

**THE PERMANENT JUDICIAL COMMISSION  
OF THE GENERAL ASSEMBLY OF THE  
PRESBYTERIAN CHURCH (USA)**

Presbytery of San Joaquin,	)	
Complainant,	)	
	)	
v.	)	<b>DECISION and ORDER</b>
	)	
Permanent Judicial Commission,	)	<b>Remedial Case 215-3</b>
Synod of the Pacific, and	)	
Synod of the Pacific,	)	
Respondents.	)	

This remedial case of original jurisdiction comes before the General Assembly Permanent Judicial Commission (GA PJC) on a complaint filed by the Presbytery of San Joaquin (San Joaquin ) against the Permanent Judicial Commission of the Synod of the Pacific (SPJC) and the Synod of the Pacific (Synod).

**History**

On October 9, 2001, seven members of the Presbytery of the Redwoods (Redwoods) filed a remedial case with the SPJC against Redwoods (the Redwoods case). The complaint asserted that Redwoods had committed an irregularity when, on September 21, 2001, it voted to ordain a candidate to the Ministry of the Word and Sacrament in violation of G-6.0106b. These presbytery members also filed a petition for stay of enforcement and requested the SPJC to stay enforcement of Redwoods’ action approving the candidate for ordination. The complaint and petition alleged that the Interim Stated Clerk of Redwoods had advised the Presbytery’s committee on ministry that the proposed ordination would constitute an irregularity under the Book of Order.

On October 17, 2001, the SPJC, minus three of its members, met by conference telephone call. The members of the SPJC participating in the conference call discussed the requested stay of enforcement and whether probable grounds existed for finding that the decision or action of Redwoods was erroneous. Following this discussion, the conference call participants announced their individual decision on the requested stay of enforcement, and two commissioners stated they would sign the stay. The moderator of the SPJC then directed the Stated Clerk of the Synod, who was participating in the conference call as a “resource,” to telephone the three absent members of the SPJC to “ascertain their willingness or lack thereof to sign” the stay request. Ultimately, less than three members of the SPJC signed the requested stay of enforcement, and Redwoods’ action was not stayed. [See D-6.0103a(3).]

On or about November 19, 2001, San Joaquin, which had never been a party to the initial case against Redwoods, filed a remedial complaint with this Commission against the SPJC and asserted that the SPJC had abused its discretion in refusing to issue

the stay of enforcement requested in the Redwoods case. San Joaquin also requested that this Commission order the SPJC to “request reference” to this Commission of any further action involving the candidate and Redwoods. (See D-4.0101) The SPJC answered, denying that it had abused its discretion in not issuing the stay and asserting that San Joaquin’s complaint failed to state a claim upon which relief can be granted and that San Joaquin lacked standing to file the complaint. Subsequently, the SPJC moved to dismiss San Joaquin’s complaint, reiterating its arguments that the complaint failed to state a claim upon which relief can be granted and that San Joaquin lacked standing to file the complaint. Thereafter, San Joaquin filed an amended complaint adding the Synod as a respondent. The Synod objected to this amendment, but filed an answer urging the same grounds for dismissal put forward by the SPJC.

On July 12, 2002, this Commission conducted a hearing on both the objection to the amendment and on respondents’ motion to dismiss. The Commission has accepted the filing of the amended complaint.

### **Decision**

In this case, San Joaquin contended at oral argument that it seeks to redress two alleged harms: (1) misconduct by the Synod’s Stated Clerk in the way in which he processed the complaint in the Redwoods case, and (2) misconduct by the SPJC in allegedly disregarding the Constitution in its ruling on the stay in the Redwoods case. The Commission concludes that the complaint against the Synod fails to state a claim upon which relief can be granted and that San Joaquin lacks standing to seek the requested relief against the SPJC.

#### *Mutual Accountability in Our Covenantal Life*

Fundamental to our Presbyterian system of government is the understanding that the members of the church come together in “voluntary covenanted relationship with one another and with God through Jesus Christ.” (G-7.0103) Indeed, a central theme of the Reformed tradition is “covenant life marked by a disciplined concern for order in the church according to the Word of God.” [G-2.0500a(2)] The concept of mutual accountability and responsibility lies at the heart of this covenantal understanding, and our system of government is structured to achieve such mutual accountability.<sup>1</sup>

#### *San Joaquin’s Complaint Regarding the Synod Stated Clerk*

The rules on standing in our Rules of Discipline, which govern who may file a remedial complaint, also seek to implement the concept of mutual accountability. Under D-6.0202a(4), a presbytery may file a remedial complaint against its synod with the General Assembly. This standing provision recognizes that a presbytery has an interest

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<sup>1</sup> See, e.g., G-1.0400 (historic principles of Presbyterian Church government include a larger part of church governing a smaller part, and appeals being sent from lower to higher governing bodies); G-4.0301f (higher governing bodies have right of review of lower governing bodies and power to determine matters of controversy); G-4.0301h (ecclesiastical jurisdiction is a shared power).

in holding the synod of which it is a member accountable for functioning in accordance with our Constitution.

San Joaquin clearly has an interest, as a member of the Synod of the Pacific, in holding the Synod accountable for the conduct of the Synod staff in properly discharging its functions. San Joaquin would unquestionably have standing under D-6.0202a(4) to initiate a remedial complaint against the Synod seeking a declaration that the conduct of the Synod's Stated Clerk in the handling of the Redwoods complaint was in violation of the Constitution. However, San Joaquin moved, without opposition, to dismiss with prejudice the allegation in its complaint before this Commission that the conduct of the Stated Clerk was improper. Hence, San Joaquin has elected not to pursue this allegation as a separate ground for relief.<sup>2</sup> The Commission therefore dismisses the complaint against the Synod for failure to state a claim upon which relief can be granted.

### *San Joaquin's Complaint Against the SPJC*

With respect to the second harm alleged by San Joaquin—namely, the SPJC's alleged disregard of the Constitution in its stay ruling—our system of government ensures the accountability of a judicial body by providing for a process of direct appeal. In other words, the appellate process is the means by which a judicial commission's alleged errors in constitutional interpretation are corrected. Our Rules of Discipline do not permit a person to seek remedial relief, as San Joaquin is attempting here, against a judicial commission based upon that commission's rulings in another case in which that person was not a party.

An appeal is, by definition, “the transfer to the next higher governing body of a case in which a decision has been rendered in a lower governing body, for the purpose of obtaining a review of the proceedings and decision to correct, modify, set aside, or reverse the decision.” (D-8.0101)<sup>3</sup> A central task of the appellate process is the correction of any constitutional error by a judicial commission.<sup>4</sup> Under D-8.0102, an appeal in a remedial case “may be initiated *only* by one or more of the original parties in the case.” (Emphasis added.)<sup>5</sup>

In this case, San Joaquin seeks to challenge the rulings of the SPJC *not* through the direct appeal process designed to correct errors in constitutional interpretation, but through a *collateral attack* on the SPJC's interim rulings in the Redwoods case by filing a separate remedial complaint against that judicial body. Our Rules of Discipline do not confer standing upon a party not involved in a particular case to collaterally attack the rulings of a judicial commission in that case.

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<sup>2</sup> We find that San Joaquin Presbytery reserved the right to present at any trial on the merits of this case evidence of the Stated Clerk's conduct in support of its claim that the SPJC abused its discretion in declining to issue a stay.

<sup>3</sup> See also D-13.0101 (appeal in disciplinary case); G-4.0301f

<sup>4</sup> D-8.0105g, D-13.0106g (error in constitutional interpretation is ground for appeal in remedial and disciplinary cases).

<sup>5</sup> See also D-13.0102, D-13.0103 (only parties to disciplinary case may pursue appeal)

Our ruling that San Joaquin lacks standing to file an action against the SPJC does not leave it without a remedy to ensure that lower governing bodies obey the Constitution. San Joaquin could have moved to intervene—that is, to join the original Redwoods complainants—as a party in the initial Redwoods case, but it did not do so. In addition, San Joaquin could have, and later did, initiate its own remedial complaint against Redwoods.<sup>6</sup> By either of these means, San Joaquin could ensure, as a party to the appeal in a remedial case, that the SPJC is held accountable to the Constitution in its rulings. In short, the same constitutional question that San Joaquin raises in its challenge to the stay ruling—namely, whether probable grounds existed to believe that Redwoods had violated the Constitution in voting to ordain a particular candidate—could be raised before this Commission through the direct appeal process.<sup>7</sup>

### **Order**

IT IS THEREFORE ORDERED that the complaint of the Presbytery of San Joaquin against the Synod be dismissed for failure to state a claim upon which relief can be granted and that its complaint against the SPJC be dismissed for lack of standing.

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

Wendy Warner, member of the Commission from the Synod of the Pacific, did not participate in the deliberations or final decision. Fane Downs, member of this Commission, was not present and took no part in the deliberations or decision.

Dated this 14<sup>th</sup> day of July 2002.

### **Concurring Opinion of Daniel Saperstein, Catherine Borchert, Christopher Yim, and Jesse Butler**

We concur with the majority in its decision and agree with the reasoning of its opinion. However, we believe the motion to dismiss could and should have been granted on other, more foundational grounds of jurisdiction.

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<sup>6</sup> See D-6.0202a(5) (complaint by any governing body against any other governing body of the same level).

<sup>7</sup> The Commission assumes, without deciding the question addressed in the concurring opinion – namely, whether an appeal properly lies from a failure to grant a stay. Because of its ruling on the standing question, the Commission does not address this separate issue.

D-6.0103 defines a stay of enforcement as “a written statement that requests the implementation of a decision or action be delayed until a complaint or appeal is finally determined.” It also indicates, “Any person or governing body qualified to file a complaint or appeal may stay enforcement by filing with the governing body, commission, or respondent whose action or decision is to be stayed, no later than forty-five days after the decision or action, one of the following: [omitting those options not at issue]

D-6.0103a(3): a stay of enforcement signed by at least three of the members of the permanent judicial commission having jurisdiction to hear the complaint or appeal on the decision or action, provided there has been submitted to such members of the permanent judicial commission either a copy of the complaint or notice of appeal, or the substance of the complaint or appeal to be filed, with the reasons therefore, and that such members certify that in their judgment probable grounds exist for finding the decision or action erroneous.

From these foundational statements, the following may be concluded:

- a. A stay of enforcement requires two separate actions to become effective: the signatures of three members of the permanent judicial commission having jurisdiction, and the timely filing of the endorsed petition with the governing body, commission, or person whose action or decision is to be stayed *by the person seeking the stay*.
- b. The decision to endorse or not to endorse a stay is not made by the permanent judicial commission acting as a body, but by the independent judgment of the individual members of that commission. In the instant case, the minutes of the SPJC reflect this understanding. During the teleconference of October 17, 2001, no vote was taken; rather, individual decisions of each member were received by the Stated Clerk, who was also instructed to solicit decisions of members not present. Were this the action of the SPJC as a body, this would have been out of order, as members not present would not be entitled to vote.
- c. That it is entirely possible for the full complement of commissioners on a PJC to endorse a stay and still not have it take effect, if the person or governing body seeking the stay fails to file the endorsed petition. The decision to endorse a stay by members of a PJC is a necessary, but not sufficient, prerequisite to effect a stay.
- d. A request to endorse a petition for a stay creates no obligation either to act or to fail to act on the part of the members of the PJC. Although all members of a PJC are bound by their ordination vows to pursue the business of the commission with diligence, we are aware of no explicit provision in either the Constitution or in case history to require a member of a PJC to act in concert with the request made in the petition, irrespective of the merits of the pleading. It is not even necessary that all of the members of a PJC receive the request to endorse the petition. Indeed, the decision to endorse or to fail to endorse a petition for a stay could hardly be construed as an action or omission of the commission as a body if there is no requirement that it be submitted to the whole

commission. A body cannot be held responsible for failing to act if it is not required to act in the first place.

D-2.0202b defines a delinquency as “an omission or a failure to act.” This definition by itself has little judicial meaning, but implies “an omission or a failure to act in a situation where a judicatory is required to act by our Constitution” (*Edmonds v. Presbytery of Cape Fear*, 1984, 107, 11.088). The decision of a PJC member to endorse or to fail to endorse a petition for a stay is entirely a matter of individual discretion. No constitutional provision mandates a particular action on a request in any circumstance, or even action at all. Where there is no constitutional mandate to act, there can be no delinquency (*Edmonds v. Presbytery of Cape Fear*, 1984, 107, 11.088).

In short, the matter alleged in the complaint is an empty shell; it is, in fact no matter at all. There is no action or decision, no constitutional omission or failure to act when individual members of a PJC do not endorse a petition for a stay, irrespective of the merits of the pleading. Judicially speaking, a request for a stay “is nothing until it becomes something,” and it doesn’t become “something” until the three necessary endorsements are signed and the endorsed petition is properly filed. Until then, it has no judicial relevance at all.

Therefore, the complaint in the instant case meets the requirements of neither D-6.0305a nor D-6.0305d: the governing body does not have jurisdiction, and the complaint fails to state a claim upon which relief can be granted.

The above notwithstanding, members of judicial commissions have a solemn duty to uphold the Constitution and to maintain order in the Church. In all situations, the exercise of discretion is a matter of conscience bound by the Constitution (G-6.0108a). Commission members who refuse to do so violate the trust placed in them, abuse their office, and are honor-bound to resign their commissions.

### **Concurring Opinion of John Dudley**

I agree with the full text and substance of the concurring opinion entered by Saperstein *et. al.*, with the exception that I do not agree with the reasoning of the decision in the majority opinion.

### **CERTIFICATE**

We certify that the foregoing is a full 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 215-3, *Presbytery of San Joaquin v. Synod of the Pacific PJC*, made and announced at Phoenix, AZ on July 14, 2002.

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Mary Lou Koenig, Moderator  
Permanent Judicial Commission of the General Assembly

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Ernest E. Cutting, Clerk  
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Phoenix, AZ on July 15, 2002.

Daniel Pursell, Counsel for Complainant  
Virginia Robertson, Counsel for Respondent  
Art Kalafut, Stated Clerk, Presbytery of San Joaquin  
Donald MacInnes, Stated Clerk, Synod of the Pacific  
General Assembly Permanent Judicial Commission (regular mail)

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on July 14, 2002.

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Ernest E. Cutting, Clerk  
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly at Phoenix, AZ on July 14, 2002 in Remedial Case 215-3, Presbytery of San Joaquin v. Synod of the Pacific PJC and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Phoenix, AZ on July 14, 2002.

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C. Laurie Griffith  
Manager of Judicial Process and Social Witness