

**Presbytery of the Mid-Atlantic
Orthodox Presbyterian Church**

In the Matter of

MR. JASON R.

Appellant

and

The Session of
NEW HOPE ORTHODOX
PRESBYTERIAN
CHURCH,
Frederick, Maryland

Appellee

REPORT:

**Committee Recommendations
Regarding Appellant's Specifications of Error**

Rev. Daniel C., *Chairman*
Rev. Andrew M.
John S. L., *Clerk*

April 27, 2021

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Introduction

This report provides guidance to the Presbytery of the Mid-Atlantic (PMA) in hearing an appeal by Elder Jason R. from the decision rendered against him by the Session of New Hope Presbyterian Church in Frederick, Maryland. On March 29, 2021, Reverend. Jerry T., Moderator of the PMA, emailed the Presbytery requesting general consent to appoint an Ad Hoc Committee to guide the PMA in considering the appeal. In the absence of any objection, the Moderator appointed Reverend Daniel C., Reverend Andrew M., and Mr. John S. L. to the Ad Hoc Committee for the Appeal. The Moderator, in the same email, also requested general consent to appoint another Ad Hoc Committee to guide the Presbytery in considering charges brought by Mr. Jason R. against the New Hope Session.

The Ad Hoc Committee for the Appeal chose Reverend Clifford as Chairman, designated Mr. Logan as Clerk, and met twice by itself and once jointly with the members of the Ad Hoc Committee for the Charges consisting of Reverend Stuart J. and Reverend Tom M. The two committees conferred about their respective approaches and coordinated their recommendations to the Presbytery about the order of addressing the charges and appeal.

On April 22, 2020, the Ad-Hoc Committee for the Appeal (hereinafter the Committee) received an email from Mr. Jason R. addressing the New Hope Session's response to his appeal. The Committee sent a copy of the reply to Moderator and Clerk of Presbytery with a proposal that a copy be sent to the New Hope Session and that the Clerk of Presbytery indicate that no further communications be sent on the merits of the proceeding and that any additional points be raised at Presbytery, given the practical need for the Committee to complete its report in time for its review by Presbytery prior to the scheduled meeting.

Timeliness

Presbytery must find the appeal in order with respect to timeliness. The trial concluded Feb. 6, 2021. Notice of intent to appeal was filed with clerk of session on Feb. 15, 2021, within the ten-day limit required by BD VII.3. The appeal was filed with Presbytery on May 16, 2021, within thirty days of when the intent was filed, as required by BD VII.4. **The committee recommends that Presbytery find the appeal in order and properly before the Presbytery.**

Recommended Order for Hearing the Appeal

The committee recommends that Presbytery adopt the following order for hearing the appeal:

- Appellant presentation: 12 minutes
- New Hope Session presentation: 18 minutes
- Appellant response: 6 minutes
- Questions from PMA to Committee and Parties
- Consider recommendations, including amendments, debate, and voting

General Overview

This appeal comes in response to the Session of New Hope Orthodox Presbyterian Church (“New Hope”) bringing four charges against Mr. Jason R., finding him guilty on all counts, and proposing a censure of indefinite suspension together with deposition from the office of ruling elder. The appeal seeks to overturn Mr. Jason R.’s conviction and thereby nullify the proposed censures.

The record of the trial, which was submitted with the appeal, contains an array of documents, most notably the minutes, which provide the official account of the trial. The minutes are spare and do not disclose the rationale for Session’s decisions that the evidence adduced at trial supported the charges and specifications. The trial transcript provides additional texture but does not convey how Session weighed evidence and arrived at conclusions. The trial record also includes many documents submitted as evidence by both prosecution and defense. Some of the prosecution’s evidence seems to imply wrongdoing by Mr. Jason R. beyond what is expressed in the charges, as do some of the speeches in the trial transcript.

Mr. Jason R.’s appeal sets forth fourteen specifications of error. These do not follow the order of the charges and specifications. Some allege defects in certain charges or specifications, and some take exception to the conduct or outcome of the trial more generally. The specifications of error are expressed with minute specificity, in contrast with the laconic trial minutes. The New Hope Session submitted a response to the appeal, which was emailed to the Presbytery. The response makes some general arguments but does not attempt to engage the appeal point by point.

In the process of its work, the Committee collated each specification of error with the corresponding charges and specifications, as well as the corresponding the New Hope Session response. The Committee analyzed the merits of each specification of error and gave a recommendation in each instance, as detailed below.

The Committee has reviewed the case on the record, which is the task that our Book of Discipline imposes on an appellate judicatory. In other words, we have assessed the merits of the appeal solely based on the documents provided to Presbytery as the record. We have not conducted any independent investigation. As described above, we have conferred with the Ad Hoc Committee for the Charges consisting of Reverend Stuart J. and Reverend Tom M. and have discussed our respective approaches and coordinated recommendations to the Presbytery about the order of hearing the charges and appeal. We have not discussed the merits of the appeal with either the appellant or the appellee or the representatives of either. Our recommendations therefore flow only from the record known to Presbytery. In this way, we hope to enable Presbytery to consider this appeal as fairly and expeditiously as possible.

Brief Summary of the Circumstances Giving Rise to the Proceeding Now on Appeal

In October 2019, a member of the New Hope congregation engaged in writing and speaking on Christian themes (the “congregant”) received copies of postings on a Reformed Website coarsely critical of her writings and teachings. Suspecting that Mr. Jason R., the elder for her shepherding group, knew of these postings and did not tell her, the congregant, accompanied by her husband, met with Pastor VanD. The first event giving rise to the charges against Mr. Jason R., particularly Charge 3, is that Mr. Jason R.

did not alert her of the Website material before she became aware of them through other means.

On November 5, 2019, after various other meetings with Session members, Mr. VanD. and the congregant met with Mr. Jason R. to seek reconciliation. The congregant was not satisfied with the results of the meeting. Subsequent meetings took place between Mr. Jason R. and other members of the New Hope Session regarding the congregant's concerns.

A second meeting between Mr. Jason R. and the congregant took place on December 10, 2019, but the rift between Mr. Jason R. and the congregant remained. During January 2020, various meetings took place between Mr. Jason R. and members of Session about uncharged matters regarding Mr. Jason R. and his ministry, which Mr. Jason R. believed were being raised for the first time following the rift with the congregant. In a January 14, 2020 meeting, Pastor VanD. apologized to Mr. Jason R. for not having raised concerns about him and his ministry earlier.

In subsequent meetings during January, the Session sought to convince Mr. Jason R. to step back from his duties as an elder and take a sabbatical.

During February 2020, Session members encouraged Mr. Jason R. to cooperate with the Session or face a recommendation to resign.

In March, 2020, the Session urged Mr. Jason R. to resign and, at various times during the month, urged Mr. Jason R. to read and write a response to a book, to prepare a written list of issues about which he disagreed with the Session, and to answer a series of questions from Session. Mr. Jason R.'s failure to respond to these overtures in the way the Session requested forms the basis for the specifications to additional charges leveled against Mr. Jason R..

On March 26, 2020, Mr. Jason R. filed a complaint against the New Hope Session and the Session ceased informal communications with Mr. Jason R..

On April 8, 2020, the Session sent a congregational letter called the Backstory to church members and to non-member regular attendees. The Backstory purported to explain the Session's dissatisfaction with Mr. Jason R. and the congregant's continued concerns with his remaining in office, as expressed from the Session's viewpoint. On April 21, 2020, Mr. Jason R. sent a copy of the Backstory to two officers of the Orthodox Presbyterian Church criticized in it. The report was subsequently posted on the Internet by third parties who added their own comments to it. The New Hope Session now cites Mr. Jason R.'s sending the Backstory to persons not members or regular attendees of New Hope as the basis for additional charges against Mr. Jason R..

On April 22, 2020, Mr. Jason R. sent an email to members and regular attendees of New Hope defending himself against allegations in the Backstory and related correspondence that the Session sent to the congregation and explaining the matters referenced in the Backstory from his perspective. Mr. Jason R.'s sending his communications to the New Hope congregation is the final event giving rise to the charges and specifications against Mr. Jason R..

Summary of Specifications of Error and Their Recommended Disposition

The Committee's analysis and recommended disposition of each specification of error is set forth in Appendix A. A brief summary of that information is set forth below for convenience.

1. **Specification of Error No. 1** alleges various violations of the BD in the specifications against Mr. Jason R.. Much relates to the distinction between public and private sin as well as the pursuit of Matt. 18.
 - a. **Committee recommendation: Sustain**
 - b. Rationale:
 - i. Session has not made clear how failure to respond to private emails is sinful.
 - ii. More generally, disrupting the peace and unity of the church is a category of offense rather than a specific sin. There is no specific sin alleged in Charge 2 or any of its specifications.
2. **Specification of Error No. 2** alleges the New Hope Session erred in using evidence beyond the two-year limit when it charged Mr. Jason R. with sin for failing to report a website posting that occurred more than two years earlier.
 - a. **Committee Recommendation: Deny**
 - b. Rationale: Although the website posting occurred more than two years before charges were filed, the alleged failure to report fell within the two-year limit.
3. **Specification of Error No. 3** alleges irregularities in the trial, including opening and closing statements.
 - a. **Committee Recommendation: Deny**
 - b. Rationale:
 - i. The Book of Discipline does not expressly prohibit opening and closing statements when the Session is prosecuting an action and their use generally should benefit the defendant.
 - ii. Mr. Jason R. did not demonstrate that any other alleged irregularities ultimately prevented him from raising any point on appeal.
4. **Specification of Error No. 4** alleges the New Hope Session introduced prejudicial information unrelated to the matters charged and judged him based on allegations outside of what trial specifications and evidence.
 - a. **Committee Recommendation: Sustain only to the extent of agreeing that some material introduced by New Hope Session improperly implied concerns that were not charged.**
 - b. Rationale:
 - i. There were multiple vague references in the trial to issues that session had been pursuing with Mr. Jason R. privately that were never charged and evidence irrelevant to the charges and prejudicial

- to Mr. Jason R.. Any effect of this material on the verdict, however, can be corrected by Presbytery on appeal.
- ii. Mr. Jason R. did not demonstrate that the problems he identified presented him from timely submitting his appeal.
5. **Specification of Error No. 5** alleges error in that certain of the charges and specifications do not rise to the level warranting a trial.
- a. **Committee Recommendation: Sustain**
 - b. Rationale:
 - i. With respect to Charge 2, Specification 2 and 3 and Charge 4, Specification 2, the failure to respond to correspondence in the circumstances described in the record did not establish a chargeable offense or an instance of specific sin to support a charge a breach of the peace and unity of the church. With one exception, the emails in question were sent by spouses of elders or a paid employee of the church and could reasonably have been viewed as indirect attempts by of the Session to elicit admissions for future actions. One of the letters even specifically stated that no reply was expected.
 - ii. With respect to Charge 3, the evidence available to the Session did not establish the existence or terms of any agreement for Mr. Jason R. to undertake specific long-term obligations to report Web postings to the congregant in question with sufficient clarity to warrant a trial on whether he had violated some obligation to continue acting as an undisclosed informant for the congregant with respect to the Website.
6. **Specification of Error No. 6** alleges error in charging Mr. Jason R. for the actions of another person (who posted correspondence given to him by Mr. Jason R.).
- a. **Committee Recommendation: Sustain**
 - b. Rationale: Session's prior public disclosure of "the Backstory" to all members and even beyond the membership complicates any allegation that Mr. Jason R.'s sending it to two Orthodox Presbyterian Church officers specifically named and criticized in the document was sin.
7. **Specification of Error No. 7** alleges that the New Hope Session had already disturbed the peace of the church by their public pseudo-discipline of him, and his email to the congregation was not a further disruption.
- a. **Committee Recommendation: Sustain**
 - b. Rationale: The charge of disturbing the peace and unity of the church, standing alone, does not set forth a chargeable offense unless accompanied by the enumeration of a specific sin.
8. **Specification of Error No. 8** alleges session did not prove that the appellant was disingenuous in his speech.
- a. **Recommendation: Sustain**

- b. Rationale: Some of the specifications involve only non-speech conduct and other specifications involve circumstances too ambiguous to conclude that the defendant spoke disingenuously.
- 9. **Specification of Error No. 9** alleges Mr. Jason R.'s absence from New Hope worship should not be calculated into charges against him.
 - a. **Recommendation: Sustain**
 - b. Rationale: Session has not established why Mr. Jason R. should have been expected to attend New Hope worship during his sabbatical and COVID-19. Furthermore, breach of the peace and unity of the congregation does not establish a chargeable offense absent the enumeration of a specific sin, which Charge 2, Specification 6 does not do. Moreover, a breach of the peace and unity of the church is, by its terms, necessarily public and a statement in a private meeting about sitting under someone's ministry is not.
- 10. **Specification of Error No. 10** alleges the New Hope Session erred in charging Mr. Jason R. because he knew of certain web postings but did not demonstrate his knowledge of them.
 - a. **Recommendation: Sustain**
 - b. Rationale: The trial / evidentiary records do not establish a sufficient predicate for the charge. They do not demonstrate that Mr. Jason R. had early knowledge of the postings or that he had an obligation to report them.
- 11. **Specification of Error No. 11** alleges charge 2 specification 1 was in error because of lack of evidence; i.e. Session never established that Mr. Jason R. damaged the unity and peace of the church by failing to address their concerns with him.
 - a. **Recommendation: Sustain**
 - b. Rationale: A charge of breach of the peace and unity of the congregation cannot stand alone without the enumeration of some specific sin, and Charge 2, Specification 1 includes no such enumeration. Moreover, Charge 2, Specification 1 addresses non-public actions whose relevance to a breach of the peace and unity of the congregation—an inherently public matter—is not explained.
- 12. **Specification of Error No. 12** relates to Charge 1, Specifications 1 and 2, and Charge 2, Specification 5, alleging that Mr. Jason R.'s sending an email to the congregation defending himself was not sinful considering his duty to defend his own good name.
 - a. **Recommendation: Sustain**
 - b. Rationale: Although Mr. Jason R. arguably aggravated the situation by mounting a public defense, his potential fault is mitigated by the fact that he was responding to material published by the Session prejudicial to his reputation.

13. **Specification of Error No. 13** alleges error in the sentence pronounced (both deposition from office and indefinite suspension from the privileges of membership) as being too severe.
- a. **Recommendation: Sustain**
 - b. Rationale:
 - i. Presbytery's acceptance of the recommendations of the Committee would result in the dismissal of each of the charges and specifications against Mr. Jason R. and no imposition of any censure.
 - ii. In the event that Presbytery nevertheless should sustain any of the charges and specifications against Mr. Jason R., which certainly is its prerogative, the **Committee recommends that censure be no more extreme than deposition from office, given that each of the charges and specifications alleged takes its significance from the relationship of those acts to Mr. Jason R.'s service as an elder.**
14. **Specification of Error No. 14** alleges that the New Hope Session did not provide a sufficient trial record for Mr. Jason R. to appeal.
- a. **Recommendation: Sustain only with respect to affirming that Session's insufficient record-keeping burdened Mr. Jason R. in the process of appeal.**
 - b. Rationale:
 - i. The minutes of the trial fail to include a summary of the testimony of witnesses, which normally provides a statement of what Session relied upon in reaching its decision. A transcript does not serve the same role.
 - ii. Mr. Jason R. has not demonstrated, however, that any failure of the Session to compile and deal appropriately with the record ultimately prejudiced his ability to submit his appeal.

Summary of the Effect of the Recommendations on the Disposition of the Charges

If the Presbytery sustains several of these specifications of error, the judgment would be reversed. If Presbytery chooses to deny a number, but not all, of these specifications, it is possible to modify the censure to deposition from the office of ruling elder. If Presbytery denies all specifications of error, the judgment of the New Hope Session would be affirmed. The following is a summary of the effect of the Committee's recommended disposition of the specifications of error on the charges and specifications:

Charge 1: Violating ninth commandment and failing to protect the good name of others.

The New Hope Session did not demonstrate that Mr. Jason R.'s letter was out of line in response to theirs, or how it violated the ninth commandment and rose to the level of warranting a trial.

Charge 2: Violating the peace and unity of the church.

BD III.3(c) specifies that only one offense per charge. This charge is out of order in that it does not charge a sin, but an effect. Violation of the peace and unity of

the church is not a charge that can stand alone. A specific sin must be alleged as the cause of such a disturbance of the church.

Within this charge, there are three offenses in the specifications: (1) non response to communication; (2) sending church communication outside of the church, and (3) not attending New Hope.

Mr. Jason R. points out (Specification of Error No. 5) that session did not follow Matt. 18 in that they did not tell him that his lack of response to letters was sin. Further, he objects that this does not rise to the level of a trial. These objections are compelling.

Likewise, Mr. Jason R. objects (Specification of Error No. 1) that session is charging him with disrupting the peace of the church with a specification relating to a non-public event (Specification of Error No. 6), the communication of unease sitting under Pastor VanD.'s ministry. They also charge him with absenting himself from New Hope, but Mr. Jason R. objects (Specification of Error No. 9) that he was on sabbatical (at the insistence of the Session) and communicated he would attend elsewhere at that time. The New Hope Session does not show how Mr. Jason R.'s absence was sinful. These objections are compelling.

Charge 3: Violating the fifth commandment, not protecting the flock of God.

Mr. Jason R. objects (Specification of Error No. 5) that an elder is not responsible for informing members of social media posts involving their public work. The New Hope Session does not show how failing to report negative Web postings is a violation of the fifth commandment. The New Hope Session states, "The conviction on Charge 3 was based on evidence, which the session found convincing, that the defendant had been aware of attacks on a member of the flock and had failed to protect the flock" (response to Specification of Error No. 10). Nevertheless, Mr. Jason R.'s objection is compelling (Specification of Error No. 10), that session did not show sufficient evidence of Mr. Jason R.'s knowledge of such posts. Furthermore, even if the Session had established this point, they do not make the case that an officer is responsible to share social media criticisms with members he oversees. While wisdom might suggest significant pastoral interaction with members being publicly criticized, Session does not show how Mr. Jason R.'s omission was sinful, particularly for posts that, even if coarse, address the ideas of a professional writer and speaker as opposed to being attacks on personal integrity.

Charge 4: Violating the ninth commandment by speaking disingenuously.

Clearly, there has been a breakdown in good communication between Mr. Jason R. and the New Hope Session. The New Hope Session's specifications here involve Mr. Jason R.'s non-response to communication. He objects (Specification of Error No. 8) that his non-response was not a lie. The New Hope Session does not give clear examples of ninth commandment violations. While charge 4 specification 3 does give clear concern, namely that an elder has been expressing a desire for reconciliation but supposedly not following through, it is not clear why this is an error that rises to the level of a trial (Specification of Error No. 5). The New Hope

Session's response: "The judgment of the judicatory was that the offenses described in the charges and specifications did rise to a level which justified a trial" leaves the appellate judicatory to guess as to their reasoning.

Specification 4 charges Mr. Jason R. with lying related to his church attendance, but the evidence was conflicted (Specification of Error No. 8).

Recommended Order for Voting on the Specifications of Error

The Book of Discipline calls for the Presbytery to vote separately on each specification of error put forward by the appellant. **The Committee recommends that the Presbytery proceed to vote on the specifications of error in the following order, which differs from the order of the specifications of error: 3, 4, 14, 1, 10, 8, 6, 12, 7, 11, 5, 9, 2, 13.**

First, vote on the following specifications of error that address the conduct of the trial proceeding before the New Hope Session.

Specification of Error No. 3

Specification of Error No. 4

Specification of Error No. 14

By denying these specifications or sustaining them in part as recommended by the Committee, the Presbytery would agree with the Committee that certain elements of the trial below, such as permitting closing arguments for the Session, were not procedural errors and that the procedural errors identified did not preclude the appellant from perfecting his appeal or from obtaining redress through the present appeal and, thus, do not affect the ultimate decision on the charges. The Presbytery would sustain the specification of error to the extent of pointing out errors that improperly burdened the appellant's exercise of his rights:

Second, vote on Specification of Error No. 1, which asserts that the Session erred in citing private conduct as a breach of the peace and unity of the church, addresses each specification of error in Charge No. 2 and, if sustained as recommended by the Committee, would dispose of Charge No. 2 in its entirety.

Third, vote on Specification of Error No. 10, which addresses each of the specifications in Charge No. 3 and, if sustained as recommended by the Committee, would dispose of Charge No. 3 in its entirety.

Fourth, vote on Specification of Error No. 8, which addresses each of the specifications in Charge No. 4 and, if sustained as recommended by the Committee, would dispose of Charge No. 4 in its entirety.

Fifth, vote on Specification of Error No. 6, which addresses Charge 1, Specifications Nos. 3 and 4. (Specifications 3 and 4 grow out of the making public of the Backstory, an event that precedes the appellant's correspondence to the congregation that is the factual predicate for Specifications 1 and 2.) Sustaining Specification of Error No. 6 as recommended by the Committee would dispose of Specifications 3 and 4 of Charge No. 1.

Sixth, vote on Specification of Error No. 12, which addresses Charge 1, Specifications 1 and 2, relating to the appellant's correspondence with the congregation. Sustaining Specification of Error No. 12 as recommended by the Committee would dispose of Specifications 1 and 2 of Charge 1.

Seventh, vote on the remaining specifications of error. If Presbytery has adopted the recommendations of the Committee to this point, none of the four charges would stand. The Book of Discipline, however, requires a vote on each specification of error and Presbytery's action on the remaining specifications of error could be significant if Presbytery's action on the prior specifications of error should be overturned on appeal. The Committee recommends proceeding to vote on the remaining specifications in order that each first addresses a charge, as follows, ending with Specification of Error No. 13:

Specification of Error No. 7, which the Committee recommends that Presbytery sustain, asserting that, with respect to actions alleged to have constituted a breach of the peace and unity of the church, the Session improperly charged the appellant with conduct primarily the responsibility of others.

Specification of Error No. 11, which the Committee recommends that Presbytery sustain, asserting that no sufficient evidence supported the finding of guilt with respect to Charge 2, Specification 1.

Specification of Error No.5, which the Committee recommends that Presbytery sustain, asserting that the Session erred in prosecuting charges which, even if true, would not have warranted a trial and relates to

Charge 2, Specification 3, relating to the making public of the Backstory;

Charge 3 (Generally), relating to specifications of conduct that breached the peace and unity of the church; and

Charge 4, Specification 2, asserting that the appellant's failure to answer correspondence received following his solicitation of congregational comment on his performance as an elder constituted disingenuous speech;

Specification of Error No.9, which the Committee recommends that Presbytery sustain, asserting that Session erred in finding that statements in a non-public meeting and being absent from worship constituted offenses against the peace and unity of the church and relating to Charge 2, Specification 6.

Specification of Error No. 2, which the Committee recommends that Presbytery deny, asserting that Charge 3, Specification 3, is time-barred because the date of the material rather than the date that the material was seen and not reported determines the period of limitations applies.

Specification of Error No.13, asserting that the censures imposed by the Session, deposition from office and indefinite suspension of the privileges of membership, were overly severe. If the Presbytery should choose to follow the Committee's

recommendations, none of the charges or specifications would be upheld, and Specification of Error No. 13 would be moot. If the Commission should uphold one or more of the charges and proceed to assess the censures imposed, the Committee recommends that the Presbytery impose no censure more severe than deposition from office because all of the conduct charged was significant because the appellant was held to the higher standard of conduct of an ordained officer.

APPENDIX A: COMMITTEE RECOMMENDATIONS BY SPECIFICATION OF ERROR (Cross-Referenced to Charges and Specifications)

Specification of Error No. 1: Committee Recommendation: Sustain (2.0, 2.2, 2.6, 4.2, 4.3)

Specification of Error No.1 relates to

- Charge 2 Generally
- Charge 2, Specification 2
- Charge 2, Specification 6
- Charge 4, Specification 2
- Charge 4, Specification 3

Specification of Error No. 1 addresses to the characterization in Charge 2 of private communications as instances of the violation of the peace and unity of the church. BD states that “nor shall a charge of a private offense which is not personal be admitted unless it appears that the plaintiff has first done his utmost privately to restore the alleged offender.” BD III.4 states “Public offenses are those which are commonly known. Private offenses are those which are known to an individual only, or, at most, to a very few individuals.”

The Committee recommends that the Presbytery sustain Specification of Error No. 1 because, in addition to advancing private communications to support a charge inherently public in nature, Charge No.2, in each of its specifications, asserts a violation of the peace and unity of the church without asserting a specific sin. It is not enough to charge disturbance of the church; there must be disturbance by some specific sin set forth in the charges and specifications. The reference to the same principle in an elder’s ordination vow does not resolve the problem of lack of specificity. (As an illustration: preaching Biblical truth historically has severely violated the peace and unity of many congregations, including in Edinburgh and Wittenberg, but would not in itself constitute a chargeable offense under Presbyterian polity.)

The New Hope Session responds that the violation of the peace and unity of the church cannot by its nature be a private offence. In the committee's view, however, it is for this reason that private communications of the sort described in Specification of Error No. 1 would not themselves be instances of the violation of the peace and unity of the church.

Mr. Jason R. similarly takes exception to the characterization of the failure to respond to private communications as instances of disingenuity in Charge 4, Specification 2 (private communications with individuals) and Charge 4, Specification 3 (communications with the Session). The Session did not respond meaningfully to either specification of error, and the Session’s minutes do not set forth any credible rationale for treating as disingenuous the failure to respond to private email communications in the circumstances presented, particularly in the absence of an indication to deal privately with any supposed sin. All but one of the letters to which Mr. Jason R. supposedly failed to respond were

from family members of Session members or persons who report to the Session in their employment. One of the letters specifically stated that no response was expected. Mr. Jason R. reasonably could have read the correspondence in question as efforts to elicit admissions from him in connection with a future filing against him by the Session, a circumstance which makes his decision not to respond understandable.

Specification of Error No. 2: Committee Recommendation: Deny (3.3)

Specification of Error No. 2 relates to Charge 3, Specification 3.

The Committee recommends that Presbytery deny Specification of Error No. 2, but notes that this specification and charge have other significant deficiencies addressed in response to Specification of Error No. 10.

Charge 3, Specification 3 charges Mr. Jason R. with failure to alert a congregant in his shepherding group to content on a website criticizing her writings and discussing approaches to prevent their circulation. This failure is supposed to have taken place after the defendant saw, on a date within the period of limitation, an earlier posting which itself was made on a date beyond the period for bringing a complaint. Under the theory advanced by the Session, which does not charge the defendant with having made the post in question but only with having failed to report it, the date of the original posting would not in itself establish that Charge 3, Specification 3 was time-barred.

Specification of Error No. 3: Committee Recommendation: Deny (General)

Specification of Error No. 3 relates to the conduct of the trial generally.

Specification of Error No. 3 objects to the Session's use of counsel in the examination of witnesses and to the Session's use of an opening and closing statement on its behalf. Mr. Jason R. further asserts that the Session erred in making opening and closing statements because the BD does not provide for them and because the inclusion of irrelevant and extra-record material in those statements prejudiced the Session against his position.

The Committee recommends that the Presbytery deny the exception because there is no prohibition on using opening and closing statements when a session is prosecuting a case and seeking to bring clarity to the proceeding; and Mr. Jason R. did not demonstrate that the procedural errors he identified prevented him from raising his concerns on appeal or from having those errors corrected. In the Committee's view, this specification of error is misplaced to the extent Mr. Jason R. asserts that the procedures he identifies materially prejudiced his ability to lodge his appeal. In contrast to a jury trial in a secular court, the Session itself was the sole decision maker in the proceedings below. Thus, by adding an opening and closing statement, the New Hope Session effectively was talking to itself about the preceding and allowing Mr. Jason R. (and, indirectly, any future appellate judicatory) to hear its explanation about why it was disposed toward making the decision it did.

In its best use, a closing statement or opening statement by a Session would allow the person charged, as well as any subsequent appellate judicatory, to hear the session's view of how the charges and specifications relate to the evidence adduced or to be adduced

during the trial. This would permit the charged party to respond with greater particularity in its closing statement by directing the charged party to what the Session has identified as the evidence and rationale on which it will rest its decision.

Because review of the session's action is based on the record produced, a defendant with the benefit of a Session's explanation of the reasons for its decision would have a better opportunity to speak to the Session's concerns and, in the event of an appeal, to identify inconsistencies between the decision made and the record produced. The Committee believes that, properly used, opening and closing statements on behalf of the Session should improve decisions and give added assurance that the Session treated the defendant fairly. Improper use of opening and closing statements to inject irrelevant material or to distract from the record produced at trial, on the other hand, should be largely self-correcting errors because those actions alert the appellate judicatory that Session may have rested its decision on something other than those portions of the evidentiary record from the trial relevant to the charges and specifications.

Specification of Error No. 4: Committee Recommendation: Sustain Only in Part (General)

Specification of Error No. 4 is directed at the conduct of the trial generally.

Specification of Error No. 4 asserts that testimony and other presentations in the trial before Session included statements and allegations not related to the charges and specifications, leading to judgments not based on the charges and specifications.

The Committee recommends that the Presbytery uphold Specification of Error No. 4 only to the extent of agreeing that the record below contained material and testimony introduced by the Session that was not relevant to the charges that Session brought and that improperly implied the existence of concerns not charged. The Committee recommends that the Presbytery otherwise deny Specification of Error No. 4 because Mr. Jason R. failed to identify any error that prevented him from raising his concerns on appeal or Presbytery from redressing any error on appeal.

The appearance of fairness in disciplinary proceedings is important for the reputation of Christ's Church, even if a Session had no intention to act unfairly. The Session's failure to avoid the introduction of prejudicial statements and testimony irrelevant to the charges against Mr. Jason R. objectively creates for one reading the record an impression of lack of integrity in the proceedings below and of an effort to support censures on something other than the actions charged.¹ The Session's decision to respond to many of Mr. R.'s specifications of error with an unhelpful equivalent of "we decided otherwise" compounds that impression by denying Mr. Jason R. (and the Presbytery) an understanding of whether and how the Session evaluated the evidence produced at trial as sufficient to uphold the charges brought. Insofar as the decision in this proceeding is concerned, however, the Committee believes that Presbytery may correct these errors through this appeal by disregarding proffered evidence that does not relate to the charges that the

¹ Apart from the outcome of a proceeding, a charged party could be unfairly injured at trial by the presentation of personally prejudicial material not related to the charges and specifications brought. In this regard, the Committee notes that the record shows that the Moderator below sustained objections on behalf of the defendant to argumentation unrelated to the charges and specifications. The Session, however, had the responsibility to avoid the introduction of irrelevant and prejudicial material.

Session brought. The Committee has taken that approach in developing its recommendations. To the extent that the Session may seek to support its decision by additional arguments not set forth in the Session's closing argument, the Session's minutes, or the Session's response to Mr. Jason R.'s specifications of errors, the Committee recommends that the Presbytery, as a matter of fundamental fairness, consider providing Mr. Jason R. an extension of time sufficient for him to evaluate and respond to the new material prior to voting on his specifications of error.

Specification of Error No. 5: Committee Recommendation: Sustain (2.2, 2.3, 3.0, 4.2)

Specification of Error No. 5 relates to whether the Session erred in prosecuting charges which, even if true, would not have warranted a trial. This specification relates to the following:

- Charge 2, Specification 2
- Charge 2, Specification 3
- Charge 3, and
- Charge 4, Specification 2

The Committee recommends the Presbytery sustain Specification of Error No. 5 because the charges and specifications cited did not warrant a trial.

With respect to Charge 2, Specification 2 and Charge 2, Specification 3, the failure to respond to correspondence in the circumstances described in the record did not establish a chargeable offense or an instance of specific sin to support a charge a breach of the peace and unity of the church; and, because neither of these instances involved public activity, they could not in any event support such a charge.

With respect to Charge 3, the evidence available to the Session did not establish the existence or terms of any agreement for Mr. Jason R. to undertake long-term obligations to report Web postings to the congregant in question with sufficient clarity to warrant a trial on whether he had violated some obligation to continue acting as an undisclosed informant for the congregant with respect to the Website.

With respect to Charge 4, Specification 2, the failure to respond to emails likewise did not warrant a trial. With one exception, the emails in question were sent by spouses of elders or a paid employee of the church and could reasonably have been viewed as indirect attempts by of the Session to elicit admissions for future actions. One of the letters cited to support the specification even specifically stated that no reply was expected.

Specification of Error No. 6: Committee Recommendation: Sustain (1.3, 1.4, 2.4)

Specification of Error No. 6 relates to the following charges and specifications:

- Charge 1, Specification 3
- Charge 1, Specification 4
- Charge 2, Specification 4

Specification of Error No. 6 relates to charges and specifications involving Mr. Jason R.'s providing to persons outside the New Hope congregation and visitors a document from the Session termed the "Backstory" and subsequently sending correspondence to the congregation defending himself against allegations made against him by the Session in the Backstory and other Session correspondence.

This specification of error asserts that Mr. Jason R. was charged with having caused harms that were the result of actions of others. The Backstory took specific positions related to controversial issues and named two officers of the Orthodox Presbyterian Church as having taken positions that the Session deemed improper. Mr. Jason R. supplied a copy of the Backstory to the named officers. The Backstory subsequently was published on the Web, contrary to Mr. Jason R.'s professed intent, presumably by the persons receiving it from him.²The Committee recommends that Presbytery sustain the specification of error with respect to Charge 2, Specification 4, because the specification does not name a specific sin and the charge of violating the unity and peace of the church without the enumeration of a specific sin, and there is no such enumeration here.

Charge 1, Specification 3 and Charge 1, Specification 4 address Mr. Jason R.'s sending the Backstory to the two Orthodox Presbyterian Church officers criticized in it by name. The parties apparently agree that this resulted in the circulation of the Backstory on the Web. These specifications charge that the publication of the Backstory outside the congregation resulted in the casting of aspersions on the New Hope session and on the New Hope congregant whose writings the Backstory defended because of the use that third parties made of it.

The record does not set forth any evidence that Mr. Jason R. did more than share or send a copy of the Backstory to the third party, Mr. Jason R. denied having done more in his Specifications of Error, and the Session does not assert otherwise, but charges Mr. Jason R.

² Mr. Jason R. subsequently defended himself in his open letter to the congregation against the matters set forth in the Backstory, including allegations that he had covertly opposed and betrayed the interests of a congregant ostensibly because of his views about the content of her professional writing and speaking. In his defense, Mr. Jason R. denied that his views on the congregant's writings differed significantly from the views of two other members of the Session whom he named. Mr. Jason R. was not an active member of the Session at this point, being on a sabbatical.

only with “sharing or sending a document to OPC officers outside the session of New Hope,”

The Committee recommends (1) that Presbytery sustain the specification of error with respect to Charge 1, Specification 3, and Charge 1, Specification 4, to the extent it refers the statement of a third party as having been “[b]ased on Mr. Jason R.’s communication of the situation with him” as opposed to Mr. Jason R.’s only having shared or sent the third party a copy of the Backstory, and (2) that the Presbytery otherwise sustain Specification of Error No. 6 because mitigating factors overwhelm the remainder of Charge 1, Specifications 3 and 4. Presbytery conceivably could deny the remainder of the Specification of Error on the ground that Mr. Jason R., as an ordained elder in the Session (albeit not one then actively on Session), had an obligation to respect Session’s instructions to limit circulation of the Backstory to members and regular attendees and to remain silent, even in the face of repeated written criticisms of his character and ministry from the Session. Presbytery could presume that, as an ordained officer of the church, Mr. Jason R. would understand that he had recourse to Presbytery and to the complaint process to defend himself without mounting a public defense before the congregation that could embarrass the Session or the congregant whose writings the Backstory addressed. The record here, however, shows mitigating factors that the Committee views as sufficiently strong to overwhelm the remainder of Charge 1, Specifications 3 and 4.

First, Mr. Jason R. may be viewed as having had an obligation to keep the Backstory confidential despite the way the Session distributed the Backstory. Nevertheless, the notion that a lengthy document on issues controversial in both the local and regional church sent in hard copy to each member of a congregation and each regular attendee by USPS and criticizing ordained officers inside and outside the congregation would remain confidential within that group defies ordinary human experience. Given the contents of the Backstory, it would be reasonable to conclude that the ultimate full public availability of the Backstory became certain at the point that Session chose to distribute the Backstory to the entire congregation and to non-members who were outside its disciplinary reach, and it is difficult to conceive how the Session would not have been aware of the likelihood that the Backstory would shortly become public after its initial distribution.

Second, if making the Backstory available to Orthodox Presbyterian Church officers outside the congregation “cast aspersions” on the Session and the congregant whose works the Backstory addressed, then it is difficult to see why the release of the document to the congregation and attendees, even if the Backstory had remained in that group, would not also have “cast aspersions” on the Session and the congregant: the circle of offense would only have been smaller.

Third, although “cast aspersions” often is used when a writer has in view distribution of false or misleadingly incomplete information, that is not what Mr. Jason R. did in providing the Backstory to others. To the extent that the release of the Backstory “cast aspersions” on any one’s good name, it did not do so by distorting the Session’s position or reporting partial positions or ideas that the Session was considering but had not fully endorsed. As the record indicates, Session developed and distributed the Backstory expressly as a full statement to the congregation of its position on the matters addressed.

Fourth, the record demonstrates that, in preparing the Backstory, the Session consulted and collaborated with the congregant whose writings and teachings the Backstory addressed. Thus, to the extent that the Backstory cast aspersions on the good name of the

congregant because of any false information contained in the Backstory, the deficiency resulted from a failure of the Session to obtain or reflect accurate information from the congregant with whom it consulted, and not any failing of Mr. Jason R., whom the Session excluded entirely from the process of preparing the Backstory.

Specification of Error No. 7: Committee Recommendation: Sustain (2.0, 2.1)

Specification of Error No. 7 charges that the Session held Mr. Jason R. responsible for the actions of others with respect to several actions related to the breach of the peace and unity of the church. This specification of error relates to

- Charge 2, Specification 1
- Charge 2 generally.

The Committee recommends that the Presbytery sustain the specification of error because the charge of disturbing the peace and unity of the church, standing alone, does not set forth a chargeable offense unless accompanied by the enumeration of a specific sin. Causing a Session to spend time is not in and of itself a sin that provides the missing element, so there is no need to evaluate whether what portion of the time spent in this dispute is attributable to Mr. Jason R. and what portion to the Session. The Committee believes it would be fitting for the Presbytery to disapprove the references in Charge 2, Specification of Error No. 1, to “concerns about . . . character and shepherding.” Whatever the Session may mean by those terms, it has not found them sufficiently serious to be chargeable offenses and the use of words in a public document that imply otherwise is inappropriate and creates an impression of carelessness about the reputations of others.

Specification of Error No. 8: Committee Recommendation: Sustain (4.1, 4.2, 4.3, 4.4)

Specification of Error No. 8 relates to

- Charge 4, Specification 1
- Charge 4, Specification 2
- Charge 4, Specification 3
- Charge 4, Specification 4

The Committee recommends that the Presbytery sustain Specification of Error No. 8, which relates to instances of supposed disingenuous speech in Charge 4, Specifications 1, 2, 3, and 4, because some of the specifications involve only non-speech conduct and the other specifications involve circumstances too ambiguous reasonably to conclude that the defendant spoke disingenuously.

Charge 4, Specification 1, concerns a statement that Mr. Jason R. had attempted to avoid the need to file a complaint and asserts he acted disingenuously by filing his complaint

before responding to the Session's request that he provide written statements that could reasonably appear to have been requests for admission that Session might have sought for a filing of its own.

Charge 4, Specification No. 2 involves failure to respond to correspondence sent in response to Mr. Jason R.'s statement of interest in hearing from others about his performance as an elder. The record shows no commitment to respond to any such correspondence and at least one of the pieces of correspondence even stated that no response was expected.

Charge 4, Specification 3 asserts that a statement of desiring reconciliation was disingenuous because Mr. Jason R. had not read a book specified by Session and provided Session with a written response. Failure to take requested actions is different from being disingenuous.

Charge 4, Specification 4 involves statements Mr. Jason R. made to Presbytery in response to questions about his church attendance. No member of the Session appears to have challenged Mr. Jason R.'s statement on the floor of Presbytery at the time it was made and the members of Session testifying in the proceeding do not appear to concur as to what Mr. Jason R. actually said.

The Committee believes it may be fitting for the Presbytery call out for special disapproval the statement of the Session in its response to Mr. Jason R.'s complaint that Mr. Jason R. was disingenuous in his specifications of error because he complained that he "was not provided the official transcript of the trial soon enough, when the session gave him, within a week of his notice, a 160-page draft transcript of the trial!" Mr. Jason R. was entitled to final Session minutes that explained why the Session believed the evidence adduced during the proceeding supported the specific charges and specifications that it upheld. Furnishing a 160-page transcript subject to being changed that did not include that explanation did not provide Mr. Jason R. with what the Session should have placed in his hands before the period for preparing his appeal began to run.

Specification of Error No. 9: Committee Recommendation: Sustain (2.6)

Specification of Error No. 9 relates to Charge 2, Specification 6. The Session asserts in response that Charge 2, Specification 6, does not charge absence from worship but breach of the peace and unity of the congregation by reason of a statement by Mr. Jason R. in a non-public meeting of Session that he could not sit under Mr. VanD.'s preaching, nor take communion from him. Breach of the peace and unity of the congregation does not establish a chargeable offense absent the enumeration of a specific sin, which Charge 2, Specification 6 does not do. Moreover, a breach of the peace and unity of the church is, by its terms, necessarily public and a statement in a private meeting is not.

Specification of Error No. 10: Committee Recommendation: Sustain (3.1, 3.2, 3.3)

Specification of Error No. 10 relates to a lack of evidence to establish that Mr. Jason R.'s supposed failure to report to a congregant on Website postings criticizing her work constituted a chargeable offense and relates to

- Charge 3, Specification 1
- Charge 3, Specification 2
- Charge 3, Specification 3

The Committee recommends that the Session sustain Specification of Error No. 10 and reject Charge 3 and each of its three specifications because of the failure to establish a sufficient predicate for the charge in the evidentiary record. Charge 3 and each of its specifications charge only a failure to report information appearing on a Website critical of a congregant.

In the Committee's view, the evidence available to the Session did not establish the existence or terms of any agreement for Mr. Jason R. to undertake specific long-term obligations to report Web postings to the congregant in question with sufficient clarity and specificity to warrant a trial on whether he violated some obligation. Website monitoring for postings adverse to a congregant's writings is not an ordinary part of shepherding.

The Committee notes a concern that the Session arguably could not have reached its decision that Mr. Jason R. was obligated to monitor and report on communications on the Website in question without implicitly determining (1) that it would have been proper for Mr. Jason R. to participate as an undisclosed informant despite an apparent requirement for a pledge of confidentiality to other participants as a condition to participate on this Website, (2) that it would have been proper for the congregant to obligate Mr. Jason R. to undertake covert monitoring and reporting under those circumstances, and (3) that it would have been proper for the Session to enforce such an obligation under those circumstances. There is insufficient information in the record for Presbytery resolve those points in this appeal.

Specification of Error No. 11: Committee Recommendation: Sustain (2.1)

Specification of Error No. 11 relates to Charge 2, Specification 1.

Specification of Error No. 11 addresses the insufficiency of the evidence to support Charge 2, Specification 1, which asserts that several instances of time spent by the Session on unspecified matters related to Mr. Jason R. constituted a breach of the peace and unity of the church. **The Committee recommends that the Presbytery sustain Specification of Error No. 11 for the following several reasons.** A charge of breach of the peace and unity of the church cannot stand alone without the enumeration of some specific sin, and Charge 2, Specification 1 includes no such enumeration. Moreover, Charge 2, Specification 1 addresses non-public matters not in any event relevant to a breach of the peace and unity of the congregation, which is inherently a public matter.

Specification of Error No. 12: Committee Recommendation: Sustain (1.1, 1.2, 2.5)

Specification of Error No. 12 relates to

- Charge 1, Specification 1
- Charge 1, Specification 2
- Charge 2, Specification 5

Specification of Error No. 12 relates to charges and specifications involving Mr. Jason R.'s sending personal correspondence to the congregation defending himself against allegations made against him by the Session in the Backstory document described in the discussion above of Specification of Error No. 6.

Specification No. 1 focuses on Mr. Jason R.'s having sent a personal letter to the congregation without the advice or permission of the New Hope Session. Specification 2 asserts that the writing and sending of the letter "cast aspersions" on the name of a member of the New Hope congregation by stating, based on personal conversations within the New Hope Session, that certain members of the New Hope Session "have stated to me and in session their [the Session's] concerns about her [the congregant's] writing that are of the same vein as the concerns that members of GC [Genevan Commons, a Web-based membership discussion group] have."

Mr. Jason R. defended himself in his open letter to the congregation against the matters set forth in the Backstory, including allegations that he had covertly opposed and betrayed the interests of the congregant because of his supposed opposition to the content of her writing and speaking. In his defense, Mr. Jason R. stated that the views of certain other members of the Session were similar to those of some of the members of the Website that the Session criticized in the Backstory. Mr. Jason R. was not an active member of the Session at this point, being on a sabbatical.

In his exceptions, Mr. Jason R. asserts that he properly sent the letter in furtherance of that portion of Question 144 of the Westminster Larger Confession ("WLC") that commends "love and care of our own good name, and defending it when need requireth." Although this situation implicates that principle and the sending of the letter furthered that principle, that principle does not necessarily override other principles that may be involved and is not a complete answer to Charge 1, Specification 3. Presbytery conceivably could deny Specification of Error No. 12 on the ground that Mr. Jason R., as an ordained elder in the Session (albeit not one then actively on Session), had an obligation to remain silent, even in the face of repeated written public criticisms of his character, ministry, and good name from the Session. Presbytery could presume that, as an ordained officer of the church (although not then active on the Session), Mr. Jason R. would understand that he had recourse to Presbytery and to the complaint process to defend himself without mounting a public defense before the congregation that could embarrass the Session or the congregant whose writings the Backstory addressed.

The Committee, however, recommends that Presbytery sustain Specification of Error No. 12 because the record shows mitigating factors that the Committee believes overwhelm the remainder of Charge 1, Specifications 3 and 4.

First, Mr. Jason R. remained silent following other correspondence from the Session to the congregation that questioned his ministry and character based on private conversations without the institution of the processes contemplated by the Book of Discipline. Only later, after further communications to the congregation by the Session, did Mr. Jason R. even file a formal complaint to seek redress.

Following the filing of the complaint, the Session terminated informal communications with Mr. Jason R. and sent the lengthy Backstory letter to the congregation and to non-member regular attendees who were beyond the reach of the Session's discipline. Thus, even with the initial release of the Backstory, the Session already had distributed the Backstory, with information prejudicial to Mr. Jason R., to members of the public whose use or further publication of the Backstory was beyond the Session's control, making it all but certain that the Backstory eventually would become public.

Second, the portions of Mr. Jason R.'s letter to the congregation alleged to have "cast aspersions" on the good name of a congregant through his letter—the gravamen of the charge against Mr. Jason R. in Charge 1, Specification 2—concern the congregant's professional writings and the ideas they embody, not the congregant's good name or reputation for personal integrity. The portion set forth in the charge states: "[T]hey [certain Session members] have stated to me and in session their [those Session member's] concerns about her [the congregant's] *writing* that are of the same vein as the concerns that members of GC [Genevan Commons] have." (Emphasis added.) The reference in the specification is to the congregant's "*writing*"—implicitly, to ideas advanced in her writings.

New Hope Session has not named in Charge 1, Specifications 1 and 2, any personal attack or slur by Mr. Jason R. on the congregant's character or good name, notwithstanding the reference to "aspersions" on the congregant's good name.

³ It does not attack the good name or reputation of a person (and certainly not that of one who is a professional writer, author, and speaker) to say that certain others do not agree with the ideas expressed in something that he or she wrote and to put those ideas forward for discussion and consideration.

Third, the reference to the congregant's writings cited in the specification is too general to be read as a statement that the New Hope Session or any Session member disapproved generally of the congregant's and writings. Fairly read, the quoted statement is an instance of Mr. Jason R.'s defending his own position vis-à-vis his participation in the Website group in question. Thus, he indicates that his participation in the Website group did not constitute endorsement of an extreme position in opposition to the congregant because other members of the New Hope Session had some of the same concerns that some members of the Website did, the implication being that Mr. Jason R.'s views were well within the window for discussion among fellow believers, including the congregant.

Finally, the Session did not allege that Mr. Jason R. intended any harm to the congregant or made any intentional misrepresentation through the sending of his letter to the

³ "Aspersions" is, in any event, a slippery word. Although often used to refer to false reports casting a shadow on another's reputation, "aspersions" can mean a true statement that calls one's reputation into question. Here, the statement in question, fairly read, cast no aspersions whatsoever, true or false, on the good name of the congregant.

congregation or that the statement underlying Charge 1, Specification 4 was untrue. All that remains of the charge is an instance of an elder not actively on Session sending a personal letter to the congregation without seeking leave of the Session, which by that time had indicated that it would no longer engage in informal communications with him.

Charge 2, Specification 5, asserts that Mr. Jason R.'s sending of a personal letter to the congregation without the leave of the Session breached the peace and unity of the church. The sending of a congregational letter, in and of itself, is not a sin. A charge of the breach of the peace and unity of the church cannot stand alone without the enumeration of a specific sin, something Charge 2, Specification 5 does not do.

Specification of Error No. 13: Committee Recommendation: Sustain (General)

Specification of Error No. 13 challenges the seriousness of the censures imposed rather than any charge or specification.

The Committee recommends that Specification of Error No. 13 be sustained and that no censure be imposed. Presbytery's acceptance of the Committee's recommendation with respect to each of Mr. Jason R.'s specifications of error would result in the dismissal of each of the charges and specifications against Mr. Jason R. and no imposition of any censure.

In the event that Presbytery nevertheless should sustain any of the charges and specifications against Mr. Jason R., which certainly is its prerogative, the Committee recommends that censure be no more extreme than deposition from office, given that each of the charges and specifications alleged takes its significant from the relationship of those acts to Mr. Jason R.'s service as an elder.

Specification of Error No. 14: Committee Recommendation: Sustain Only in Part

Specification of Error No. 14 relates to the record of the trial generally and not to any specific charge or specification.

Specification of Error No. 14 addresses errors in the preparation of the record of the trial contrary to the provisions of BD IV.A.2.b, which states that in the minutes of the trial the following shall not be omitted: "(2) objections made and exceptions taken at any stage of the trial; (3) a list of witnesses who testified and a summary of their testimony "

The Committee recommends that Presbytery sustain the Specification of Error only to the extent it points out procedural irregularities in the proceedings before the Session that unnecessarily and unfairly burdened Mr. Jason R.'s exercise of his rights to appeal, even if not demonstrably affecting the outcome of the proceeding. The Session furnished Mr. R. with a draft transcript of the trial and, subsequently with draft minutes, but neither the transcript nor the minutes specifically set forth in meaningful detail why the Session concluded that the evidence adduced at the trial supported the particular points needing to be established to uphold each charge and specification. In particular, the minutes of the trial fail to include a summary of the testimony of witnesses to indicate the relationship of their testimony to the Session's final decision. As a result, the appellant effectively faced the need to prove a negative: to show that no possible construction of the evidence would

support the charges and specifications because the Session had not provided him with a concise statement of why Session believed that the evidence supported the charges and specifications.

Mr. Jason R. responded reasonably to the dilemma with which the Session presented him with a lengthy and highly detailed list of specifications of error seeking to cover every possible construction of the evidence and the transcript that the Session might later advance. The resulting complication of the proceeding and the additional burden on the Presbytery from this situation is, in the Committee's view, not due in any substantial respect to any fault of Mr. Jason R..

Mr. Jason R. did not demonstrate that any failure of the Session to compile and deal appropriately with the record in any of the ways he described ultimately prejudiced his ability to lodge his appeal. Thus, he cites no objection asserted during trial that he was unable to preserve and present as a specification of error because of an action or inaction of the Session at trial, nor does he cite any witness testimony alleged to have been altered or omitted. The only specific inaccuracy that Mr. Jason R. notes is a discrepancy between the trial transcript and the minutes with respect to whether Mr. Jason R. declined his right to request that the judicatory assess whether there was a warrant for the trial. Because all parties appear to agree that the trial did proceed after that point as the transcript indicates, the question whether the trial continued because Mr. Jason R. waived his right to the assessment or because he exercised the right and Session found warrant to continue the trial did not prejudice Mr. Jason R.'s ability to appeal.

APPENDIX B: CHARGES AND SPECIFICATIONS (Cross-Referenced to Specifications of Errors)

Charges and Specifications Against Mr. Jason R.

Charge 1:

We, the members of the Session, charge Mr. Jason R. with the offense of violating the ninth commandment by failing to protect the good name of others.

Scripture References: Exodus 20:16; Ephesians 4:15 "...speaking the truth in love..."; Ephesians 4:29 "but only such [talk] as is good for building up... , that it may give grace to those who hear"; James 4:11 "Do not speak evil against one another, brothers;" Acts 20:28 "Pay careful attention to....the flock, in which the Holy Spirit has made you overseers, to care for the church of God"

Constitutional References: WLC Q 144 "preserving and promoting.....the good name of our neighbor..."; WLC Q 145 "detracting... , reviling....."

Specification 1:

Specification of Errors No. 12 (Sustain)

On or about April 22, 2020, Mr. Jason R., without the advice or permission of the New Hope Session, sent a personal email to the members and regular attenders of New Hope Church defending himself, delineating his grievances and disagreements with the New Hope Session, and explaining his concerns with the New Hope Session's response to his complaint prior to Presbytery even processing his appeal.

Document: Document 1 (Mr. Jason R. email to church members).

Witnesses: Mr. Karl K., Mr. Dave M., Mr. Francis VanD., Mr. John W. (for the provenance of document).

Specification 2:

Specification of Errors No: 12 (Sustain)

On or about April 22, 2020, Mr. Jason R. cast aspersions on Mrs. Aimee B.'s good name by writing about private conversations in his email to New Hope Church members and regular attenders: "they have stated to me and in session their [Session's] concerns about her [Mrs. Aimee B's] writing that are of the same vein as the concerns that members of GC [Genevan Commons] have."

Document: Document 1 (Mr. Jason R. email to church members). Witnesses: Mr. Karl K., Mr. Dave M.

Specification 3:**Specification of Errors No: 6 (Sustain)**

Mr. Jason R. cast aspersions on Mrs. Aimee B. when, on or about April 21, 2020, he shared The Backstory and his understanding of matters at New Hope Church with an OPC officer not from New Hope Church. Based on Mr. Jason R.'s communication of the situation with him, that officer wrote "Mrs. Aimee B. has been laboring in her own session and in the OPC to develop some way to bring charges against me and others for opposing her. To do this, they have assembled (dissembled?) snippets of this and that for years.

And now, she has accomplished the removal of one of her own elders without proper discipline procedures for not adequately supporting her. On Good Friday, members of Mrs. Aimee B's church began receiving a mailed document in which the session presented its written case against Genevan Commons to its congregation as part of its work to divest the elder who displeased Mrs. Aimee B. by his membership in Genevan Commons...."

Documents: Document 2 (The Backstory), Document 3 (Daily Genevan Blog).

Witnesses: Mrs. Aimee B., Mr. Joel P., Mr. Dave M.

Specification 4:**Specification of Errors No. 6 (Sustain)**

Mr. Jason R. cast aspersions on New Hope Session when, on or about April 21, 2020, and without the advice or permission of the New Hope Session, he shared The Backstory and his understanding of matters at New Hope Church with an OPC officer not from New Hope Church. Based on Mr. Jason R.'s communication of the situation with him, that officer wrote "Mrs. Aimee B. has been laboring in her own session and in the OPC to develop some way to bring charges against me and others for opposing her. To do this, they have assembled (dissembled?) snippets of this and that for years. And now, she has accomplished the removal of one of her own elders without proper discipline procedures for not adequately supporting her."

Documents: Document 2 (The Backstory), Document 3 (Daily Genevan Blog).

Witnesses: Mr. Joel P., Mr. Dave M.

Charge 2:**Specification of Errors Nos: 1 (Sustain), 7 (Sustain)**

We, the members of the Session, charge Mr. Jason R. with the offense of violating the command to keep the unity and peace of the church (Ephesians 4:3), a sin aggravated by being a violation of his ordination vow to "seek the peace, the purity, and the unity of the church."

Scripture References: Exodus 20:16; Ephesians 4:3.

Constitutional References: WLC Q 144 "...keeping of lawful promises.. .;" WLC Q 145 "...breach of lawful promises.. .;" FG 25:6.b(4).

Specification 1:**Specification of Errors Nos: 7 (Sustain); 11 (Sustain)**

Session expressed concerns about Mr. Jason R.'s character and shepherding directly to him, spending some time on it at its January 7th meeting, a significant amount of time on it in its January 15th meeting, most of its time on it at its January 25th meeting, as well as detailing the concerns in a letter from the New Hope Session to Mr. Jason R. dated February 6, 2020. Mr. Dave M. and Mr. Francis VanD. had a lengthy conversation with Mr. Jason R. on or about January 4, 2020 about these concerns, and Mr. Francis VanD. also wrote a personal letter to Mr. and Mrs. R. dated January 30, 2020 which addressed some of these concerns. However, Mr. Jason R. has not addressed these concerns to date. Document: Document 4 (Session's Feb 6 letter).

Witnesses: Mr. John W., Mr. Dave M., Mr. Francis VanD.

Specification 2:**Specification of Errors Nos:1 (Sustain), 5 (Sustain)**

On or about February 25, 2020 Session requested Mr. Jason R. to write out his "concerns with where Session erred in policy/procedure matters, along with why [he] believed they were wrong." No response was received, although on or about March 25, 2020 Mr. Jason R. filed a complaint against the Session.

Documents: Document 5 (Session's concerns request), Document 6 (Complaint). Witnesses: Mr. John W., Mr. Dave M., Mr. Francis VanD.

Specification 3:**Specification of Errors No: 5 (Sustain)**

On March 4, 2020 Mr. Francis VanD., on behalf of Session, asked Mr. Jason R. to meet with Session on March 14th to respond to several questions prepared by the Session. On March 9, 2020 Mr. Jason R. responded that that date didn't work. On March 9th Mr. Francis VanD. asked for "a few Saturdays or Tuesdays that work for you" and received no response.

Document: Document 7 (Session date request).
Witnesses: Mr. Karl K, Mr. Dave M., Mr. Francis VanD.

Specification 4:**Specification of Errors No: 6 (Sustain)**

On or about April 21, 2020, Mr. Jason R., without the advice or permission of the New Hope Session, sent a document (The Backstory) intended only for members and regular attenders of New Hope Church to an OPC officer outside of New Hope Church and the Presbytery of the Mid-Atlantic, who had a vested interest in it and subsequently posted it on his website, which made this a public affair well beyond the boundaries of our local church.

Documents: Document 2 (The Backstory), Document 3 (Daily Genevan Blog). Witnesses: Mr. John W., Mr. Karl K., Mr. Dave M.

Specification 5

Specification of Errors No. 12 (Sustain)

On or about April 22, 2020, Mr. Jason R., without the advice or permission of the New Hope Session, sent a personal email to the members and regular attenders of New Hope Church defending himself, delineating his grievances and disagreements with the New Hope Session, and explaining his concerns with New Hope Session's response to his complaint prior to Presbytery even processing his appeal.

Document: Document 1 (Mr. Jason R. email to church members). Witnesses: Mr. Karl K., Mr. Dave M.

Specification 6:

Specification of Errors Nos: 1 (Sustain); 9 (Sustain)

In a Session meeting on May 5, 2020, Mr. Jason R. stated that he could not sit under Mr. Francis VanD.'s preaching, nor take communion from him. Mr. Jason R. was physically absent from public worship from January 26th to May 5th, and until September 13th, 2020, despite attending another local church in person with some frequency.

Documents: Document 8 (Attendance Lists), Document 9 (Attendance Email). Witnesses: Mr. Dave M., Mr. John W., Mr. Francis VanD.

Charge 3:

Specification of Errors No: 5 (Sustain)

We, the members of the Session, charge Mr. Jason R. with the offense of violating the fifth commandment by failing to protect the flock of God.

Scripture References: Exodus 20:12, 13; Acts 20:28 "Pay careful attention to... all the flock "

Constitutional Reference: WLC Q 130 "...careless exposing, or leaving them to wrong... , danger...."

Specification 1:

Specification of Errors No: 10 (Sustain)

On or about December 10th, 2019, Mr. Jason R. said he saw on the Web warnings like "Aimee Aimee B. being promoted in the OPC. Guard your families and churches" written about Mrs. Aimee B. speaking at the Machen Retreat and Conference Center's ladies retreat, which were posted on or about August 15th, 2019, on the Genevan Commons

Facebook group, and on the Machen Center's homepage. He failed to alert her to these matters.

Document: Document 10 (Screenshot Warning).
Witnesses: Mrs. Aimee B., Mr. Dave M.

Specification 2:

Specification of Error No. 10 (Sustain)

On or about December 10th, 2019, Mr. Jason R. said he saw a post written in late 2019 threatening offensive and defensive measures to be taken against Mrs. Aimee B. because "we are in a war for the heart and soul of our churches and communities." He failed to alert her to any of these things.

Documents: Document 11 (Screenshot GC Meetup), Document 12 (Screenshot Offensive Measures).

Witnesses: Mrs. Aimee B., Mr. Dave M.

Specification 3:

Specifications of Errors Nos.: 10 (Sustain); 3 (Denied)

On or about December 10th, 2019, Mr. Jason R. acknowledged seeing offensive comments about Mrs. Aimee B. on the Genevan Commons website, which comments he calls rude. Mr. Jason R. posted a comment in a thread in which Mrs. Aimee B.'s book was mocked by being retitled "Why Can't We Be Naked?" He failed to alert her to any of these things.

Document: Document 13 (Screenshot Book). Witnesses: Mrs. Aimee B., Mr. Dave M., Mr. Francis VanD.

Charge 4:

We, the members of the Session, charge Mr. Jason R. with the offense of violating the ninth commandment by speaking with doubtful and equivocal expressions, in other words, being disingenuous.

Scripture References: Exodus 20:16; James 5:12.

Constitutional References: WLC Q 144, "...sincerely, freely, clearly, and fully speaking the truth... "; and WLC Q 145, "...speaking the truth... in doubtful and

⁴ The strike through and underlined text, added by the Committee, indicate changes made in the initial charges and specifications prior to the end of the trial.

equivocal expressions "

Specification 1:

Specification of Errors No: 8 (Sustain)

On March 25, 2020 in Mr. Jason R.'s Complaint, he states that he "made a serious effort to correct the error short of entering a complaint" while having given no answer to Session's February 25, 2020 request to him to write out his "concerns with where Session erred in policy/procedure matters, along with why [he] believed they were wrong."

Documents: Document 6 (Complaint}, Document 5 (Session concerns request).

Witnesses: Mr. Karl K., Mr. Dave M., Mr. Francis VanD.

Specification 2:

Specification of Errors Nos: 1 (Sustain); 5 (Sustain); 8 (Sustain)

On or about April 22, 2020, Mr. Jason R. wrote in his unsolicited email to New Hope Church members and regular attenders that "I desire for others to speak to me about concerns that they might have. Please feel free to reach out."

However, when various members wrote to him, including but not limited to Mrs. S., Mrs. VanD., and Mrs. W., they received no response.

Document: Document 1 (Mr. Jason R. email to church members).

Witnesses: Mr. Karl K., Mr. Dave M., Mrs. S., Mrs. VanD., Mrs. W.

Specification 3:

Specification of Errors Nos: 1 (Sustain); 8 (Sustain)

On or about April 22, 2020 in his unsolicited email to New Hope Church members and regular attenders, and on other occasions, Mr. Jason R. expressed "a desire for reconciliation" and "I earnestly pray for resolution and miraculous healing." However, he has not responded to the New Hope Session's request for a list of his concerns (February 25, 2020), for dates to meet (March 9th), and to read and discuss a book (February 25, 2020), and has made no movement or effort to work with Session to this end apart from filing a complaint.

Documents: Document 1 (Mr Jason R. email to church members}, Document 5 (Session concerns request), Document 7 (Session date request).

Witnesses: Mr. Karl K., Mr. Dave M.

Specification 4:

Specification of Errors No: 8 (Sustain)

On September 19, 2020, when asked on the floor of Presbytery if he had been regularly attending New Hope Church, Mr. Jason R. failed to answer with a

clear "no" despite frequently absenting himself from public worship services at New Hope from January 26th to September 13, 2020, despite attending another local church in person with some frequency, and despite having stated on May 5, 2020 in a Session meeting that he could not sit under Mr. Francis VanD.'s preaching.

Rather, he spoke of how he tried to keep up with a few members via phone, and was keeping his distance due to Covid-19 concerns related to his parents' health.

Documents: Document 8, (Attendance Lists), Document 9, (K. Email).

Witnesses: Mr. Steve H., Mr Karl K., Mr. Francis VanD., Mr. John W..

[End]