and judgment, being “unguarded” in communications, and excusing mitigated statements of responsibility. Alleged personal offenses are passed over. Nowhere does one read about a “pattern of ungodly behaviors.” Indeed, although the Confession comes close, TE Lewis never actually admits to a violation of his vows, but only that “at times” he “acted out of my sinful nature in a manner unbecoming my vows as a Minister of the Gospel.” Thus, he confesses and regrets that his “failures have contributed to difficulties at Evergreen.”

In sum, the litany of allegations has yet to be fully addressed. It is incumbent for PNW to take the necessary steps to fill the void. It may do so in conjunction with TE Lewis by amending the Statement and Confession. It may do so by initiating process. It may do so by reactivating the IC, or perhaps through some other course – so long as it concludes by responding directly and specifically to the allegations that remain before it.

Accordingly, PNW’s denial of the Complaint is annulled, and the case is remanded to PNW for further proceedings consistent with this Decision.

The Panel unanimously produced this Proposed Decision, which was unanimously approved, as amended, by the SJC on the following roll call vote (20 Concur, 2 Recused, 2 Absent):

MINUTES OF THE GENERAL ASSEMBLY

Bankson, <i>Concur</i>	Dowling, <i>Concur</i>	Meyerhoff, <i>Concur</i>
Barker, <i>Concur</i>	Duncan, <i>Recused</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, <i>Concur</i>	Greco, <i>Concur</i>	Robertson, <i>Concur</i>
Chapell, <i>Absent</i>	Jones, <i>Concur</i>	Terrell, <i>Concur</i>
Coffin, <i>Concur</i>	Kooistra, <i>Concur</i>	White, <i>Concur</i>
Donahoe, <i>Recused</i>	McGowan, <i>Absent</i>	Wilson, <i>Concur</i>

RE Donahoe disqualified himself in accordance with *OMSJC* 2.10(d)(3)(iii) as he is a member of a church in the respondent presbytery. RE Duncan recused himself pursuant to *OMSJC* 2.10(d) because he has attended the church from which the case arises and is a friend of one of the presbytery representatives.

**CASE 2016-12**

***RE SAM K. HARWELL, et al.***

***VS.***

***NASHVILLE PRESBYTERY***

**DECISION ON COMPLAINT**

**March 3, 2017**

The Case is judicially out of order and is not able to be put in order, because the Complaint was not properly previously filed with Nashville Presbytery (*BCO* 43-2). The initial “complaint” filed with Nashville Presbytery was not a complaint “against some act or decision of a court of the Church” (*BCO* 43-1), but rather either suggested charges against a Teaching Elder or a call for an investigation of a Teaching Elder (*BCO* 31-2). Complainant did not file a complaint with Nashville Presbytery concerning its actions on August 9, 2016, but instead filed this Complaint directly with the Standing Judicial Commission. As more than sixty days have passed since August 9, 2016, no further action may be taken.

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 (22 Concur, 2 Absent):