

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

JI SUK KIM, IN HYUK PARK, GIL
BONG KIM, JONG SOO PARK, SUK HO
LEE, YONG SUNG LEE, JAE GEUN
LEE, JONG SIK LIM, and TAE DOO
CHONG,

Complainants/Appellants

vs.

ADMINISTRATIVE COMMISSION OF
THE SYNOD OF LINCOLN TRAILS
acting as THE MIDWEST HANMI
PRESBYTERY,

Respondent/Appellee

DECISION AND ORDER

Remedial Case 221-07

Arrival Statement

The matter now before the Permanent Judicial Commission of the General Assembly (GAPJC or this Commission) is a Challenge to an April 29, 2013, Preliminary Order of the Executive Committee of GAPJC (GAPJC EC) to Dismiss Appellants' Appeal of a Decision of the Permanent Judicial Commission of the Synod of Lincoln Trails (SPJC).

In its required examination of the papers, GAPJC EC found that since SPJC was not the correct forum within which to file Appellants' remedial case, GAPJC had no jurisdiction to hear an Appeal of that SPJC Decision.

Appellants' Notice of Challenge under D-8.0302a was received by the Stated Clerk of the General Assembly on May 30, 2013.

Parties

The Appellants are: Ji Suk Kim, In Hyuk Park, Gil Bong Kim, Jong Soo Park, Suk Ho Lee, Yong Sung Lee, Jae Geun Lee, Jong Sik Lim, and Tae Doo Chong.

The Respondent is the Administrative Commission of the Synod of Lincoln Trails acting as The Midwest Hanmi Presbytery.

Jurisdictional Statement

The Commission finds that the Challenge was properly filed by Complainant within thirty days after receipt of GAPJC EC's Preliminary Order of Dismissal.

Appearances

Appellants are represented by W. Dan Lee. Respondent is represented by Linda L. Long. Appellee waived personal appearance, and Appellants were deemed to have waived personal appearance by reason of non-response.

History

This remedial case first came before this Commission upon an Appeal by Appellants from a March 9, 2013, Decision and Order of SPJC.

In its March 9, 2013 Decision and Order, the full SPJC, referencing Book of Order Article G-3.0109, concurred with a Preliminary Order for Dismissal of SPJC's Moderator and Clerk and determined "that the Synod PJC is not the appropriate commission to hear this remedial complaint because 'the action of a Commission shall be regarded as an action of the Council that created it.'" SPJC sustained the Preliminary Order for Dismissal, and dismissed the case. This Appeal followed.

Appellants stated in the Appeal that their underlying Complaint filed with SPJC arose from a May 21, 2012, action of an Administrative Commission of the Synod of Lincoln Trails "**acting as the [Midwest Hanmi] Presbytery.**" [Emphasis original]

The Appeal was received by GAPJC on April 22, 2013, and was referred to GAPJC EC for initial review.

In their preliminary review of the Appeal, the Moderator and the Clerk of GAPJC concurred with SPJC's analysis that under provisions of G-3.0109 the actions of an administrative commission are the actions of the council that appointed it, from and after the time the administrative commission's actions are taken. They determined that, since SPJC had no original jurisdiction over the Complaint, GAPJC did not have jurisdiction to hear an Appeal of the matter from SPJC. GAPJC EC issued a Preliminary Order dismissing the case.

Appellants filed a Challenge to that Preliminary Order, and on May 31, 2013, this Commission's officers found that the Challenge was properly and timely filed and they directed a hearing on the Challenge be set for a time and place determined by this Commission. That hearing was scheduled for Friday, October 25, 2013. A briefing schedule was prepared for the parties.

On August 16, 2013, the Office of Constitutional Interpretation was informed by Counsel for Appellants that by reason of a conflicting trial schedule Counsel was unable to appear at the scheduled hearing. In response to such information, on August 19, 2013, the officers of GAPJC issued a Pre-Hearing Order directing that Appellants be permitted, if they chose, to have other counsel appear for them at the Challenge hearing. Alternatively, the officers of GAPJC urged both parties to submit the case on papers and briefs alone without personal appearance, as had been done at the Synod-level hearing. GAPJC officers directed that a response to the Pre-Hearing Order be made by both parties not later than August 27, 2013.

On August 26, 2013, Appellee waived personal appearance at a hearing contingent upon Appellants doing so as well. Appellee also noted that Appellants had not submitted a brief by Appellants' August 16, 2013, required briefing deadline; Appellee requested it be permitted an extension of time to submit its brief within 30-days after Appellants had done so.

Appellants neither submitted a brief by their August 16, 2013, briefing deadline nor entered a response to the August 19, 2013 Pre-Hearing Order within the time directed by the officers of GAPJC. The Office of Constitutional Interpretation staff made repeated attempts to contact Appellants' Counsel. All attempts went unanswered.

Due to the lack of response from Appellants' Counsel, on September 3, 2013, GAPJC EC issued a Second Pre-Hearing Order finding that under provisions of D-8.0302b Appellants waived a hearing on this Challenge since (1) Appellee has contingently waived a personal appearance at a hearing, (2) Appellants' Counsel has advised that Counsel cannot appear at the scheduled hearing because of a trial scheduling conflict, (3) Appellants, after repeated requests, have not timely responded to GAPJC's suggested alternatives for a hearing, and (4) both parties waived personal appearance on this matter at the Synod of Lincoln Trails hearing.

GAPJC EC ordered that no in-person hearing would be held by GAPJC on this Challenge and the Challenge would be decided by the full GAPJC on documents so far submitted and briefs, if any, to be filed. Appellee was directed to file a brief not later than its September 16, 2013, original briefing date. A brief was filed by Appellee, but Appellants did not file a brief or provide a response of any kind.

Decision

Under the provisions of G-3.0109, the actions of an administrative commission are the actions of the council that appointed it, from and after the time the administrative commission's actions are taken. The case of *Sundquist, et al. v. Heartland Presbytery* [Remedial Case 219-03 (formerly 218-18)] confirms this interpretation (citing provisions to the same effect of a former constitutional Article G-9.0505a).

In the present case, a claimed action of the administrative commission created by Synod of Lincoln Trails would have been the action of Synod from and after the date of the action. Any complaint about that action properly should have been filed with GAPJC against Synod and not

with SPJC. Because SPJC had no original jurisdiction over the Complaint, GAPJC does not have jurisdiction to hear an Appeal of the matter from SPJC.

GAPJC confirms the decision of GAPJC EC and confirms that the case is dismissed.

In addition, GAPJC notes that D-8.0304c provides: "Failure of appellant to file a brief within the time allowed, without good cause, shall be deemed by the permanent judicial commission an abandonment of the appeal." Given that Appellants failed to file their brief by the August 16, 2013, briefing deadline, never sought an extension of the date to file the appeal, and never responded to the August 19, 2013, Pre-Hearing Order, this Commission finds such failure constitutes an abandonment of the appeal by Appellants (D-8.0304c).

Order

IT IS THEREFORE ORDERED that the dismissal of the Complaint is hereby sustained.

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

Absences and Non-Appearances

The full Commission participated in this Decision.

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 221-07, Ji Suk Kim, In Hyuk Park, Gil Bong Kim, Jong Soo Park, Suk Ho Lee, Yong Sung Lee, Jae Geun Lee, Jong Sik Lim and Tae Doo Chong, Complainants/Appellants, v. Administrative Commission of the Synod of Lincoln Trails acting as The Midwest Hanmi Presbytery, Respondent/Appellee made in a telephone conference call meeting under provisions of Article 3.01.30 of the GAPJC Manual this 24th day of October, 2013.

Dated this 24th day of October, 2013.



Bradley C. Copeland Moderator
Permanent Judicial Commission of the General Assembly



Jay Lewis, 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 C. Laurie Griffith to deposit it in the mail at Louisville, KY this 24th day of October, 2013.

W. Dan Lee, Counsel for Appellants
Linda L. Long, Counsel for Appellee
Stated Clerk, The Synod of Lincoln Trails
Stated Clerk, The Presbytery of Midwest Hanmi
General Assembly Permanent Judicial Commission

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 to C. Laurie Griffith, on October 24, 2013.



Jay Lewis, 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 a telephone conference call meeting under provisions of Article 3.01.30 of the GAPJC Manual on October 24, 2013, in Remedial Case 221-07, Ji Suk Kim, In Hyuk Park, Gil Bong Kim, Jong Soo Park, Suk Ho Lee, Yong Sung Lee, Jae Geun Lee, Jong Sik Lim and Tae Doo Chong, Complainants/Appellants, v. Administrative Commission of the Synod of Lincoln Trails acting as The Midwest Hanmi Presbytery, Respondent/Appellee and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Trails acting as The Midwest Hanmi Presbytery, Respondent/Appellee and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, KY on October 24, 2013.



C. Laurie Griffith

Manager of Judicial Process and Social Witness

Concurrence - Dissent of Patrick Notley

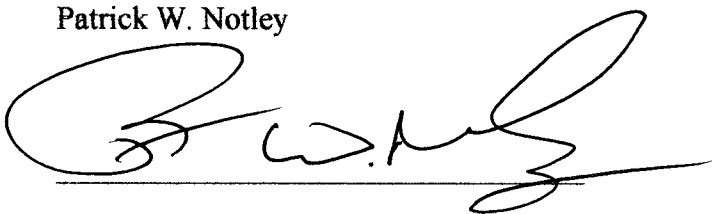
I concur in part and dissent in part. I concur with the majority that this case should be dismissed because it was improperly filed with the Permanent Judicial Commission of the Synod of Lincoln Trails instead of with the General Assembly Permanent Judicial Commission. G-3.0109b(6) clearly and concisely states that, “[a]ctions of a commission shall be regarded as actions of the council that created it” and this Commission has correctly interpreted this provision in dismissing this case.

However, I respectfully disagree with the majority that the lack of communication from Appellants or their counsel in their challenge of a pre-hearing procedure constitutes an abandonment of the appeal as described in D-8.0304c. The heading for D-8.0304 in *the Book of Order* is listed as “Filing of Appellant’s Brief” thus all of the constituent portions of D-8.0304 have to do with the filing of a brief for Appellant and include such direction to Appellant as: how much time Appellant has to file its brief; what specifically the brief needs to contain; what documentation must be included to certify that all parties have been furnished the brief; and what will happen if Appellant does not file a brief. Nowhere in this section on Appellant’s duties in filing a brief for the hearing of an appeal is there mention that such requirements may be translated to a case where Appellant fails to respond to an opportunity to further explain its challenge to a preliminary decision of the Moderator and Clerk of a Judicial Commission.

The controlling section of *the Book of Order* in regard to challenges made during the pre-hearing portion of a case is D-8.0302a, which states that if a challenge to the findings of the Moderator and Clerk is made then it is the responsibility of a permanent judicial commission to provide for an opportunity for evidence and argument on the finding in question to be presented. Previous cases before this Commission confirm that PJC’s must provide for this opportunity but are not required to hold a hearing (see especially: *Raines v. Session of Miami Shores Presbyterian Church*, GAPJC Case 217-6, 2006). Again, nowhere in this section is there any language that can be interpreted to deem the entirety of an appeal process abandoned because Appellant did not affirmatively respond to an opportunity to further argue a challenge it made to the Moderator and Clerk’s preliminary finding. The only entity required to act in response to such a challenge is the permanent judicial commission itself, therefore to conclude that a party to the case has abandoned its right to appeal for not positively responding to an opportunity that the permanent judicial commission must provide is, in my opinion, an incorrect reading of the Constitution of the Presbyterian Church (USA). Further, to conclude that a section that deals with the process of filing a brief by Appellant is in some way equivalent to Appellant responding, or not, to an opportunity to provide additional arguments in a pre-hearing procedure is, in my opinion, for this Commission to move toward the act of legislation instead of its role as the interpreter of that which is currently codified within the *Book of Order*.

If this Commission finds that the either D-8.0302 or D-8.0304 are either insufficient, unclear or in some way not as helpful as they might be, it is the right and privilege of this Commission to so state and to encourage that the legislative portions of our denomination consider changes that would help to clarify and/or strengthen these portions of the *Book of Order*. It is however, in my opinion, neither the right nor the privilege of this Commission to act as a legislative body and thus usurp those privileges from those to whom they rightfully belong.

Patrick W. Notley

A handwritten signature in black ink, appearing to read 'P. W. Notley', written over a horizontal line. The signature is stylized and cursive.