

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

Cary Tolley, **Appellant/Cross-Appellee**

v.

Presbytery of Tropical Florida acting as Session of First
Miami Presbyterian Church, through Administrative
Commission, **Appellee/Cross-Appellant**

Decision and Order

Remedial Case 226-01

Arrival Statement

This is an appeal to the General Assembly Permanent Judicial Commission (GAPJC or this Commission) filed by Ruling Elder Cary Tolley (Elder Tolley or Appellant/Cross-Appellee) from a decision issued on April 22, 2022, by the Permanent Judicial Commission of the Synod of South Atlantic (SPJC). The SPJC decision did not sustain any part of the remedial complaint that Elder Tolley had filed against the Presbytery of Tropical Florida (Presbytery or Appellee/Cross-Appellant), acting as the Session of the First Miami Presbyterian Church, of Miami, Florida (FMPC), through the Presbytery's Administrative Commission (AC). Both Elder Tolley and the Presbytery appealed the SPJC's decision to the GAPJC.

Jurisdictional Statement

This Commission finds that it has jurisdiction, both Appellant and Cross-Appellant have standing to file the appeals, the appeals were properly and timely filed, and the appeals each state one or more of the grounds for appeal set forth in the *Book of Order*, D-8.0105.

Appearances

Appellant/Cross-Appellee Elder Cary Tolley appeared personally before the Commission. Ruling Elder Nancy Fine, the Rev. Nicholas Merchant, and Ruling Elder James Wilson appeared as committee of counsel on behalf of Appellee/Cross-Appellant. The Rev. Daris Bultena, General Presbyter and Stated Clerk for the Presbytery of Tropical Florida, also was present for the hearing.

History

The controversies underlying this case have existed for several years. Beginning in early 2020, the COVID pandemic played a significant role in the world, changing many patterns of relationships, processes, and activities. Church bodies were among those forced to adapt to new ways of worshipping, connecting, and doing the church's business. Congregations and presbyteries made choices about how to carry out necessary adaptations during these COVID years, and those choices are among the issues at stake in this case.

The current case centers on whether the Presbytery followed proper procedures before and during a particular FMPC congregational meeting carried out entirely online on October 17, 2021, a meeting that included a vote by church members on a motion to sell certain church property. That vote was in the context of questions that the congregation and the Presbytery had been considering about how to resolve the congregation's tax obligations and whether the congregation might sell a portion of its property. To help the Presbytery in that regard, on August 24, 2019, the Presbytery voted to create an administrative commission to act on its behalf regarding matters involving FMPC. The authorities delegated to that AC included the power to assume original jurisdiction of the FMPC Session, which the AC exercised later in 2019, after which it began to function as the Session.

An opportunity arose for FMPC to sell a portion of its property to a developer. The AC, acting as the Session, agreed on September 20, 2021, to call a congregational meeting to occur on October 17, 2021, during which the FMPC congregation was to vote on a motion to approve a proposed property sale. This meeting was to be preceded by an informational meeting for the congregation on October 3 at which materials describing the sale proposal would be distributed. The AC concluded and announced that the October 17 meeting would be carried out solely by electronic means. Members of the congregation were sent information explaining the virtual processes for using Zoom technology, and describing the processes for discussion and debate at the called online meeting. Issues related to the call and notice of this meeting, and the way the meeting was carried out, are at the core of the controversy in this case.

At the October 17 meeting, following more than an hour of procedural discussions and substantive debate, an electronic vote by show of hands was taken on the motion to approve the proposed property sale. A majority of FMPC active members present at the meeting cast votes to approve the motion. The final revised tally, based on a later review of the recording of the Zoom meeting, was 52 votes in favor of the motion, and 31 opposed. The Presbytery's Leadership Council on October 27, 2021, noted the favorable congregational action and voted to send the approved sale proposal forward for a presbytery vote. At its November 13, 2021, virtual stated meeting, the Presbytery Assembly approved the proposal permitting FMPC "to sell a portion of the property that the property may be developed to the benefit of the church," if the way be clear upon resolution of the remedial complaint, which had been filed and is described in the next paragraph.

Elder Tolley, an active FMPC member, but not at the time an enrolled elder commissioner to Presbytery, filed a remedial complaint with the SPJC on October 25, 2021, and requested a stay of enforcement. He had initially attempted to file the complaint with the

Presbytery Permanent Judicial Commission, but an official of the Presbytery advised him to file instead with the SPJC. The SPJC moderator and clerk issued an order on preliminary questions on November 2, 2021, finding that the SPJC had jurisdiction and, as part of that decision, that Elder Tolley had standing to file the complaint “as a member in good standing of First Miami Presbyterian Church.” On November 13, 2021, it was announced that a stay of enforcement had been entered after three SPJC members approved the stay. The Presbytery answered Elder Tolley’s complaint on November 29, 2021, and also filed a challenge to the preliminary findings and filed motions to dismiss the complaint, to hold an evidentiary hearing, and to lift the stay of enforcement.

On February 16, 2022, the SPJC held a hearing on the Presbytery’s motion challenging the preliminary findings and the Presbytery’s objection to the stay of enforcement. The following day, the SPJC entered orders letting stand and modifying the stay of enforcement, and affirming the preliminary questions determination, including Elder Tolley’s standing to file the complaint. In affirming the preliminary questions determination, the SPJC provided a clarification that “the only claim upon which relief may be granted as alleged by the Complainant shall be the claim of alleged irregularity with respect to the calling and/or conduct of the congregational meeting of October 17, 2021.” All other claims were dismissed.

The SPJC held an in-person trial on April 22, 2022. The SPJC decision and order, issued on April 22, 2022, did not sustain any part of Elder Tolley’s complaint, and concluded that “the Congregational meeting of October 17, 2021 was timely called, properly advertised and conducted virtually in accordance with Florida law, and otherwise conducted in a manner consistent with norms of orderliness, fairness, and good faith consistent with the *Book of Order*.” The SPJC did not provide detailed rationale for its decision, noting only that it had

[held] at least two virtual (2) pretrial hearings and trial in person, . . . considered the extensive documentary evidence presented to it, evaluated the testimony of all witnesses, and carefully deliberated and voted on each irregularity. . . . By unanimous decision of the PJC, it has been determined that Complainant has failed to carry the burden of proof by a preponderance of the evidence.

Elder Tolley appealed and requested a stay of enforcement from the GAPJC on April 25, 2022. The Presbytery filed a cross-appeal on April 26, 2022.

The moderator and clerk of this Commission issued an Order on Determination of Preliminary Questions on April 27, 2022, accepting the appeal and cross-appeal. A stay of enforcement was not entered, and the parties were notified on May 9, 2022. Both parties filed briefs on the appeal and cross-appeal in July 2022, and response briefs in August 2022. The GAPJC hearing on the appeal and cross-appeal occurred in person in Louisville, Kentucky, on September 9, 2022.

Introduction to Specifications of Error

Permanent judicial commissions have long-standing and broad authority to restate, group, consolidate, and summarize, but not omit, specifications of error presented in an appeal, for purposes of clarity (D-8.0404d). See *Lewellen v. Presbytery of Los Ranchos* (2017, 223-03).

In its notice of cross-appeal and brief, the Presbytery states one specification of error, challenging Elder Tolley's standing. Because the cross-appeal raises the threshold issue of standing, this Commission addresses that specification first.

In his brief, Elder Tolley states four specifications of error, which summarize and consolidate a number of allegations set forth in his notice of appeal. For the sake of clarity, this Commission has reordered and restated Elder Tolley's four consolidated specifications of error and will address them in turn later in this Decision and Order.

Specification of Error in the Cross-Appeal

Specification of Error (Cross-Appeal): The SPJC erred in constitutional interpretation (D-8.0105g) in finding that Complainant had standing to bring a remedial case against the Presbytery of Tropical Florida.

This specification of error is not sustained.

Decision in the Cross-Appeal

This case asks this Commission to decide the standing of a congregation member to file a remedial complaint against a presbytery, acting as a session, through an administrative commission. The action challenged here relates to the calling and conduct of a congregational meeting, which under the polity of the Presbyterian Church (U.S.A.) typically are the tasks and responsibilities of the session of a particular congregation.

When the administrative commission of a presbytery assumes original jurisdiction of a session, it takes on a dual function as both presbytery commission and the session of a congregation. The *Book of Order* confirms that “[a]ctions of a commission shall be regarded as actions of the council ... that created it” (G-3.0109b). Past GAPJC decisions have cited that language in cases involving administrative commission actions. At the same time, in this case, the AC clearly has identified itself as acting as the Session. The AC chair identified the AC as “serving the function of the session” for FMPC, and himself as serving as clerk of session, in his email communication with the congregation explaining the voting process for the October 17, 2021, congregational meeting. Additionally, the minutes of the AC are titled “Session Minutes.”

In D-6.0202, the *Book of Order* has separate provisions governing standing to challenge actions of a presbytery or session. Those provisions are:

A complaint of an irregularity or a complaint of a delinquency may be filed by one or more persons or councils subject to and submitting to the jurisdiction of a council.

a. In the instance of ***a complaint against a presbytery***, a synod, or by a council against another council at the same level, a complaint of an irregularity shall be filed within ninety days after the alleged irregularity has occurred.... Those eligible to file such a complaint are

(1) a minister of the Word and Sacrament or a ruling elder enrolled as a member of a presbytery concerning an irregularity or a delinquency during that period of enrollment, against the presbytery, with the synod;...

b. In the instance of ***a complaint against a session***, the Presbyterian Mission Agency, or an entity of the General Assembly, a complaint of an irregularity shall be filed within ninety days after the alleged irregularity has occurred.... Those eligible to file such a complaint are

(1) a member of a particular church against the session of that church, with the presbytery;... (emphasis added).

In this case, the Presbytery would look solely at subsection D-6.0202a, and would restrict Elder Tolley from having standing to challenge the actions of the AC. On the other hand, Elder Tolley relies on the whole of D-6.0202, reflecting the dual function and jurisdiction of a *presbytery* administrative commission acting as a *session*. This is the first opportunity for this Commission to apply these constitutional provisions in this context. To be clear, this Commission addresses the specific context where a presbytery-appointed administrative commission has assumed original jurisdiction of a session.

This Commission agrees that neither subsection on its own adequately contemplates the dual function and jurisdiction of an administrative commission acting as a session. Subsection D-6.0202b provides standing for a member of a congregation to challenge actions of their session. Where an administrative commission assumes original jurisdiction over a session, members of the congregation have no less of a right to seek to hold a presbytery's administrative commission accountable for its actions. Standing to file remedial complaints is fundamentally based on who is subject to the jurisdiction of the council against which the complaint is lodged. Thus, members of a congregation who are subject to their session for disciplinary purposes can also file remedial actions against that session. Mutual accountability undergirds these rules.

Accordingly, this Commission holds that the provisions of D-6.0202 provide standing for a member of a particular congregation to file a remedial complaint challenging the actions of a presbytery-appointed administrative commission acting as the congregation's session.

Such a complaint would be filed with the synod permanent judicial commission. See F-3.0206: "A higher council shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint, or appeal." See also *Kim et al. v. Administrative Commission of Synod of Lincoln Trails acting as Midwest Hanmi Presbytery* (2013, 221-07). In cases where an administrative commission created by a presbytery is acting as a session, it would clearly not be in order for a complaint to be considered by the presbytery's permanent judicial commission. Such actions would be filed, as Elder Tolley's was in this case, with the synod permanent judicial commission.

Specifications of Error in the Appeal

Specification of Error No. 1 (Appeal): The SPJC erred in constitutional interpretation in finding that Complainant had not proven that the call and notice of the congregational meeting was inadequate.

This specification of error is not sustained. (See Decision below.)

Specification of Error No. 2 (Appeal): The SPJC erred in constitutional interpretation in finding that Complainant had not proven that the conduct of the congregational meeting was irregular.

This specification of error is not sustained. (See Decision below.)

Specification of Error No. 3 (Appeal): The SPJC erred in constitutional interpretation in its application and interpretation of Florida state law.

This specification of error is not sustained. (See Decision below.)

Specification of Error No. 4 (Appeal): The SPJC erred in constitutional interpretation in failing to hold that the AC did not have authority to recommend to either the congregation or presbytery a sale of real estate.

This specification of error is not sustained. (See Decision below.)

Decision in the Appeal

Elder Tolley challenges the notice and conduct of, and action taken at, a congregational meeting held online during the COVID pandemic. The task of this Commission is to review the decision of the SPJC for constitutional error (D-8.0105). To the extent that the SPJC, as a part of its decision, has made factual findings based on evidence presented at trial, those findings are accorded a presumption of correctness and are not to be disturbed on appeal unless they are “plainly wrong, without supporting evidence, or manifestly unjust” (*Presbytery of New York City v. Edmonds* (2012, 220-09)).

The AC, acting as the Session of FMPC, noticed and convened this congregational meeting during the time of COVID. This Commission observes that throughout the COVID pandemic, congregations and councils across the denomination have been thrust into the challenge of living out the church’s constitutional life with very real limitations on how we are able to be present with each other in person. This Commission also notes that the issues in this case involve the sale of a congregation’s property, which can be a critical and highly charged moment in the life of a congregation. Understanding the complexity of this context, this Commission turns to the task of addressing the constitutional issues raised in the specifications of error.

A. Notice of the Congregational Meeting

The constitutional standards for notice of congregational meetings are set forth in G-1.0502:

Meetings of the congregation shall be called by the session, by the presbytery, or by the session when requested in writing by one fourth of the active members on the roll of the congregation. *Adequate public notice of all congregational meetings shall be given.* Congregations shall provide by their own rule for minimum notification requirements and give notice at regular services of worship prior to the meeting” (emphasis added).

Accordingly, the constitutional standard this Commission applies to the congregational meeting at issue is whether there has been “adequate public notice.”

In challenging the notice for this meeting, Elder Tolley argues that the notice given did not comply with the congregation’s bylaws. As an initial matter, this Commission notes that a bylaw violation, in and of itself, does not necessarily rise to the level of a constitutional violation. See *Session, Second Presbyterian Church of Tulsa, Oklahoma v. Eastern Oklahoma Presbytery* (2005, 217-5); *Hope v. Presbytery of San Francisco* (2004, 217-1). A judicial commission may, however, consider a bylaw violation within the totality of the circumstances presented by the evidence in determining whether a constitutional violation has occurred, under the relevant constitutional standard.

In this case, this Commission affirms the SPJC’s determination that no constitutional violation has been proven. G-1.0502 directs congregations to provide “minimum notification requirements” and to give notice at regular services of worship. The FMPC bylaws provide that a congregational meeting “shall be announced at least three weeks prior to the meeting, including on successive Sundays.” The evidence presented at trial was undisputed that notice was provided in worship on three successive Sundays, the third of which was the Sunday worship service immediately preceding the meeting. The evidence also showed that providing notice in this manner was consistent with the ways in which special meetings of the congregation had been called, and notice provided, under the congregation’s bylaws in the recent past.

Lewellen v. Presbytery of Los Ranchos (2017, 223-03) defines “fair notice” as “a short plain statement of the matters at issue as identified by the commission and of the time and place for a hearing upon the matters at issue.” The notices sent from the AC described the matter to be addressed at the congregational meeting, specifics of how the meeting would be conducted (including time limits for debate), and technical information about how to join the meeting online.

The evidence as a whole in this case shows that the notice was adequate and timely to inform congregation members of the time, place, manner, and substance of the meeting. Accordingly, this Commission finds no constitutional error.

B. Conduct of the Congregational Meeting

With regard to the conduct of the congregational meeting, Elder Tolley’s primary challenges relate to two aspects of the meeting: (1) the time allotted for individual speakers during debate, and (2) the fact that the meeting was convened solely online. The Constitution and the decisions of this Commission provide that an administrative commission, when resolving disputed issues in a council or congregation, shall provide “fair notice and an opportunity to be heard” to impacted parties. See G-3.0109; *Sundquist v. Heartland Presbytery* (2010, 219-03); *Essinger-Hileman v. Presbytery of Miami* (2006, 218-5); *Gaba v. Presbytery of Eastern Virginia* (2002, 215-4). This Commission applies that constitutional standard to Elder Tolley’s claims concerning the conduct of the congregational meeting.

In calling the congregational meeting at issue here, the AC presented several parameters for the meeting, including a time limit for speakers of one minute and thirty seconds, and a total debate of one hour unless extended by a vote of the congregation. These are more restrictive than the default time limits set forth in *Robert’s Rules of Order Newly Revised* (RONR), and whenever there is a modification of that standard, the body should be invited to affirm this by a two-thirds vote unless standing rules or general practice have established otherwise. See RONR, 43:8, 15 (12th ed.). While this did not occur, this Commission does not find that this departure rises to the level of constitutional violation.

The *Book of Order* states that meetings of councils “shall be conducted in accordance with the most recent edition of *Robert’s Rules of Order Newly Revised*, except when it is in contradiction to [the] Constitution” (G-3.0105). As with allegations of bylaw violations (see *Session, Second Presbyterian Church of Tulsa, Oklahoma v. Eastern Oklahoma Presbytery*

(2005, 217-5); *Hope v. Presbytery of San Francisco* (2004, 217-1)), a departure from any single provision of RONR does not in and of itself constitute a constitutional violation. Such a claim of procedural and parliamentary deficiency may, however, be considered as a part of the totality of the circumstances in addressing a constitutional claim. In other words, the constitutional question is whether the conduct of the meeting, including parliamentary issues, failed as a whole to provide “fair notice and an opportunity to be heard.”

In the parties’ disagreement as to whether the congregational meeting was properly convened online, this Commission is sensitive to the uncertainties raised by the COVID pandemic, especially as it relates to the limitations on in-person gatherings. The pandemic caused society, including churches, to look for new ways to meet. Thus, virtual meetings were sometimes the only way for the church to stay active and continue its ministry, whether through worship services, business meetings, or congregational meetings. The congregational meeting in this case was FMPC's first meeting of any kind in eighteen months, and its first virtual congregational meeting. There are benefits and challenges to both virtual and in-person forms of meeting. While it is true that virtual processes provide ample options for participation, and members can participate no matter where they are geographically located, there are challenges, including technical problems, differences in communication style, lack of access to the right tools, distracting environments, and a lack of familiarity with technology, among others.

In their disagreement over how the AC should have proceeded in the complexity of the COVID pandemic, both parties invoked a range of authorities: Florida state law, local ordinance, presbytery policy, congregational bylaws, and guidance from the Stated Clerk of the General Assembly. Elder Tolley asserted that the Presbytery did not take into account the requirement for councils to follow their own bylaws, and referred to the Advisory Opinion of the Stated Clerk of the General Assembly, “Church in an Emergency/Pandemic,” that recommends that a council revise its bylaws to authorize virtual meetings. In their response, the Presbytery relied upon Florida state law as the guiding authority in determining that the meeting should be held virtually for all participants. At trial, the Presbytery argued for the primacy of Florida state law over the guidance of the Stated Clerk of the General Assembly.

This Commission’s task is to address issues of constitutional interpretation and to review the SPJC’s decision for constitutional error. Although the cited provisions from these authorities may be informative as to the constitutional issue before the Commission, none of them is determinative in and of itself.

The Constitution of the PC (USA) considers a number of authorities in its guidance to councils of the church. As a faith community, we are guided first and foremost by the headship of Jesus Christ, and we are aware of the limitations of human/civil laws. But we are also participants in a larger society who benefit from the rights of civil laws, and so the Constitution does not advocate disregard for civil law. However, civil law should not be given priority over the Constitution of the church.

Mindful of its constitutional task, this Commission looks to the whole of how the AC provided notice of, convened, and conducted this congregational meeting to determine whether the AC provided the constitutionally required “fair notice and opportunity to be heard.”

Particularly in consideration of the complexity of the context, this Commission finds no constitutional error in the conduct of this congregational meeting.

C. The Administrative Commission's Authority to Recommend the Sale of Property

In addition to challenging the notice and conduct of the meeting, Elder Tolley claims that the AC exceeded its delegated authority by failing to make a finding of unavailability and making a recommendation to the Presbytery's Leadership Council before presenting the proposed sale of real estate to the congregation.

The Presbytery approved the creation of the AC, entrusting to it the following functions:

APPROVED THAT the Presbytery form an Administrative Commission over the First Presbyterian Church of Miami (also known as First Miami Presbyterian Church), and should it become necessary if the way be clear as discerned by the Administrative Commission, grant that commission the power to assume original jurisdiction and all other necessary powers to consider and conclude matters related to the taxable status of the church, the on-going tax lien, the on-going accrual of ad valorem tax, the school, and any other matters of disorder or discord. The commission shall have the power to initiate or resolve any pending or future litigation. The commission shall have the power to retain and dismiss legal counsel as necessary. In settling any of the matters within its purview, should the commission find it unavoidable to encumber the property, the commission shall make a recommendation to the Leadership Council of the Presbytery.

Elder Tolley points to the last sentence of the Presbytery's delegation and argues that the sale of property was an "encumbrance" that required the AC to make a finding of unavailability and a recommendation to the Presbytery's Leadership Council.

This Commission finds that the AC was acting under the specific delegation of powers granted to it by the Presbytery "to assume original jurisdiction and all other necessary powers to consider and conclude matters related to the taxable status of the church, the on-going tax lien, the on-going accrual of ad valorem tax, the school, and any other matters of disorder or discord." This Commission agrees with the Presbytery that the sale at issue here was distinct from an encumbrance on the property, and not subject to the specific provisions set forth in that final sentence. This Commission notes, however, that a sale of property is in many ways a more significant event in the life of a congregation and a presbytery. Accordingly, it is important to recognize that the sale proposed and approved by the congregation was also then reviewed and approved by Presbytery's Leadership Council. The Leadership Council then presented it to the Presbytery Assembly, which also considered and approved the sale of property. This Commission finds no constitutional error with regard to this specification.

D. The Responsibility for Adequate Rationale in SPJC Decisions

This Commission has at times expressed concern about decisions rendered by synod permanent judicial commissions without their providing explicit and adequate rationale for those decisions. See *Jones v. Mission Presbytery* (2019, 224-05); *Murphy v. The Session of Westminster Presbyterian Church, Des Moines, Iowa* (2018, 224-01); *Buescher, et al. v. Presbytery of Olympia* (2008, 218-09); and *Presbyterian Church (U.S.A.) through the Presbytery of Atlanta v. Ransom* (2008, 219-02). Adequate rationale is important for parties to understand the bases for synod commission decisions, for potential appellants to clarify where they perceive errors, and for this Commission to carry out its review responsibilities. While the SPJC decision of April 22, 2022, that is before this Commission did identify three specific findings, it did not elucidate the commission's reasoning for those conclusions. Likewise, in its earlier decision following the February 16, 2022, hearing on preliminary questions, a decision that is not directly before this Commission, the SPJC found that Elder Tolley had standing to file the complaint, but did not explain its rationale in light of the Presbytery's challenge to that standing.

This Commission continues to encourage other permanent judicial commissions to provide specific and adequate rationale in their decisions. See *Jones*, holding that "a decision rendered without rationale constitute[s] an injustice to the Appellant" (*Jones v. Mission Presbytery* (2019, 224-05)).

Order

IT IS THEREFORE ORDERED that the decision of the Synod of South Atlantic Permanent Judicial Commission is affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of South Atlantic report this Decision to the Synod of South Atlantic at the first meeting after receipt, that the Synod of South Atlantic 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 Tropical Florida report this Decision to the Presbytery of Tropical Florida at the first meeting after receipt, that the Presbytery of Tropical Florida 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.

Absences and Non-Appearances

Commissioner Linda Windy Johnston was recused and took no part in the hearing and deliberations. The commissioner positions from the Synod of Alaska-Northwest and Synod of the Sun were vacant.

Concurring Opinion

We agree with the majority's conclusion that the specification of error on the cross-appeal regarding Elder Tolley's standing should not be sustained. Because we do not agree with a portion of the rationale, we write this concurring opinion.

The existing procedure established by the *Book of Order* is sufficient. We agree with the majority that the *Book of Order* should properly be read together, but we disagree about where that complaint is to be filed.

The majority in its decision states that anyone in the congregation has standing to file a remedial complaint against an AC with original jurisdiction with the Synod PJC. We believe the proper filing for a remedial complaint against an AC with original jurisdiction is with the Presbytery PJC.

We believe there is a significant difference between the way an AC without original jurisdiction and an AC with original jurisdiction function.

When an AC is not given original jurisdiction, the *Book of Order* makes it clear about who is allowed to challenge those actions and file a complaint. The *Book of Order* (D-6.0202a) has separate provisions governing standing to challenge actions of a presbytery or session. Those provisions are:

A complaint of an irregularity or a complaint of a delinquency may be filed by one or more persons or councils subject to and submitting to the jurisdiction of a council.

a. In the instance of a complaint against a presbytery, a synod, or by a council against another council at the same level, ...

(1) a minister of the Word and Sacrament or a ruling elder enrolled as a member of a presbytery concerning an irregularity or a delinquency during that period of enrollment, against the presbytery, with the synod;...

The *Book of Order* is also clear about who has standing to file a complaint against a session. When an AC is given original jurisdiction and is granted the authority of function and jurisdiction of a session, it is my opinion that the complaint can be filed against them pursuant to the provision in the *Book of Order*, D-6.0202b:

In the instance of a complaint against a session, the Presbyterian Mission Agency, or an entity of the General Assembly, those eligible to file such a complaint are:

1. a member of a particular church against the session of that church, with the presbytery; ...

The Commission's rationale assumes a presbytery PJC is not in a position to adjudicate an alleged irregularity by a commission of the presbytery. We do not agree. We believe the *Book of Order* provides a process for the presbytery PJC to address such a complaint.

The *Book of Order* has provisions for how to handle cases filed with the PJC for making the reference to the higher council, in this case the synod, at D-4.0101: "A reference is a written request, made by a session or a permanent judicial commission of a presbytery or synod to the

permanent judicial commission of the next higher council, for trial and decision or a hearing on appeal in a remedial or disciplinary case not yet decided.” Only a session or PJC may ask for reference (*Hart, et al. v. Presbytery of San Joaquin*, 2003, 215-8).

We are concerned that the rationale for not sustaining this specification of error could create space for all members of a congregation to file complaints even against an AC without original jurisdiction of a session. We feel D-6.0202a and b should only be read together and applied to an AC where original jurisdiction of a session has been assumed, and that complaints filed in such a case should be filed with the Presbytery.

Commissioner Leah Ntuala
Synod of the Northeast

Commissioner John C. Welch
Synod of the Trinity

Opinion Concurring in Part and Dissenting in Part

We concur with the Decision of the Commission in all parts but for the decision related to Specification of Error No. 1 and 2. We believe the AC erred by failing to provide adequate notice and an opportunity to be heard.

In this case, the main event occurred during the emergence of the COVID pandemic. This Commission recognizes that the pandemic caused society to look for new ways to meet, and the church was no exception. Thus, virtual meetings were sometimes the only way for the church to stay active and continue its activities, whether through worship services, business meetings, and a congregational meeting. These were involuntary and unplanned changes. Therefore, this new form of meeting requires different attention, and we cannot automatically assume that the current rules are suitable for everyone and all situations.

Although the local bylaws provide that a congregational meeting shall be announced at least three weeks prior to the meeting, including successive Sundays, and the evidence showed this manner was consistent with the recent past, *that past was not in the middle of a pandemic*.

Similarly, limiting the time for members to speak to one minute and 30 seconds, with a total debate of one hour in length, in a virtual mode, was another way that did not consider the complexities of a virtual meeting. With those restricted rules, it was difficult to ensure and provide a real “*opportunity to be heard*” to impacted parties. Especially when those decisions impact the life and mission of a church, such as the sale of a property, it requires the highest level of attention to discern and decide complicated matters.

In view of the changes brought about by the pandemic, it was essential and necessary the AC do something more and make additional effort to ensure adequate notice and opportunity in this technological time. Continuing old patterns in a different modality is not necessarily appropriate.

When considering the totality of the circumstances in this case, especially the pandemic time, the events/actions taken in the past should not be considered sufficient. We conclude that the AC could have made, and should have made, additional efforts to ensure full participation. Applying the same criteria as in the past, in the new reality, is an error, and clearly it was not a best practice.

“The [PC (USA)] shall guarantee full participation and representation in its worship, governance and emerging life to all persons or groups within its membership” (F-1.0403).

Commissioner Mari Glory González-Guerra
Sínodo Presbiteriano Boriquén

Commissioner Wendy S. Tajima
Synod of Southern California & Hawaii

Certificates

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 226-01, *Cary Tolley, Appellant/Cross-Appellee, v. Presbytery of Tropical Florida acting as Session of First Miami Presbyterian Church, through Administrative Commission, Appellee/Cross-Appellant*, made and announced at Louisville, Kentucky, this 11th day of September, 2022.

Dated this 11th day of September, 2022

Brian D. Ellison, Moderator
Permanent Judicial Commission of the General Assembly

Diana Moore, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did, on this 11th day of September, 2022, transmit in person a certified copy of the foregoing to Flor Vélez-Díaz for delivery to the following persons:

Cary Tolley, Appellant/Cross-Appellee
James Wilson, Committee of Counsel for the Appellee/Cross-Appellant
Stated Clerk, Presbytery of Tropical Florida
Stated Clerk, Synod of South Atlantic
General Assembly Permanent Judicial Commission

Diana Moore, 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, in Louisville, Kentucky, on September 11th, 2022, in Remedial Case 226-01 *Cary Tolley, Appellant/Cross-Appellee, v. Presbytery of Tropical Florida acting as Session of First Miami Presbyterian Church, through Administrative Commission, Appellee/Cross-Appellant*, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, this 11th day of September, 2022.

Flor Vélez-Díaz, Assistant Stated Clerk
Manager of Judicial Process and Social Witness