

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

<b>David ANDERSON</b>	)	
<b>Clarence W. BLACKHURST</b>	)	
<b>Gary A. CHORPENNING</b>	)	
<b>Jeff DYBDAHL</b>	)	
<b>Harrison A. GRUENLER</b>	)	
<b>Peggy McQUADE-HEDDEN</b>	)	
<b>Keith R. KIVLIN</b>	)	
<b>Case KOORN</b>	)	
<b>John LADERER</b>	)	
<b>Patricia M. LADERER</b>	)	
<b>Betty MEABON</b>	)	
<b>James M. MORAN</b>	)	
<b>Richard C. NEGLEY</b>	)	
<b>William H. NEWELL</b>	)	
<b>Robert J. PICKETT, Sr.</b>	)	
<b>Kristana P. ROBINSON</b>	)	
<b>Charles L. STEEL</b>	)	
<b>George W. STEWART</b>	)	
<b>Margaret A. STOUT</b>	)	
<b>John Allan WATSON</b>	)	
<b>Complainants/Appellants</b>	)	
	)	
<b>v.</b>	)	<b>REMEDIAL CASE 209-7</b>
	)	
<b>Presbytery of SCIOTO VALLEY</b>	)	
<b>Respondent/Appellee</b>	)	

This remedial Case comes before the Permanent Judicial Commission of the General Assembly (Commission) on appeal by David Anderson (Appellant), joined by several others (collectively, Appellants) from a purported decision by the Permanent Judicial Commission of the Synod of the Covenant (SPJC). The Presbytery of Scioto Valley (Presbytery) is the Appellee.

In adopting amendments to the Form of Government and Rules of Discipline, the 208th General Assembly (1996) affirmed this Commission's request that all cases filed before the adoption of the amendments be adjudicated in accordance with the Rules of Discipline then in effect. Therefore, we consider this case in accordance with the 1995-1996 version of the Rules of Discipline. All references in this decision shall be to the 1995-1996 Rules of Discipline.

The Permanent Judicial Commission finds that it has jurisdiction, that the Appellants have standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order. (D-13.1200a)

### **HISTORY**

This case arises from complaints by David Anderson and others against the Presbytery concerning Presbytery action on November 28, 1995. The complaints were nearly identical and, by agreement of the parties, were consolidated.

After the recusal of the Moderator of the SPJC the Vice Moderator and Clerk of the SPJC held a pre-trial conference on April 9, 1996, to examine the preliminary questions identified in D-6.1200 and to explore the settlement options. During the pre-trial conference the parties disagreed about whether the complaints stated a claim upon which relief could be granted.

On May 7, 1996, the Vice Moderator and Clerk of SPJC circulated a memorandum to the other members of the SPJC entitled "Suggested Decision". Members of the SPJC were requested to review the "Suggested Decision" and other papers relating to the case, some of which had been sent to them previously, and indicate

by mail their agreement or disagreement with it. Seven members indicated their agreement, one member indicated disagreement with part of the "Suggested Decision." The dissenting member stated that she did not even have a copy of the original complaint. It is not clear from the record whether all members of the SPJC had received copies of all the relevant documents. The dissenter challenged some of the language in the "Suggested Decision" and briefly indicated her reasons. Other members of the SPJC had no opportunity to consider her ideas when they made their responses.

On July 22, 1996, a memorandum indicating that it came from the SPJC was sent to the Stated Clerk of the Presbytery and to "Kristana Robinson, Complainant (and 19 others)." The memorandum stated that eight responses to the May 7, "Suggested Decision" had been received, only one of which indicated disagreement. In its concluding paragraph the memorandum stated:

It was also suggested that a more appropriate wording in the proposed decision would have been to "dismiss the case" (on the basis of it having no merit) rather than "return the complaint." The point is well taken. The complaints (sic) do have the right to insist on proceeding to trial in this case but their wiser course of action would seem to be one of filing disciplinary and/or remedial cases with the Presbytery Permanent Judicial Commission if future actions...provide a basis for this.

D-6.1200b provides:

If any question arises on any point listed in 12.a. above, either upon motion by a party or by the permanent judicial commission upon the suggestion of its moderator or clerk or any member, the permanent judicial commission shall schedule a pretrial conference at which all such preliminary questions will be resolved by agreement or will be reduced to writing and submitted to the permanent judicial commission for resolution, if possible, upon the written record. If the trial of any preliminary question is necessary, that trial shall be scheduled at least thirty days prior to the trial upon the merits, unless the circumstances, including monetary

considerations, render advisable the disposition of the preliminary questions immediately before the trial.

The full SPJC held neither a pretrial conference on the preliminary question of whether the Complaint presented a claim upon which relief could be granted nor a trial on the merits of the Complaint. It did not meet nor hold a conference telephone call to deliberate and form a considered decision based on the written record. The memorandum of July 22, 1996, was not certified by the Clerk of the SPJC as a decision, nor were receipts received as proof of delivery (D-8.1800e). The memorandum was not signed by the Vice Moderator. Although the memorandum generally described the procedures followed by the SPJC, it failed to resolve the preliminary question or to announce a determination of that issue.

Thereafter, the Stated Clerk of the Presbytery wrote to the Vice Moderator of the SPJC and expressed confusion over the meaning and intent of the memorandum. On August 7, 1996, the Vice Moderator of the SPJC wrote a letter to the Presbytery Stated Clerk stating "Please consider this letter the official action of the Permanent Judicial Commission in dismissing the complaints." Initials below the signature on this letter indicate that it was actually signed by another person. There is no indication that a copy of this letter or a similar letter was sent to the Complainants.

Appellants, assuming that the July 22, 1996, memorandum constituted a decision, appealed to this Commission on August 20, 1996. In this case the SPJC never rendered a recognizable determination on the preliminary questions. Consequently, the synod has never disposed of the case.

## **SPECIFICATIONS OF ERROR**

Appellant has listed six specifications of error. From Appellant's brief this Commission has determined that a single specification of error disposes of the Case:

SPJC failed to render a recognizable determination on the preliminary question whether the Complaint stated a claim upon which relief can be granted.

This specification is sustained.

The July 22, 1996, memorandum was not a decision on this preliminary question. Further, the entire SPJC had no opportunity to deliberate corporately. Because of our determination on this specification of error it is not necessary to address the others.

## **ORDER**

IT IS THEREFORE ORDERED that the decision of the SPJC is remanded to that commission for determination by the full SPJC of the question whether the complaint presents a claim upon which relief can be granted. The SPJC is to provide both parties opportunity to present their views on the preliminary question either in person or by pretrial briefs. The SPJC is to provide its own members opportunity to discuss the views of the parties along with their own views either in person or by other effective means. The SPJC is then to determine whether the complaints state a claim upon which relief can be granted. If it is determined that relief can be granted, the SPJC shall hold a trial on the merits of the complaints and determine whether the relief requested or some other relief should be granted.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Covenant 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 Scioto Valley 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.

Dated this 9th day of February, 1997.

**CONCURRING IN PART; DISSENTING IN PART**

Although we agree with the majority's conclusion that the Synod Permanent Judicial Commission failed to render a recognizable decision determining whether Complainants' complaint stated a claim upon which relief can be granted [D-6.1200a(4)], we dissent from that portion of the Commission's decision remanding this case to the Synod Permanent Judicial Commission for a determination of this preliminary question. Although the procedures followed by the Synod Permanent Judicial Commission were flawed, the record presented to it (which has also been presented to this Commission) failed to demonstrate that the Complainants had stated a claim under D-6.1200a(4). To remand this Case to the Synod Permanent Judicial Commission solely to correct these procedural errors would needlessly expend the time, talent and resources of the Church and its members.

At its November 28, 1995, meeting, the Presbytery of Scioto Valley voted to support the "mission and ministry" of Northminster Presbyterian Church. The Presbytery also approved a motion extending a stated supply contract between Northminster and the Rev. Theresa Hansing. The record reflects that at least one year before the Presbytery's action, the Northminster Session had adopted a mission statement whereby it invited Christ United Evangelical Church to share in its Bible study programs and worship services. The Northminster mission statement further provided that in its services, "the Session's mission of inclusiveness is to be interpreted as a direct invitation to Christ United Evangelical Church to join with Northminster as a guest of these services."

In their complaint, the Complainants contended that the actions taken by the Presbytery were irregular, alleging that affirmation of Northminster's mission and ministry was unconstitutional because it was operating as a federated or union church with Christ United, without having complied with, and in violation of, certain constitutional procedures and provisions. The Complainants also asserted that because Northminster was acting as a federated or union church, Hansing was, thus, acting as pastor of Christ United, without having received permission to labor beyond the jurisdiction of the Presbytery.

In our view, the complaint filed by the Complainants failed to state a claim upon which relief can be granted. As relevant to this Case, D-6.0300 states that a complaint is a written statement alleging an irregularity in a particular decision or action . . .” In turn, an irregularity is defined as an “erroneous decision or action.” (D-1.0600) Here, even accepting the factual allegations of the Complaint, the specific actions taken by the Presbytery do not constitute an authorization, approval or endorsement of an unconstitutional union or federated church, an unconstitutional stated supply arrangement, or an unconstitutional validation of a service beyond the jurisdiction of the church. The Complainants have attempted to create a claim by recasting, recharacterizing and reinterpreting what the Presbytery did. A complainant, however, cannot unilaterally create a claim against a governing body by asserting the occurrence of an unconstitutional “erroneous decision or action” which, in reality, never happened.

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Patricia K. Norris

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Janet Schlenker



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E. Cader Howard