

**PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
PRESBYTERIAN CHURCH (U.S.A.)**

Teaching Elder Robert Smith and)	
Ruling Elder Edward Kappus,)	
Appellants/Complainants,)	DECISION AND ORDER
v.)	
The Presbytery of the Peaks)	Remedial Case 222-04
Appellee/Respondent.)	

Arrival Statement

This remedial case comes before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on appeal filed by Robert Smith and Edward Kappus (Appellants), from an October 30, 2014, Decision of the Permanent Judicial Commission of the Synod of the Mid-Atlantic (SPJC). The Notice of Appeal was received by the Stated Clerk of the General Assembly on December 2, 2014.

Jurisdictional Statement

This Commission finds that it has jurisdiction, that Appellants have standing to file the Appeal, that the Appeal was properly and timely filed, and that the Appeal states one or more of the grounds for appeal under D-8.0105.

Appearances

Appellants were present and were represented by Parker T. Williamson. The Presbytery of the Peaks (Appellee or Presbytery) was represented by Archibald Wallace, III.

History

Beginning in 2011, the Presbytery received letters and calls from members of First Presbyterian Church in Roanoke, Virginia (Church). In an April 12, 2012, meeting with the Session, the Presbytery's Committee on Ministry (COM) learned that the Session was involved in a discernment process regarding dismissal from the Presbyterian Church (U.S.A.). On December 13, 2012, COM appointed an Administrative Review Committee (ARC) to work with the Session. After concluding progress had not been made with the Session, the Presbytery voted at its May 9, 2013, stated meeting to change the status of ARC to an Administrative

Commission (AC). In July 2013, the AC imposed five moratoria, including that no members would be added to, transferred out, or removed from the rolls.

No complaint was filed at that time to lift the moratoria under the Rules of Discipline. However, on or about October 22, 2013, the Presbytery received a Request for Remedial Action for consideration at its October 24, 2013, stated meeting. The Presbytery was asked to “remedy the irregularities committed in its name” by its AC through: (1) dismissing the AC; (2) declaring null and void the five moratoria; (3) repudiating various listed actions of the AC; (4) recommitting the Presbytery to both the spirit and the letter of its Gracious Dismissal Policy; and (5) electing a response team that would strictly adhere to the Gracious Dismissal Policy.

At the Presbytery’s October 24, 2013, meeting the Moderator announced that this Request for Remedial Action would need to be resolved by the SPJC. The Moderator nominated and Presbytery elected a committee of counsel according to D-6.0302.

The Presbytery, during its May 8, 2014, meeting, acting upon an order from the SPJC, addressed the Request for Remedial Action and then voted on each of the five requests. The Presbytery voted in favor of recommitting itself to the spirit and letter of the Gracious Dismissal Policy. The other four requests were not approved including the request to declare null and void the five moratoria imposed by the AC.

Following the Presbytery meeting, Appellants filed two nearly identical complaints with the SPJC. The first complaint was filed on May 21, 2014, alleging a delinquency occurred at the Presbytery’s May 8, 2014, stated meeting when the Presbytery failed to rescind the moratoria imposed by the AC. On July 3, 2014, Appellants filed a second complaint alleging an irregularity occurred at the May 8, 2014, Presbytery meeting when the Presbytery refused to rescind the five moratoria imposed on its behalf by the AC.

At the Hearing on October 30, 2014, receiving no objection from the parties, the SPJC ruled that the two virtually identical complaints be consolidated into one Complaint of an irregularity. It also ruled that the consolidated Complaint did not state a claim upon which relief could be granted. The case was dismissed.

A Notice of Appeal from the Decision of the SPJC was received by the GAPJC on December 2, 2014. By Preliminary Order for a Hearing dated January 21, 2015, the Appeal to the GAPJC was accepted.

Specifications of Error

Specification of Error No. 1: (Appellants’ Specification of Error No. A) The SPJC erred in finding that the complaints fail to state a claim upon which relief can be granted under D-6.0305d based on its assertion that the complaints “are now well past the timeliness requirements of D-6.0202a.”

This specification of error is not sustained

Specification of Error No. 2: (Appellants' Specification of Error No. B) The SPJC erred in determining that it need not review the constitutionality of the AC's actions because it found that the Appellee committed no procedural errors.

This specification of error is not sustained.

Specification of Error No. 3: (Appellants' Specification of Error No. C) The SPJC erred in dismissing the complaints because it declined to substitute its judgment for that of the Appellee.

This specification of error is not sustained.

Specification of Error No. 4: (Appellants' Specification of Error No. D) The SPJC erred in finding that the complaints fail to state a claim upon which relief can be granted under D-6.0305d based on its opinion that a party is forever barred from challenging the constitutionality of an action beyond 90 days of its first occurrence.

This specification of error is not sustained.

Specification of Error No. 5: (Appellants' Specification of Error No. E) The SPJC erred by overreaching the limits of inquiry under D-6.0305 because it addressed the merits of Appellants' claims in dismissing the complaints.

This specification of error is not sustained.

Specification of Error No. 6: (Appellants' Specification of Error No. F) The SPJC erred in dismissing the complaints because it committed a procedural error in consolidating the complaints and thereby unjustly dismissing one of them without due process.

This specification of error is not sustained.

Decision

The act that forms the basis for the complaint was the imposition of a moratorium against the acceptance of new members, which occurred in July 2013. However, the sole issue before this Commission is the May 8, 2014, Presbytery decision to leave in place the moratorium on receiving new members or removing members from the roll. The Synod ruled that the Presbytery's decision was an exercise in discretionary judgment. This Commission does not reach that argument.

This Commission affirms the SPJC decision that there were no procedural errors at the May 8, 2014, meeting. Furthermore, the SPJC did not err in consolidating two nearly identical complaints for the sake of judicial economy, especially since Appellants did not object to the consolidation at the time.

Appellants argue that the Presbytery's failure to rescind the moratorium on May 8, 2014, provides an independent basis for reviewing the constitutionality of the AC's imposition of the moratorium on behalf of the Presbytery in July 2013. Because this was an action taken by an AC, it can only be classified as an irregularity under D-2.0202a. A complaint based upon an irregularity must be filed within ninety days of an occurrence under D-6.0202a. The Appellants did not file their complaint until well after the deadline for the July 2013 action.

Appellants further argue that the moratorium constitutes a continuing violation akin to a continuing tort, as borrowed from civil law. This Commission declines to adopt this theory for two reasons. First, the continuing violation theory is not contained within the *Book of Order*. Second, even if this Commission were inclined to adopt this theory, it would not do so in this case, as the enactment of the moratorium on membership is a discrete and completed act which could have been the subject of an immediate complaint. To do otherwise would be to nullify the 90-day deadline of D-6.0202a.

Order

IT IS THEREFORE ORDERED that the Decision of the Synod of the Mid-Atlantic Permanent Judicial Commission is affirmed and the case is dismissed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Mid-Atlantic report this Decision to the Synod of the Mid-Atlantic at the first meeting after receipt, that the Synod of the Mid-Atlantic enter the full Decision upon its minutes and an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of the Peaks report this Decision to the Presbytery of the Peaks at the first meeting after receipt, that the Presbytery of the Peaks enter the full Decision upon its minutes and an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

Absences and Non-Appearances

Commissioners A. Bates Butler, III, and Ruth Goldthwaite did not participate in the hearing or deliberations.

DISSENT

by: Commissioners Robin L. Roberts, Helen R. Heffington, Kevin L. Nollette,
and Maurice R. Caskey

A Request for Remedial Action filed by Edward Bennett, a member of Session of the Church, and Robert Smith sought action by the Presbytery to rescind the actions of the AC which, among other things, prohibited the Session from making any change in the membership of the church, whether by confession of faith or transfer. Presbytery declined to docket or to act on the request. That refusal to act was appealed to SPJC.

On April 29, 2014, SPJC ordered the Presbytery to docket and consider the request, as it would a motion to rescind under G-3.0109b(6), not as a complaint for irregularity. Based on the SPJC's ruling, the Presbytery then docketed and took up the matter at its May 8, 2014, meeting and declined by a majority vote to rescind the moratorium. The Appellant then filed its Complaint of delinquency to SPJC which dismissed the Complaint. SPJC's ruling has been timely appealed to this Commission.

The question before this Commission is whether the Complaint stated a claim upon which relief can be granted.

The majority of the Commission declines to reach the question of whether the Commission's judgment can be substituted for that of Presbytery. "A permanent judicial commission may not substitute its judgment for that of a lower governing body *unless the decision being reviewed is contrary to an express provision of the Book of Order, arbitrary, unreasonable or clearly erroneous.*" *Kuipers v. Elkton PC* 217-11 (2005) (emphasis added). In our opinion, the Presbytery was faced with a Constitutional issue. Membership is a fundamental matter, not a budgetary or administrative issue, in which a presbytery or synod should not meddle.

Even though the AC placed its moratorium on membership during a gracious dismissal process, a time in which membership and numbers can be manipulated, the record contains no evidence of manipulation of membership by the Session. The AC overreached in attempting to deal with the membership issues. The acceptance of membership is a non-delegable, essential and fundamental function of the Session lodged exclusively to that council in the *Book of Order*. A higher council, such as presbytery acting through an administrative commission, cannot proscribe or curtail a session's duties concerning membership, as the AC did to the Church at Roanoke, without assuming original jurisdiction. The AC (having been given the authority by Presbytery) did not assume original jurisdiction, but usurped the Session's right to determine membership. The failure by Presbytery, and/or the SPJC on the subsequent appeal, to rescind this moratorium prohibiting acceptance or dismissal of members by confession of faith or transfer was delinquent and violates the *Book of Order*. Thus, it falls within the exception articulated in *Kuipers, supra*.

On the basis of these findings, and there being other facts that should be more fully developed, in our opinion this matter should be remanded for trial before the SPJC.

Certificate

We certify that the foregoing is a true and correct copy of the Decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 222-04, Teaching Elder Robert Smith and Ruling Elder Edward Kappus, Appellants (Complainants) v. The Presbytery of the Peaks, Appellee (Respondent), made and announced at Indianapolis, IN this 2nd day of May, 2015.