

minister regards as fairly representing his view. This should certainly involve phone conversations, and perhaps even a dinner conversation or two (or at least attempts at such). And it might be prudent to recruit a mediator, or at least a conversation-facilitator. This would be good stewardship of the Lord’s time, because the alternative could consume hundreds of man-hours. The Record of this Case did not indicate this course was followed, and I’m not convinced this process can reasonably be fulfilled via e-mail.¹⁴ For the several reasons outlined above, I concurred with the Judgment to deny this Complaint.

/s/ RE Howard Donahoe, et al

CASE 2016-13
RE SCOTT DANIELS, et al.
VS.
NASHVILLE PRESBYTERY
DECISION ON COMPLAINT
August 30, 2017

The Standing Judicial Commission finds that circumstances have rendered the Complaint moot.

The foregoing decision was approved on the following roll call vote

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

TE McGowan disqualified himself as he is a member of the Presbytery, which is a party to the case. *OMSJC* 2.10(d)(3)(iii).

¹⁴ The Evangelical Presbyterian Church’s *BCO* has a lengthy section suggesting such mediation and providing helpful steps. (Book of Discipline 3-2: “Mediation”) <http://epcoga.wpengine.com/wp-content/uploads/Files/4-Resources/5-Downloadable-EPC-Resources/A-Constitution-Doctrine/BookOfOrder2016-17.pdf>

DISSENTING OPINION

ON CASE 2016-13

RE Frederick Neikirk, joined by RE John Bise, RE Dan Carrell, RE Steve Dowling, TE Paul Fowler, and TE Guy Waters.

The undersigned respectfully dissent from the decision of the Standing Judicial Commission to declare moot case 2016-13 (Daniels, et al vs. Nashville Presbytery). We issue this dissent not only to clear our consciences but because we are concerned that this decision may open the door for the Standing Judicial Commission to proceed in other cases in ways that may undermine the credibility of the Commission and its decisions.

This case involved a disagreement over the proper powers of a Session, and a ruling by Nashville Presbytery that the Session in question had erred and had to redress its actions. Some members of the Session and Congregation disagreed with the decision of Presbytery and complained against Presbytery's decision. As such, there is a legitimate dispute. Further, the issue and actions have been raised and communicated in ways that the Record shows have made the dispute(s) known within the Congregation, the Presbytery, and other area churches. Given this, the parties deserve to have the Complaint answered, either to vindicate the position of Presbytery or to correct Presbytery if its conclusions were erroneous. That right should be denied only if the Complainants abandon their complaint, the requirements of *BCO* 43-1, 2 (cf., *OMSJC* 9.1, 10.3) are not met, or the matter was clearly decided in another, related, case.

In this case there is no evidence that the parties abandoned their Complaint. They did not, so far as we are aware, send a letter saying they wished to withdraw their Complaint and they did not fail to appear at a hearing (*BCO* 43-7). We grant that there is a question in the Record as to whether the Complainants complied with the filing guidelines of *BCO* 43-2 (cf., *OMSJC* 9.1, 10.3). Given, however, the lack of documentation in the Record regarding this question, any decision as to whether the Complaint was timely filed should have been handled by appointing a Panel, allowing the Panel to work with the parties to perfect the Record, and then letting the Panel rule on whether the case is judicially in order. That is the procedure the Commission has followed in other cases where there was a dispute between the parties as to whether the record demonstrated that a complaint had been properly filed.

Instead of dealing properly with this case through one of the mechanisms noted above, the Standing Judicial Commission dealt with it by declaring the

matter to be moot. What is perplexing is that the Commission provides no evidence or rationale for this conclusion. Thus, we are left to speculate, based on the discussion in the Commission meeting, as to the reason(s) that led to the decision. One possibility is that the Commission concluded this case was moot because it was clearly related to already decided cases arising out of Nashville Presbytery. But, while Case 2016-13 is certainly related to those other cases, it raises an issue that was not before the Commission in any of those other cases. As such, Case 2016-13 cannot be declared moot on the grounds that the issue has already been decided.

A second possibility is that the Commission concluded the case has become moot because all the Complainants have left the church in question, and maybe the PCA. This possibility, however, raises a factual question that should be settled only by evidence presented in the Record of the Case and thus is known to all members of the Commission. There is nothing in the Record that indicates that those who filed the Complaint have left the church in question or the PCA. Thus, if this is the reason the Commission declared the case to be moot, it would clearly violate the fourth vow taken by SJC members (“I will judge according to the Constitution of the Presbyterian Church in America, through my best efforts **applied to nothing other than the record of the case and other documents properly before me**” (see *RAO 17-1*, emphasis added)). Moreover, even if evidence were to reveal a departure of some of the Complainants from the church and the PCA the Complaint would remain in order because those remaining would still have standing, and if all the Complainants left the church and the PCA, a better characterization would be that the Complaint had been abandoned, not that it had become moot.

A final possibility is that the Standing Judicial Commission voted to declare the case moot because it did not want to take it up. Unlike the procedures of the U.S. Supreme Court, however, there is no procedure in the Constitution of the PCA to allow the Standing Judicial Commission to pick and choose which cases it wants to take up. If, as some have proposed, the PCA wanted to give the Standing Judicial Commission the power to refuse to hear cases that it did not want to take up, that would be a different matter. But that is not where we are. The fourth vow taken by SJC members obligates us to “**judge according to the Constitution of the Presbyterian Church in America**” (*RAO 17-1*, emphasis added). That means the Commission must take up whatever cases are properly before it.

In sum, the Commission provides no rationale for its determination that Case 2016-13 is moot, and any rationale we can infer based on the discussions

within the Commission appears to be unconstitutional. In our view, that means the Commission has made a serious error in its handling of this case. Even more troubling is the precedent this decision appears to set. If the SJC can declare a case to be moot without providing reasoning and evidence from the record of the case, then the door is opened to future Standing Judicial Commissions using declarations of mootness to make decisions that rest on reasoning that is not available to the Church at large or on facts that are not available in the record (and thus are not available to all members of the Commission). This would seriously undermine the rules and safeguards set forth in the vows in *RAO 17-1* and would, thereby, do serious damage to the credibility of the Commission and its decisions. It is out of these concerns that we are compelled to register this dissent.

CASE 2016-15
APPEAL OF TE JAMES BACHMANN
VS.
NASHVILLE PRESBYTERY
DECISION ON APPEAL
June 13, 2017

I. SUMMARY OF THE FACTS

- 10/11/15 As a result of tensions and conflicts within the ministerial staff and Session of Covenant Presbyterian Church (CPC) of Nashville since at least the spring of 2014, Senior Pastor TE James Bachmann communicated to the Session’s Personnel Committee that after much prayer and consultation with his family he had decided to make a “formal request to retire from the ministry of Covenant Presbyterian Church, contingent on a suitable financial arrangement.”
- 10/19/15 At a Session meeting it was moved that the Session accept Pastor Bachmann’s request for retirement under the conditions he formally requested.
- 10/21/15 TE Bachmann sent via email a letter to the Members of CPC announcing his possible retirement as Senior Pastor: “... during the last 18 months I have wondered if some elders desire a change in leadership. Therefore, my contingent offer