

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

**Presbyterian Church (U.S.A.), filed by )  
the Prosecuting Committee of Newark )  
Presbytery, )  
Appellee, )  
v. )  
Ruling Elders Ana Aquino, Catherine )  
Campbell-Wright, Emile Duho, Stephen )  
Fingal, Sr., Samuel Jan, Michael Lunga, )  
and Paul Taylor, of First Presbyterian )  
Church in Newark, New Jersey, )  
Appellants. )**

**Decision and Order  
Disciplinary Appeal 224-04**

**Arrival Statement**

This is an Appeal to the Permanent Judicial Commission of the General Assembly (GAPJC or this Commission) from an April 11, 2018, decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC) censuring the seven Appellants pursuant to D-12.0104. In that decision, the SPJC found Appellants guilty on three of four disciplinary charges. The appeal was received by the Stated Clerk of the General Assembly on June 4, 2018.

**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 grounds for appeal under D-13.0106.<sup>1</sup>

**Appearances**

For Appellants, William B. Savo and Appellant Michael Lunga appeared by telephone conference call, such that all could hear and be heard by everyone present. For Appellee, Jeremy Campbell and Gregory Horn appeared.

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<sup>1</sup> Book of Order citations in this Decision are from the 2015-2017 edition, which was in effect during the time of the actions and the SPJC decisions herein.

## History

This case arises as an appeal from a disciplinary case before the SPJC, heard on April 9-11, 2018. Appellants were all trustees of First Presbyterian Church in Newark, New Jersey (FPCN). Newark Presbytery (Presbytery) placed an administrative commission (AC) over the affairs of the session of FPCN in July 2015, and the Synod of the Northeast (Synod) placed an administrative commission over the affairs of Presbytery in October 2015. The SPJC heard the disciplinary case as the court of original jurisdiction.

The SPJC tried Appellants on four charges, identified in the underlined text below:

1. Service beyond maximum term limits. Appellants have exceeded six consecutive years of service as trustees as prohibited by G-2.0404 and G-4.0101.
2. Causing a corporation to be formed without the knowledge, consent, and vote of the congregation in a properly called congregational meeting. On May 13, 2015, Appellants filed a “certificate of incorporation” in Superior Court of New Jersey, Essex County, Chancery Division (Docket No. ESX-C-147-18), to cause formation of a non-profit religious corporation, “The Trustees of First Presbyterian Church in Newark.” This was done without the approval of session or congregation in violation of G-4.0101.
3. Failure to submit to the authority of the session, in violation of G-4.0101. Appellants disregarded the authority of session (*e.g.*, by refusing to disburse funds as directed by the AC that was acting as the session per decision of Presbytery). Additionally, in oral testimony, Appellants maintained that “they did not have to answer to the session.”
4. Violation of ordination vows.

On April 11, 2017, FPCN Treasurer Anthony Wisseh and the Presbytery AC for FPCN filed a civil suit in Superior Court of New Jersey, Essex County, Chancery Division, seeking a declaratory judgment concerning the relationship between the Charter of the First Presbyterian Church in Newark (Charter), granted by King George II of England in 1753, and the Constitution of the Presbyterian Church (U.S.A.). As of the date of the hearing on this appeal, the civil case had not been decided.

The SPJC pretrial hearing scheduled for January 4, 2018, was postponed until January 10. The trial was scheduled for February 12-14, in Albany, New York, but upon request of Appellants was postponed to April 9-11, 2018, and relocated to Orangeburg, New York.

On March 16, 2018, Appellant Ana Aquino informed the SPJC Executive Committee (EC) that she could not attend the trial because she did not have sufficient leave from her employment. On March 23, Appellant Catherine Campbell-Wright informed the EC that she did

not believe her health permitted her to attend the trial. The EC agreed to excuse both, if both agreed to be represented by counsel. On April 2, Appellant Emile Duho informed the EC that he would not be able to attend the trial because he would be attending the funeral of a relative in Africa. The EC offered Duho the same arrangement offered to Aquino and Campbell-Wright. On April 3, the EC was informed that William Savo, counsel for Appellants, was not able to attend due to a serious medical condition. The EC invited one of the Appellants (Lunga), a practicing attorney, to serve as counsel. He declined, but the record shows that he spoke on behalf of Appellants throughout the course of the trial.

On April 9-11, 2018, SPJC tried the case. It found Appellants guilty by unanimous decisions on charges 1 through 3 and not guilty by unanimous decision on charge 4. It imposed immediate temporary exclusion from membership in the PC(USA), to be lifted three months after all records and control of all financial accounts of FPCN are turned over to the duly elected treasurer of FPCN.

As part of their defense, Appellants relied on the fact that FPCN was granted a Charter, arguing that the provisions of the Charter supersede the authority of the *Book of Order* in matters on which the Charter speaks.

Appellants maintain that, pursuant to their fiduciary and contractual obligations under the Charter, the Board of Trustees has always independently controlled the disposition of the property of FPCN, and that the congregation is bound by contractual obligations through its Charter superior to any which bind it to any ecclesiastical judicatories.

In its decision, the SPJC held:

...the fact that FPCN's legal existence commenced with the Royal Charter does not mean that its trustees are not subject to the Constitution of the PC(USA). The corporate status of every incorporated congregation in the denomination arises out of a civil source, as the *Book of Order* recognizes (G-4.0101). This does not mean that the board of trustees of a church is a separate and distinct entity apart from the church itself.... The trustees of the corporation of the church are subject to both the requirements of the source of origin AND the provisions of the Constitution, including the *Book of Order*, and as such, those rules are read together, giving full effect to both, to the extent possible. The history and tradition of an individual congregation of the PC(USA) cannot supplant the Constitution applicable to all congregations in the denomination, particularly on topics specifically addressed in the Constitution (*PC(USA) by Presbytery of Newark v. Aquino, et al.*, SNE 2017-06, p. 5).

Appellants filed their Appeal with the Stated Clerk of the General Assembly on May 22, 2018.

## Specifications of Error

There are five specifications of error raised by the appeal, most with sub-parts. Appellants' specifications of error pursuant to D-13.0106 are listed below in substantially the same language used by Appellants.

Specification of Error No. 1: Irregularities in the proceedings (D-13.0106a) on the part of the SPJC, by:

- a. *Failing to give three of the Appellants the opportunity to be present by denying their request for a continuance;*
- b. *Failing to give the Appellants adequate time to obtain counsel;*
- c. *Failing to appoint counsel for the Appellants.*

This specification is not sustained (see Decision below).

Specification of Error No. 2: The SPJC erred by refusing the Appellants reasonable opportunity to be heard and present evidence at a time when they could attend (D-13.0106b).

This specification is not sustained (see Decision below).

Specification of Error No. 3: The SPJC erred by hastening to a decision (D-13.0106d) by:

- a. *Failing to allow a continuance for Appellants to obtain counsel;*
- b. *Failing to allow a continuance for Appellants the opportunity to be present;*
- c. *Failing to allow a continuance until after the civil case was heard.*

This specification is not sustained (see Decision below).

Specification of Error No. 4: The SPJC manifested prejudice in the conduct of the case (D-13.0106e) by denying Appellants an opportunity to be heard, to present evidence, and to be present, and by hastening to a decision.

This specification is not sustained (see Decision below).

Specification of Error No. 5: The SPJC erred through injustice in the decision (D-13.0106f) by:

- a. *The Prosecuting Committee (PC) failed to establish beyond a reasonable doubt that they were guilty of service beyond six consecutive years;*
- b. *The PC failed to establish beyond a reasonable doubt that they were guilty of causing a corporation to be formed;*
- c. *The PC failed to establish beyond a reasonable doubt that they were guilty of any actions related to the session of the FPCN.*

This specification is not sustained (see Decision below).

## Decision

Two issues are central to this case.

### *Specifications 1 through 4*

The first issue is whether the action of the SPJC to hold the disciplinary trial on April 9-11, 2018, was in error. The SPJC had been notified of the absences of three of the Appellants and of Appellants' counsel. The procedural irregularities alleged in Specifications 1 through 4 consist of a denial of the right to be heard and to present evidence, hastening to a decision, and a manifestation of prejudice on the part of the SPJC. This Commission holds that the SPJC decision to proceed to trial on April 9 does not constitute error.

The record is silent concerning any alternate date proposed by Appellants Aquino and Campbell-Wright on which they expected to be able to appear. It does note that both agreed to be represented by counsel and to have their absences excused. Additionally, although Savo, original counsel for Appellants, was unable to appear, there was among Appellants an attorney (Lunga) who was eligible to serve. The SPJC appointed Lunga as counsel; he declined the appointment. Nonetheless, the record shows that he spoke on behalf of Appellants throughout the trial, serving as *de facto* counsel. (It should be noted that there is no requirement in the *Book of Order* that counsel be an attorney.) Appellants had already been granted one postponement from an original trial date of February 12-14, 2018, and a relocation of the trial from Albany, New York, to Orangeburg, New York.

In response to the argument that the SPJC's refusal to delay the trial until after a decision in the civil suit constitutes hastening to a decision, this Commission finds that the SPJC assessed the costs of postponement and determined that proceeding with the April 9 trial date was the most faithful stewardship of resources. In its decision, the SPJC notes:

The history statement demonstrates the great practical difficulty involved in exercising church discipline in councils of the church that are far removed from the council having direct responsibility for members of the church.... It becomes necessary to ask the Accused, the Prosecuting Committee, their counsel, and members of the Commission to travel considerable distances and forego work and family commitments in order to be present, and it becomes difficult to exercise flexibility with regard to hearing and trial dates, since arrangements involving significant material and human resources must be made (*PC(USA) by Presbytery of Newark v. Aquino, et al.*, SNE 2017-06, p. 8).

This Commission declines to substitute its judgment for that of the SPJC in this matter.

Specifications 1 through 4 are therefore not sustained.

## Specification 5

The second issue is whether the PC established beyond a reasonable doubt that Appellants were: a) guilty of service beyond maximum permitted length of term; b) guilty of causing a corporation to be formed without approval of the congregation; and c) guilty of actions related to the Session of FPCN.

The Presbyterian Church (U.S.A.) and its antecedent churches have long insisted that adherence to the church's Constitution is not optional but mandatory for congregations and their members, councils, and those in the church's ordered ministries (F-3.0209, G-1.0103, W-4.0404e). For those who are part of the church's life and ministry, there are no exceptions to the requirement to act in accordance with the Constitution.

This is an appeal of a disciplinary case in which Appellants were found guilty of actions that violate the Constitution. It is not a remedial matter concerning the disposition of church property. It is undisputed by either party that Appellants have violated provisions of the Constitution represented in charges 1 through 3 brought against them in the SPJC trial.

Appellants' Specification No. 5 rests on the claim that the Charter supersedes the authority of the Constitution. This Commission does not find this argument persuasive.

The question of the relationship between civil authority and ecclesiastical constitutions goes back to the earliest days of Presbyterianism in the United States. In 1789, the first General Assembly of the Presbyterian Church in the United States of America adopted as its first historic principle of church order" the commitment of the Westminster Confession (1646) that God alone is Lord of the conscience...." It drew from this core commitment the following corollary:

Therefore we consider the rights of private judgment, in all matters that respect religion, as universal and unalienable: We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and at the same time, be equal and common to all others (F-3.0101b).

Bearing in mind Revolutionary era concerns to avoid state-sponsored or "established" churches, Presbyterians in the new United States of America asserted their commitment to the right of each individual church or society of churches to declare "the whole system of its internal government," acknowledging as they did so that "in the exercising of this right they may, notwithstanding, err; ... yet even in this case they do not infringe upon the rights and liberties of others, but only make an improper use of their own" (F-3.0102). Throughout the centuries since, Presbyterians have insisted that, in matters of internal ecclesial governance, the church's polity is subordinate only to Scripture and the confessions as a guide for our ecclesiastical decisions, and that all congregational articles of incorporation must be consistent with provisions of the Constitution.

This case tests these commitments. Appellants argue that the Charter supersedes in authority any provisions of the *Book of Order* with which the Charter may be in conflict.

Appellants' argument is based on the fact that the Charter was granted in 1753, some thirty-six years before the adoption of the historic principles adopted in 1789 by the first General Assembly. Appellants rely on civil authority to secure their position, something PC(USA) polity does not do.

The *Book of Order* G-4.0101 mandates:

Where permitted by civil law, each congregation shall cause a corporation to be formed and maintained...The corporation so formed, or the individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for the congregation, provided that in buying, selling, and mortgaging real property, *the trustees shall act only after the approval of the congregation, granted in a duly constituted meeting*; to accept and execute deeds of title to such property; to hold and defend title to such property; to manage any permanent special funds for the furtherance of the purposes of the congregation, *all subject to the authority of the session and under the provisions of the Constitution of the Presbyterian Church (U.S.A.). The powers and duties of the trustees shall not infringe upon the powers and duties of the session or the board of deacons* (emphasis added).

As the SPJC notes in its decision:

The corporate status of every incorporated congregation in the denomination arises out of a civil source, as the Book of Order recognizes (G-4.0101). This does not mean that the board of trustees of a church is a separate and distinct entity apart from the church itself. The fact that a church has a legal existence pursuant to a source outside of the PC(USA) does not mean that each and every matter involving the corporation and its trustees is determined outside the Book of Order. By virtue of being a congregation of the PC(USA), the congregation is governed by the Constitution of the PC(USA) and the members of the congregation subject themselves to the leadership of the session and higher councils (G-1.0203). The trustees of the corporation of the church are subject both to the requirements of the source of origin AND the provisions of the Constitution, including the Book of Order, and as such, those rules are read together, giving full effect to both, to the extent possible. The history and tradition of an individual congregation cannot supplant the Constitution applicable to all congregations in the denomination, particularly on topics specifically addressed in the Constitution (*PC(USA) by Presbytery of Newark v. Aquino, et al.*, SNE 2017-06, p. 5).

This Commission concurs in this reasoning of the SPJC.

Appellants assert that a decision in the pending civil suit will be the final determinant regarding the authority of the Charter. This Commission finds that the outcome of this ecclesiastical proceeding is not dependent on the decision of a civil court. Regardless of civil court rulings, a congregation of the PC(USA) is bound by the Constitution of the PC(USA). Provisions of the Constitution governing the relationship of trustees to congregation and session,

and the length of term of those serving as trustees, apply fully and without exception to PC(USA) congregations.

Appellants also claim injustice in the SPJC finding of guilt with respect to causing a corporation to be formed without approval by the congregation. They argue that their action of May 15, 2018, to “reaffirm” the corporation did not constitute the formation of a corporation. This Commission finds this argument unpersuasive.

In recent years, congregations in many states have sought to amend corporate documents or revise them in various ways, many of which are inconsistent with provisions of the church’s Constitution. In 2010, the 219th General Assembly addressed this matter in an authoritative interpretation of G-4.0101 (then G-7.0401; *Minutes* 2010, p. 330, Item 05-12). The interpretation stated that a congregation “...lacks the power to adopt changes to its articles of incorporation, regulations, bylaws, or standing rules that are contrary to the Constitution of the Presbyterian Church (U.S.A.)” This Commission regards the adoption of corporate documents without congregational approval as no less a violation of the church’s polity than adoption of such documents containing provisions contrary to the Constitution. Either constitutes grounds for presbytery to act to correct the irregularities inherent in the creation of such documents.

Appellants’ claim of injustice in the finding of guilt for service beyond the maximum term limit fails on the grounds that each currently serving trustee has served longer than six consecutive years (G-2.0404). On the basis of oral testimony and record, it is clear that Appellants have not stood for election as trustees since 2014 and have served for periods considerably longer than six years, and that this is both current and historic practice.

This Commission notes that the SPJC-imposed censure temporarily excluded Appellants from membership in the congregation. An effect of this action is that Appellants are also no longer trustees of FPCN, since G-4.0101 requires that trustees be members of the congregation.

Appellants’ claim of injustice in the finding of guilt for actions related to the session of FPCN is also unpersuasive. In both the record and oral argument, Appellants admit their failure to turn over control of financial assets of the congregation, and to pay a former pastor as instructed by the AC serving as the session of FPCN. G-3.0201c mandates that the session has responsibility for “directing the ministry of deacons, trustees, and all organizations of the congregation.” The fact that the session of FPCN was dissolved and an administrative commission was in place to manage the congregation’s affairs does not obviate this charge. Therefore, the AC’s instructions, for the period of time it serves in place of the session, are the instructions of the session.

Specification 5 is therefore not sustained.

### **Order**

IT IS THEREFORE ORDERED that the decision of the Synod of the Northeast Permanent Judicial Commission is hereby affirmed.

IT IS FURTHER ORDERED that Appellants be notified of this Decision and Order.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this Decision to the Synod of the Northeast at the first meeting after receipt, that the Synod of the Northeast 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 Newark Presbytery report this Decision to Newark Presbytery at the first meeting after receipt, that Newark 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.

IT IS FURTHER ORDERED that the Clerk of Session of the First Presbyterian Church in Newark, New Jersey, report this Decision to the Session at the first meeting after receipt, that the Session 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**

Commissioners Jean Kennedy and William Myers were absent and did not participate in the hearing or its deliberations.

## Certificate

We certify that the foregoing is a true and correct copy of the decision of the Permanent Judicial Commission of the Presbyterian Church (U.S.A.) in Disciplinary Appeal 224-04, Presbyterian Church (U.S.A.) by Newark Presbytery, Appellees, v. Ruling Elders Ana Aquino, Catherine Campbell-Wright, Emile Duho, Stephen Fingal, Sr., Samuel Jan, Michael Lunga, and Paul Taylor, for First Presbyterian Church, Newark, New Jersey, Appellants, made and announced at Louisville, KY, this 28<sup>th</sup> day of April, 2019.

Dated this 28<sup>th</sup> day of April, 2019.

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Ruth Goldthwaite, Moderator  
Permanent Judicial Commission of the General Assembly

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Deborah Little Cohn, 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 Federal Express Next Day Air, directing Flor Vélez-Díaz to deposit it in the mail at Louisville, Kentucky, this 28<sup>th</sup> day of April, 2019.

General Assembly Permanent Judicial Commission  
Stated Clerk, Synod of the Northeast  
Stated Clerk, Newark Presbytery  
Clerk of Session, First Presbyterian Church in Newark, New Jersey  
William Savo, Counsel for the Appellants  
Jeremy Campbell and Gregory Horn, Counsel for Appellee

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 Flor Vélez-Díaz, on April 28, 2019.

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Deborah Little Cohn, 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 April 28, 2019, in Disciplinary Appeal 224-04, Presbyterian Church (U.S.A.) by Newark Presbytery, Appellee, v. Ruling Elders Ana Aquino, Catherine Campbell-Wright, Emile Duho, Stephen Fingal, Sr., Samuel Jan, Michael Lunga, and Paul Taylor, for First Presbyterian Church, Newark, New Jersey, Appellants 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, on April 28, 2019.

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Flor Vélez-Díaz, Assistant Stated Clerk, Presbyterian Church (U.S.A.) and Manager of Judicial Process and Social Witness