this Complaint Administratively Out of Order. Furthermore, in the same e-mail he indicated he was "not sure if the wording of the request fully represents my heart in the matter" and also that he "was not able to review the wording of the document" prior to it being filed.

CASE 2015-03
RE STEVE FLESHER AND RE RANDY WEEKLY
VS.
METRO ATLANTA PRESBYTERY

DECISION ON COMPLAINT
March 3, 2016

Because the issues raised in Complaint 2015-03 were adjudicated in Appeal 2015-08, the Complaint 2015-03 is moot. The SJC approved this decision on the following vote:

Barker, *Concur*	Duncan, *Concur*	Meyerhoff, *Concur*
Bise, *Concur*	Evans, *Concur*	Neikirk, *Concur*
Burnet, *Absent*	Fowler, *Concur*	Nusbaum, *Concur*
Cannata, *Absent*	Greco, *Concur*	Pickering, *Concur*
Carrell, *Concur*	Gunn, *Concur*	Fowler, *Concur*
Chapell, *Concur*	Jones , *Concur*	Terrell, *Concur*
Coffin, *Concur*	Kooistra, *Concur*	White, *Recused*
Donahoe, *Concur*	McGowan, *Concur*	Wilson, *Concur*

CASE 2015-04

COMPLAINT OF JOHN B. THOMPSON
VS.
SOUTH FLORIDA PRESBYTERY

DECISION ON COMPLAINT
MARCH 3, 2016

The SJC finds the Complaint judicially out of order as the objections raised in the Complaint ought to be raised by a defendant during process with the court of original jurisdiction (*BCO* 32-14), or thereafter, if not satisfied, by an appellant on appeal (*BCO* 42-3).

The Panel's proposed decision was amended by the SJC and adopted on the following vote:

Barker,*Concur*	Duncan, *Concur*,	Meyerhoff, *Concur*
Bise, *Concur*	Evans, *Concur*,	Neikirk, *Concur*
Burnett, *Absent*	Fowler, *Concur*	Nusbaum, *Concur*
Cannata, *Absent, Recused*	Greco, *Concur*	Pickering, *Concur*
Carrell, *Concur*	Gunn, *Concur*	Fowler, *Concur*
Chapell, *Concur*	Jones, *Concur*	Terrell, *Concur*
Coffin, *Concur*	Kooistra, *Concur*	White , *Concur*
Donahoe, *Concur*	McGowan, *Concur*	Wilson, *Concur*

Note: RE Howie Donahoe timely submitted a Concurring Opinion, which was considered at the May 9, 2016, SJC meeting. See Attachment 2 (Supplement) for this Concurring Opinion.

CONCURRING OPINION
CASE 2015-04
JOHN B. THOMPSON
VS.
SOUTH FLORIDA PRESBYTERY

March 7, 2016

Concurring Opinion of RE Howard Donahoe.

I heartily concur with the SJC Decision but believe further background and rationale would be helpful. To summarize, the plaintiff contended his indictment from the Session was illegitimate, and he filed what he regarded as a *BCO* 43-1 complaint, but the Session and Presbytery ruled it out of order. He carried the complaint to the SJC, and the SJC Panel recommended the case also be ruled out of order, specifically because a defendant should not be granted appellate review of a decision of a trial court or commission via a *BCO* 43-1 complaint *while the judicial case is in process* (absent a demonstration of irreparable impending harm).

The procedural issue in this Case is similar to one decided by the SJC last year in which an accused person filed a complaint, prior to his trial, alleging the indictment was incomplete (Case 2013-03: *Marshall v. Pacific*). In *Marshall*, the SJC ruled as follows:

> The Complaint is Judicially Out of Order, because it has to do with matters in a judicial case that an accused should reserve for proper disposal in an appeal, not through a complaint (*BCO* 32-14; 42-3), and because it arose in a judicial case in which an appeal is now pending (*BCO* 43-1).[10]

The first part of the SJC's reasoning in *Marshall*, and its reference to *BCO* 32-14 and 42-3, also apply to this present Case.

In his Complaint to the Session, Mr. Thompson wrote:

> Chapter 43 of the *BCO* happily provides that the victim of "some act or decision of a court of the Church" may bring a stand-alone complaint against the Church, separate and apart from and before an appeal of a final decision of the Church in any disciplinary proceeding against him.

In his Complaint to Presbytery, he wrote:

> Such a Complaint could be loosely analogized to an interlocutory appeal in a secular court system. It seeks a remedy from an unjust judicial act or proceeding before that proceeding is completed.

But our *BCO* does not explicitly allow for what's known in U.S. law as an "interlocutory appeal" (i.e., appealing a lower court's ruling to an appellate court prior to the final judgment of the lower court). And even in civil cases in U.S. courts, it's extremely rare and only allowed if it meets narrow requirements. For example, the U.S. Supreme Court specified requirements for U.S. Federal Courts, holding that a pre-judgment appeal would be permitted only if three facts were each demonstrated:

1. The outcome of the case would be conclusively determined by the disputed question;
2. The matter appealed was collateral to the merits (i.e., of a secondary nature to); *and*
3. The matter was effectively unreviewable if immediate appeal were not allowed.[11]

[10] Case 2013-03: Marshall v. Pacific Presbytery, *M43GA*, Chattanooga 2015, p. 548.
[11] *Lauro Lines v. Chasser*, 1989, https://supreme.justia.com/cases/federal/us/490/495/case.html

Interlocutory appeals are even more rare in criminal cases. Appellate courts are understandably reluctant to consider this when the defendant has not yet been convicted. A defendant's petition for permission to appeal a trial court's pre-judgment ruling usually must demonstrate he will be irreparably harmed if he must wait until the end of the trial to appeal. For example, irreparable harm is probably at risk where a juvenile is waived from children's court into adult court. If the juvenile were forced to wait until the end of the case to appeal the waiver order, the children's court may lose jurisdiction (because the child becomes a legal adult) by the time the Court of Appeals reverses the waiver order. But examples like this are rare.

Even if the *BCO* explicitly allowed for such interlocutory appeals, the circumstances in this present Case do not rise to the level of something warranting the allowance of such an unusual and trial-delaying action. There was no demonstration of impending irreparable harm.

And if this Complainant's broad interpretation of *BCO* 43-1 is correct, and such interlocutory appeals are allowed for any and all objections to a trial court's many rulings, there could be an unlimited number of *BCO* complaints in a judicial case – even prior to the convening of the actual trial. If a defendant were allowed to file complaints against any and all actions of a trial commission, it could significantly and needlessly delay a trial. For example, the accused might file complaints against:

1. the appointment of a particular prosecutor;
2. alleged deficiencies in the indictment;
3. the appointment of a particular member of a trial commission;
4. the date of the trial;
5. any pre-trial rulings of the court or trial commission (allowable defense counsel, witness citations, admissibility of evidence, length of briefs, scheduled length of trial, time allotted for closing arguments, etc.).

If a defendant were allowed to file a *BCO* 43-1 complaint simply because he believed an indictment was faulty, as the plaintiff alleged in this Case, it could delay the trial for a year or more while the *BCO* 43 Complaint was adjudicated by the Session, and then by the Presbytery, and then by an SJC Panel, and then by the SJC.

Finally, it should be noted the Complainant's objection to the indictment was eventually one of the matters considered in his subsequent Complaint in SJC Case 2015-11. But that part of his Complaint was not sustained.

/s/ RE Howard Donahoe