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

Atlantic Korean American Presbytery,)	
Complainant,)	
and)	
Nam H. Cho and Kim Robinson,)	Decision and Order
Complainant,)	Remedial Complaint 224-02
)	
v.)	
)	
Synod of the Mid-Atlantic)	
Respondent.)	

Arrival Statement

This is a remedial case of original jurisdiction before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) as a result of a remedial complaint filed by Atlantic Korean American Presbytery (Presbytery or AKAP) against the Respondent Synod of the Mid-Atlantic (Synod). Complainants the Rev. Nam H. Cho and Ruling Elder Kim Robinson (Cho and Robinson) also filed a remedial complaint against the Respondent Synod. The Cho and Robinson case was consolidated with the Presbytery case because the irregularity cited in the Cho and Robinson case was the same irregularity cited as one of the issues in the Presbytery complaint. The trial was held at the Fall 2018 meeting of the GAPJC held in Atlanta, Georgia, October 18-22, 2018.

Jurisdictional Statement

In its Preliminary Order dated June 12, 2018, the Executive Committee of the GAPJC found this Commission has jurisdiction, Complainants have standing to file the Complaints, the Complaints were timely filed, and the Complainants state a claim upon which relief can be granted.

Appearances

Complainant AKAP was represented by the Rev. Byeong Ho Choi and the Rev. Chi Hyeon Yun as committee of counsel. Complainant Rev. Cho was present and represented himself with assistance from the AKAP committee of counsel. Complainant Ruling Elder Kim Robinson was not present but was represented by Rev. Cho and the AKAP committee of counsel. The Respondent Synod was represented by the Rev. Archibald Wallace III, Ruling Elder Susanne Taylor, and the Rev. Wilbur Douglass as committee of counsel. The Rev. Jihyun Oh and the Rev. Jae Kim acted as interpreters.

Brief History

This case arose from actions taken at the 241st stated meeting of the Synod of the Mid-Atlantic held at Ginter Park Presbyterian Church, in Richmond, Virginia, on March 12-13, 2018 (the Meeting). Present as commissioners for AKAP were Rev. Cho and Elder Robinson. Also present at the Meeting was

the Executive Presbyter/Stated Clerk for AKAP, the Rev. David Kang. Elder Robinson was present for both days of the Meeting; Rev. Cho attended only the second day.

The Synod had received numerous reports over several years of difficulties in the Presbytery. The executives of the Synod and the Presbytery reported difficulties in communication. Additionally, there were reports of conflict at meetings of the Presbytery.

The Synod Stated Clerk's report on March 12 noted that concerns continued to be expressed about the life, health, and vitality of the ministry of the Presbytery. It indicated that there had been consultations with Korean staff members from the Presbyterian Mission Agency, Office of the General Assembly, and other individuals proficient in Korean culture. It also indicated that there were a number of cases pending before the Synod Permanent Judicial Commission involving AKAP.

On the evening of March 12, 2018, Rev. Kang was informed by the Synod Executive Committee of its pending recommendation related to the Presbytery. Rev. Kang testified that he had no prior knowledge of the recommendation. On the next day, the second day of the Meeting, the Executive Committee presented a report, including a recommendation "to appoint an Administrative Commission to deal with the life, health and vitality of the Atlantic Korean American Presbytery."

Several commissioners, including Rev. Cho, addressed the motion. Some suggested looking for other avenues to address concerns in AKAP. At the conclusion of the discussion, the Synod approved the following: "That the Synod of the Mid-Atlantic appoint an Administrative Commission of no more than seven persons to address concerns in AKAP according to the Book of Order G-3.0109b, and that the Synod Moderator and Stated Clerk be given the authority to appoint an AC with at least one half of the commission representing Koreans."

On March 21, Synod Executive/Stated Clerk the Rev. Warren Lesane, Jr., sent a letter officially informing AKAP of the Synod action establishing an Administrative Commission (AC) "as provided in G-3.0109b(5) of the Presbyterian Book of Order." The letter went on to say: "The Administrative Commission shall consist of not fewer than seven (7) persons and its membership shall be appointed by the Synod Moderator and Synod Stated Clerk. At least one-half of the commission shall be Koreans. The Administrative Commission may be given additional authority as the Synod deems necessary in order to effectively engage its work." Finally, Rev. Lesane asked that the letter be read in its entirety at the AKAP meeting to be held in April.

A Request for Stay of Enforcement was received for both of these cases by the Commission on April 15, 2018, but failed to receive the necessary signatures pursuant to G-6.0103d. Respondent filed a motion to dismiss on June 7, 2018, which was withdrawn at the start of the trial on October 19, 2018. A pre-trial conference was held pursuant to D-6.0310 on October 10, 2018, at which the parties stipulated to facts, exhibits and witnesses in preparation for the trial and the issues in dispute. Trial was held October 19 and 20, 2018.

Alleged Irregularities

By agreement of the parties and pursuant to a pre-trial order dated October 12, 2018, the trial focused on the following three disputed issues, phrased here as three alleged irregularities:

Irregularity No. 1: The appointment of an Administrative Commission was an irregularity under G-3.0109b. (This issue was understood to include the complainants' allegation that false information was presented to the synod.)

This irregularity is not sustained in part and sustained in part.

The original complaint of the Presbytery concerning the appointment of an AC is not sustained. However, the language of the Synod action establishing the AC was insufficient, and therefore was irregular. (See Decision below.)

Irregularity No. 2: The synod treated the presbytery improperly under F-1.0403.

This irregularity is not sustained. (See Decision below.)

Irregularity No. 3: The complainants have not been afforded "fundamental fairness" or "due process" in the appointment of an Administrative Commission.

This irregularity is not sustained. (See Decision below.)

Decision

Over the course of two days, this Commission considered the documentary evidence presented to it, evaluated the testimony of the witnesses, and carefully deliberated and voted on each alleged irregularity and disputed issue. This Commission is grieved by the long history of conflict and communication difficulties between the Synod and Presbytery, and between the councils' leaders. A lack of clarity and understanding about certain processes and procedures, exacerbated by differences in language and culture, further complicates conflicted relationships, such as these.

Irregularity No. 1: The appointment of an Administrative Commission was an irregularity under G-3.0109b. (This issue was understood to include the complainants' allegation that false information was presented to the synod.)

Councils have wide latitude in the appointment of administrative commissions. Except for a few specifically prohibited powers, many of their official functions may be delegated to duly appointed administrative commissions. The authority to delegate oversight of lower councils, and to inquire into councils "reported to be affected with disorder" (G-3.0109b(5)), is explicit.

In the present case, the Synod's decision to appoint an administrative commission to inquire into reported difficulties in one of its constituent presbyteries did not violate any provisions of the *Book of Order*. No provision quantifies how severe the disorder must be to justify such an appointment. The facts in this case present sufficient justification, based on a history of reported conflict in the Presbytery, for Synod reasonably to act.

However, G-3.0109 also states, "The designating council shall state specifically the scope of the commission's power and any restrictions on those powers." On March 13, 2018, the Synod approved a motion to appoint an administrative commission: "That the Synod of the Mid-Atlantic appoint an Administrative Commission of no more than seven persons to address concerns in AKAP according to the Book of Order G-3.0109b, and that the Synod Moderator and Stated Clerk be given the authority to appoint an AC with at least one half of the commission representing Koreans." This motion fails to specify the powers and limitations given to the AC by the omission of any language to define the scope of the AC's authority to "address concerns" or any language defining the restrictions of the AC's authority. Such a generic charge is insufficient. The conflicting testimony at trial from the Respondent's own witnesses about the intended scope of the action demonstrates the potential for confusion. So, too, does

the conflict in language between the approved motion and its description in the Synod Stated Clerk's March 21 letter to the Presbytery. Because of this insufficiency, the Synod must delegate specific powers prior to the AC taking any actions on behalf of the Synod (see *Hoy, et al., v. Presbytery of Tropical Florida* 1991, 203-1; *Sundquist v. Heartland Presbytery* 2008, 219-03; *Lee, et al., v. Presbytery of Midwest Hanmi* 2008, 219-05).

Unless or until additional powers are delegated, the AC would only have authority to make recommendations to the Synod, not to take any actions. Any final actions (*e.g.*, any assumption of original jurisdiction), would require providing the Presbytery and its representatives the opportunity to be heard on the matter before a final decision is made. And such actions, whether taken by the Synod or delegated to an AC, would be subject to administrative or judicial review. Any power not specifically delegated remains with the Synod (*Sundquist v. Heartland Presbytery*, 2008).

Complainants have also alleged that Synod's decision to appoint an AC was based, in part, on false information orally presented by the Synod Executive/Stated Clerk at the Synod assembly. This remedial case did not provide an appropriate framework to investigate or adjudicate all of the Complainant's allegations, and this Commission did not find sufficient evidence to prove or disprove those claims.

Irregularity No. 2: The synod treated the presbytery improperly under F-1.0403.

F-1.0403 establishes important principles that lie at the heart of what it means to be the Church. The Constitution establishes an expectation of intentionality in representation in every council of the Church.

The existence of non-geographic presbyteries within synods, and of presbyteries where the language and culture are not shared by the majority in the synod, places a special responsibility on the synod to ensure representation, fairness, and equal access in decision-making. No council should take lightly its responsibility to ensure diverse voices are given opportunity to speak and be heard in the councils of the church.

In this case, this Commission finds the Synod has met its responsibility. Being heard is not the same as being agreed with. While members of the Presbytery were displeased by the Synod's action to appoint an AC, there is no evidence that they were excluded from the decision-making process. Indeed, the Presbytery's two commissioners and Executive Presbyter/Stated Clerk (as a corresponding member) were present during the Meeting on the motion in question and had opportunity to speak. At least one of them did so.

The Presbytery has raised broader questions of racial representation on Synod entities. It is not within this Commission's purview to conduct an administrative review of the Synod's efforts, or lack thereof, to ensure diversity and representation on its committees and boards. But no evidence has been presented that Asian persons (or those of Korean descent, specifically) are being deliberately underrepresented. Synod Standing Rules intentionally place representatives of all presbyteries, including AKAP, on Synod entities. An Asian-American woman (from another presbytery) served as Synod moderator in 2015.

Irregularity No. 3: The complainants have not been afforded "fundamental fairness" or "due process" in the appointment of an Administrative Commission.

Complainants have also raised concerns about whether "fundamental fairness" was shown to the Presbytery. This Commission held in *Sundquist, et al., v. Heartland Presbytery* 2008, 219-03, that an

administrative commission may be appointed without hearing or advance notice.

In fact, the Presbytery did have some advance notice of an action being considered to form an AC. The minutes of the September 2017 Synod Meeting anticipate the formation of a commission to conduct special administrative review of the conflict issues in the Presbytery. On March 12, 2018, the Presbytery's Executive Presbyter/Stated Clerk was advised of the Synod Executive Committee's recommendation to form an AC. At the Synod Meeting, AKAP commissioners had opportunity to speak on the motion, as did the Executive Presbyter/Stated Clerk (as a corresponding member). Additionally, attention was given in the action creating the AC to ensure that Korean voices would make up at least half of the AC.

Throughout its consideration of this case, this Commission has heard an earnest desire from the Presbytery's representatives to be heard and fully included in the life and mission of the Synod. Through its witnesses and counsel, the Presbytery has expressed a sense of injustice, of a history of unfair treatment, and of not being heard. This Commission has also heard testimony that Presbytery leadership has not submitted minutes or other documents for regular review and has been unresponsive to some outreach efforts from the Synod. In seeking reconciliation, judicial process is often a poor substitute for deeper investment in relationships and shared mission. The Synod and its staff are encouraged—perhaps even through the work of the AC at issue in this case—to consider how best to achieve a different tone and spirit in the ongoing relationship between the councils and their leadership.

Order

IT IS THEREFORE ORDERED that the Synod action of March 13, 2018, establishing an Administrative Commission is hereby suspended, pending modification of the action to delineate the powers of that Administrative Commission consistent with this decision and in compliance with G-3.0109, "The designating council shall state specifically the scope of the commission's powers and any restrictions on those powers."

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Mid-Atlantic report this Decision and Order to the Synod at its first stated meeting following the date of this Order, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from the Synod's minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.).


IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Mid-Atlantic deliver a copy of this Decision and Order to its Administrative Commission addressing concerns in the Atlantic Korean American Presbytery.

IT IS FURTHER ORDERED that the Stated Clerk of the Atlantic Korean American Presbytery report this Decision and Order to the Atlantic Korean American Presbytery at the first stated meeting after receipt, that the Atlantic Korean American 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 of the Presbyterian Church (U.S.A.).

Dissenting Opinion

As to Irregularity No. 1, I dissent.

The Synod motion fails to state specifically the scope of the AC's powers and any restrictions on those powers (G-3.0109) by the omission of any language to define the scope of the AC's authority to "address concerns" and the omission of any language defining the restrictions of the AC's authority. The motion as approved lacked specificity defining the delegation of authority from Synod to the AC and is, therefore, irregular. Because the motion was irregular and thus did not create a valid AC, the Synod of the Mid-Atlantic should be required to begin anew its consideration of possible recommendations related to the Atlantic Korean American Presbytery.



Ruth Goldthwaite

Ruth Goldthwaite

Opinion Concurring in Part and Dissenting in Part

We concur with the decision of the Commission on Irregularities Nos. 2 and 3, but we respectfully dissent from the decision to sustain in part Irregularity No. 1. We would not sustain any irregularity.

We join the Commission in the finding that the formation of an AC was justified. While we agree that the language of the Synod's motion was insufficient, we believe the Synod could delegate powers at a later time, correcting the insufficiency before the AC took actions that would have been constitutionally irregular.

Brian Ellison 10/22/18
Date

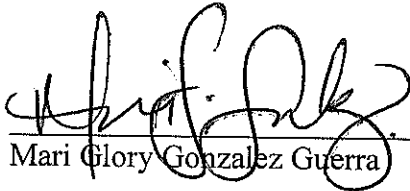
Linda Windy Johnston 10-22-18
Date

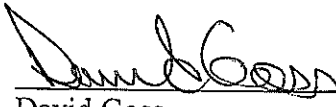
Diana Moore 22 Oct 2018
Date


Opinion Concurring in Part and Dissenting in Part

We concur with the decision of the Commission on Irregularities Nos. 1 and 3, but we respectfully dissent from the decision to not sustain Irregularity No. 2. We would sustain in part, and not sustain in part, Irregularity No. 2.

The Commission recognizes this case was—in part—about a lack of clarity and understanding about certain processes and procedures, exacerbated by differences in language and culture, which further complicates conflicted relationships, such as these. In this case, while we agree that the Synod provided opportunities to AKAP representatives and participated in many processes, the existence of non-geographic presbyteries within synods requires additional efforts to ensure representation, fairness and equal access in decision-making. The Executive Committee could have made, and should make, additional efforts, like consulting an AKAP representative (according to the Synod Standing Rules), and providing adequate interpretation and translation services to ensure diverse voices are given opportunities to speak and be heard in the diverse committees and councils of the Synod.


Mari Glory Gonzalez Guerra October 22, 2018
Date


David Goss October 22, 2018
Date


William Myers October 22, 2018
Date

Absences and Non-Appearances

Commissioners Paul Hooker and James Pak were recused and did not participate in the trial and deliberations. Commissioners Craig Lindsey, June Lorenzo, and Susan McGhee were absent and did not participate in the trial and deliberations.

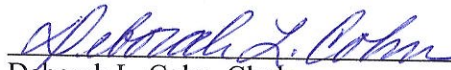
Certificate

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 224-02, *Atlantic Korean American Presbytery, Complainant v. Synod of the Mid-Atlantic, Respondent*, and in Remedial Case 224-02, *Nam Cho and Kim Robinson, Complainants v. Synod of the Mid-Atlantic, Respondent*, made and announced at Atlanta, GA, this 22nd day of October, 2018.

Dated this 22nd day of October, 2018.



Ruth Goldthwaite, Moderator
Permanent Judicial Commission of the General Assembly



Deborah L. 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 Atlanta, Georgia, this 22nd day of October, 2018.

Archibald Wallace, Counsel for the Respondent
Chi Hyeon Yun, Counsel for the Complainants
Stated Clerk, Atlantic Korean American Presbytery
Stated Clerk, Synod of Mid-Atlantic
General Assembly Permanent Judicial Commission

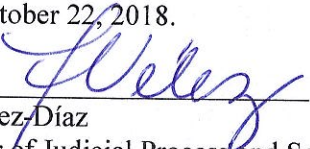
I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to Flor Vélez-Díaz, on October 22, 2018.



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 Atlanta, GA, on October 22, 2018, in Remedial Case 224-02, Atlantic Korean American Presbytery and Nam H. Cho and Kim Robinson, Complainants v. Synod of the Mid Atlantic, Respondent, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Atlanta, Georgia, on October 22, 2018.



Flor Vélez-Díaz
Manager of Judicial Process and Social Witness