

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

Robert Sundquist, Mark Hawke, Elise Hawke,	)	
Charles Lupton and Di Lupton,	)	
Appellants (Complainants),	)	<b>DECISION AND ORDER</b>
	)	
v.	)	Remedial Case 219-03
	)	(formerly 218-18)
Heartland Presbytery,	)	
Appellee (Respondent).	)	

**Headnotes**

1. **Delegation to and Exercise of Power by an Administrative Commission.** The functions of an administrative commission are limited by the appointing body and may include any function that the appointing body wishes to delegate (with few exceptions). Powers delegated to administrative commissions must be specifically described (G-9.0502). When an administrative commission reaches a decision on a matter referred to it, the commission’s decision becomes the action of the appointing body. A governing body may amend or rescind an action or decision of an administrative commission in the same manner that it may change its own decisions and actions.
  
2. **Congregational Consultations for the Purpose of Seeking Dismissal.** Withdrawal from the Presbyterian Church (U.S.A.) is not a matter that can be considered absent the participation of the presbytery. G-7.0302 and G-7.0304 limit the business of congregational meetings and do not include seeking dismissal from the PC(USA). The presbytery is required to afford all persons affected by a dismissal notice an opportunity to be heard on the subject (G-9.0503b(2)). Consultations between a congregation and a presbytery about dismissal are for the benefit of facilitating reconciliation and informing the presbytery as it considers a request for dismissal, but are not meetings at which any business of the congregation may be conducted.
  
3. **Covenantal Relationship between Churches and Presbyteries.** In consulting with members of local churches about dismissal, the presbytery’s witness, concern, and responsibility are not solely to one congregation, but to each congregation in light of the whole. The congregation’s responsibility must be seen in light of its call to fulfill its responsibilities as the local unit of mission for the service of all people, for the upbuilding of the whole church, and for the Glory of God (G-4.0104). Unity in Christ and the relational nature of our polity are fundamental to Presbyterianism and to a gracious witness to Scripture and the Holy Spirit.

4. **Limitations on Conscience.** Appointment of an administrative commission to deal with churches, sessions and pastors contemplating leaving the PC(USA) does not improperly bind the conscience of church officers or pastors. Belief and behavior are distinguishable. Free expression of conscience is limited for officers and pastors under G-6.0108b. Calling congregational meetings, moving churches to seek dismissal from the denomination or obstructing constitutional governance of the church are actions, not expressions of free conscience.

### **Arrival Statement**

This remedial case came before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal filed by the Appellants Robert Sundquist, Mark Hawke, Elise Hawke, Charles Lupton and Di Lupton, from a decision of the Permanent Judicial Commission of the Synod of Mid-America (SPJC) dated January 25, 2008.

### **Jurisdictional Statement**

This Commission finds that it has jurisdiction, that the Appellants have standing to file the Appeal, that the Appeal was properly and timely filed, and that the Appeal states one or more of the grounds for appeal under D-8.0105.

### **Appearances**

The Appellants, Robert Sundquist, Mark Hawke, Elise Hawke, Charles Lupton and Di Lupton (Sundquist, *et al.*) were represented by Robert Howard. The Appellant Heartland Presbytery (Presbytery), was represented by Stephen Taber, Chad Herring and Landon Whitsitt.

### **History**

The parties agreed that the facts of this case are not in dispute. Accordingly, this statement of the case history and relevant facts is adopted from the parties' statements.

At the May 3, 2007, meeting of the Presbytery's Committee on Ministry (COM), the Executive Presbyter reported concerns about actions of Kirk Johnston, the Pastor, and the Session of First Presbyterian Church, Paola, Kansas, including concerns about their apparent efforts to diminish or sever the congregation's connection with the Presbyterian Church (U.S.A.). In response to those concerns, the COM appointed an Administrative Review Committee (ARC) to explore the current state of the relationship and to work pastorally to strengthen the relationship among First Paola, its Pastor and Session, the Presbytery, and the PC(USA).

In May, 2007, the ARC attempted to meet with the Pastor and Session of the Paola Church, but did not hold the meeting when it became aware that the Session had already called a congregational meeting to take place on June 24, 2007, for the purpose of voting to request dismissal with property from the PC(USA) to the Evangelical Presbyterian Church.

On May 21, 2007, the Executive Presbyter was notified by Laurie Johnston, Pastor of Hillsdale Presbyterian Church, that the Hillsdale Session would be voting on May 31, 2007, to

recommend that the congregation seek dismissal from the PC(USA). The Session of Hillsdale subsequently called a congregational meeting on June 10, 2007, to vote to seek dismissal from the PC(USA) with property to the Evangelical Presbyterian Church.

On June 7, 2007, the COM adopted a resolution that the Presbytery form an Administrative Commission (AC) to address the situations at the Paola and Hillsdale churches. The COM Resolution was published to ministers and commissioners of the Presbytery and slated for action at the Presbytery's stated meeting on June 16, 2007.

At the June 16, 2007, stated meeting of the Presbytery, after the COM motion was offered, a substitute motion was proposed that made substantial changes to the COM motion. Both motions were debated extensively and perfected. The main motion (the COM Resolution) was passed by a vote of 91 to 39, and provided in relevant part as follows:

- 1. The purpose of the Commission shall be to act on behalf of the presbytery on all matters regarding ministers, congregations, and members of congregations who are considering withdrawal from the Presbyterian Church (U.S.A.).*
- 2. [Naming members of the Commission]*
- 3. The Presbytery by this action shall delegate to the Commission the following powers, to take effect when it should become evident to the commission that minister(s) or congregation member(s) are moving toward expressing a desire for separation, and that reconciliation is not likely:*
  - a. Access to all church records, including but not limited to: membership rolls, minutes of Session and all boards and committees, financial records, membership directories, newsletters, and materials distributed for congregational information.*
  - b. Authority to call a congregational meeting (G-7.0303.a.(2)) and to obtain current and accurate membership lists from the church for this purpose.*
  - c. Authority to engage appropriate legal counsel.*
  - d. Authority to take all necessary steps to discern the "true church" (G-8.0601), that is, those wishing to remain loyal to the Presbyterian Church (U.S.A.).*
  - e. In the event that a Session calls a congregational meeting for the purpose of considering actions leading to separation from the PCUSA, the Commission shall have authority to dissolve the Session and assume the full powers and jurisdiction of the Session. In the event that this has occurred prior to this action of presbytery, the power shall be effective immediately. With the full authority of the Session, the Commission shall be empowered to:*
    - i. Provide for worship and for the continuing pastoral care of all members of the congregation, in the manner of Christ.*
    - ii. Receive and act on request from members to be transferred or deleted from the rolls.*

iii. *Determine and negotiate appropriate distribution of all property and assets of the congregation, with any final resolution to be recommended to the Presbytery Council for approval.*

f. *Authority to dissolve the pastoral relationship upon evidence that the pastor has advocated separation from the denomination or upon renunciation of jurisdiction, fully observing the due process requirements of the Constitution, G-9.0505b.(2).*

g. *Authority, in consultation with the Committee on Ministry, to transfer the minister to an established judicatory of another Reformed denomination with which the Presbyterian Church (U.S.A.) is in correspondence.*

h. *Authority to declare a minister to have renounced jurisdiction in accordance with G-11.0416 upon evidence that they have obtained membership of any character in another denomination.*

4. *The current list of churches for which the Administrative Commission has authority is:*

*First, Paola, Kansas*

*Hillsdale, Kansas*

5. *Other congregations may be added to this list by vote of the Committee on Ministry or the Presbytery Council, or such subcommittees as they may designate, according to procedures established by those bodies.*

On June 24, 2007, the Paola congregation voted on the question: *Shall the First United Presbyterian Church of Paola, Kansas request dismissal with property from the Presbyterian Church (U.S.A.) to the Evangelical Presbyterian Church.* The vote was 200 in favor and 81 against dismissal.

On June 24, 2007, the Hillsdale congregation voted by ballot with two options: to *“Keep the Hillsdale Presbyterian Church in the PC(USA) denomination”* or *“dismiss with property the Hillsdale Presbyterian Church to the New Wineskins Presbytery of the Evangelical Presbyterian Church (EPC) denomination”* (emphasis in original). The vote was 77 in favor of requesting dismissal and 5 against.

### **Specifications of Error**

***Specification of Error No. 1. The SPJC erred in Constitutional interpretation by failing to sustain Specification of Error “a” in the Complaint, which specified:***

*The Presbytery erred by empowering an Administrative Commission to assume original jurisdiction of the session of one or more particular churches within its bounds without having complied fully with the requirements of G-11.0103s, viz, an affirmative determination that a session cannot exercise its authority and a prior thorough investigation and a prior and full opportunity for the subject session to be heard.*

This Specification of Error is not sustained for the reasons discussed in Part I below.

**Specification of Error No. 2. The SPJC erred in Constitutional interpretation by failing to sustain Specification of Error “b” in the Complaint, which specified:**

*The Presbytery erred by empowering an Administrative Commission to dissolve a pastoral relationship prior to discharging its affirmative duty to make findings to establish that the church’s mission under the Word imperatively demands the dissolution (G-11.0103o).*

This Specification of Error is not sustained for the reasons discussed in Part I below.

**Specification of Error No. 3. The SPJC erred in Constitutional interpretation by failing to sustain Specification of Error “c” in the Complaint, which specified:**

*The Presbytery erred by delegating to its Committee on Ministry and its Council the authority to sub-delegate to any subcommittee its powers to “divide, dismiss, or dissolve churches in consultation with their members” (G-11.0103a) and “to dissolve [the pastoral relationship] ... when it finds that the church’s mission under the Word imperatively demands it” (G-11.0103e).*

This Specification of Error is not sustained for the reasons discussed in Part IV below.

**Specification of Error No. 4. The SPJC erred in Constitutional interpretation in its rationale for sustaining Specification of Error “e” resulting in injustice in the process or decision by failing to grant adequate relief to Appellants, which specified:**

*The Presbytery erred by empowering the Administrative Commission to assume the full powers and jurisdiction of the Session when “a Session calls a congregational meeting for the purpose of considering actions leading to separation from the PCUSA,” effectively preventing a Session from exercising its right, implicit in G-15.0203b, to call for a congregational meeting to consider requesting dismissal from the PC(USA) to another reformed denomination in correspondence with the PC(USA).*

This Specification of Error is not sustained for the reasons discussed in Part II below.

**Specification of Error No. 5. The SPJC erred in Constitutional interpretation by failing to sustain Specification of Error “f” in the Complaint, which specified:**

*The Presbytery erred by making powers of the Administrative Commission effective “when it should become evident to the Commission that minister(s) or congregation member(s) are moving toward expressing a desire for separation and that reconciliation is not likely” [emphasis omitted], violating the*

*requirement of G-1.0307 that “no Church governing body ought to pretend to make laws to bind the conscience in virtue of their own authority.”*

This Specification of Error is not sustained for the reasons discussed in Part III below.

## **Decision**

### **I.**

#### **Specifications of Error Nos. 1 and 2**

#### **Delegation to and Exercise of Power by an Administrative Commission**

Role and Responsibility of Administrative Commissions. Administrative commissions have an important role in Presbyterian polity and governance. Presbyteries need to rely on administrative commissions to act in a variety of situations. G-9.0502 provides:

A commission is empowered to consider and conclude matters referred to it by a governing body. The appointing body shall state specifically the scope and power given to a commission. A commission shall keep a full record of its proceedings, which shall be submitted to its governing body to be incorporated in its minutes and to be regarded as the actions of the governing body itself.

The functions of an administrative commission are limited by the appointing body, and may include any function that the appointing body wishes to delegate (with few exceptions expressly provided for in the *Book of Order*). Ordinarily these functions may include: ordaining ministers of the Word and Sacrament, organizing churches, merging churches, receiving candidates under the care of presbytery, making pastoral inquiry in certain situations where judicial proceedings have terminated as the result of death or renunciation of jurisdiction by a person accused of sexual abuse (G-9.0503). Commissions appointed as judicial commissions have other functions, and commissions may be assigned other duties as committees (G-9.0503b and c).

Among the appropriate and **ordinary** functions for an administrative commission are the following:

to visit particular churches, governing bodies, or other organizations of the church reported to be affected with disorder, and to inquire into and settle the difficulties therein, except that no commission shall have the power to dissolve a pastoral relationship unless such power has been specifically delegated to it by the appointing body.

(G-9.0503a(4)). *See also Session of Second Presbyterian Church of Tulsa v. Eastern Oklahoma Presbytery, Minutes, 2006, p. 469, (Presbytery may delegate authority to dissolve a congregation to an administrative commission.); Londonderry v. Presbytery of New England, Minutes, 2001, p. 577, (demonstrating presbytery’s use of an administrative commission to work with a session struggling over its constitutional obligations in light of disagreement with specific constitutional provisions).*

Powers delegated to administrative commissions must be specifically described (G-9.0502). This is consistent with the principle that the jurisdiction of each governing body within the church is limited by the express provisions of the Constitution, and that powers not expressly mentioned in the *Book of Order* are reserved to the presbyteries (G-9.0103).

Decisions of Administrative Commissions. When an administrative commission reaches a decision on a matter referred to it, the commission's decision becomes the action of the appointing body. A governing body may amend or rescind an action or decision of an administrative commission in the same manner that it may change its own decisions and actions. Specifically, G-9.0505a states:

The decision of an administrative commission shall be the action of the appointing body from the time of its completion by the commission and the announcement, where relevant, of the action to parties affected by it. Such decision shall be transmitted in writing to the stated clerk of the governing body, who shall report it to the governing body at its next meeting. A governing body may rescind or amend an action of an administrative commission in the same way actions of the governing body may be modified.

Fair Process. When an administrative commission has been appointed to settle differences within a church or other entity, there are requirements that it must observe in order to assure the fair exercise of authority. Those requirements for a fair process are set forth in G-9.0505b, which states:

(1) When an administrative commission has been appointed to settle differences within a church, a governing body, or an organization of the church, it shall, before making its final decision, afford to all persons to be affected by the decision fair notice and an opportunity to be heard on the matters at issue. (See G-9.0503a(4), G-9.0503a(6), G-9.0505b-d) Fair notice shall consist of a short and 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 hearing shall include at least an opportunity for all persons in interest to have their positions on the matters at issue stated orally.

(2) Whenever the administrative commission has been empowered to dissolve a pastoral relationship and the administrative commission chooses to exercise that power, there shall always be a meeting of the congregation at which the commission shall hear the positions of the pastor and the members if they choose to speak. The pastor shall be accorded the right to hear the concerns expressed by members in the meeting and to have reasonable time to respond during the meeting. (See G-14.0610, G-14.0611, G-14.0612, G-11.0103o).

Use of Administrative Commissions in Presbyteries. Administrative commissions appointed by a presbytery to settle differences in a church are required to follow G-9.0505b, even if the presbytery did not quote or refer to these requirements when it appointed the administrative commission and specified the commission's scope of power. When a presbytery

creates an administrative commission to divide, dismiss or dissolve churches; establish or dissolve a pastoral relationship; or assume original jurisdiction over a session (G-11.0103i, o and s, respectively), the commission must follow the requirements of G-9.0505b, including obligations for investigation and providing an opportunity for those affected to be heard. When the presbytery's powers are specifically assigned to an administrative commission, the commission then is acting with the full power and authority of the presbytery as to the powers assigned. Moreover, the administrative commission must follow all applicable requirements for fair notice and an opportunity to be heard. An administrative commission may, in its absolute discretion, offer additional procedures that it deems appropriate to investigate, consider and decide the matters before it in a fair, open and pastoral manner (*see* G-9.0505c and d).

Application of Principles in This Case. Applying these principles and provisions to this case, this Commission finds that the Presbytery acted appropriately in appointing the AC and delegating specific authority to it. The argument of Sundquist, *et al.* that, the Presbytery must take all the steps to dissolve a pastoral relationship or assume original jurisdiction over a session, including investigation, notice and an opportunity to be heard, **before** appointing an administrative commission or delegating power to it, has no Constitutional basis and is in error. However, when an administrative commission is granted the authority to assume original jurisdiction over a session, it may not exercise that authority without first finding that the session is unable or unwilling to manage wisely the affairs of its church as required by G-11.0103s and by following the procedures of G-9.0505b(1). Similarly, an administrative commission may not dissolve a pastoral relationship without adhering to the requirements of G-11.0103o and G-9.0505b(2).

Sundquist, *et al.* are correct that when a session calls a meeting for the purpose of considering actions that may lead to separation from the PC(USA), neither the Presbytery, nor an administrative commission, may **automatically** assume original jurisdiction over that session. That is not in fact what happened with respect to the Paola or the Hillsdale churches.<sup>1</sup> The SPJC correctly held that the AC, acting under its delegated powers, must make the determinations specified in G-11.0103s before assuming the powers and jurisdiction of a session and may not assume such powers and jurisdiction solely because the session has called a meeting for the purpose of separating the congregation from the PC(USA). (*See* Part II below regarding the session's authority to call a congregational meeting for this purpose.)

Appointing an administrative commission with the power to assume original jurisdiction or dissolve or dismiss a congregation or dissolve a pastoral relationship does not mean that the commission will inevitably exercise this power. In this case, the Resolution provided a process that insured that granting of such powers was separated from the exercise of the powers by the requirement that the AC must first determine that it is "evident to the commission that minister(s) or congregation member(s) are moving toward expressing a desire for separation, **and that reconciliation is not likely**" (Resolution, section 3 (emphasis added)). This determination is an important buffer between the grant of authority and exercise of that authority by the AC. This provision for phased implementation of the Resolution reflected the Presbytery's

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<sup>1</sup> In this case, the parties agreed the challenge is to the Resolution itself and not to the AC's exercise of the powers granted in the Resolution.



view that in dealing with issues as grave as dissolution of pastoral relationships, dissolving or dismissing churches or assuming original jurisdiction over sessions, it is generally wise to proceed deliberately and with due consideration for the opportunity for reconciliation. It is to be expected that a session and congregation will proceed with that same deliberation in seeking reconciliation. The Resolution reflected the Presbytery's desire and intent to give broad powers to an administrative commission that may be faced with particularly fluid and difficult circumstances, but conditioned the exercise of those powers on appropriate pastoral considerations for reconciliation in addition to the procedural safeguards imposed by G-9.0505b and G-11.0103i, o and s.<sup>2</sup>

Without an administrative commission in place, the alternative would have required the Presbytery to call the session and pastor to the next plenary meeting of the Presbytery to air the differences in front of the entire Presbytery.<sup>3</sup> Such a process would be unwieldy, use an undue amount time and resources, result in poor stewardship of Presbytery resources, and would in all likelihood not afford the best opportunity for a full hearing or reconciliation. There is greater potential to act pastorally, build trust and seek reconciliation in smaller groups.

## **II.**

### **Specification of Error No. 4**

#### **Congregational Consultations for the Purpose of Seeking Dismissal**

Sundquist, *et al.* assert that a session has an “implicit” or “implied right” to call a congregational meeting to consider requesting dismissal to another denomination, but at oral argument to this Commission suggested that it was a “privilege,” not a “right.” Any such privilege exists only within a covenantal relationship between a church and the presbytery. On the contrary, G-7.0302 and G-7.0304 limit the business of congregational meetings and do not include the topic of seeking dismissal. In 2008, the 218<sup>th</sup> General Assembly adopted Item 04-20 (*Minutes*, 2008, p. 48), which refers to G-7.0304 and states, “Withdrawal from the Presbyterian Church (U.S.A.) is not a matter that can be considered at a congregational meeting.”

This does not mean that a congregation is prohibited from requesting dismissal. However, it is the presbytery (or its duly appointed administrative commission or its Committee on Ministry) that has the responsibility to consult with the members of a church about dismissal (G-11.0103i). The presbytery is required to afford all persons affected by a dismissal notice and an opportunity to be heard on the subject (G-9.0503b(2); Item 04-20). These consultations (which may be in the form of listening sessions, hearings or other consultations) are for the benefit of informing the presbytery as it considers a request for dismissal, but are not meetings at which any business of the congregation may be conducted (*id.*; *see also Gaba v. Presbytery of Eastern Virginia, Minutes*, 2003, p. 269, (The purpose of this provision is not merely matter of

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<sup>2</sup> Presbyteries are cautioned that the use of ambiguous language which implies that Constitutional safeguards have been omitted or replaced is not helpful.

<sup>3</sup> *Essinger-Hileman v. Presbytery of Miami (Minutes*, 2008, p. 307), clarifies that G-9.0505b applies to provide additional procedural safeguards when administrative commissions act to dissolve a pastoral relationship.

fairness or information gathering, but also exercise of pastoral oversight of churches by the presbytery to facilitate reconciliation.)).

“Our unity in Christ and the relational nature of our polity require dialogue between and among governing bodies.... [D]ialogue requires participation by both parties...” (*Johnston, et al. v. Heartland Presbytery, Minutes*, 2006, p. 462, 466). This obligation and mutual responsibility for dialogue was made explicit by the 218<sup>th</sup> General Assembly when it adopted the Resolution for a Gracious, Pastoral Response (*Minutes*, 2008, Item 04-28, p. 49), expressing its will that all governing bodies and persons dealing with members of a church seeking dismissal act in a consistent and pastoral manner, with accountability and due consideration for fiduciary and connectional concerns, with open and transparent communication in the context of gracious witness to one another. Presbyteries and congregations have a **reciprocal obligation** for this process (G-4.0302). Whether the presbytery’s power “to divide, dismiss, or dissolve churches in consultation with their members” (G-11.0103i) is retained or delegated to an administrative commission, it is to be exercised in a pastoral manner, with litigation seen as a last resort, “deadly to the cause of Christ” (Item 04-28, section 2).

Any privilege to seek dismissal is conditioned on the cooperation of the congregation, the session and the pastor(s) with the presbytery in a process that operates in the manner set forth in Item 04-28. There shall not be any secret or secretive acts by sessions, pastors or congregations; bylaw changes or transfers of assets effectively negating the *Book of Order* or diminishing a church’s connection to the PC(USA); or curtailment of communications with the presbytery as a prelude to dismissal. Congregational meetings called or conducted by sessions for the purpose of voting on dismissal without the involvement of the presbytery are improper and have no binding effect.

G-11.0103i requires the presbytery to consult with members of local congregations seeking dismissal. The presbytery should consult with pastors and congregations seeking dismissal at the earliest practicable opportunity and in the manner described by the Resolution for a Gracious, Pastoral Response (Item 04-28). In consulting with members of local churches about dismissal, the “presbytery’s witness, concern, and responsibility are not solely to one congregation, but to each congregation in light of the whole. The congregation’s responsibility is not to itself, but to itself in light of its call to ‘fulfill its responsibilities as the local unit of mission for the service of all people, for the upbuilding of the whole church, and for the glory of God.’ (G-4.0104)” (*Johnston*, p. 467). This understanding of our unity in Christ and of the relational nature of our polity is fundamental to Presbyterianism and a gracious witness to Scripture and the Holy Spirit. We are bound together in covenantal relationships that assume and require the blessings and difficulties of dialogue based on trust and love (G-7.0103).

The several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently that appeals

may be carried from lower to higher governing bodies, till they be finally decided by the collected wisdom and united voice of the whole Church.

(G-1.0400). Likewise, “Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution...It shall fulfill its responsibilities as the local unit of a mission for the service of all people, for the upbuilding of the whole church, and for the glory of God” (G-4.0104). This union requires each governing body within the church to treat the others pastorally and with high moral obligations to care for and respect the other. “In this way, without the congregations, the presbytery is a hollow shell; without the presbytery, the vision of the churches is limited” (*Johnston*, p. 466). Thus congregations, sessions, and pastors who fail to abide by the principles of the Resolution for a Gracious, Pastoral Response or presbytery policies (such as the Heartland Resolution) that embody these principles shall have breached important responsibilities and duties. As Presbyterians, the church at every level must visibly demonstrate the covenantal ties that bind us as the one church of Jesus Christ.

### III. Specification of Error No. 5 Limitations on Conscience

Citing the phrase in part 3 of the Presbytery’s Resolution, “moving toward expressing a desire for separation,” Sundquist, *et al.* argued that the Resolution was an improper attempt to bind the conscience of pastors, elders and members and that it would have a chilling effect on the free expression of conscience. However, the record is clear that the Paola and Hillsdale pastors and sessions had done much more than express their views about a desire for separation, but had taken action to withdraw their congregations from the denomination.

This Commission has distinguished between belief and behavior on several occasions. In *Hambrick v. Permanent Judicial Commission of the Synod of North Carolina* (PCUS Minutes, 1983, p. 43), this Commission addressed a presbytery’s approval for membership of a pastor whose views on the ordination of women and the participation of unconfirmed children in the Lord’s Supper did not comport with the Constitution, and drew an important distinction between “the right of individuals to hold *views* contrary to the Constitution...and *actions* contrary to the Constitution [which] are not sanctioned.” In *Presbytery of West Jersey v. Synod of the Northeast* (Minutes, 1993, p. 17), the GAPJC affirmed the right of the Synod to adopt a resolution in opposition to the *Book of Order*, as interpreted under an authoritative interpretation, and differentiated between opinion and action. In *Londonderry* (at p. 580), this Commission found that a purported expression of opinion on G-6.0106b actually went further, declaring an intent not to enforce that provision, and thus went too far. *Williamson v. Presbytery of Western North Carolina* (Minutes, 2006, p. 475) holds that those ordained to office in the PC(USA) must exercise freedom of conscience within certain bounds, and are answerable to the governing bodies of the church in order that all may live and work together in love and unity. Finally, most recently in *Spahr v. Presbytery of the Redwoods* (Minutes, 2008, p. \_\_\_\_),<sup>4</sup> this Commission held:

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<sup>4</sup> See also *Bush et al. v. Presbytery of Pittsburgh* (Minutes, 2008, p. 319) (discussing differences between faith and polity, belief and behavior, in the context of G-6.0106b and G-6.0108b).

Rather than describing freedom of conscience in any absolute way, G-6.0108 declares the manner in which the conscience of an officer of the church is bound. The binding of the conscience of an officer of the church permits freedom of conscience with regard to the interpretation of Scripture only insofar as it ‘may be possible without serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church.’ G-6.0108a. Submission to the current standards of the church may not always be comfortable, but it is not optional.

In this case, there is no evidence that Presbytery, either by adopting or following the Resolution, in the exercise of its constitutional powers, has, or necessarily would, improperly bind the conscience of church officers.<sup>5</sup> The mere creation of an administrative commission is not an act of discipline. Free expression of conscience is limited for officers and pastors under G-6.0108b, and does not encompass the calling of congregational meetings, moving churches to seek dismissal from the denomination or obstructing constitutional governance of the church.

#### **IV. Specification of Error No. 3 Additional Churches**

Presbytery’s Resolution specified that the AC had authority over two churches: First United Presbyterian of Paola, Kansas, and Hillsdale Presbyterian of Hillsdale, Kansas. In addition, the Resolution (at section 5), provided for the addition of other congregations by “the Committee on Ministry or the Presbytery Council, or such subcommittees as they may designate, according to procedures established by those bodies.” The SPJC did not sustain Sundquist, *et al.*’s Specification of Error on this point, but expressed its concern about the breadth of section 5, and stated, “It is our considered view that churches should only be added to the list by vote of the presbytery.” One additional church was subsequently added to the list by the COM.

Here the Presbytery acted to make every church in the Presbytery potentially subject to the AC, conditioned upon action by the COM or the Presbytery Council (or their designated subcommittees) to name a particular church to be actively subject to specified powers of the AC.<sup>6</sup> Although not prohibited by any specific provision of the *Book of Order*, a better practice would be for the Presbytery itself to name any additional specific churches to come under the authority of the AC.

#### **Order**

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<sup>5</sup> If the Administrative Commission violated the rights of ministers or members under G-6.0108, a remedial action could be brought to address any such infringement.

<sup>6</sup> Presbyteries may delegate to their Committees on Ministry the authority to appoint administrative commissions to ordain ministers of Word and Sacrament (Interpretation of G-11.0502h Regarding Committee on Ministry’s Authority to Approve Commissions for Ordination, *Minutes*, 2006, Item 05-26, p. 441).

IT IS, THEREFORE, ORDERED that the Decision of the Permanent Judicial Commission of the Synod of Mid-America is hereby sustained.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Heartland report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of Mid-America report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

### **Absences and Non-participants**

A. Bates Butler was absent and did not participate in this case.

### **Certificate**

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 219-03 (formerly 218-18), Robert Sundquist, Mark Hawke, Elise Hawke, Charles Lupton and Di Lupton, Complainant/Appellants, v. the Presbytery of Heartland, made and announced at Baltimore, Maryland, on October 27, 2008.

Dated this 27<sup>th</sup> day of October, 2008.

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Fred L. Denson, Moderator  
Permanent Judicial Commission of the General Assembly

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Gregory A. Goodwiller, Clerk  
Permanent Judicial Commission of the General Assembly

**Concurring Opinion of Mary Eleanor Johns, Bradley C. Copeland,  
Michael Lukens, and Susan J. Cornman**

Remedial Case 219-03  
Sundquist, *et al.* v. Heartland Presbytery

Historic principles of the PCUSA regarding schism, dating back to the plan of reunion of the Synod of New York and Philadelphia, contained the following: "That when any matter is determined by a major vote, every member shall either actively concur with or passively submit to such determination; or if his conscience permit him to do neither, he shall, after sufficient liberty modestly to reason and remonstrate, peaceably withdraw from our communion without attempting to make any schism. Provided always that this shall be understood to extend only to such determination as the body shall judge indispensable in doctrine or Presbyterian government." (Hist. Dig. (P) p. 1310, Plan of Union of 1758, par. II: see also footnote 1 to G-6.0107b.) Though a presbytery may dismiss a congregation to another reformed body within certain bounds, members and officers are urged to remember and abide by these principles.

Dated at Baltimore, Maryland, on October 27, 2008.

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Mary Eleanor Johns

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Bradley C. Copeland

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Michael Lukens

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Susan J. Cornman