

MINUTES OF THE GENERAL ASSEMBLY

meeting - three months after they informed him there were accusations. That was neither wise nor just. Had the Commission interviewed the accused sooner, given him specifics about the allegations, and allowed his Session and PCC staff leadership to also speak as they requested, the following proceedings might have been avoided.

The Complaint in Case No. 2020-07 is sustained, and the censure outlined in that case is annulled. The Complaints in Case Nos. 2020-08 and 2020-09 are sustained and answered by reference to this decision.

This Panel Decision was drafted by RE Howie Donahoe, amended and unanimously approved by the Panel, with amendments by the full SJC. The SJC approved the decision on the following roll call vote:

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

(19-0-0)

RE Terrell disqualified himself because of his personal relationship to the Appellant and Appellant's father-in-law. *OMSJC* 2.10(d).

CASE NO. 2020-06
BRIAN PAUL GORDON
V.
SOUTHERN NEW ENGLAND PRESBYTERY
DECISION ON APPEAL
OCTOBER 21, 2021

SUMMARY OF THE CASE

The Appellant was charged by the Session of his church with failing to keep his membership vows by not attending church for more than one year and failing to submit to the Session in its recommendations regarding his conduct,

his marriage and his family. At trial, the Appellant admitted that the charges were “true”. The Appellant was found guilty at trial. On appeal, the Presbytery affirmed the decision of the lower court. The Appellant appealed the Presbytery’s decision to the General Assembly.

I. SUMMARY OF THE FACTS

- 03/11/15 The Session of First Presbyterian Church North Shore (FPCNS; an OPC congregation at that time) sent Mr. Gordon a letter of admonishment regarding his treatment of his wife. Mr. Gordon disagreed with the admonishment and informed the Session that he intends to leave the church.
- 11/20/15 Session of FPCNS sent a communication to Mr. Gordon to encourage him to take steps to heal his marriage and return to worship.
- 01/14/16 Mr. Gordon wrote to the Session that his plan was to withdraw his membership and inform them when he joined another church. Note: The Session did not remove his name. FPCNS was a member of the OPC at this time. According to the Session, the OPC Rules of Discipline do not allow such a withdrawal, unless “the member informs the session that he does not desire to remain in the fellowship of the OPC, in other words the denomination as a whole, rather than just this particular church.”
- 12/11/16 The Congregation of FPCNS voted to join the PCA
- 12/29/16 Commission of SNEP concluded their interviews with the Ruling Elders of FPCNS. Interviews were conducted in accordance with *BCO* 13-8. The Commission concluded that the Ruling Elders understand and can sincerely adopt the doctrines and polity of the Presbyterian Church in America as contained in its Constitution.
- 01/27/17 FPCNS Teaching Elders were examined and received into SNEP
- 04/28/17 SNEP received FPCNS into the PCA. Mr. Gordon was a member of FPCNS when the church was received into the PCA.
- 05/06/17 The FPCNS Session sent a letter to Mr. Gordon asking him to re-establish contact with the Session, heed their admonishments and

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return to Lord's Day worship at FPCNS. The letter warned Mr. Gordon that failure to comply could result in additional disciplinary actions.

- 01/15/19 The Session of FCPNS conducted the trial of Mr. Gordon. He was found guilty of "failure to heed the admonition of the session," and failure to follow the membership vow 5 of the OPC and membership vows 4 & 5 of the PCA." . Mr. Gordon was indefinitely suspended from the table.
- 05/14/19 The Session of FPCNS voted to impose the censure of excommunication, because the Session found that Mr. Gordon's conduct warranted the greater censure. (*BCO* 30-3).
- 08/12/19 FPCNS sent a letter to Mr. Gordon notifying him that the censure had been changed to excommunication. Mr. Gordon received the notice from FPCNS regarding his excommunication on 8/16/2019.
- 09/10/19 Mr. Gordon submitted notice to the Stated Clerk of Southern New England Presbytery (SNEP) that he was appealing the decision. The grounds of his appeal were that "they have disregarded all of the very considerable evidence which would have not only exonerated me of the chargers [sic] they leveled against me, but would actually constitute sufficient grounds for me to bring charges against them."
- 03/06/20 SNEP's Commission heard the appeal.
- 06/27/20 SNEP heard the report of the Commission at a Called meeting. SNEP voted in favor of the Commission's recommendation and denied the appeal.
- 07/24/20 The Stated Clerk of the PCA received the appeal from Mr. Gordon.
- 04/15/20 The panel conducted the hearing. Panel members were RE E. J. Nusbaum (chairman), RE Jack Wilson (secretary) and TE Charles McGowan. TE Paul Lee (alternate) was also present.

II. STATEMENT OF THE ISSUES

Did SNEP err on June 27, 2020, in approving the recommendation of its Judicial Commission’s decision to deny Mr. Brian Gordon’s appeal?

III. JUDGMENT

No.

IV. REASONING AND OPINION

The Appellant has not presented any evidence that sustain the specifications of error that he has alleged. The Appellant did not “specify” an error in the conduct of the trial, the admission of evidence, or the Presbytery’s review on appeal. The Appellant failed to identify any error with particularity. Instead, he recited the general grounds for appeal outlined in *BCO* 42-3. We believe this vague and non-specific recitation of general grounds for appeal could be said to be inadequate to identify any particular error with specificity. While the SJC has summarily adjudicated at least one recent case for such lack of specificity (See 2019-05, *Goggan v. Missouri Presbytery*), we review each of the Appellant’s “specifications” below in an abundance of fairness.

A. Failing to Grant a Reasonable Indulgence

The Presbytery granted the Appellant a reasonable indulgence by resetting the date of the hearing. This specification is not supported by the Record and is not sustained.

B. Hurrying to a decision

The Appellant did not identify any specific act or omission by the lower court or the Session in support of this specification. The Session waited approximately twenty (20) months between offering its admonition and proceeding to trial. After the trial and censure, the Session waited an additional five (5) months before proceeding to excommunication because the Appellant never returned to church attendance. This timeline does not indicate any improper rush to a decision. This specification is not supported by the Record and is not sustained.

C. Exhibiting Prejudice

The Appellant has not identified any specific act or omission by the lower court or the Session in support of this specification. While the Appellant contends that the Session took his wife's side in his divorce, he did not identify any error in the conduct of the trial amounting to prejudice. He also failed to identify any prejudicial act by the Presbytery in considering his appeal. This specification is not supported by the Record and is not sustained.

D Exhibiting Injustice

Again, the Appellant has failed to identify any specific erroneous act or omission from the trial or the appeal in support of this vague allegation. At trial, in his brief and oral argument to Presbytery, and in oral argument to the Panel in this case, the Appellant admitted that the trial court's charges against him were true. The Appellant indicated that he did not call witnesses at trial because their testimony would have provided further proof of his guilt. The Appellant made clear that he wished to present evidence not directly related to the charges against him but bearing on the actions of his wife or the circumstances of his marriage. Since Appellant chose not to tender such evidence at trial to support his defense, it is impossible to evaluate whether it would have been admissible, and if so, whether it would have been exculpatory. On appeal, the higher court cannot consider or evaluate evidence not presented at trial. This specification is not supported by the Record and is not sustained.

While a number of defenses at trial and arguments on appeal may have been available to the Appellant, we limit our review to those issues actually presented by the parties in the lower courts and decline to speculate regarding matters not raised by the parties in the lower courts. *BCO* 39-3(1).

The decision of SNEP is affirmed, and the appeal is denied.

The Panel decision was written by RE EJ Nusbaum and RE Jack Wilson and edited and approved by the panel 3-0-0. The SJC amended and approved the decision on the following roll call vote:

APPENDIX T

Bankson <i>Concur</i>	M. Duncan <i>Concur</i>	Neikirk <i>Concur</i>
Bise <i>Dissent</i>	S. Duncan <i>Concur</i>	Nusbaum <i>Concur</i>
Cannata <i>Concur</i>	Ellis <i>Concur</i>	Pickering <i>Concur</i>
Carrell <i>Concur</i>	Greco <i>Concur</i>	Ross <i>Dissent</i>
Chapell <i>Concur</i>	Kooistra <i>Concur</i>	Terrell <i>Concur</i>
Coffin <i>Concur</i>	Lee <i>Concur</i>	Waters <i>Concur</i>
Donahoe <i>Dissent</i>	Lucas <i>Absent</i>	White <i>Absent</i>
Dowling <i>Dissent</i> (18-4-0)	McGowan <i>Concur</i>	Wilson <i>Concur</i>

**Dissenting Opinion
Of RE Howie Donahoe**

I dissented from the Decision because the SJC (1) should have ruled the Appeal administratively out of order for lack of standing and (2) should have ruled that the Session did not retain jurisdiction over Mr. Gordon when First Presbyterian Church North Shore left the OPC and joined the PCA and thus had no jurisdiction to conduct the trial. The Record does not demonstrate Mr. Gordon ever became a PCA member or was ever under the jurisdiction of a PCA Session.

The matter is complicated by Mr. Gordon having participated in a PCA trial even though he had repeatedly maintained he was not leaving the OPC. And he did not raise the jurisdictional question in his appeal. However, his September 2021 Supplemental Brief indicates that at the time of the church's departure from OPC, he was unfamiliar with the OPC rule for how members could remain in the OPC.

Regardless, the higher court must always verify jurisdiction and standing before adjudicating a case, even if neither party raises the issue. This is a critical part of what's considered when a higher court determines if a case is administratively in order. When *BCO* 39-3.1 stipulates, "A higher court, reviewing a lower court, should limit itself to the issues raised by the parties to the case in the original [lower] court," it's not referring to jurisdiction or standing.⁷

⁷ SJC Manual 9.1 stipulates: "When a judicial case is submitted to the Commission, the Officers shall make an initial determination as to whether the case is administratively in order. (a) A case is administratively in order if the relevant provisions of *BCO* 41, 42, and 43 have been followed." The "relevant provisions" would include jurisdiction and standing. There is precedent for the SJC ruling complaints out of order for lack of standing. See, for example, these seven cases: 92-9b *Overman v. E. Carolina*, 2015-03 *Gearhart v. Chicago Metro*, 2012-06 *Bethel*

Here is a summary chronology. In March 2015, about two years before FPCNS joined the PCA and four years before the PCA trial, the OPC Session of FPCNS “admonished” Mr. Gordon in a letter regarding matters related to his marriage. It’s important to note that in one procedural way, admonition is different in the OPC than in the PCA. An OPC Session can impose the censure of admonition *without* a confession of guilt or a guilty verdict at trial. (OPC Book of Discipline 3.6) However, the censure of admonition is not an on-going *status*. It’s administered at one point in time. The OPC *BCO* does not mention the “removal” of an admonition as it does other censures. Nor does a PCA Session vote to remove the censure of admonition at some point in the future, as it would with other censures. (*BCO* 37)

Below are the OPC Session’s *recommendations* in its March 2015 letter sent four years before the PCA trial, in which it admonished him to “repent of harshness to his wife.” [ROC 12]

... It is also our responsibility as your shepherds in the Lord to help guide you in a path of repentance, healing, and reconciliation. In order to help you do so we give you the following recommendations.

1. Begin marriage counseling with [the wife] as soon as possible with a counselor of our recommendation.
2. Meet with Elder ___ for discipleship and accountability.
3. Seek individual professional counseling.
4. Limit your conversations about your circumstances with only 2 or 3 people including ___ but not including the pastor, elders or [the wife].

Eleven days later, on March 22, 2015, Mr. Gordon wrote the OPC Session, saying,

I have determined before the Lord that my family needs to leave FPC. We will be looking for another Presbyterian Church to join, preferably within the OPC. ...We will begin our search for a different OPC church immediately and will be seeking membership there.” [ROC 16]

v. SE Alabama, 2012-08 Jackson v. NW Georgia, 2019-13 Benyola v. Central Florida, 2019-14 McWilliams v. SW Florida, and 2020-01 Benyola v. Central Florida.

He began attending worship elsewhere, and in January 2016, ten months after the admonition, he asked to be removed from the rolls of FPCNS OPC. The OPC Session declined the request on two grounds: (1) their contention that Mr. Gordon was still “under discipline” and (2) their understanding that the OPC Book allowed them to retain someone under discipline *unless* that person was leaving the OPC.

A year later, FPCNS left the OPC and was received into the PCA by the S. New England Presbytery in January 2017.⁸ Four months after joining the PCA, the Session wrote Mr. Gordon and exhorted him to worship at FPCNS PCA - even though he had clearly said in March 2015 and again in January 2016, that he was planning to worship elsewhere in the OPC.

In January 2019 — two years after leaving the OPC — the PCA Session put Mr. Gordon on trial and convicted him on two charges — “failure to heed the admonition of the session” and “failure to follow the membership vow 5 of the OPC and membership vows 4 and 5 of the PCA.” He was judged guilty on both and suspended from the sacraments. Four months later, the Session excommunicated him.

When Your Church Changes Denominations and You Don’t Want to Follow

Again, we note Mr. Gordon complicated jurisdictional questions by appearing at the trial before the PCA Session. But his error does not thereby impart jurisdiction. For example, it would be illegitimate for my PCA Session to put my Methodist neighbor on trial, regardless of whether he chooses to participate.

The OPC Session clearly understood Mr. Gordon desired to stay, and intended to stay, in the OPC. This was clear in the OPC Session Moderator’s email to him in April 2015 - three years before the PCA trial.

With regard to the substance of your request [to be removed from the rolls of FPCNS], however, the [OPC] Book of Discipline does not permit your erasure under these circumstances. Your request, as we understand it, was specific to withdrawing from membership at First Presbyterian Church

⁸ PCA Stated Clerk’s Report, *M46GA*, p. 89

North Shore [OPC]. Under Chapter V(2)(a)(2) of the [OPC] Book of Discipline, however, such an erasure can only be performed where the member informs the session that he *does not desire to remain* in the fellowship of the Orthodox Presbyterian Church, in other words the denomination as a whole, rather than just this particular church.

I am, of course, not in a position to suggest what the Session would decide, but am able to communicate that *should you make the request based on your desire to no longer remain in the fellowship of the Orthodox Presbyterian Church as a whole* we would docket the matter for consideration at a regular Session meeting. (Emphasis added.) [ROC 45]

Thus, it was clear to the OPC Session that Mr. Gordon *did not* intend to leave the OPC, which is why the Session believed they could retain them on the rolls of FPCNS OPC. The Record does not indicate Mr. Gordon ever attended FPCNS after it became a PCA church.

Furthermore, as far as Mr. Gordon's OPC membership was concerned, the OPC Session apparently failed to comply with the OPC rules for withdrawing. Below is an excerpt from the OPC Form of Government, Chapter 16 regarding congregational meetings held to withdraw from the OPC. Note the italicized requirement at the end regarding members who wish to remain in the OPC.

7. A congregation may withdraw from the OPC only according to the following procedure:
 - a. Before calling a congregational meeting for the purpose of taking any action contemplating withdrawal from the Orthodox Presbyterian Church, the session shall inform the presbytery, ordinarily at a stated meeting, of its intention to call such a meeting, and shall provide grounds for its intention. The presbytery, through representatives appointed for the purpose, shall seek, within a period not to exceed three weeks after the presbytery meeting, in writing and in person, to dissuade the session from its intention. If the session is not dissuaded, it may issue a written call for the first meeting of the congregation. The call shall contain the session's recommendation, with its written grounds, together with the presbytery's written argument.
 - b. If the vote of the congregation favors withdrawal, the session shall call for a second meeting to be held not less

than three weeks, nor more than one year, thereafter. If the congregation, at the second meeting, reaffirms a previous action to withdraw, *it shall be the duty of the presbytery to prepare a roll of members who desire to continue as members of the OPC and to provide oversight of these continuing members.* (Emphasis added.)
https://www.opc.org/BCO/FG.html#Chapter_XVI

There is no evidence in the Record that the OPC Session helped arranged for such a remain-in-the-OPC option roll or that the OPC Presbytery of NY and New England required such. In the Minutes of the FPCNS congregational meeting of December 11, 2016, there is no mention of this remain-in-the-OPC option for those who voted against joining the PCA. [ROC 214] Granted, if Mr. Gordon had been familiar with this section of the OPC BCO, perhaps he could have directly petitioned the OPC Presbytery to retain his OPC membership at large. But the real responsibility lay with the departing Session and the OPC Presbytery. Had the rules been followed, Mr. Gordon would have been placed on the rolls of the OPC at large and would have been removed from the rolls of FPCNS when it joined the PCA.

This should have been clear to the Session. In an August 4, 2021, post-Appeal-hearing email to the SJC Panel Chairman, FPCNS RE Joss stated the following:

There is a provision in the OPC Book of Church Order (XVI.7.b) for individual members who object to the church leaving the denomination to be taken under care of the presbytery. This did not happen with [Mr. Gordon] so he was still a member when we came into the PCA. [226]

But that August email does not indicate *why* this did not happen, nor does it indicate Mr. Gordon was aware of, or was informed of, the OPC provision. In his September 28, 2021 Supplemental Brief, Mr. Gordon included excerpts from emails he sent to the Panel in August and September in which he reiterated the Session knew he wanted to stay in the OPC and not join the PCA.⁹

⁹ The Record of the Case was deemed complete by the Panel on March 1, 2021, and the Panel Hearing was on April 15. The Record was later revised on August 12, and finally on September 1 with the addition of 14 pages. [ROC 214-227] The Panel's final proposed decision is dated September 7. Mr. Gordon's Supp Brief contained

I vigorously resisted their decision to switch their denominational affiliation... [P]rior to RE Walters' note, the session had sent [name omitted] ... on a fact-finding mission concerning how I felt about FPCNS leaving the OPC for the PCA. [That person] knew exactly and with what vehemence I opposed such a transition and communicated this to [RE Walters] and the members of the Session. ... RE Walters knew that I had no intention of leaving the OPC but rather only leaving FPCNS because it had left the OPC ... [T]here is plenty of evidence in proof of exactly what my intention was and why. So, it was never my intention to leave the OPC: it was my intention to leave FPCNS only because of their poor treatment of my family and their decision to leave the OPC ... In short, my desire for erasure was not from the OPC but from FPCNS precisely because they planned to transition to the PCA; ... I was *not* interested in *erasure* [from the OPC]; I wanted *out* of FPCNS and into another OPC fellowship. ... Why wasn't I "taken under the care of Presbytery"? Was it not precisely, though the session, *whose responsibility it was* to notify the [OPC] Presbytery of members who wanted to remain in the OPC, *knew* I wanted them to take just such action, they never communicated this to the [OPC] Presbytery? Had they done so, I would now be an OPC man having nothing whatsoever to do with FPCNS ... So, before ever my [PCA] trial began, the session of FPCNS knew that I wanted to leave their fellowship, not the OPC. They could have worked with me to make that happen but put me on trial instead ..."

OPC and PCA Rules on Receiving a New Congregation

The arguments above should be sufficient to establish that the PCA Session erred by believing they could retain jurisdiction over an OPC member, *against his expressed wishes*, after the Session and congregation left the OPC. But this Case also raises the general issue of how a person's membership is moved from one church to another when that church changes denominations.

excerpts from emails he contends he sent to the Panel on August 24, 28, 31, September 7, and 10.

We presume the FPCNS Session (PCA) was familiar with OPC rules on receiving congregations, because the Session membership remained the same after the church came into the PCA. [ROC 216; 220-21]

OPC Form of Government 29.B - Receiving Congregations

2. In receiving an existing, local church not belonging to the Orthodox Presbyterian Church as a new and separate congregation (church) the procedure shall be as follows:

...

- b. The presbytery or a committee appointed by the presbytery *shall examine the applicants* as to their Christian faith and life and their knowledge of and *willingness* to submit to the standards of the Orthodox Presbyterian Church. (Emphasis added.)

Granted, the above did not apply when the OP church sought entry to the PCA. But it would be unreasonable to assume an OPC member like Mr. Gordon was aware of the difference between the OPC and PCA rules. The Record does not indicate Mr. Gordon ever submitted himself for such an applicant examination in the PCA or ever expressed a “willingness to submit to the standards” of the PCA, which, given his membership in the OPC, would have been a reasonable expectation on his part.

While the PCA *BCO* might not be as explicit as the OPC’s, the principle still pertains. A person cannot be taken into another denomination against his will, especially when he has repeatedly indicated his intent to remain in his current denomination. Agreement with the following points is not necessary to establish the FPCNS PCA Session’s lack of jurisdiction, but it demonstrates a principle.

It seems reasonable to expect that when a church joins the PCA, either from PCA mission church status or from another denomination, each joining congregant would ordinarily sign the PCA’s *BCO* 5-9.g. organizing petition to transfer his membership into the PCA along with fellow congregation members. Ordinarily, he would also publicly affirm the covenant promise of *BCO* 5-9.i.(3) at the organizing service. Absent that signing and public affirming, it is reasonable to question if a member of the previous church intends to be part of the church in the new denomination. Put another way, the entire membership roll of an OP church does not *automatically* become the membership roll of the PCA church at the organization service. Each member must ordinarily make that choice individually and demonstrably. And this seems to at least be implied in the PCA’s stipulations below from the *BCO* 5

section titled “The Organization of a Particular Church.” (Emphasis added throughout.)

BCO 5.9.g. In order to proceed to organization as a particular church the members of the mission church *shall sign a petition* to Presbytery requesting the same.

BCO 5.9.h. Upon Presbytery’s *approval of the petition*, Presbytery shall appoint an organizing commission and shall set the date and time of the organization service.

BCO 5-9.i.(3). A member of the organizing commission *shall require* communicant members of the mission church present to enter into covenant, by answering the following question affirmatively, with uplifted hand: Do you, in reliance on God for strength, solemnly promise and covenant that you will walk together as a particular church, on the principles of the faith and order of the Presbyterian Church in America, and that you will be zealous and faithful in maintaining the purity and peace of the whole body?

The SJC Decision does not cite *BCO 13-8*, which would govern *how transferring ruling elders become PCA elders* in a newly received PCA church.

BCO 13-8. The Presbytery, before receiving into its membership any church, shall designate a commission to meet with the church’s ruling elders to make certain that the elders understand and can sincerely adopt the doctrines and polity of the Presbyterian Church in America as contained in its Constitution. In the presence of the commission, the ruling elders shall be required to answer affirmatively the questions required of officers at their ordination.

If *BCO 13-8* is the *only* constitutional provision that applies to an OPC church joining the PCA, it would contradict my understanding of the jurisdictional question. But I don’t believe *BCO 13-8* is the only paragraph that applies. *BCO Chapter 5* also applies regarding the congregation members. The provisions in *BCO 5* were adopted *after BCO 13-8*. So, it’s reasonable to

understand *BCO* 5-9 as describing an additional component of how a church joins the PCA.¹⁰

The Minutes of the Southern New England Commission to receive FPCNS record the following from the organization service on April 28, 2017:

The Service of Reception was conducted according to the Order of Service. The members of First Presbyterian Church responded in the affirmative to their vow to enter into covenant to walk together as a church according to the principles of faith and order of the Presbyterian Church in America. The church was received according to the Word of God and faith and order of the Presbyterian Church in America.” [ROC 222]

The Order of Service in the Record clearly followed that in *BCO* 5-9. [ROC 223-225]

To maintain that Mr. Gordon became a PCA member against his will and against his expressed wishes might be akin to the following examples. Let’s say 50 members of the 99-member XYZ PCA Church vote to leave the PCA and each of the 50 sign a petition to join a local RCA church. But the other 49 vote against doing so and decline to sign the joining petition. Are those 49 *automatically* excised from the rolls of the PCA and immediately entered onto the rolls of the RCA against their will, and immediately under the jurisdiction of its mixed-gender Session and female minister?

Or let’s say instead of joining the RCA, the PCA church joined the CREC. And let’s say John Doe was in the 49-person minority voting against leaving. And let’s say that regardless of Mr. Doe’s clear intention not to leave the PCA, the CREC Session believes it has automatic jurisdiction over him and promptly indicts him for the sin of failing to have his children baptized (citing *WCF*

¹⁰ Here’s some quick history. In 1977, Mid-Atlantic Presbytery filed Overture 33 seeking to add *BCO* 13-8, which was enacted a year later by the 6th GA. *Six years later*, *BCO* 5-1 through 5-7 were added and enacted by the 12th GA in 1984. In 1985, *BCO* 5-9 was *extensively revised*. In 2011, *BCO* Chapter 5 was revised again, including the addition of what is now *BCO* 5-5. In 2015, *BCO* 5-2 was revised, and the last revision to *BCO* Chapter 5 came in 2017 with a revision to 5-3. Thus, it is difficult to argue that *BCO* 13-8 supersedes or stands in place of the lengthy procedures of *BCO* 5-9, when *BCO* 5-9 was revised seven years after *BCO* 13-8. The extensive section on “The Organization of a Particular Church” did not exist in 1978 when *BCO* 13-8 was enacted.

28:5). Mr. Doe then reiterates what he clearly stated previously that he never intended to become part of the CREC. But they retain him on the rolls, conduct the trial, and eventually excommunicate him for lack of repentance for that sin. I find the jurisdictional understanding in these two examples untenable.

Finally, referencing those two examples, PCA presbyteries are often not consulted in such church departures, so how would the average member who wants to remain in the PCA know what his options are? PCA ministers and elders might be aware, but it's not reasonable to expect the average member to know his options. And it might be many months before a PCA presbytery has a stated meeting and can act on the member's petition to remain in the PCA at large.¹¹

Proper Charges? - If the Case had been ruled administratively out of order, there would be no need to address the Charges. However, because the SJC took up the Case, some comments are warranted. Before addressing them directly, we commend the Session for its desire to exhibit pastoral care and offer its counsel. Marital difficulties are often quagmires. And this Dissent does not express any opinion on the Session's assessment of the difficulties in the marriage.

The SJC Reasoning states: "At trial, in his brief, oral argument to Presbytery, and in oral argument to the Panel in this case, the Appellant admitted that the trial court's charges against him were true." However, it matters little whether the charges were true if the charges don't allege something that is truly a sin. *BCO 29-1* stipulates, "Nothing, therefore, ought to be considered by any court as an offense, or admitted as a matter of accusation, which cannot be proved to be such from Scripture." These two charges were illegitimate at the outset.

Charge 1 - The first charge in the PCA Session's indictment was "*failing to receive and heed* the discipline of the [OPC] Session as stated in the admonition of March 11, 2015." The PCA Session cited Hebrews 13:17 as the Scripture mandating obedience the admonition/ recommendation of the elders: "Obey your leaders and submit to them, for they are keeping watch over your souls, as those who will have to give an account." [ROC 39]

First, it seems odd for a *PCA* Session to charge someone with not heeding recommendations of an *OPC* Session, even if the membership of those

¹¹ Twelve of our PCA presbyteries only meet twice a year, and 28 others only meet three times a year.

Sessions is identical. More importantly, it is an error to claim husbands and wives are required to *obey* Session advice or recommendations regarding marital struggles, and risk excommunication if they decline. It's not automatically a sin to "fail to heed" such counsel. Presumably, the obedience in view in Hebrews 13 pertains to things *Scripture* prohibits or requires. Session recommendations are not that. (WCF 20.2) Thus, it is not a violation of membership vows.¹²

A Session might indict a man for the sin of divorce without biblical grounds, but it cannot indict him for declining to follow Session recommendations, advice, counsel, admonitions, etc. This principle was most recently expressed in the SJC's February 2020 Decision in Case 2019-06: *PCA v. Presbytery of the Mississippi Valley*, which was a BCO 40-5 referral from the 47th GA involving a wife [the Petitioner] who had been pursuing a divorce. Below are the most pertinent excerpts.

The 47th GA's Question 2 to Presbytery - "If a church member declines to follow advice or counsel from a Session, is that automatically evidence of failing to submit to the government and discipline of the church? (i.e., offense for which the Session indicted her)."

MS Valley Response - "No. Not automatically. The action of the session was to "rule" that [the Petitioner] did not have a Biblical basis for divorce (ROC 13 l. 15ff.). That "rule" was communicated to remove any ambiguity as to what the session deemed obedient action for both [the husband and wife]. Knowing her expressed conclusions (ROC 12, l. 11) a clear scriptural decision and communication was approved by the session for [the Petitioner]. That was intended for her benefit."

[SJC Reasoning for finding that Response unsatisfactory] - Presbytery's answer concludes with the assertion below, which indicates that Presbytery, and perhaps the Session, believe the Petitioner only had two options: "obey" and stop the divorce, or file a Complaint."

¹² OPC Directory for Worship 4.b.2.(5) Vow 5: Do you promise to ... to submit in the Lord to its government, and to heed its discipline, even in case you should be found delinquent in doctrine or life? PCA BCO 57-5. Vow 5: Do you submit yourselves to the government and discipline of the Church, and promise to study its purity and peace?

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“The proper course of action for [the Petitioner], if her conscience would not allow her to obey, would have been to file a complaint against their ruling. The fifth vow of membership precludes summarily disregarding the session's communication. (*BCO 57-5.5; ROC 12, 1.11*).”

But there's at least one other option: *to consider, but respectfully disagree with, the Session's conclusion*. That would *not* be a violation of membership vow 5 or de facto evidence of "failing to submit to the government and discipline of the church." Granted, in a situation like that, a Session might allege the person is divorcing without biblical grounds, and indict on those grounds, but that was not the Indictment against the Petitioner.” ... (Emphasis added.)

Furthermore, whenever a Session offers such or similar counsel, a member is not required to file a *BCO 43 Complaint* if the member declines to follow it (*contra* Presbytery's response to GA Question 2). *A member's responsibility is to seriously and respectfully consider the counsel*. But there may be many instances where a Session advises it regards something as sinful, without the member sinning by not following the advice. (The person's underlying action may indeed be sinful, but his *response to the advice* is not, in and of itself, sinful). This might include Session advice on how the Lord's Day should be observed, whether parents should use books with depictions of Jesus, whether parents should baptize their infants (WCF 28:5), whether tithing is morally obligated, the permissible use of tobacco or alcohol, appropriate clothing standards, "undue delay of marriage" (WLC 139), "avoiding unnecessary lawsuits" (WLC 141), what constitutes "prejudicing the good name of our neighbor" (WLC 145). And if a Session believed an indictment was warranted in any such situation, the indictment should allege the underlying sin, not the person's decision declining to follow Session counsel.”¹³ (Emphasis added.)

¹³ SJC's 2020 Report to the 48th GA, St. Louis Commissioner's Handbook, pp. 2051-64. <https://drive.google.com/file/d/1MW-TfB2VWJQa8-mZyq1Shr512zD9VTwo/view?usp=sharing>

Charge 2 - The second charge was “intentionally absenting himself from Lord’s Day worship *at First Presbyterian ...*” (Emphasis added.) The Session cited Hebrews 10:24-25, “Let us consider how to stir up one another to love and good works, not neglecting to meet together, as is the habit of some, ...” And in this charge, the Session accused him of violating OPC membership vow 5 and PCA membership vow 4.

As with Charge 1, it’s hard to understand how a PCA court can charge someone with breaking an *OPC* membership vow. And as explained above, Mr. Gordon never affirmed *any* PCA membership vow. Furthermore, the January 2019 trial transcript records:

Mr. Gordon ... indicated that he attended the church pastored by David Booth (Merrimack Valley Orthodox Presbyterian Church). He also reported that he attended a Presbyterian Church when he was [in] Shiloh and he has also attended Genesis, a church in Burlington,” [ROC 47]

It is not automatically a violation of Hebrews 10:25 to decline to heed a Session’s counsel to attend worship at a *specific* church when that person is regularly attending elsewhere, especially when the *specific* church has changed denominations and the accused desired to remain in the original denomination.¹⁴

Conclusion - For the reasons above, the Appeal should have been ruled administratively out of order for lack of standing, and any actions of any PCA court regrading Mr. Gordon should have been ruled null and void for lack of jurisdiction. This dissenting opinion was written by RE Howie Donahoe and joined by RE Steve Dowling and TE Michael Ross.

¹⁴ None of the seven Larger Catechism questions on the 4th Commandment cite Hebrews 10:25. It is cited in Westminster Confession of Faith 21:6 and 26:2, but not in a way that supports how it was applied in Charge 2.