

## **Constitutional Musing #23**

### **Abuses or Inappropriate Uses of Judicial Process**

Issued August, 2009

This is being published as a response to Referral # 05-20<sup>1</sup> from the 217<sup>th</sup> General Assembly to the Office of the General Assembly to study the Inappropriate Use of Judicial Process.

- The 217<sup>th</sup> General Assembly (2006) requested that the Office of the General Assembly undertake a study of the inappropriate use of judicial process and report findings and recommendation to the 218<sup>th</sup> General Assembly (2008).
- The 217<sup>th</sup> General Assembly urged individuals and governing bodies to become familiar with D-10.0102 and, as appropriate, to exercise their right to submit an accusation alleging (1) that a member of the Presbyterian Church (U.S.A.) has violated the commandment against bearing false witness, and/or (2) the member, if an officer of the church, has broken his/her ordination vows (see G-14.0405b(4)–(9) and G-14.0207d–j [now W-4.4003]) by filing accusations in bad faith.
- After receiving the results of the study, the 218<sup>th</sup> General Assembly directed the Stated Clerk to prepare an Advisory Opinion outlining existing remedies to address abuses of judicial process.

The Advisory Committee on the Constitution (ACC) reminded the 218<sup>th</sup> GA of existing remedies it cited in its response to Item 05-20 to the 217<sup>th</sup> General Assembly (2006):

The polity of the PC(USA) currently provides means to protect the denomination and its members from abuse of the system. Currently that protection exists through

1. the ability of an investigating committee to determine that charges will not be filed;
2. the ability of the investigating committee to choose to file allegations against an individual who inappropriately files allegations against another;
3. the ability of a session/permanent judicial commission that tries a disciplinary case to include in its opinion the statement that the allegations were frivolous. Investigating committees and sessions/permanent judicial commissions are strongly urged to avail themselves of these means as they seek to protect the integrity of our judicial system.

In addition, the ACC notes that permanent judicial commissions of higher governing bodies may instruct parties in its decisions that it will take original jurisdiction of cases in lower governing bodies filed by specific individuals when there has been a pattern of multiple complaints and appeals. This would reduce the time and money spent on multiple appeals. There is precedent for this by the General Assembly Permanent Judicial Commission in the 1998 case of Veldhuizen v. Presbytery of San Francisco<sup>2</sup>.

## **Background**

The Rules of Discipline of the Book of Order describe two very detailed judicial processes for the governing bodies to use in order to address two very specific types of conflict in the church, Disciplinary and Remedial. The Disciplinary judicial process provides a “due process” in situations where individual members of the church are alleged to have behaved in ways contrary to Scripture or the PC(USA) Constitution. The Disciplinary judicial process allows the PC(USA) community to determine whether the individual engaged in the prohibited behavior and whether the PC(USA) should limit the individual participation within the church (either as a member or as an officer) until the individual has exhibited repentance and is able to be restored to the full rights and responsibilities of membership or office. The Remedial judicial process provides a formal process by which a member of a governing body, a sister governing body, or an employee of a governing body may challenge a collective decision of the governing body if the governing body has taken an action it does not have the power to take under the PC(USA) constitution or has failed to take an action the governing body has a duty to take under the PC(USA) constitution. All other conflicts may be addressed by the governing bodies through administrative committees or commissions that may be given broader powers to resolve the particular conflicts under the Form of Government.

Occasionally individuals within the PC(USA) will attempt to use these judicial processes in inappropriate ways. On these occasions it can take quite a bit of human energy and money to eventually resolve the cases and many times resolve the issues. Inappropriate uses of judicial process can include multiple filing of allegations of disciplinary offenses against individual which triggers the appointment of multiple committees to determine probable cause. When allegations of offenses are in writing from a member of the PC(USA), the governing body automatically appoints an investigating committee to determine probable cause. When allegations of offense are from a non-member of the Presbyterian Church (U.S.A.) or not in writing, the governing body staff analyze whether they have received a notice of offense that will need a committee appointed to determine probable cause and reasonable proof. Other inappropriate uses of judicial process include the filing of multiple remedial cases against one governing body to interfere with the ongoing mission of the church.

## **Results of Study**

The Office of the General Assembly sent a survey to the Stated Clerks of the Presbyteries and Synods to find if the Stated Clerks felt that there had been any inappropriate use of judicial process in their governing body. We received responses from fifty-six presbyteries out of one hundred seventy-four three presbyteries or just under one third of the presbyteries and four synods or one fourth of the synods. Of those who responded, fifty-two stated clerks stated that their governing body had not experienced any inappropriate use of judicial process. Eight stated clerks did acknowledge the inappropriate use of judicial process, representing seven presbyteries and one synod.

Most of the inappropriate uses were spread out over two to four years and involved one person filing multiple disciplinary allegations as well as multiple remedial complaints. In several instances the individual also filed civil cases. Most of these allegations and cases were attempts to challenge a particular set of facts and circumstances in a variety of ways. In some cases the disciplinary allegations of offense were filed against individuals for decisions made within the context of a committee or commission of a presbytery and in two instances for participation in a judicial case either as witnesses or as members of a permanent judicial commission. In some situations, the disciplinary allegations did not rise to the level of an offense and the investigating committees did not begin an inquiry. In some situations, the allegations may have constituted an offense, but the investigating committees found no probable cause after an initial inquiry. Some of these governing bodies had to appoint five to six investigating committees (of three to five members each) simultaneously. Others have had to field five to six investigating committees over a period of years because the individual filing the allegations continued to file against people.

The most egregious use of judicial process occurred over a period of four years in which a church split spawned over one hundred disciplinary allegations and remedial complaints. The Permanent Judicial Commission with jurisdiction spent several years consolidating the cases until a resolution satisfactory to all was obtained. Another church split spawned a dozen disciplinary allegations and remedial complaints. In those cases where multiple remedial complaints were filed, the Permanent Judicial Commission with jurisdiction consolidated cases based upon similar facts and circumstances. In those disciplinary allegations based upon the same facts and circumstances, Presbyteries have utilized one IC to inquire into the facts and circumstances for allegations of offense against multiple people.

The financial costs to the governing bodies have ranged from \$2,000 to \$200,000 for the inappropriate use of judicial process within the context of the church, with most in the range of \$2,000 to \$5,000. When civil litigation is included, the financial costs increase. The costs to the governing bodies in time and energy included the use of as many as fifteen to thirty people as members of investigating committees, administrative commissions, permanent judicial commissions, and governing body staff. When these inappropriate uses occur, it can cripple the ongoing mission of the governing body since the time and energy of so many people are directed towards judicial process.

One stated clerk observed that the inappropriate use seemed to be in retaliation for a perceived wrong rather than an attempt to correct a perceived wrong.

In five instances, the governing bodies eventually either censured the individual responsible for the inappropriate use, limited which body has jurisdiction over the cases filed by the individual, presumed the individual to have renounced jurisdiction, or the individual renounced jurisdiction. In three instances, there has been no censure of the individual who used the judicial process inappropriately.

## Is there a solution?

The current Rules of Discipline allow the Permanent Judicial Commission of jurisdiction to dismiss a Remedial Complaint that fails to state a claim upon which relief may be granted. Current Authoritative Interpretation of the Rules of Discipline also allows a Permanent Judicial Commission to consolidate multiple remedial complaints filed based upon the same facts and circumstances.

When allegations of offense against member of the PC(USA) are received by a governing body, the current Rules of Discipline state that, depending upon the relationship of the person who filed the allegation with the PC(USA), either a committee is automatically formed to determine probable cause or the governing body staff that receives the allegation determines whether or not to form a committee. Generally the PC(USA) polity prefers that decisions made by governing bodies be made in the context of groups of people, not by individuals. Any further limit on the form of allegation that automatically triggers the formation of a committee shifts the power into the hands of the governing body staff to determine whether or not a committee should be appointed to determine probable cause.

The PJC currently has the power, after due process, to limit any individual behavior that constitutes an offense, including the inappropriate use of judicial process.

The inappropriate use of judicial process can be quite destructive on the life and witness of the church through its governing bodies. When used appropriately, judicial process maintains the rights of individuals and governing bodies to have a fair hearing when alleged to have behaved beyond the boundaries set by the church and Scripture. The current processes can be used to limit, consolidate, dismiss, or censure individual and governing body behavior including inappropriate use of judicial process.

The 218<sup>th</sup> General Assembly reminded individuals that the Rules of Discipline cannot be used to mediate intrinsic differences of theology, policy, polity, power, or trust. These broader issues of conflict should be addressed by individuals within the church and by administrative processes within the church such as mediation, administrative review committees, or administrative commissions. Judicial process is to be used when an individual church member, after trying to bring about an adjustment or settlement of the quarrel, complaint, delinquency or irregularity asserted has determined after prayerful deliberation that the due process provided by the Rules of Discipline is necessary to preserve the purity and purposes of the church either to limit the behavior of individuals within the church or to correct the unconstitutional use of power by governing bodies.

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<sup>1</sup> General Assembly *Minutes*, 2006, Part I, p. 428.

<sup>2</sup> Remedial Case 210-6, *Veldhuizen v. Presbytery of San Francisco*, General Assembly *Minutes*, 1998, Part I, p. 136.