

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

Hyung K. Yun, Yun Soo Kim, Young)
Yoon Kim, Kwan Young Lee, Seung G.)
Ahn, In Bae Chun, Richard Yun, and Kee)
Ho Lim,)
Complainant/Appellant,)
v.)
Session of Korean United Presbyterian)
Church of New Jersey,)
Respondent/Appellee.)

**DECISION ON CHALLENGE
TO PRELIMINARY QUESTIONS
(D-6.0305)**

Remedial Case 218-08

This remedial case came before this Commission on an appeal filed by the Complainants/Appellants, Hyung K. Yun, Yun Soo Kim, Young Yoon Kim, Kwan Young Lee, Seung G. Ahn, In Bae Chun, Richard Yun, and Kee Ho Lim, (*Yun et al.*,) from a Ddecision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC) dated December 7, 2006.

Yun et al., appealed to the SPJC contesting a decision by the Permanent Judicial Commission of the Presbytery of Newark (PPJC). Upon examining papers pursuant to D-8.0301, the Executive Committee of the SPJC determined that the appeal did not state one or more of the grounds for appeal set forth in D-8.0105. In response to a challenge by *Yun et al.*, the SPJC upheld the SPJC Executive Committee's determination and dismissed the appeal. *Yun et al.*, have now appealed the Synod decision to the General Assembly Permanent Judicial Commission (GAPJC). The scope of the appeal is limited to the question of whether the SPJC erred in dismissing the appeal because it did not state at least one of the grounds for appeal mentioned in D-8.0105.

The Executive Committee of the GAPJC examined the papers in the case and found that this Commission has jurisdiction and that *Yun et al.*, have standing to file the appeal. The Executive Committee also found that the appeal from the SPJC decision states one or more of the grounds for appeal under D-8.0105. This finding was neither an affirmation nor a rejection of the SPJC finding, but instead found that the *Yun et al.*, Notice of Appeal to this Commission states at least one of the constitutional grounds for appeal.

However, the Executive Committee found that the appeal was not properly and timely filed. "A written notice of appeal shall be filed within forty-five days after a copy of the judgment has been delivered by certified delivery or personal service..." (D-8.0201). This finding was based on the fact that the Synod decision was delivered on December 14, 2006, and that the appeal was received in the Synod office on January 29, 2007, which was the 46th day. The notice was due on January 28, 2007, which was a Sunday.

Yun *et al.*, challenged this finding in a timely manner. In its challenge, Yun *et al.*, acknowledged the “one-day delay in filing the appeal.” However, Yun *et al.*, has argued timely filing with the stated clerk should be interpreted in a manner that means “mailing within the legal deadline.” In this regard, Yun *et al.*, note that the Notice of Appeal was mailed on January 25, 2007, but was not received by the Synod until January 29.

At its meeting on May 3-7, 2007, in Kansas City, MO, this Commission reviewed the findings of the GAPJC Executive Committee in accordance with the challenge procedure of D-6.0306.

DECISION

This Commission has determined that the standard for timely filing as set forth in *Haggin v. Presbytery of The Redwoods, Minutes, 1997, p. 134*, is no longer viable. *Haggin* requires that a notice of appeal be “filed and *received* by the stated clerk of the governing body from which the appeal is taken” within the 45 day appeal period. This interpretation makes the ability to file an appeal totally dependent on the availability of the stated clerk to receive the notice. While it is unreasonable to expect a stated clerk to be available at all times to receive an appeal, it is also unreasonable and unjust to require an appellant to file before the expiration of the constitutional due date. When the final day for filing is a day when a governing body office is closed (*e.g.*, weekends and holidays), under the *Haggin* decision an appellant would be required to file a notice on the last day that the office was open prior to the weekend or holiday due date in order for the filing to be timely. This would result in a manifest injustice because it would deprive the appellant of access to use of the full 45-day period for filing as required by the Rules of Discipline.

In order to correct these and other deficiencies and uncertainties inherent in the application of the *Haggin* decision, and the potential injustices associated therewith, this Commission has concluded the following:

Permissible Means of Service - Any paper required to be filed by a party with a stated clerk, or any paper that a stated clerk is required to send to the parties during judicial process, may be sent or delivered by United States Postal Service certified mail, return receipt requested; commercial courier, with delivery receipt requested; or personal delivery.

Date of Service deemed received - Any paper served with the foregoing procedure shall be deemed filed if it is received by the stated clerk on or before the due date or, when the due date falls on a weekend or holiday, it is received by the stated clerk on the next business day.

Since Yun *et al.*, met this requirement, the appeal is deemed to be timely filed.

ORDER

IT IS THEREFORE ORDERED that this matter is set for hearing before the General Assembly Permanent Judicial Commission at its July, 2007 meeting on the sole question of whether the Synod of the Northeast Permanent Judicial Commission erred in its determination that the appeal to the SPJC did not state one or more of the grounds for appeal set forth in D-8.0105.

Dated the 7th day of May, 2007.

Certificate

We certify that the foregoing is a true and correct copy of the Order of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A) in the Yun *et al*, v. Session of Korean United Presbyterian Church of New Jersey in Remedial Case 218-08, made and announced at Kansas City, Missouri, on May 7, 2007.

Dated this 7th day of May, 2007.