

Or, more broadly, perhaps also allow an acquittal complaint if it clearly alleges things like judicial misconduct, manifestly inadmissible evidence, gross procedural negligence, etc., and which appear to have substantively led to the acquittal. Absent such exceptional circumstances, perhaps our *BCO* should require courts to rule acquittal complaints out-of-order.

In the meantime, this SJC Decision (and its Decision five years ago in Case 2012-05) should alert prospective complainants that if they hope to prevail in an acquittal complaint, they would need to have a very substantial case.<sup>29</sup>

**CASE 2016-17**

***RE MORRIS WEBSTER & RE WAYNE FOWLER***

**VS.**

***HERITAGE PRESBYTERY***

**DECISION ON COMPLAINT**

**August 30, 2017**

**I. SUMMARY OF THE FACTS**

- 05/10/2016 Heritage Presbytery (HP) appointed an Ad Interim Committee “to address the continuing discord at New Covenant Church (NCPC) in Lewes, DE.
- 08/23/2016 The Ad Interim Committee approves the “Concluding Report to Presbytery.”
- 08/28/2016 RE Robert Almond, Clerk of HP, emailed TE Robert Dekker, pastor of NCPC, about a report that had been received by RE Almond concerning “the potential qualification criteria for men to be considered for office in a PCA church. In particular I have heard you advised that men who do not subscribe to infant baptism may be considered qualified if they agree not to teach their view.” RE Almond included a reference to SJC Case Bowen vs. East Carolina Presbytery and concluded his email with “If you have not made any such statements regarding qualifications, please accept my apologies.”

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<sup>29</sup> By a 15-2 vote, the SJC also denied an acquittal complaint in Case 2012-05: *RE Gerald Hedman v. Pacific NW*. (M41GA, pages 583-589) [http://pcahistory.org/ga/41st\\_pcaga\\_2013.pdf](http://pcahistory.org/ga/41st_pcaga_2013.pdf)

## APPENDIX T

- 09/03/2016 TE Dekker sends a response to RE Almond. The response acknowledges receipt of the email and concludes “Rest assured, our Session does understand the ramifications of the SJC’s clarification and it is committed to placing only qualified candidates forward for ballot who have affirmed subscription accordingly to the *BCO* 21-4(including the understanding of 21-4F) and who can take the vows of *BCO* 21-5”
- 09/09/2016 TE Rick Gray, Chairman of the Ad Interim Committee prepared an addendum for the Ad Interim Committee’s “Concluding Report to Presbytery” In that addendum, it is reported that RE Larry Ullrey, a former member of the NCPC session, had “submitted a written complaint to TE Dekker, as the Moderator of Session. The complaint cites the Session for acting out of accord with the PCA’s Constitution that requires ruling elders to take a vow of subscription to the Westminster Standards, including the doctrine of infant baptism.”
- 09/10/2016 At September 10, 2016 Meeting of HP, the “Concluding Report to Presbytery” and the Addendum dated 9/9/016 was read to HP in executive session. The minutes of that meeting note that “The Committee had not had time to meet between the Addendum preparation and the presbytery meeting to approve in a physical meeting the Addendum and its implications, but committee members individually agreed that the August 23, 2016 report without the Addendum leaves presbytery with a misimpression of the state of relations between the congregants, the pastor and remaining Session members.”
- The minutes of executive session note that after the report was read HP engaged in intense debate about the accuracy of the report, the issues raised by the report and what course of action could or should be pursued.
- After rising from executive session, but prior to adjournment, HP passed the following motion from the HP Clerk:

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That Heritage Presbytery, (while not taking a position on the complained about action as the complaint [clerk's note: of RE Ullrey] is not presently properly before us as the complaint being properly submitted first to the court alleged to be in error and that court has not yet responded) does nonetheless caution the Session of New Covenant Presbyterian Church about the dangers of allowing a man who as a result of this complaint may ultimately be found unqualified for church office (as he may be judged out of accord with a fundamental of our System of Doctrine) to stand for election to that office or be ordained to that office. The presbytery suggests it would be more expedient to await the outcome and proper judicial resolution of this complaint, before electing and ordaining this candidate to office. Therefor[e,] the Presbytery requests the New Covenant Session to postpone the candidate's consideration, election, or ordination until the complaint is finally resolved.

- 09/22/2016 RE Morris Webster and RE Wayne Fowler file their Complaint against the action taken by HP on 9/10/16.
- 11/12/2016 At the November 12, 2016 Stated meeting, HP denies the Complaint
- 11/16/2016 RE Webster and RE Fowler file their Complaint with the General Assembly. The case is designated as Webster & Fowler vs. Heritage Presbytery SJC 2016-17.
- 05/16/2016 SJC Panel conducts the hearing.

**II. STATEMENT OF THE ISSUE**

Did Heritage Presbytery err at the September 10, 2016 Stated Meeting when they passed the motion referred to in the Summary of the Facts above:

That Heritage Presbytery, (while not taking a position on the complained about action as the complaint [clerk's note: of RE Ullrey] is not presently properly before us as the complaint being properly submitted first to the court alleged to be in error and that court has not yet responded) does nonetheless caution the Session of New Covenant Presbyterian Church about the dangers of allowing a man who as a result of this complaint may ultimately be found unqualified for church office (as he may be judged out of accord with a fundamental of our System of Doctrine) to stand for election to that office or be ordained to that office. The presbytery suggests it would be more expedient to await the outcome and proper judicial resolution of this complaint, before electing and ordaining this candidate to office. Therefor the Presbytery requests the New Covenant Session to postpone the candidate's consideration, election, or ordination until the complaint is finally resolved.

### **III. JUDGMENT**

No.

### **IV. REASONING AND OPINION**

The Complaint, as filed by RE Webster and RE Fowler raised one issue before this Court: Did the motion passed by HP on September 10, 2016 violate the Constitution of the Presbyterian Church in America?

The Constitution of the Church is clear in outlining the jurisdiction and authority afforded to courts of the church and the relationship between the higher and lower courts. The Complainant has correctly pointed out a number of these provisions in the Constitution.

In this case, however, Heritage Presbytery did not "act for" Session, nor did it "require" Session to take any action. Presbytery provided advice. The fact that the Session chose to heed Presbytery's advice does not make it any less advice. Session could have, if it so chose, decided not to heed the advice.

Further, Presbytery clearly realized that the Ullrey Complaint was not properly before Presbytery. While the knowledge of that Complaint may have colored the thinking of some presbyters, it is clear that Presbytery did not act on the Complaint, but properly recognized that it needed to be taken up first by the Session. At the same time, nothing in the *BCO*

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prohibits members of Presbytery from discussing matters relating to a complaint before that complaint is actually before them. *BCO* 43-2 prohibits the parties from circularizing. It does not say that members of Presbytery cannot discuss issues that are related to a complaint. Had the Ullrey Complaint been carried forward to Presbytery the question of whether Presbytery's discussions might have rendered some or all of the members of Presbytery ineligible to rule on the merits of the Complaint could have been taken up. But that Complaint was never before Presbytery and thus the question is not before us.

The only issue before the SJC is whether Presbytery exceeded its authority in giving advice to the Session as it was considering the Complaint and its process of officer examination. For the reasons noted above, we conclude that the advice and counsel provided by Heritage Presbytery to the Session of New Covenant Presbyterian Church did not impinge on the authority of the lower court, did not interfere with the prerogatives of the Session and Congregation in electing officers, and did not violate the provisions of the Constitution. Therefore, the Complaint is denied.

The proposed opinion written by RE E. J. Nusbaum and edited by TE Brad Evans and TE Paul Kooistra and revised and approved by the SJC on the following roll call vote:

Bankson, <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>Absent</i>	Terrell, <i>Concur</i>
Chapell, <i>Absent</i>	Jones, <i>Concur</i>	Waters, <i>Concur</i>
Coffin, <i>Concur</i>	Kooistra, <i>Absent</i>	White, <i>Concur</i>
Donahoe, <i>Concur</i>	McGowan, <i>Concur</i>	Wilson, <i>Concur</i>
Dowling, <i>Concur</i>	Meyerhoff, <i>Concur</i>	