may determine to be a stated difference in future cases. What if only 30% of the presbyters feel the view is out of accord? Or what if only one person? Imagine that an examination is in progress and some number of people, 5, 10, or 15, etc., disagree with the candidate's views. The only way for a presbytery to be sure it is in compliance with this present Decision would be to pause the exam, give time for the candidate to put his view in writing (or at least record the candidate's view in his own words) and then categorize the view in accordance with *RAO* 16-3. The vague standard established by the Decision in this case has the potential to allow an undefined minority to delay and disrupt the examination of candidates with which they disagree.

In summary, this Complaint should not have been sustained. The Philadelphia Presbytery conducted a sound exam that met all the requirements specified in the Constitution of the Church. Most problematic is the erroneous and vague interpretation of the term "stated difference." This is a serious error that has the potential to create unnecessary confusion and delay in future exams.

/s/ RE E. J. Nusbaum

CASE 2019-03
COMPLAINT OF DAN & ANGELIA CROUSE
vs.
NORTHWEST GEORGIA PRESBYTERY

DECISION ON COMPLAINT
October 18, 2019

I. SUMMARY OF THE FACTS

06-07/18 The Session of Midway Presbyterian Church provided notice to the congregation for 2018 an election of officers and took nominations from the congregation.

7/15/18 The Complainant, then serving as an elected Deacon, was nominated for the office of ruling elder.

7/16/18 The Session determined that the Complainant's nomination would not proceed and that he would not be invited to training or be examined.

8/30/18 The Complainant filed a complaint with the Session against the timing of its decision to set aside his nomination. The Complainant alleged that he was qualified, that his prior divorce did not disqualify him from serving as a deacon, and that the provisions of *BCO* 24-1 required instruction and an examination prior to a determination by the Session regarding his nomination.

9/17/18 The Session heard and denied the Complaint.

10/11/18 The Complainant carried his Complaint to Northwest Georgia Presbytery (NWGP).

1/19/19 NWGP appointed a Judicial Commission to hear the Complaint.

3/6/19 After a hearing, the Judicial Commission recommended the Complaint be denied.

4/2/19 NWGP heard the report of its commission and adopted the judgment recommended by the commission.

4/4/19 The Complainant carried his Complaint to the General Assembly

7/15/19 The parties amended and finalized the Record of the Case by agreement.

8/20/19 The SJC Panel heard oral argument via Go to Meeting. The Panel included RE Jack Wilson (Chairman), TE Bryan Chapell, and TE Charles McGowan, with TE Guy Waters and RE Steve Dowling attending as alternates.

II. STATEMENT OF THE ISSUE

Did Presbytery err, in violation of the Constitution, when it adopted the recommended judgment of its judicial commission by ruling the Session had not erred in setting aside the nomination of the Complainant to be a ruling elder prior to training and examination?

III. JUDGMENT

Yes.

IV. REASONING AND OPINION

The Complainant was previously elected to the office of Deacon and served in that office at the time he was nominated by members of the congregation to be a Ruling Elder. The Complainant contends that the Session erred when it determined, without any examination or hearing, that his nomination would not be permitted to proceed. The Session reviewed the nominations submitted by the congregation. Prior to training or examining nominees, the Session, consistent with its standing practice, screened or "vetted" the congregation's nominees before proceeding through the instruction and examination process outlined in *BCO* 24-1.

The *BCO* reserves the determination of the qualifications of candidates for office to the sound discretion of the Session. *BCO* 24-1. Absent clear error or unconstitutional action, the decision of a Session regarding an individual's qualifications should not be disturbed. *BCO* 39-3(3) and (4).

This case presents questions regarding the application and timing of the process described in *BCO* 24-1, which provides in relevant part:

> Every church shall elect persons to the offices of ruling elder and deacon in the following manner: At such times as determined by the Session, communicant members of the congregation may submit names to the Session keeping in mind that each prospective officer should be an active male member who meets the qualifications set forth in 1 Timothy 3 and Titus 1. After the close of the nomination period nominees for the office of ruling elder and/or deacon shall receive instruction in the qualifications and work of the office. Each nominee shall then be examined in:
>
> a. his Christian experience, especially his personal character and family management (based on the qualifications set out in 1 Timothy 3:1-7 and Titus 1:6-9),
> b. his knowledge of Bible content,
> c. his knowledge of the system of doctrine, government, discipline contained in the Constitution of the Presbyterian Church in America (*BCO* Preface III, The Constitution Defined),
> d. the duties of the office to which he has been nominated, and

e. his willingness to give assent to the questions required for ordination. (*BCO* 24-6)

If there are candidates eligible for the election, the Session shall report to the congregation those eligible, giving at least thirty (30) days prior notice of the time and place of a congregational meeting for elections.

This section establishes a sequence of events to occur through the nomination and election process. That process begins with nominations from the congregation, and continues through instruction, examination and election. This section outlines the various rights and responsibilities of the congregation to submit the names of nominees; of the nominees to participate in instruction and examination; and of the Session to instruct, train, examine, and determine each nominee's eligibility to become a candidate for election. Nothing in this section forecloses the Session's prerogative, at any time, to counsel or advise nominees regarding their suitability or qualifications for office.

In this case, the Session's practice of "vetting" or "prescreening" the congregation's nominees, by acting to eliminate one from the process of instruction and examination, is not described in *BCO* 24-1. In adding a peremptory review process without providing the Complainant, an elected Deacon, the benefit of any examination, the Session erred. The Record does not show that Session made any affirmative finding that the Complainant was not "an active male member who meets the qualifications set forth in 1 Timothy 3 and Titus 1" *(BCO* 24-1). By virtue of his election and continuing service a Deacon, it appears the Complainant met these Biblical qualifications. In such circumstances, the ordinary course of nominations and elections should follow the sequence outlined in *BCO* 24-1. The language of *BCO* 24-1 is mandatory. ("Every church *shall* elect persons to the offices…in the following manner…;" "nominees…*shall* receive instruction;" and "Each nominee *shall* then be examined…"(emphasis supplied)). This imperative language controls our decision. While the Session's determination of eligibility vests in its sound discretion (*BCO* 39-3(3)), that discretion must be exercised in accordance with the provisions of the Constitution. In adding a step at odds with the Constitution and "vetting," by mandating the removal of men from the process before examination, the Session erred. The Presbytery erred in approving this preliminary review process.

The examination described in *BCO* 24-1 serves several vital purposes. It affords the Session the opportunity to ask questions of a nominee, to ensure his qualifications meet the Biblical standards and the subject matters outlined in *BCO* 24-1. The examination also provides a nominee an opportunity to be heard and to articulate his knowledge, sense of calling, qualifications, understanding and views. In this case, the premature arrest of the nomination of one duly elected and serving in office, without the benefit of an examination violates the mandatory provisions of *BCO* 24-1. While the pastoral communication of concern to a questionable candidate may be proper for a Session, a preemptive removal of a congregational nominee is not.

At the hearing, neither party could identify any portion of the record in which the reason for the setting aside of the Complainant's nomination were articulated. Further, the nominee contended (and the Presbytery did not refute the claim) that the Session did not communicate any rationale to the Complainant for setting aside his nomination at the time it did so. While *BCO* 24-1 does not specifically prescribe a process for such communication, fairness and equity suggest a Session should communicate the rationale for its action to remove a man from further consideration promptly and directly to the man.

This decision is limited to the narrow question of the application the process required by *BCO* 24-1 to the facts of this case. We do not address or express any opinion regarding the Complainant's qualifications for the office of Ruling Elder or the right and duty of the Session to exercise its discretion, at the proper time, to determine his qualifications for that office and his eligibility to be a candidate. This decision also should not be construed to address "frivolous" nominations or submission of names of those who are clearly disqualified. Barring clearly or grievously disqualified nominees, the procedures for instruction and examining nominees outlined in *BCO* 24-1 should be followed. That process requires instruction and examination to precede a session's determination of a nominee's qualifications and eligibility. The case is remanded for adjudication consistent with this decision.

The SJC reminds the church that according to *BCO* 14-7, General Assembly judicial decisions "shall be *binding and conclusive on the parties who are directly involved in the matter being adjudicated*, and may be appealed to in subsequent similar cases as to any principle which may have been decided." (Emphasis added.) Should anyone suppose that there should be greater flexibility in the process of *BCO* 24-1, proposed amendment to the *BCO* would be in order.

The Panel's Proposed Decision was drafted by RE Wilson and revised and approved by the Panel. The Reasoning was further revised by the SJC, and then the SJC approved the Decision by a vote of 19-3, with two absent.

Bankson, *Concur*	Duncan, M., *Concur*	Neikirk, *Concur*
Bise, *Concur*	Duncan, S., *Concur*	Nusbaum, *Concur*
Cannata, *Dissent*	Ellis, *Concur*	Pickering, *Concur*
Carrell, *Concur*	Greco, *Concur*	Ross, *Concur*
Chapell, *Absent*	Kooistra, *Absent*	Terrell, *Dissent*
Coffin, *Concur*	Lee, *Concur*	Waters, *Concur*
Donahoe, *Concur*	Lucas, *Dissent*	White, *Concur*
Dowling, *Concur*	McGowan, *Concur*	Wilson, *Concu*

Concurring Opinion
Case 2019-03: Crouse vs. NW Georgia Presbytery
RE Howie Donahoe

I was a bit ambivalent about my vote in this Decision. I personally think a Session should have more flexibility, but it seems *BCO* 24-1 contains mandatory language and a mandatory sequence. The main issue is the flexibility (or rigidness) of the phrase "shall *then* be examined ..." So, the PCA may want to consider an overture revising *BCO* 24-1 to explicitly provide more flexibility.

Regarding flexibility, most would agree a Session has the freedom and flexibility to determine what the *BCO* 24-1 "instruction" looks like. There are different practices in the PCA. And it could even vary for individuals. If a 45-year-old military officer resigns from service on his Session due to an upcoming three-year overseas assignment, and then returns to the same church after the assignment, his *BCO* 24-1 training could look different from what's offered to a 28-year-old man in the same church who's never been an elder. Likewise, if one of my fellow ruling elders on the SJC moved to our church near Seattle, I doubt many would construe *BCO* 24-1 as requiring us to put him through, or requiring him to attend, the same elder training program we provide rookies.

There's a legitimate debate on how flexibly we can construe the word "shall" in the *BCO*. For example, there seems to be broadly-recognized flexibility regarding another mandatory-sounding *BCO* provision (at least in practice).

> 58-5. ...Here the bread is to be distributed. After having given the bread, he shall take the cup, and say:

The word "shall," appears 1,634 times in the *BCO*, *RAO* and SJC Manual. Many times in the *BCO* it refers to a mandatory action. For example:

> 32-13. In order that the trial may be fair and impartial, the witnesses *shall* be examined in the presence of the accused, or at least after he shall have received due citation to attend.

But sometimes it is used merely descriptively. For example:

> 37-7. When a person under censure *shall* reside at such a distance from the court by which he was sentenced... [See also *BCO* 38-1, 38-2, 41-4.]

In many *BCO* paragraphs, it is used descriptively and prescriptively in the same paragraph:

> 19-2. ... No Presbytery *shall* omit any of these parts of [licensure] examination except in extraordinary cases; and whenever a Presbytery *shall* omit any of these parts, it *shall* always make a record of the reasons therefor, and of the trial parts omitted. [See also *BCO* 19-13, 21.4.b, 21-4.d, 23-1, 38-3.a, 40-5, 42-7, 46-1, 46-2, 46-6, 46-8.]

/s/ RE Howie Donahoe

Dissenting Opinion
Case 2019-03: Crouse vs. NW Georgia Presbytery
TE Sean M. Lucas, joined by RE Terrell and TE Cannata

There were two issues that led to our dissent from the SJC decision in 2019-03 *Crouse v. NW Georgia Presbytery*. First, the decision provided a constitutional solution to what was actually a pastoral issue. In the record of the case, it appeared that the Complainant's Session was wrestling with the requirements of 1 Timothy 3:2 and how to apply its developing understanding to those who were already officers in that church. Of course, it is the prerogative of that Session to determine and "to declare…the qualifications of its ministers and members" (*BCO*, Preliminary Principle, 2); such determination subject to its "sound discretion" (*BCO* 24-1) and "should not be distributed" (*BCO*

39-3[3] and [4]). The pastoral problem that emerged was two-fold: the inconsistent way the Session wrestled with this issue and the failure to communicate to the Complainant what was happening and how this all affected his nomination to serve as a Ruling Elder.

To be sure, the Complainant sought the constitutional solution when he complained against the action of the Session and pursued that Complaint through the procedures provided by the *BCO*. That surely was his right. However, while the SJC decision provided constitutional relief for the Complainant, it will not actually provide what is required—pastoral care that will lead to further ministry within that particular congregation. It is hard to imagine how the *BCO* process in which the Complainant engaged will actually provide the relief sought—which is a place on his local church's Session. Surely, that could only come through pastoral care and communication, not through the constitutional solution offered by the SJC.

Second, and more significant in terms of the reach of this decision, the SJC decision creates a precedent that goes beyond the required relief in the case. While the SJC's reason and judgment suggested that this is a "narrow decision," it actually is a broad one: it is a decision that has the potential of affecting hundreds of churches and their officer training programs and could open the door to litigation for disgruntled nominees who were rightly prevented from standing for election to church office.

The broad nature of the decision is seen in two ways. First, in the repeated use of "mandatory" in connection with the sequence in *BCO* 24-1. After laying out the sequence of events to occur through the nomination and election process, the SJC declared, "The language of *BCO* 24-1 is mandatory." And the relief offered to the Complainant was the result of a supposed violation of "the mandatory provisions of *BCO* 24-1." However, the alleged violation was for a practice that is "not described in *BCO* 24-1," that of "prescreening" nominees. While not denying that the positive commands of *BCO* 24-1 are mandatory (as represented in the repeated "shall" statements), it strikes me as odd that such "shall" statements are taken to rule out anything else that may happen in-between those "shalls." The SJC has not demonstrated in its judgment why the Constitution prevents Sessions from "certifying" the nominees prior to their beginning the training process; such certification is not prohibited. Such certification would happen between "the close of the nomination period" and nominees for office "shall receive instruction." This, in fact, could be what was occurring in the Complainant's Session as they "vetted" their nominees, wrestling with the qualifications of

1 Timothy 3:2 and how they apply. The SJC's reading of *BCO* 24-1 treats that section in a rigid fashion that does not allow for the appropriate flexibility that is contained already in the Constitution.

Second, in the final paragraph of the reason and judgment, the SJC doubled down on their decision by suggesting that if a Session desires "greater flexibility" in the requirements found in *BCO* 24-1, it should pursue a change to the Constitution. Such language suggests that the SJC declared the "mandatory" sequence in *BCO* 24-1 to have the weight of constitutional law. The net effect of this declaration suggests that the SJC holds that the only place where a nominee can be removed from the officer process is at the very end after training and examination.

While such a strict reading of *BCO* 24-1 may be defended, it is pastorally disastrous and practically unrealistic. It is pastorally disastrous because it leaves individuals in the training and examination process who may be unfit for office and yet cannot be removed until the examination occurs at the end. The individual goes through all the training, thinking that he is going to be a deacon or ruling elder; meanwhile, the Session has significant concerns about his fitness to serve. Yet, the individual goes to the very end, only to be rejected. How is he going to feel? Would he believe that it would have been better pastorally to have been told this at the very beginning, rather than believing that he will make it through the process and stand for election?

Not only this, but this reading is practically unrealistic. What is much more likely is that such individuals who have gone all the way through the training and examination process will be allowed to stand for office, even while elders have concerns about their fitness for office. While we would like to believe that elders would have the courage not to let such men find a place on the ballot, it is much more likely that they would have sympathy on such men who have engaged with the formative discipline of the training and examination process and allow them to proceed. Meanwhile, the church may end up with a Diatrophes (3 John 9), all because such a man was not vetted out of the process at the very beginning.

The SJC decision appears to be uncomfortable with the constitutional overreading provided here as evidenced in its mitigating language: "Nothing in this section forecloses the Session's prerogative, at any time, to counsel or advise nominees regarding their suitability or qualification for office." Yet how should such counsel occur? Does counsel rise to the level of a ruling? If the Session's counsel is that someone is not suited for office and then they proceed to training and examination anyway, does such represent a violation

of their membership vows? Can only one member of the Session give this counsel (i.e., the pastor) or does the Session need to give such counsel jointly under its power of jurisdiction (*BCO* 3-2)? How does this not open the door to further litigation?

Likewise, the SJC offers as mitigating relief to this decision the ability to deal with "clearly or grievously disqualified nominees." Such can be removed—but how and when? At the beginning of the process in a "prescreening" process? The Complainant's Session tried to do this as it wrestled with 1 Timothy 3:2, determined that he was disqualified, and removed his nomination; yet, the SJC has ruled that such could only be done at the end of the "mandatory sequence" of *BCO* 24-1. The result is that "clearly or grievously disqualified" nominees can only be removed at the end of the process after examination. And so, the apparent mitigating relief is no true relief at all. What is actually here is an overreading of the constitutional requirements in *BCO* 24-1 by not allowing for the appropriate flexible, pastoral application of its mandatory aspects.

For these reasons, this dissent argues that the SJC should have answered its statement of the issue in the negative and supported the lower court's ruling that the Complainant's Session had not erred in their handling of the case. This dissent also warns concerning the potentially wide-ranging, negative effects of the SJC decision both pastorally and practically as Sessions seek to qualify men for office.

/s/ TE Sean M. Lucas

CASE 2019-06
THE PRESBYTERIAN CHURCH IN AMERICA
vs.
THE PRESBYTERY OF THE MISSISSIPPI VALLEY

DECISION ON *BCO* 40-5 REFERRAL
February 6, 2020

SUMMARY OF THE CASE

This Case arose from a July 18, 2016 arraignment at which a member (hereinafter referred to as the "Petitioner") of Pear Orchard PCA Church in Ridgeland, MS, pled "not guilty" to the charge of "failing to submit to the government and discipline of the church." She had filed for divorce, even