

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

11 November 2022

From: Ken B., Stated Clerk, Presbytery of the Mid-Atlantic

To: Jason R., William R., Paige P., Jesse B., Trevor W., Kelly R., New Hope Session, Francis VanD.

At the 17 September 2022 Regular Meeting of Presbytery, the following motion was passed:

“On recommendation from the [Visitation] committee Presbytery instructed the clerk to communicate an apology to the parties involved for the delays caused by its significant errors in processing the charges against Mr. VanDelden.”

On behalf of the Presbytery of the Mid-Atlantic of the OPC, I am writing to apologize for the delays caused by its significant errors in processing the charges against Mr. VanD.

The charges (against Mr. VanD. and New Hope ruling elders) were initially brought to the Stated Clerk on 22 March 2021. The charges were referred to an ad hoc committee appointed by the Moderator on 29 March 2021. This committee completed a preliminary investigation and presented it to the presbytery on 1 May 2021. (see Appendix A)

Following the 1 May 2021 meeting, after draft minutes were sent out for review, a member of presbytery made a telephone call to the Moderator and expressed his concern that the minutes were not clear as to whether the charge against Mr. VanD. had been found to be serious enough to warrant a trial, and that this could be used as a basis of appeal if the accused should subsequently be convicted. The Moderator phoned the Stated Clerk to discuss this. The Moderator and Stated Clerk proposed to edit the draft minutes of the 1 May 2021 meeting to state that the presbytery must next determine whether the charge was serious enough to warrant a trial, and that this proposed change must be openly announced. The proposed change appeared as follows:

“Presbytery moved to adjourn the current discussion and consider the report of the Ad Hoc Committee to examine the Appeal in a special meeting, after which it will ~~appoint prosecutors and determine the first date of trial~~ determine whether the charges, if proved true, would constitute an offense serious enough to warrant a trial in accordance with Book of Discipline III, 7.”

This proposed change generated considerable controversy at the 26 June 2021 Adjourned meeting. As a consequence, the minutes of the May meeting presented for approval at the September Regular Meeting reverted to the original wording, as follows:

“Presbytery moved to adjourn the current discussion and consider the report of the Ad Hoc Committee to examine the Appeal in a special meeting, after which it will appoint prosecutors and determine the first date of trial.”

The presbytery took the following actions as recorded in its minutes (pp 110-111; see Appendix B):

1. Determined that it did not satisfy the requirement to determine “whether the charge, if proved true, would constitute an offense serious enough to warrant a trial” BD III, 7.b(6) with respect to the charges against Mr. VanD. in the May meeting.
2. Postponed the determination of whether the fixed charge against Mr. VanD. is in order to the September meeting of Presbytery, and to gave notice to the accusers that they might attend.

Mr. J. gave notice that at the September meeting he intends to bring a motion to rescind the motion to dismiss the charge against Mr. VanD., and to amend it by finding the charge against him serious enough to warrant a trial.

At the regular meeting of presbytery on 19 September 2021, presbytery again took up the business of the charge against Mr. VanD.. Presbytery failed to reach a conclusion at this meeting, and determined to continue this business at an adjourned meeting in October. (See Appendix C)

At the adjourned meeting of the presbytery on 9 October 2021, presbytery determined that the charge against Mr. VanD. did not constitute an offense serious enough to warrant a trial. (See Appendix D)

At the regular meeting of presbytery held on 4 December 2021, two complaints and a protest were brought. An ad hoc committee brought recommendations on handling these complaints and protest. The outcome was that the preliminary investigation brought to the 1 May meeting was completed, that the charge against Mr. VanD. was in fact serious enough to warrant a trial, but declined to go to trial. (See Appendix E for a rather lengthy quote from the minutes of that meeting.)

In conclusion, presbytery erred in not acknowledging it had already found the charge against Mr. VanD. to be serious enough to warrant a trial at its 1 May 2021 meeting, and wasted considerable time in the meetings which followed. This was an injustice to the accusers and to Mr. VanD.. The accusers were denied a fair trial to adjudicate their charge in the interests of justice. Mr. VanD. was denied the proper opportunity to defend himself that a trial would have afforded. The Presbytery of the Mid-Atlantic begs forgiveness from all involved.

This matter has not yet reached a conclusion. There is a complaint against presbytery for not proceeding to trial. The complaint was denied by presbytery and will now go to the 2023 General Assembly on Appeal.

In Christ,

Ken B.

PMA Stated Clerk

## **Appendices**

### **Appendix A**

#### **Extract (pp 102-103) from the minutes of the 1 May 2021 Regular Meeting**

##### **e. Charges against New Hope Session.**

A formal warning was read to the accusers in accordance with BOC 3.6.

The Ad Hoc Committee to examine the charges against New Hope officers presented its recommendations, after which presbytery engaged in a time of questioning the Ad Hoc committee, the accusers and accused.

On motion, Presbytery accepted the first recommendation of the Ad Hoc committee:

**Find corporate act charges out of order, i.e.**

- **H.e and all similarly charged (per H. enumeration): Charge 1, Specifications 1-4; Charge 2, Specifications 1-3; Charge 3, Specification 1 (publicity)**
- **H. and all similarly charged (per H. enumeration): Charge 1, Specification 6 (remarks at trial)**
- **H. and all similarly charged (per H. enumeration): Charge 3, Specification 2 (remarks at PMA)**

Mr. M. asked that his negative vote be recorded in the minutes.

On motion, Presbytery accepted the following recommendations of the Ad Hoc Committee:

- **Find Charges re open letter out of order, i.e. H. and all similarly charged (per H. enumeration): Charge 1, Specification 5; Charge 2, Specification 4. (Recommendation 2)**
- **Find Charge 3, specifications 3 and 4 out of order. (Recommendation 3)**
- **Find charge (two counts) against Mr. VanD. in order but potentially in need of fixing [BD III.7.b], in the following revised form: (Recommendation 4b):**

- **Mr. VanD. did commit the 9<sup>th</sup> commandment offense of improperly disparaging Mr. R's good name (thereby failing to keep the peace, purity, and the unity of the church and contrary to his ordination vow).**
  - **Specification 1 (count 1):** On February 11, 2020, Mr. VanD., in an open session meeting, gave examples of sins Mr. R. was alleged to have committed apart from the filing of formal charges.
  - **Specification 2 (count 2):** On February 13, 2020, Mr. VanD., in an open meeting of the congregation, gave examples of sins Mr. R. was alleged to have committed apart from the filing of formal charges.
- **If Presbytery deems that a charge of charges by the accusers may not go to trial, defer the question of whether censure should be considered (for faulty charge[s]) until the completion of the R. appeal.** (Recommendation 5)
- **Agree to assume prosecution.** (Recommendation 6a)

As a consequence of the motion, all charges except for those against Mr. VanD. as per Recommendation 4b were dropped.

By common consent the charge against Mr. VanD. was fixed to the following:

**Mr. VanD. did commit the 9<sup>th</sup> commandment offense of improperly disparaging Mr. R's good name (thereby failing to keep the peace, purity, and the unity of the church and contrary to his ordination vow).**

- **Specification 1 (count 1):** On February 11, 2020, Mr. VanD., in an open meeting, gave examples of sins Mr. R. was alleged to have committed apart from the filing of formal charges.
- **Specification 2 (count 2):** On February 13, 2020, Mr. VanD., in an open meeting, gave examples of sins Mr. R. was alleged to have committed apart from the filing of formal charges.

**Witnesses** those in previous (unfixed) charge [Clerk's note: These witnesses per the unfixed charge are Mr. William R., Ms. Paige P., Mr. VanD., Mr. M., Mr. K., and Mr. Jason R.].

**Scripture:** Ex. 20:16 *inter alia*

**Constitution:** WLC 145

**Seriousness:** See parentheses in charge proper [**failure to keep the peace, purity, and the unity of the church and contrary to his ordination vow**] and BD III.

Presbytery moved to adjourn the current discussion and consider the report of the Ad Hoc Committee to examine the Appeal in a special meeting, after which it will appoint prosecutors and determine the first date of trial.

## **Appendix B**

### **Extract (pp 110-111) from the minutes of the 26 June 2021 Adjourned Meeting**

#### **6. (Docket 11) Miscellaneous Business.**

##### **Docket 11.e Charges against New Hope Session.**

The fixed charge against Mr. VanD. is reproduced below:

**Mr. VanD. did commit the 9<sup>th</sup> commandment offense of improperly disparaging Mr. R's good name (thereby failing to keep the peace, purity, and the unity of the church and contrary to his ordination vow).**

- **Specification 1** (count 1): On February 11, 2020, Mr. VanD., in an open meeting, gave examples of sins Mr. R. was alleged to have committed apart from the filing of formal charges.
- **Specification 2** (count 2): On February 13, 2020, Mr. VanD., in an open meeting, gave examples of sins Mr. R. was alleged to have committed apart from the filing of formal charges.

**Witnesses** those in previous (unfixed) charge [Clerk's note: These witnesses per the unfixed charge are Mr. William R., Ms. Paige P., Mr. VanD., Mr. M., Mr. K., and Mr. Jason R.].

**Scripture:** Ex. 20:16 *inter alia*

**Constitution:** WLC 145

**Seriousness:** See parentheses in charge proper [**failure to keep the peace, purity, and the unity of the church and contrary to his ordination vow**] and BD III.

On motion, Presbytery determined that it did not satisfy the requirement to determine "whether the charge, if proved true, would constitute an offense serious enough to warrant a trial" BD III, 7.b(6) with respect to the charges against Mr. VanD. in the May meeting.

Mr. Jones asked that his negative vote be recorded.

A motion was brought to dismiss the charge as not being serious enough to warrant a trial. It was seconded.

Presbytery moved to postpone the determination of whether the fixed charge against Mr. VanD. is in order to the September meeting of Presbytery, and to give notice to the accusers that they might attend.

Mr. J. gave notice that at the September meeting he intends to bring a motion to rescind the motion to dismiss the charge against Mr. VanD., and to amend it by finding the charge against him serious enough to warrant a trial.

## **Appendix C**

### **Extract (p 122) from Minutes of the 19 September 2021 Regular Meeting**

#### **13. Docket 9.e New Hope Charges**

The Moderator was requested to make a ruling on whether or not the fixed charge against Mr. VanD. was serious enough to warrant a trial.

The Moderator ruled that the fixed charge against Mr. VanD. was serious enough to warrant a trial.

The Moderator's ruling was challenged.

The Moderator's ruling and the challenge were withdrawn and Presbytery proceeded to debate the question: that the fixed charge is serious enough to warrant a trial.

On motion Presbytery determined to continue this business in an adjourned meeting in October.

## **Appendix D**

### **Extract (p 125) from Minutes of 9 October 2021 Adjourned Meeting**

#### **6. Reports of Special Committees and Commissions:**

- a. Charge against Mr. VanD.:
  - i. Having reached the order of the day, the Moderator called the PMA to continue its preliminary investigation into the charge brought against Mr. VanD. begun during its May 1, 2021 meeting, and continued at its September 18, 2021 meeting.
  - ii. The Moderator stated the preliminary investigation question before the presbytery was as follows: Pursuant to BCO BOD III.7.b(6), whether the charge, as fixed by presbytery during its May 1, 2021 meeting (see May 1, 2021 meeting minutes at draft page 7), if proved true, would constitute an offense serious enough to warrant a trial?

- iii. Mr. J. raised a point of order concerning the propriety of a speaker using the word “retaliation” when referring to those who filed the charge against Mr. VanD. and failing to address the form of the question. Moderator ruled that the point was not well taken. Mr. J. challenged the moderator’s ruling. The ruling of the Moderator was sustained. Mr. J. requested that his negative vote be recorded.
- iv. Mr. C. raised a point of order that during speeches, presbyters should address the Moderator from same location in the meeting room. The Moderator ruled that the point was not well taken. Mr. C. challenged the Moderator’s ruling. The ruling of the Moderator was sustained.
- v. By voice vote, the PMA determined that the charge against Mr. VanD., as fixed by the PMA during its May 1, 2021 meeting (see May 1, 2021 meeting minutes at draft page 7), did not constitute an offense serious enough to warrant a trial.
- vi. Mr. J. requested that his vote in favor of finding that the charge against Mr. VanD. did constitute an offense serious enough to warrant a trial, be recorded.

## **Appendix E**

### **Extract (pp 134-137 and 138-139) from Minutes of 4 December 2021 Regular Meeting**

#### **9. Order of the day – Docket Items 9.d and 11.d.**

Report of the Ad Hoc Committee to consider two complaints and one protest filed by Mr. Stuart Jones.

Mr. C. reported for the committee.

Upon motion, Presbytery determined to handle the recommendations from the committee as a series of independent requests. The committee’s report handled the complainant’s two complaints, as well as his protest, in three parts.

#### **Part One: Complaint #1 (June 28, 2021)**

On recommendation from the committee and upon motion Presbytery found the June complaint to be timely, in order, and properly before the Presbytery.

On recommendation from the committee and upon motion Presbytery sustained the June complaint.

On recommendation from the committee and upon motion Presbytery acknowledged its error in failing to find the two motions of the June 26, 2021 adjourned meeting out of order and acknowledged that it had completed the preliminary investigation of the charge in question during its May 1, 2021, stated meeting.

The committee recommended the following motion:

That Presbytery apologize to the parties involved in the charge in question (i.e., the signers of the charge and the accused), as well as to the New Hope session and the members of the New Hope congregation, for its procedural errors committed during the preliminary investigation.

Presbytery approved this recommendation as amended:

That Presbytery apologize to the parties involved in the charge in question (i.e., the signers of the charge and the accused), as well as to the New Hope session for its procedural errors committed during the preliminary investigation.

On recommendation from the committee Presbytery deferred consideration of the committee's fifth recommendation (to dismiss the charge in question against Mr. VanD.) until after consideration of the June Complaint (also known as Complaint #2).

## **Part Two: The Protest**

On recommendation from the committee and upon motion Presbytery found the Protest to be timely, in order, and properly before the Presbytery.

On recommendation from the committee and upon motion Presbytery determined to read, or appoint a member to read, the Protest to the judicatory, and that the protest be recorded in the meeting minutes in accordance with BOD VIII.2:

### ***PROTEST***

*The undersigned hereby protests the action of the presbytery of the Mid-Atlantic, taken at an adjourned meeting of Presbytery on October 9, 2021 to find a certain charge against a certain ministerial member of Presbytery not serious enough to warrant a trial.*

*First, the undersigned wishes to strongly affirm that he has had no desire to see the litigation that has engulfed the presbytery since May 1, 2021 go on any longer; in fact, the undersigned, made semi-private attempts to gain agreement from parties to recent litigation to withdraw their charges, but without effect. These attempts--the most recent being in an email to one side of the overall controversy charging the minister—were undertaken with a view to ending a conflict involving all parties that the undersigned believes was unnecessary, unhelpful, and injurious. In addition, the effort was undertaken in the interest of finding an honorable way to avoid addressing the question of whether a certain charge of offense was serious enough to warrant a trial. The charge obviously was serious enough to warrant a trial—a matter that will be addressed below.*

*The charge in view had been fixed so as to meet the requirement of BD III.7.b, last paragraph of said sub-section. viz. "The judicatory or committee, should it be persuaded that the charge and*



*specifications, if proved would constitute an offense serious enough to warrant a trial, shall not dismiss the case on technical grounds but shall require that the charge and specifications be put in proper form.”*

*Second, after controversy about what happened and how the minutes of May 1, 2021 should be worded, the clerk proposed draft minutes, eventually approved by Presbytery, that contain the following (with names of individuals deleted here):*

*“By common consent the charge against Mr. \_\_\_\_ was fixed to the following:*

*Mr. \_\_\_\_ did commit the 9th commandment offense of improperly disparaging Mr. [R1] thereby failing to keep the peace, purity, and the unity of the church and contrary to his ordination vow).*

- **Specification 1** (count 1): *On February 11, 2020, Mr. \_\_\_\_, in an open meeting, gave examples of sins Mr. [R1] was alleged to have committed apart from the filing of formal charges.*

- **Specification 2** (count 2): *On February 13, 2020, Mr. \_\_\_\_, in an open meeting, gave examples of sins [Mr. R1] was alleged to have committed apart from the filing of formal charges.*

**Witnesses** *those in previous (unfixed) charge [Clerk’s note: These witnesses per the unfixed charge are [Mr. R2], Ms. [P], Mr. \_\_\_\_, Mr. [M], Mr. [K], and Mr. [R1].*

**Scripture:** *Ex. 20:16 inter alia*

**Constitution:** *WLC 145*

**Seriousness:** *See parentheses in charge proper [failure to keep the peace, purity, and the unity of the church and contrary to his ordination vow] and BD III.”*

*Third, despite the clear implication that by common consent (note the above minute and BD III.7.b, last paragraph) Presbytery already found the charge serious enough to warrant a trial on May 1, 2021, Presbytery at a later meeting found that it had not made this determination. On October 9, 2021, Presbytery took an explicit vote that affirmed that “improperly disparaging” a member of Christ’s Church, then in good and regular standing, who had not been yet tried for any offense, at a public meeting was not a charge serious enough to warrant a trial. The only charge this individual was ever found guilty of that was not overturned on appeal involved a circular post he sent to defend himself after the alleged public disparagement of February 2020 and in connection with a communication from session that also postdated the alleged disparagement of February 11 and 13 of 2020.*

*Fourth, the reasoning generally offered in debate for not finding the charge serious enough to warrant a trial did not address the simple question of form the Book of Discipline requires to be addressed in BD III.7 (though it had already done so implicitly on May 1, 2021). To the degree any speaker against finding the charge serious enough to warrant a trial did address this question, he appeared to concede that in the abstract the charge was serious enough to warrant a trial. However, context was required to be considered. This argument is evidence that*

*Presbytery was delving into contested questions properly addressed at a trial rather than the preliminary investigation. Another line of argument, having some plausibility, is that BD III contains requirements other than the form requirements of BD III.7 before a charge should be considered. The undersigned agrees that there are threshold issues outlined in BD III.1,2, and 5 and likely others that are properly addressed in a preliminary investigation. However, other threshold issues (such as whether repentance had already occurred for the alleged disparagement offense) were not properly part of the question before presbytery. Other issues were shoe-horned into an argument that publicly and improperly disparaging a Christian in good standing is not a serious offense. This is not right. We would not make the argument to our congregations that repenting of a serious sin renders the sin unserious. Repentance and forgiveness are splendid because they overcome serious sin—not deny it. Further, from argumentation one might get the impression that sin had been truly admitted but another line of argument followed from the same individual that the specifications of charge were not specific enough. There seemed to be no dispute that session admitted wrongdoing but there was dispute whether the individual charged had made adequate confession and repentance for his own deeds. This protestor does not wish to debate that matter here except to note that it is a matter of dispute. As a matter of dispute it would properly be addressed as a defense at trial or perhaps as ground offered for dismissal at the second meeting of the trial judicatory (BD IV.C.2). Instead, Presbytery delved into disputed matters to address what should have been addressed as a simple question of form.*

*Related to the error of shoe-horning questions unrelated to form, is the fact that threshold issues were not outside the purview of the ad hoc committee report presented on May 1, 2021. At the outset of that report, considered on May 1, 2021, it is stated: "THRESHOLD ISSUES: Original Jurisdiction, Substantive Jurisdiction Issues of standing, time bar, and Matthew 18 seem not to complicate the case." Further issues were raised during debate in the course of the May 1 meeting including those of retaliation and repentance but none of those arguments persuaded those present on May 1 to find the case out of order. It was in the aftermath of the May 1 meeting that those arguments reappeared being shoe-horned into the peculiar claim that the charge was not serious enough to warrant a trial but has been stated before, do not address the narrow issue of form the Presbytery was called upon to address.*

*The undersigned sincerely hopes and prays that the unhappy litigation will end. As of the drafting of this Protest, a complaint by the undersigned is pending and another is being considered. The undersigned hopes that the pending complaint might be withdrawn and further complaint avoided and plans to correspond with accusers to see if a better way forward can be found.*

*Respectfully Submitted this 11th day of October, 2021, Stuart R. J.*

On recommendation from the committee and upon motion Presbytery amended the committee's recommendation and determined to remain silent regarding the Protest in its minutes.

### **Part Three: Complaint #2 (October 25, 2021)**

On recommendation from the committee and upon motion Presbytery found the October Complaint to be timely, in order, and properly before the Presbytery.

The Moderator ruled that the actions taken by Presbytery following the May 1, 2021 meeting regarding the case to be null and void.<sup>1</sup> [Specifically, Minutes of Adjourned Meeting dated June 26<sup>th</sup>, 2021, section 6 (Docket 11.e.) Charges Against New Hope Session (pages 110-111); and Minutes of Adjourned Meeting dated 9 October 2021, section 6.a Charge Against Mr. VanD., especially 6.a.v. (page 125)]

On recommendation from the committee Presbytery amended the recommendation to be in the positive: *Shall the Complaint be sustained?*

Following the Moderator's ruling, Complaint #2 was withdrawn by the Complainants.

On recommendation from the committee Presbytery amended the committee's recommendation to find the charge not readily prosecutable or profitable to the best interests of the church, and that the amends to Complaint (#2) withdrawn be considered as a series of independent motions.

#### **11. Complaint #2 (continued)**

The amends sought by the complainants:

1. That presbytery acknowledge that it erred by voting to find that improperly disparaging a member of the church, then in good and regular standing, was not an offense serious enough to warrant a trial;
2. That presbytery communicate this finding (amend1) to the original accusers and the accused.
3. That presbytery direct Committee on Visitation to investigate whether adequate measures were or have been taken by the pastor to alleviate concerns reflected in the charge concerning remarks allegedly made at public meetings on Feb 11 and 13, 2020 that was recently before PMA.
4. That presbytery direct the Committee on Visitation to make a detailed report of who they interviewed, their findings, and to bring any recommendations that seem warranted concerning how healing may be promoted. Also that the Committee consider whether the wording of FG XXVI.4 may have contributed to careless ways of

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<sup>1</sup> Robert's Rules of Order 10.39.35: "*Motions that conflict with the corporate charter, constitution, or bylaws of a society, or with procedural rules prescribed by national, state, or local laws, are out of order; and if any motion of this kind is adopted, it is null and void.*"

communicating and whether this section of the FG should be amended (cf. Backstory, page 2).

On motion Presbytery substituted Amend 1 with the following: **That the Ad Hoc committee be tasked with drafting circumstances to explain the previously passed motion, that is, the decision to not follow through with prosecution.**

On motion Presbytery tasked the Ad Hoc committee to draft circumstances explaining the previously passed motion, that is, the decision to not follow through with prosecution.

On motion Presbytery dismissed Amend 2.

On motion Presbytery directed the Committee on Visitation to investigate whether adequate measures were or have been taken by the pastor to alleviate concerns reflected in the charge concerning remarks allegedly made at public meetings on Feb 11 and 13, 2020 that was recently before PMA.

On motion Presbytery amended Amend 4 by striking the second sentence “Also that the committee consider whether the wording of FG XXVI.4 may have contributed to careless ways of communicating and whether this section of the FG should be amended (cf. *Backstory*, page 2).”

On motion Presbytery directed the Committee on Visitation to make a detailed report of who they interviewed, their findings, and to bring any recommendations that seem warranted concerning how healing may be promoted.

On Motion Presbytery created an Ad Hoc committee to examine FOG XXVI.4 as well as the portions of the FOG dealing with deposition of ruling elders, and to bring recommendations for changes to the BCO.

On motion Presbytery dissolved the Ad Hoc Committee to examine charges against New Hope Session, as well as the Committee to study the Jason R. appeal, with thanks.