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In its brief to the SJC, Presbytery "denies that the three paragraphs listed as 'observations' were intended or in any way treated by the Presbytery as additional offenses." But regardless of intent, there's little way to know what effect the additions may have had on the 36 presbyters who considered the motion to impose the censure of deposition. If those "observations" were important, the IC should have secured the minister's approval to add it to the CD *before* finalizing the agreement and presenting the document to Presbytery. Also in its brief, Presbytery asserted "the IC recommendation at the end of its Report added nothing new to his Confession." If that were true, then why include it? BCO 38-1 stipulates, "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*." If his own words can't contribute to the basis without his consent, then nothing from an investigating committee or commission should be allowed to do so. By allowing this additional material to be presented, Presbytery erred.

/s/ RE Howard Donahoe

CASE 2019-11
COMPLAINT OF DAN AND ANGELIA CROUSE
v.
NORTHWEST GEORGIA PRESBYTERY

DECISION ON COMPLAINT
July 21, 2020

I. SUMMARY OF THE FACTS

- June-July 2018 The Session of Midway Presbyterian Church provided notice to the congregation for an election of officers and took nominations from the congregation.
- 7/15/2018 The Complainant, then serving as an elected Deacon, was nominated for election to serve an additional term as a Deacon.
- 11/19/2018 After examining the candidates, the Session determined that the Complainant's nomination would not proceed and that his name would not appear on the ballot for election to a new term as a Deacon.

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- 12/19/2018 The Complainant filed a complaint with the Session against its decision to set aside or not advance his nomination to be re-election to the Diaconate.
- 1/21/2019 The Session heard and denied the Complaint. Four Session members dissented from the decision.
- 12/14/2019 The Complainant carried his Complaint to Northwest Georgia Presbytery (NWGP).
- 4/2/2019 NWGP appointed a Judicial Commission to hear the Complaint.
- 6/28/2019 The Presbytery's Judicial Commission heard oral argument from the parties and their representatives.
- 7/11/2019 The Presbytery's Judicial Commission entered a written judgment to deny the Complaint.
- 8/17/2019 Presbytery approved and adopted the judgment of the Judicial Commission.
- 9/10/2019 The Complainant carried his Complaint to the General Assembly.
- 2/11/2020 The SJC Panel conducted a hearing on objections to the Record of the Case, ruled on the objections, and finalized the Record of the Case.
- 04/6/2020 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, ruling the Session had not erred in determining the Complainant was not eligible to be re-elected to the Diaconate?

III. JUDGMENT

No.

IV. REASONING AND OPINION

The Complainant was an ordained, actively serving Deacon nearing the expiration of his term of service in 2018. He was nominated by members of the congregation for re-election to serve another term as an active Deacon. The Complainant contends that the Session erred when it determined that his nomination would not be permitted to proceed and that his name would not be placed on the ballot for re-election.

BCO 39-3(3) provides:

A higher court should ordinarily exhibit great deference to a lower court regarding those matters of discretion and judgment which 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.

Absent clear error or unconstitutional action, the decision of a Session regarding an individual's qualifications should not be disturbed.

In reviewing the Complainant's nomination for re-election to the Diaconate, the Session did afford the Complainant an abbreviated examination. The Session asked the Complainant whether any of his views had changed since his ordination to the office. The Complainant responded that his views had not changed and remained consistent with our Constitutional standards. After receiving responses to its inquiries, the Session did not approve the Complainant's nomination to proceed and decided not to permit his name to be submitted to the congregation for re-election to the Diaconate.

The Complainant contends that the Session erred when it did not approve his nomination and submit his name to the congregation for re-election.

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Complainant alleges that the Session's action constitutes a *de facto* deposition from office in violation of *BCO* 24-7. We disagree. No sitting officer is guaranteed re-election to active service on the session or diaconate at the end of a term.

The Complainant contends the Session could not have set aside his nomination unless it charged him with an offense and proceeded with formal discipline. *BCO* 29-1, 29-2, 32-18. The *BCO* does not require a Session to bring charges against an officer whose term is expiring prior to exercising its discretion to determine the eligibility of that candidate for re-election to active_service. Nothing in the Record indicates that the Complainant committed any offense or that the Session found any offense in reviewing his eligibility to be re-elected. Even if a chargeable offense existed, in the exercise of its discretion, a Session may forbear pursuing such an offense (see 1 Peter 4:8), and, at the same time, find it sufficient to warrant disqualification or ineligibility from re-election to office. Under our Constitution, a Session is also permitted to not advance a nomination, in the exercise of its discretion and judgment, for reasons, actions or circumstances which do not rise to the level of a chargeable offense, but may otherwise render the candidate ineligible in the judgment of the Session. Such action would not affect a man's ordination, nor would it necessarily disqualify him from future service, in his or any other congregation.

In this case, the minutes of the Session meeting in which the Complainant's nomination was not advanced do not contain reasons for which the Session determined he was not eligible for re-election. Four members of the Session filed a written dissent to the Session's decision to deny the Complaint in which they outlined reasons they perceived for the Session's action and alleged errors in that reasoning. At the hearing before the Presbytery's Judicial Commission, representatives of the Session submitted documents and made oral arguments in which individual members of the Session articulated reasons for their votes not to advance the nomination. Some of these articulated reasons fall within the permissible scope of the exercise of the Session's discretion (questions regarding attendance at Sunday School; questions regarding attendance at evening worship services; and questions related to performing Diaconal duties during worship services instead of attending). If any, or all, of these reasons had been articulated by the Session in its minutes as grounds for its decision, we believe the Complaint would clearly be denied in view of *BCO* 39-3(3).

In oral argument and a written submission to the Presbytery Commission, at least one Session member articulated a reason which the Complainant contends was an impermissible ground to not advance the Complainant's nomination, namely, that the Complainant previously filed (and prevailed) in a Complaint regarding his nomination to serve as a Ruling Elder (See 2019-03, Crouse v. NWGP, decided October 18, 2019, SJC Report to the 48th General Assembly at p. 42.) The Complainant contends that the decision to not advance his nomination for re-election to the Diaconate was an "apparently" improper action of retaliation against his filing his first Complaint. The judgment of the Presbytery Commission suggests that one Session member believed and said that filing of the first Complaint demonstrated an objectionable refusal to submit to the Session's authority by the Complainant.¹⁵ It is not clear from the Record whether this Session member contended that the mere act of filing a Complaint was the grounds for his vote to not advance the nomination or whether the Complainant's attitude and actions associated with the pleading were the grounds for his vote. It is also not clear whether any other elder shared the view. In his written submission to the Presbytery Commission, the Elder specifically denied that the nomination was not advanced as retribution or punishment for the filing of the Complaint.

The right to seek redress of improper actions by complaint or appeal is foundational to our Constitutional system. Both due process and basic charity demand that no member or officer should be ostracized or penalized for the mere filing of a complaint or appeal. The filing of a complaint or appeal may never, standing alone, constitute proper grounds to deny any privilege of membership or office in our church. That said, there may be circumstances where a member or officer's behavior associated with properly filed pleadings and ongoing litigation may give a Session pause as it considers the spiritual qualifications/eligibility of the litigant for office. In this case, the Record does not provide formal or stated reason for the Session's action. The Complainant has not clearly proved that the Session or any individual member acted improperly. From the Record in this case, we cannot attribute one elder's questionable rationale to the Session as a whole. While one member's articulated reasons may be questioned, the standard of review requires affirmative demonstration of clear error or unconstitutional action

¹⁵ The written judgment of the Presbytery's Judicial Commission includes a number of quotations from representatives presenting oral argument at the hearing. The judgment mischaracterizes the arguments and colloquy from the hearing as "testimony." No formal testimony was taken, and unfortunately, no transcript of that hearing was made.

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to overturn the Session’s exercise of its discretion and judgment in evaluating a candidate’s eligibility for office. That standard requires deference to the lower court’s exercise of its judgment, even when its representatives may articulate improper arguments in support of the decision (See 2019-07, Fozard v. Northwest Texas Presbytery, decided February 6, 2020, SJC Report to the 48th General Assembly at p. 63). At the same time, while BCO 24-1 does not specifically prescribe a process for communicating reasons for a session’s action, fairness and equity suggest a Session should ordinarily communicate the rationale for its action to remove a man from further consideration promptly and directly to the man.

For these reasons, we conclude the Presbytery did not clearly err when it denied the Complaint. This decision was written by RE Jack Wilson and revised and approved by the Panel and revised and approved by the full SJC on the following roll call vote:

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

(18-2-9)

CASE 2019-11
COMPLAINT OF DAN AND ANGELIA CROUSE
v.
NORTHWEST GEORGIA PRESBYTERY

Dissenting Opinion
August 24, 2020

RE Dan Carrell and RE E. J. Nusbaum

We respectfully disagree with the ruling made by the Standing Judicial Commission in this case and submit the following dissent to explain our disagreement.

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We believe that the SJC erred when it failed to apply the proper standard of review to this case. In its reasoning and opinion, the SJC decided this matter required great deference to the lower court because the SJC viewed the issue as limited to a matter concerning an exercise of discretion and judgment by the lower court. (*BCO* 39-3.3) Unfortunately, the SJC overlooked the erroneous interpretation of the Constitution of the Church that was made by the lower court. The proper standard of review for this case was *BCO* 39-3.4, which states in part:

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.

In this case, the Session of Midway Presbyterian Church had a Constitutional duty to report candidates that were eligible for election to the congregation. (*BCO* 24-1). While there is no one place in the Constitution of the Church that defines “eligible for election” to the office of Deacon, there are a number of places where standards are delineated. Those include the Scriptural requirements in I Timothy and Titus 3, the satisfactory completion of the five requirements in *BCO* 24-1 a. thru e., and the characteristics of a Deacon described in *BCO* 9-3. In the reasoning and opinion of the SJC, there is no mention that any member of the Midway Session judged Mr. Crouse to be deficient in any of the Biblical or Constitutional standards. Rather, the reasons given for Mr. Crouse’s ineligibility for election were “questions regarding attendance at Sunday School, questions regarding attendance at evening worship services and questions related to performing Diaconal duties during worship services instead of attending.” These attendance issues and the arbitrary standard applied by the Midway Session are extra-Biblical and extra-Constitutional. Therefore, making the determination that this man was not eligible based on the standards applied by the Session was a misinterpretation of the Constitution of the Church.

This misapplication had a significant effect. We agree with the SJC that the action was not a *de facto* deposition from office in violation of *BCO* 24-7. However, upon closer examination, the effect of the action is that an ordained Deacon was barred from being elected to the Diaconate and is therefore unable to fulfill the duties of a Deacon at his church. His status is the

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functional equivalent of one who has been suspended from office. And suspension, like other censures, can only be inflicted at the end of a judicial process. We agree with the SJC that a Session is required to exercise discretion and judgment in determining the eligibility of candidates for office. However, in the exercise of that discretion and judgment, which can have the effect that is functionally the same as a censure, courts should make decisions about eligibility based only on the Biblical and Constitutional character and competence of the individual.

Moreover, despite the SJC's reference to an "abbreviated examination," Mr. Crouse was never actually examined in the manner contemplated by *BCO* 24-1. The context here is important and is well summarized in the following excerpt from the Complaint:

Whereas, Deacon Crouse was originally examined and approved for the office of Deacon in November of 2012. He was elected by the congregation to the office of Deacon in December 2012 and subsequently ordained later that month; and

Whereas, during his tenure, Deacon Crouse served faithfully as chairman of the building and grounds committee in 2013-15, chairman of the finance committee from 2014 thru present, and secretary/treasurer of the Midway Covenant Christian School from 2014 thru present. Deacon Crouse also served on the mercy, facilities use, security, risk management, and gym expansion committees for the church as well as the finance, administration, financial aid, teacher evaluation, and booster committees for the school; and

Whereas, on November 12, 2018, Deacon Crouse was invited to the November 19th Session meeting to reaffirm his beliefs; however, knowing he would be out of the country during the meeting, submitted in writing that none of his views relating to Scripture, the Westminster Standards, or the *BCO* had changed since his examination in 2012. The practice of submitting in writing having been accepted as recently as 2017 (See Exhibit A). No additional examination was made, or attempted to be made, of Deacon Crouse beyond his written response; and

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Whereas, during the November 19, 2018 Session meeting, the sitting elders and other sitting deacons that were up for re-election were asked the following questions (See Exhibit B):

1. Is there anything in the Westminster Standards that you disagree with?
2. Have any of your views changed since you were last examined?
3. Are you willing to serve and affirm your officer vows if elected by the congregation?; and

Whereas, no additional examination was made of the sitting elders or other sitting deacons up for re-election; and

Whereas, the Session, during the November 19th meeting, removed Deacon Crouse from being considered for re-election by the congregation to the office of Deacon;

As the SJC opined in the first Crouse case (2019-03), the examination described in *BCO* 24-1 “serves several vital purposes.” In that case, the SJC sustained the Complaint in view of the Session’s conclusion, without training or examination, that Mr. Crouse would not be declared eligible for election. In other words, it acted prematurely. Those “vital purposes” included affording “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 light of these purposes, responding to three questions that fall far short of the scope of the examination required by the *BCO* can hardly serve as a meaningful examination. In that Mr. Crouse was being considered for re-election, it was unnecessary to repeat what presumably was the scope of his original examination six years before. Nevertheless, to the extent certain men on the Session had some character-related concerns, which the record suggests may have been the case despite Deacon Crouse’s years of service, it was incumbent upon the Session to raise these concerns candidly, in person, with a Christian brother and at least give him the courtesy of an opportunity to reply.

Without such a meaningful forum, the process is open to abuse. A Session could reject a candidate merely because of personality conflicts or other reasons contrary to the standards of the *BCO*. Although privacy concerns may dictate avoiding written explanations for rejecting candidates, legitimate concerns should be expressed in examination dialogue with a candidate, for his response may well satisfy the elder with such concerns that they are not well-founded.

Because Mr. Crouse was afforded no opportunity to defend himself in a meaningful examination, and because the few specifically articulated concerns did not reflect Biblical or Constitutional deficiencies, Mr. Crouse's second Complaint should have been sustained, as was his first.

CASE 2019-13
COMPLAINT OF MS. COLLEEN GENDY
v.
CENTRAL FLORIDA PRESBYTERY

DECISION ON COMPLAINT
February 4, 2021

I. SUMMARY OF THE FACTS

- 8/20/19 Following several months of formal and informal communication with Ms. Gendy concerning her marriage and her attempt to withdraw her membership under *BCO* 38-3 by affiliating with another church, the Session of St. Paul's Presbyterian Church, Orlando, Florida, voted to remove Ms. Gendy's name from its membership rolls "as an act of pastoral discipline without process (*BCO* 38-4)."
- 9/05/19 The St. Paul's Session sent Ms. Gendy a letter stating, "I am writing to inform you that in light [of] your making it known to us that you have no intention of fulfilling your membership vows at St. Paul's, the session has removed your name from our rolls as an act of pastoral discipline without process (see *The Book of Church Order* 38-4)."