

APPENDIX T

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, <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>Concur</i>	McGowan, <i>Absent</i>	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 2016-14

TE TOLIVAR WILLS

VS.

METRO ATLANTA PRESBYTERY

DECISION ON COMPLAINT

March 3, 2017

I. SUMMARY OF THE FACTS

- 01/14 Grace North Atlanta Church (“GNA”) became a particular church of Metro Atlanta Presbytery (“MAP”).
- 07/14 The Session requested assistance from Presbytery’s Shepherding Committee, due to some internal conflicts between pastor, staff and Session.
- 09/16/14 Presbytery responded to a Reference from the Session by adopting the following:

To form a Commission to come alongside of the Session, to meet with elders, members and the pastor of a MAP Church [TE John Hardie and Grace North Atlanta] in a holy attempt to investigate discern and help all work through disorder that has come to the surface. (*BCO* 15-2)

MINUTES OF THE GENERAL ASSEMBLY

- 01/23/15 REs Flesher and Weekly hold a Session meeting with TE Hardie, but without REs Lia and Norris.
- 01/24/15 Presbytery Stated Meeting. Commission recommended Presbytery institute process against TE Hardie and suspend him from his official duties during that process, per allowance of *BCO* 31-10. REs Flesher and Weekly filed a Complaint against the decision to indict. (It eventually became Case 2015-03, and in March 2016 the SJC ruled as follows: “Because the issues raised in Complaint 2015-03 were adjudicated in [the Hardie] Appeal 2015-08, the Complaint 2015-03 is moot.” *M44GA*, p. 514. http://pcahistory.org/ga/44th_pcaga_2016.pdf)
- 01/28/15 Four months of e-mails began (1/28 to 5/27/15, comprising 36 pages in the Record) between several men – REs Flesher/Weekly, REs Norris/Lia, and representatives of Presbytery – Moderator TE Rienstra, Clerk TE Schlichting and RE White (chair of various committees and Commissions on the matter).
- 03/22/15 REs Flesher and Weekly held a Called Session meeting without REs Lia and Norris and elected Weekly as new session clerk (instead of Norris). In an e-mail to MAP Clerk Schlichting on April 10, 2015, RE Weekly alleged this was done because REs Lia and Norris “had stopped worshipping at Grace North Atlanta a few weeks earlier” and also “said they no longer will worship at Grace North Atlanta.” Purportedly, “[Norris] is the one who told RE Weekly in the beginning of March that he was no longer going to be worshipping at GNA. And then he quit attending – as Chuck Lia had already been doing since January.”
- 04/10/15 Several e-mails exchanged over six days, between GNA RE Flesher and Presbytery Clerk Schlichting, Moderator TE Rienstra, and RE White, regarding the legality of the March 22 Called Session meeting.
- 04/13/15 Several e-mails exchanged over 14 days, amongst REs Flesher & Weekly, and Presbytery Clerk TE Schlichting, Moderator TE Rienstra, and RE White, and REs Lia and Norris, regarding a Lia/Norris Complaint against the March 22 Called Session meeting.

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- 04/22/15 Session held Called Session Meeting to consider Lia/Norris Complaint against the allegedly improper Session meetings of January 23 and March 22. Complaint denied by 2-2 vote.
- 04/23/15 REs Lia and Norris took that Complaint to Presbytery.
- 05/03/15 Session meeting. REs Flesher and Weekly propose calling a congregational meeting on May 17 for the purpose of the congregation voting on a motion to dissolve the calls of REs Lia and Norris. This meeting was requested in a petition presented a week prior and purportedly signed by a sufficient number of members. Motion failed 2-2. Then REs Flesher and Weekly ruled REs Lia and Norris could not vote on the matter because they were the subjects of the congregational meeting. Motion was then adopted 2-0. Below is an excerpt from the subsequent report of the Presbytery Committee appointed to review the Session minutes:

In the minutes of May 3, 2015 it is recorded that a [signed] petition (to call a congregational meeting to dissolve the relationship between GNA and Elders Chuck Lia and John Norris - *BCO* 24-7) was presented by the two remaining elders. The Clerk of Session (one of the elders named in the petition) requested sufficient time to verify the names and signatures on the petition because there appeared to be errors in the list. That request was refused by an elder who insisted that the vote be taken immediately. The motion to call the congregational meeting failed on a vote of 2-2.

The same elder “insisted that two of the elders were not allowed to vote since they were the subjects of the congregational meeting. [The elder] said the vote was 2-0 in support of the meeting.” It was announced at the end of the meeting that the congregational meeting would be held on May 17, 2015.”

- 05/05/15 Presbytery held Stated Meeting at The Rock Presbyterian Church. A committee reported on a request from REs Norris and Lia regarding their allegation that improper Session

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meetings were held in January and March. Also a report was given by a Special Committee to examine the Session minutes. Presbytery adopted four motions:

1. “That the [Lia/Norris] complaint against the January 23, 2015 [Session] meeting be denied in that it was not timely filed. *BCO* 43-2 requires that complaint be made within 60 days of the action complained against. The complaint was filed April 23, 2015 against an action taken on January 23, 2015.”
2. That the [Lia/Norris] complaint against the March 22, 2015 [Session] meeting be sustained and that the actions taken at said meeting be declared null and void in that proper notice of a called meeting was not given to all members of the Session as required by Robert’s Rules of Order.”
3. “That Metropolitan Atlanta Presbytery directs the Session of GNA to not call the proposed May 17, 2015 congregational meeting, unless and until the membership list of GNA and the petition signatures can be verified. The Committee further recommends that if said congregational meeting has been called, it be canceled until the aforementioned conditions can be satisfied.”
4. “That MAP hereby erects a commission to be appointed by the Moderator to visit GNA Church ‘for the purpose of inquiring into and redressing the evils that may have arisen . . .’ (*BCO*) 13-9 (f)”

05/06/15 E-mail from Moderator Rienstra to the four GNA elders reporting MAP’s actions from the May 5 Presbytery meeting. Also asked if the newly appointed Commission could meet with the four REs on May 11 or 14 (i.e., prior to the congregational meeting Presbytery instructed the Session to postpone.)

05/17/15 GNA Congregational meeting

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05/18/15 E-mail from Moderator Rienstra to REs Flesher, Weekly, Lia, and Norris as follows:

In that some you [sic] have not responded to my previous two attempts, as moderator of Presbytery empowered at our meeting of May 5, 2015, and in keeping with *BCO* 12-6 “The Session shall also convene when directed so to do by the Presbytery,” I am directing you to convene a meeting on Wednesday, May 20, 2015, at East Cobb PCA (4616 Roswell Rd., Marietta GA 30062) at 7:30 p.m. to meet with Presbytery’s commission appointed “for the purpose of inquiring into and redressing the evils that may have arisen...” (*BCO*) 13-9 (f). We further request that you respond to this e-mail within 24 hours.

RE Flesher replied stating he and RE Weekly were unable to meet on May 20, and proposed meeting any time during May 26-29 or May 31-June 2.

Rienstra replied, “Part of our purpose was to also deal with the congregational meeting currently scheduled for this Sunday [May 24] that was deadlocked among the Session – are you willing to postpone that meeting until we can meet?”

05/20/15 In an e-mail, TE Rienstra reminded REs Flesher and Weekly,

You were advised by Presbytery that this action [of calling the congregational meeting] was invalid, yet you ignored that instruction... Further, the date of the meeting is the Sunday of the Memorial Day holiday weekend when many will be away. Additionally, it has come to our attention that the email calling the meeting did not go to all members. These additional actions add to the reasons for invalidating the proposed meeting. . . . Presbytery’s commission now directs you a [sic] to meet wit us . . . on May 27 at 7:30 p.m. . . .

05/21/15 E-mail response (five pages) from REs Flesher & Weekly to RE Rienstra.

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- 05/22/15 TE Rienstra responded by e-mail, “So are you refusing to meet with Presbytery’s commission on Wednesday at 7:30 pm at East Cobb to deal with these matters?”
- 05/24/15 GNA Congregational meeting
- 05/25/15 REs Flesher and Weekly respond to TE Rienstra’s May 22 e-mail.
- 06/19/15 Notice was e-mailed for a Called Presbytery Meeting scheduled for June 29. The four GNA RE’s were “cited to appear” at this Called meeting. The announcement listed three items of business for the docket (paraphrased below):
1. To hear the report of the TE Hardie Trial Commission (previous pastor of Grace Church),
 2. To hear the report of the Commission dealing with Grace Church, and
 3. To appoint Respondent reps for the Flesher/Weekly Complaint at the SJC.
- 06/29/15 Presbytery held Called Meeting at Westminster Presbyterian Church, Atlanta, attended by 55 voting commissioners. REs Lia and Norris attended, and spoke. RE Flesher did not attend. Two days before the meeting, he and RE Weekly submitted a 17-page “Response to June 19, 2015 Email.” The document was distributed to presbyters and was considered prior to any Presbytery vote on dissolution of GNA.

At the June 29 meeting, the Commission filed a 13-page report, and three pages of closing remarks. The Commission included TEs Rienstra, Bailey and Owens, and REs Robinson, Salter, and White (chairman).

Presbytery adopted the following recommendation from its Commission:

That, for the reasons cited in the commission’s report, Metropolitan Atlanta Presbytery hereby dissolves Grace North Atlanta Church as an affiliate of MAP and the Presbyterian Church in America (*BCO* 13-9 (f), effective 60 days from the

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date of this action. Further that upon affirmative action on the motion to dissolve this ecclesiastical relationship between MAP/the Presbyterian Church in American and Grace North Atlanta, a letter be sent to members of GNA advising them of the action, which will take effect in 60 days and of their and Presbytery's responsibilities according to *BCO* 13-10.

- 07/16/15 RE Weekly, RE Flesher, and TE Tolivar Wills filed a 13-page Complaint against the action taken by Presbytery on 6/29/15 that dissolved Grace Church. Complainants requested the following as amends:

That MAP acknowledge that it did not follow the express provisions of the *BCO* in dissolving the ecclesiastical relationship between MAP, the Presbyterian Church in America and Grace North Atlanta, and annul its action taken on June 29, 2015. That in so acknowledging its error, that MAP recognize that Grace North Atlanta continues in ecclesiastical relationship and fellowship in MAP and the Presbyterian Church in America.”

- 09/15/15 Presbytery Stated Meeting at East Cobb Church at which it declared the Complaint filed by RE Weekly, RE Flesher, and TE Wills on 7/16/15 to be administratively out of order. Below is an excerpt from the Minutes:

The moderator, with no objections, ruled the complaint out of order on the following grounds: [1] The complaint was submitted via communication signed only by RE Weekly, who had not been present at the June 29, 2015 MAP meeting and therefore was not a ruling elder commissioner to that meeting and lacked standing to bring the complaint. [2] There were no signatures or other certification that the other two names on the complaint (one of whom also lacked standing for the reasons cited above) had authorized the submission.

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- 09/18/15 TE Wills filed a complaint with the PCA SJC against the MAP action taken on 9/15/15. (Eventually titled as Case 2015-12 by the SJC.) The complaint was “against the decision of MAP . . . in declaring administratively out of order the Complaint filed on July 16, 2015, to wit: “That the Complaint is Administratively Out of Order because it lacked a signature.”
- 02/06/16 Presbytery Stated Meeting at Westminster Church, Atlanta. [Meeting had apparently been “postponed from January 23 due to inclement weather.”] It was reported that an SJC Panel was recommending the SJC deny the Hardie Appeal and also recommending the Wills Complaint be ruled administratively out of order for not being first filed with Presbytery regarding the Moderator’s out-of-order ruling. There was also a report from the committee appointed to shepherd TE Hardie.
- 03/03/16 SJC rules on Case 2015-12 Wills v. Metro Atlanta Presbytery (*M44GA*, p. 554-5, http://pcahistory.org/ga/44th_pcaga_2016.pdf). By an 18-3 vote, the SJC ruled it administratively out of order, for the following reasons:
- Complaint 2015-12 is against the action taken by MAP on 9/15/15. *BCO* 43-2 states that “A complaint shall first be made to the court whose act or decision is alleged to be in error.” MAP has not had the opportunity to respond to the Complaint regarding their action on 9/15/15, to wit: declaring the July 16, 2015 Complaint to be Administratively Out of Order. If the Complainant desires to pursue this Complaint, he must file this Complaint with MAP within 30 days from notification of this Decision. (*OMSJC* 9.2(c))
- 03/18/16 TE Wills re-files his original Complaint with Presbytery.
- 05/03/16 Presbytery Stated Meeting at Covenant PCA in Fayetteville, GA, where it appointed a committee to “review and respond to the [re-filed Wills] complaint.” Committee included RE White (chair), RE Ted Robinson, RE Ed Salter and TE Rob Rienstra. TE Wills was invited to meet with the Committee, but he declined.

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- 09/20/16 Presbytery Stated Meeting at Intown Community Church, Atlanta. A 27-page MAP committee report recommended the Complaint be denied. TE Wills declined to speak to the motion that his Complaint be denied. MAP denied Complaint by vote of 48-1-11.
- 09/22/16 Date on Complaint filed with PCA SJC.
- 11/09/16 SJC Panel received the 125-page Record, and the Case. The Record was eventually revised to 120 pages.
- 01/20/17 Panel Hearing – RE Donahoe (chair), TE Chapell, TE Kooistra, with alternates RE Bise and TE Robertson. Complainant Wills attended but did not address the Panel. He was represented by TE Aquila (Rocky Mtn Pby), who did the presenting and answered questions posed to the Complainant. TE Rienstra represented Presbytery.

II. STATEMENT OF THE ISSUES

1. Did Metro Atlanta Presbytery violate any procedural requirement of the *BCO* by dissolving Grace North Atlanta church without that church's consent?
2. Did Metro Atlanta Presbytery clearly err, in a matter of discretion and judgment, when it dissolved Grace North Atlanta as a PCA church?

III. JUDGMENT

1. No
2. No

Therefore, the Complaint is denied.

IV. REASONING AND OPINION

The first Issue is a question of constitutional interpretation, and so the SJC's standard of review is provided in *BCO* 39-3.4. But the second Issue involves a matter of discretion and judgment, and so the standard of review for Issue 2 is stipulated in *BCO* 39-3.3.

(Issue 1) 39.3.4 - The higher court does have the power and obligation of judicial review, which cannot be satisfied by always deferring to the

findings of a lower court. Therefore, a higher court should not consider itself obliged to exhibit the same deference to a lower court when the issues being reviewed involve the interpretation of the Constitution of the Church. Regarding such issues, the higher court has the duty and authority to interpret and apply the Constitution of the Church according to its best abilities and understanding, regardless of the opinion of the lower court.

(Issue 2) 39.3.3 - A higher court should ordinarily exhibit great deference to a lower court regarding those matters of discretion and judgment that can only be addressed by a court with familiar acquaintance of the events and parties. Such matters of discretion and judgment would include, but not be limited to: the moral character of candidates for sacred office, the appropriate censure to impose after a disciplinary trial, or judgment about the comparative credibility of conflicting witnesses. Therefore, a higher court should not reverse such a judgment by a lower court, unless there is clear error on the part of the lower court.

Issue 1 – The Complainant contends a presbytery must always follow full and formal judicial process prior to dissolving a congregation without its consent – i.e., formal *BCO* 31-2 investigation, a vote finding of a strong presumption of guilt, appointment of a prosecutor, indictment, arraignment, trial (if necessary), conviction, censure, and completed appeal (if chosen). He asserts *BCO* 40-6 must always be followed prior to any such dissolution.

40-6. In process against a lower court, the trial shall be conducted according to the rules provided for process against individuals, so far as they may be applicable.

On the other hand, Presbytery (through its representative) contends *BCO* 40-6 does not necessarily apply to the dissolution authority given to a presbytery in *BCO* 13.9:

f. [Presbytery has the power] To condemn erroneous opinions which injure the purity or peace of the Church; to visit churches for the purpose of inquiring into and redressing the evils that may have arisen in them; to unite or divide churches, at the request of the members thereof; to form and receive new churches; to take special oversight of churches without pastors; to dissolve churches; to dismiss churches with their consent;

Metro Atlanta Presbytery interprets this constitutional question correctly, and thus we find no error of constitutional interpretation regarding Issue 1. Using an example from another clause of *BCO* 13.9.f, there is no constitutionally stipulated procedure a presbytery must follow to “unite or

divide churches,” or to “take special oversight of churches without pastors.” While there are undoubtedly some procedures that would be wise, and others less so, there is no mandated constitutional procedure for exercising those powers.

At least 13 times in his Brief, the Complainant alleged Presbytery failed to follow the “express provisions” of the *BCO*. But *BCO* 13-9 does not stipulate a presbytery has the power to dissolve a church only if it follows a particular procedure. Nor does *BCO* 40-6 mention the dissolution of a church. In sum, *BCO* 40 has to do with due process provisions guiding the oversight of a higher *court* in relationship to a lower *court*. *BCO* 13.9.f has to do with the power of a presbytery over a *congregation’s* membership in the PCA. The provisions of the former have no formal authority with respect to the latter.

Issue 2 – While the *BCO* does not mandate a procedure a presbytery must follow before dissolving a church without the church’s consent, that does not mean the procedure used is unimportant or unreviewable. It still needs to be prudent and reasonable, based on the facts of the situation. And because the decision to dissolve is a matter of discretion and judgment, the SJC “should not reverse such a judgment by a lower court, unless there is clear error on the part of the lower court.” The Record of the Case does not demonstrate clear error.

However, it would be a gross misunderstanding of this Decision if someone concluded a presbytery could, without sufficient justification, dissolve a church. It cannot. If Metro Atlanta Presbytery had done so without sufficient justification, the SJC would have ruled there was a clear error in a matter of discretion and judgment.

RE Donahoe drafted the proposed decision, which was approved by the Panel, and was amended and adopted by the SJC on the following roll call vote (20 Concur, 2 Recused, 2 Absent):

Bankson, <i>Concur</i>	Dowling, <i>Recused</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, <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>Recused</i>
Donahoe, <i>Concur</i>	McGowan, <i>Absent</i>	Wilson, <i>Concur</i>

RE White recused himself in accordance with *OMSJC* 2.10(d)(3)(iii), because he is a member of a congregation in the bounds of a presbytery party to a case. RE Dowling recused himself because he is familiar with the parties and has represented a person in a related case.

IV. PROPOSED CHANGES TO THE *OMSJC*

The SJC submits to the 45th General Assembly the following proposed amendments (underscoring for additions; ~~strike through~~ for deletions) to the *Operating Manual of the Standing Judicial Commission (OMSJC)* for adoption.

Item 1. Amend *RAO 17-4* as follows:

17-4. Proposed decision(s) of any judicial panel shall be circulated to the entire Standing Judicial Commission. It shall act upon the recommended decision(s) without further hearings unless a party to the case, or a commission member, requests a rehearing of the case by the Standing Judicial Commission as a whole. The commission may or may not grant such a rehearing; except such rehearing must be granted when requested by a ~~dissenting~~ voting member of the panel or by at least ~~four~~ seven qualified members of the commission. If granted, such rehearing shall be only on the record of the case; but the commission may allow oral arguments by the parties.

Item 2. Amend *OMSJC 8.2* as follows

8.2 Supplemental Briefs

A supplemental brief may be filed only when the case initially has been heard by a panel. Within 14 days after a party has received a proposed and recommended decision of a Judicial Panel under *OMSJC* 17.5 of this Manual, that party may file with the Stated Clerk a supplemental brief which shall be limited to setting forth errors the party believes were made in the proposed and recommended decision of the Panel or Commission in accordance with *OMSJC* 17.9.a. In the event of a rehearing before the full Commission, each party may file a supplemental brief in accord with a briefing schedule to be established by the officers of the Commission.

Item 3. Amend *OMSJC 10.11.a(6)* and (7) as follows

- 10.11.a** (6) Any ~~dissenting~~ voting Panel member's request for rehearing by the full Commission, appending reasons therefor which must be submitted to the Stated Clerk within 20 days after the Panel's decision is transmitted to the parties.
- (7) Any request for a rehearing by a party (*OMSJC* 17.5).