

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

Presbytery of Lake Michigan, **Appellant**

v.

Session of North Kent Presbyterian Church, **Appellee**

Decision and Order

Remedial Case 225-07

Arrival Statement

This is an appeal to the General Assembly Permanent Judicial Commission (GAPJC or this Commission) filed by the Presbytery of Lake Michigan (Presbytery or Appellant) from an October 30, 2021, decision of the Permanent Judicial Commission of the Synod of the Covenant (SPJC).

Jurisdictional Statement

This Commission finds that it has jurisdiction, Appellant has standing to file the appeal, the appeal was properly and timely filed, and the appeal states one or more of the grounds for appeal set forth in D-8.0105.

Appearances

Appellant was represented by Ruling Elder Kenneth Tiews as counsel, and the Rev. Daniel Anderson and the Rev. Karen Kelley as committee of counsel. The Session of North Kent Presbyterian Church (Session or Appellee) was represented by Ruling Elder Arthur Spalding, Ruling Elder Cara Oosterhouse, and Ruling Elder Laura Weld, committee of counsel.

History

Because a trial or hearing has not occurred at which the facts of this case have been established for the record, this background summary relies in part on the uncontested procedural history provided in the parties' pleadings in the record currently before this Commission.

At its stated meeting on September 19, 2020, the Presbytery approved a recommendation from its Leadership Team (Team) that the Presbytery establish an Administrative Commission (AC) for the Session. Among the powers the Team proposed be delegated to that AC was authority to assume original jurisdiction of the Session if certain conditions were met.

The parties' briefs indicate that for at least several years prior to 2020, the Session had raised concerns relating to Presbytery's budgets, salaries, expenditures, and financial matters, and requested access to Presbytery documents providing information on those matters. Following initial conversations about these issues, both the Session and the Presbytery indicated interest in continuing their discussions to seek clarity and a mutually satisfactory resolution. While those discussions did continue, the Team decided to present Presbytery with a new approach to these ongoing conversations with the Session that would involve appointment of an Administrative Commission, and so advised the Session.

At the September 19, 2020, stated Presbytery meeting, the Team, citing its need to devote its energy to "complete the transition of the Presbytery in a timely manner and provide leadership during the current pandemic," offered a recommendation that the Presbytery, under G-3.0109b(5), create and empower an Administrative Commission to lend additional attention to the issues with the Session. The recommendation described the AC's purpose as "including, but not limited to," four specific focus areas for AC attention, based on prior interactions between the Session and the Presbytery. Regarding the AC's authority, the Team included this request:

It is further recommended that this Administrative Commission have the full authority of the Presbytery of Lake Michigan, except where limited by provisions of the PC(USA) Book of Order. If it is determined that the Session of the North Kent Presbyterian Church, Rockford, MI is unable or unwilling to successfully resolve irregularities in a timely manner, the Administrative Commission of the Presbytery of Lake Michigan has the authority to assume original jurisdiction with full powers of the Session, in which case the Session of the North Kent Presbyterian Church, Rockford, MI will cease to act until such time as the Presbytery shall otherwise direct.

During Presbytery debate on the Team's recommendation at the September 19 meeting, North Kent Presbyterian Church's ruling elder commissioner and pastor, as well as other commissioners, spoke and raised concerns about the AC and its proposed authority. Following a vote to call the previous question and end debate, the Presbytery voted 51-22 to approve creation of the AC with the authority described above.

The Session on October 12, 2020, filed a complaint and request for a stay of enforcement with the SPJC, citing various irregularities and delinquencies in the Presbytery's September 19 action. Presbytery provided an answer to the Session filings on November 11, 2020. On December 22, 2020, six members of the SPJC granted a stay of enforcement of the Presbytery's September 19 action to create the AC and to authorize it to take original jurisdiction of the Session if certain conditions were met. The Presbytery filed an objection to the stay of enforcement on February 5, 2021, to which the Session filed a response on February 19, 2021. Following a March 9, 2021, hearing by videoconference, the SPJC voted to continue the previous stay as it was.

In a pretrial conference on September 14, 2021, the parties stipulated and the SPJC agreed to limit the scope of the trial to six questions, four of which were identified solely as matters of constitutional interpretation and two as matters requiring factual proof or testimony.

The agreement additionally bifurcated the proceeding, with the initial hearing on the stipulated questions that raised issues of constitutional interpretation of G-3.0109b(5) and G-3.0303e, and for which the parties and the SPJC agreed no factual proofs or testimony were required. Depending on the outcome of the first half of the bifurcated proceeding (which the parties and the SPJC regarded as a trial), the issues requiring factual proof or testimony could then be addressed in a subsequent proceeding.

Following receipt of briefs, the SPJC hearing on the initial four stipulated questions occurred on October 29, 2021, with the SPJC decision on those four questions issued on October 30, 2021. The SPJC decision was that “The appointment of the Administrat[ive] Commission by PLM [Presbytery] at its meeting on September 19, 2020, is void and of no further effect [, and the] granting to that same Administrative Commission the Authority to Assume Original jurisdiction of the session by PLM [Presbytery] at its meeting on September 19, 2020, is void and of no further effect.”

After addressing the four stipulated questions in its written opinion, the SPJC made certain “Observations” that the Presbytery’s granting the AC authority to exercise original jurisdiction over the Session reflected “inequity in power” and could cause potential intimidation of churches, sessions, and ordained persons from seeking open Presbytery dialogue. The SPJC made an additional “Observation” expressing concern about reports of particular actions taken by the Presbytery’s AC while the SPJC stay of enforcement was in effect.

The Presbytery filed a notice of appeal and a separate request for stay of enforcement on November 24, 2021, claiming the SPJC erred in constitutional interpretation and in its processing of the case, in part by including the additional “Observations” that the Presbytery asserted were not supported by factual evidence in the record. The Session filed its reply to the request for a stay of enforcement on November 29, 2021, along with a request for dismissal of the appeal for lack of standing. On November 29, 2021, this Commission’s Moderator and Clerk found that the Presbytery’s appeal met the requirements of D-8.0301 for this Commission to accept jurisdiction of the appeal and scheduled the GAPJC hearing on the case for April 1, 2022. Regarding the Presbytery’s request for a stay of enforcement, four members of the GAPJC certified to granting a Stay of the SPJC’s October 30 decision and order, with the Stay entered effective on November 30, 2021.

The Session filed what it termed a supplemental objection to the Stay of Enforcement on January 29, 2022. This Commission’s officers on February 3, 2022, ordered a hearing by videoconference on the objection to the Stay on March 1, 2022. Both the Presbytery and the Session submitted briefs prior to that hearing. Following the March 1, 2022, hearing, at which oral arguments were heard, a five-member panel of this Commission ordered, with clarifications, the Stay of Enforcement imposed on November 30, 2021, to continue until a decision in the case had been rendered by the GAPJC.

The Presbytery and the Session submitted briefs prior to the April 1, 2022, GAPJC hearing by videoconference on the appeal, at which this Commission heard oral arguments.

Specifications of Error

In its notice of appeal, Appellant alleges six specifications of error, two of which have multiple parts. Permanent judicial commissions have long-standing and broad authority to restate, group, consolidate, and summarize, but not omit, specifications of error presented in an appeal for purposes of clarity (D-8.0404d). This Commission has summarized Appellant's specifications of error as follows:

Specification of Error No. 1: Irregularity in the proceedings (D-8.0105a), in that the SPJC predicated its decision in part on findings of fact for which no evidence was received nor testimony heard, per stipulations of Appellee and Appellant on September 14, 2021.

This specification of error is sustained. (See rationale at Specification of Error No. 3.)

Specification of Error No. 2: Hastening to a decision before the evidence or testimony is fully received (D-8.0105d), in that

- a) The decision is based on findings of fact that the parties had stipulated would not be addressed at the trial held on October 29, 2021, and as to which neither party introduced any evidence or testimony at that trial.*
- b) The SPJC's ruling that the Presbytery Committee of Counsel acted in disregard for the SPJC's stay of enforcement is predicated on findings of fact as to which no evidence or testimony were introduced by either party at the trial held on October 29, 2021, pursuant to their stipulation restricting the questions to be addressed to matters of constitutional interpretation.*

This specification of error is sustained. (See rationale at Specification of Error No. 3.)

Specification of Error No. 3: Injustice in the process or decision (D-8.0105f), in that the SPJC decision attributes to Appellant "abuse of unequal power" and "intimidating North Kent and other congregations" without having received evidence or heard testimony.

This specification of error is sustained.

Specifications of Error Nos. 1-3 are rooted in Appellant's claim that the SPJC violated the agreement of September 14, 2021, that the decision following the hearing on October 29, 2021, would be confined to matters of constitutional interpretation, and that the SPJC would not receive evidence or testimony before reaching a decision on those constitutional matters. The record in this case clearly indicates that both parties in the case agreed to this arrangement, and that SPJC approved it.

The *Book of Order*, D-7.0402a, states: "No complaint in a remedial case shall be sustained unless it has been proved by a preponderance of the evidence."

The record in this case is clear that at the hearing, the SPJC did not hear testimony or receive evidence other than, as the parties agreed, the recommendation adopted by the Presbytery to create the AC. Nonetheless, the SPJC decision contains several phrases that are clearly statements of alleged fact, including findings that “disorder does not exist in the North Kent church,” and that the decision of the Presbytery to appoint an AC “has the effect of intimidating North Kent, as well as other churches, from further requests for open debate on the floor of presbytery” through “abuse of unequal power.” This Commission does not reach a finding on the truth or falsity of these claims. However, by including these claims in its decision, which was to be limited to matters of constitutional interpretation, the SPJC violated both the agreement referenced above and D-7.0402a.

Specification of Error No. 4: Error in constitutional interpretation (D-8.0105g), in that

- a) *the SPJC erred in interpreting G-3.0303e with respect to presbyteries’ power to appoint administrative commissions with authority to assume original jurisdiction without prior investigation, notice, and an opportunity to be heard.*

This specification of error is sustained.

The *Book of Order*, G-3.0303e, gives to a presbytery the power to assume original jurisdiction in any situation in which it determines that a session cannot exercise its authority. After a thorough investigation, and after full opportunity to be heard has been accorded to the session, the presbytery may conclude that the session of a congregation is unable or unwilling to manage wisely its affairs and may appoint an administrative commission with the full power of session. This commission shall assume original jurisdiction of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.

This commission interpreted what is now G-3.0303e in *Sundquist et al. v. Heartland Presbytery* (2008, 219-03). It held that

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.

It went on:

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. Such a process would be unwieldy, use an undue amount of 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.

This Commission has recently reaffirmed the position of *Sundquist* in *Atlantic Korean American Presbytery v. Synod of the Mid-Atlantic* (2018, 224-02).

This Commission notes that an AC must comply with the requirements of G-3.0303e before exercising any delegated authority to assume original jurisdiction. It must conduct an investigation, provide notice and opportunity for all parties to be heard, and find that a session is unable or unwilling to manage wisely its affairs.

b) *the SPJC erred in interpreting and applying G-6.02 with respect to the source and prioritization of authoritative interpretations of the Book of Order.*

This specification of error is not sustained.

Appellee argues and SPJC notes that there are conflicting interpretations of G-3.0303e, given that the 207th General Assembly (1995) adopted an interpretation that listed G-3.0303e [then G-11.0103s] among those powers and responsibilities of presbyteries that should not be delegated to ACs (*Minutes*, 1995, 282, 21.130; Item 91-18). However, *Sundquist* is a 2008 decision and as such supersedes the 1995 General Assembly action as the most recent authoritative interpretation of G-3.0303e (see G-3.0501c).

Appellee further argues that an authoritative interpretation of the *Book of Order* adopted by the General Assembly meeting in plenary session supersedes an interpretation rendered as part of a GAPJC decision. However, on this point, see G-6.02 and G-3.0501c, as well as the authoritative interpretation adopted by the 219th General Assembly (2010) (Item 05-21):

In recent years, the question has arisen in some circles whether the General Assembly's Permanent Judicial Commission may adopt an interpretation of the Constitution that is contrary to an interpretation rendered by the assembly under the provisions of G-13.0112. Section G-13.0103r makes clear that there are parallel processes for interpreting the Constitution. One method involves an interpretation approved by the assembly after hearing the advice of the Advisory Committee on the Constitution; the other is an interpretation that is part of a decision by the GAPJC in a judicial case. Whether it acts in plenary session or through its commission, the most recent interpretation so rendered is authoritative and binding. The Constitution does not distinguish between levels of authority with respect to these methods.

Appellant, in this specification of error, mischaracterizes the SPJC's conclusion. The SPJC decision does not in fact conclude that the 1995 authoritative interpretation supersedes *Sundquist*. For this reason, the specification of error is not sustained.

c) *the SPJC erred in interpreting G-3.0109b(5) with respect to reports of disorder alone as being sufficient to warrant the appointment of an administrative commission.*

This specification of error is sustained.

G-3.0109b(5) lists among the tasks for which a presbytery may appoint an AC: visiting particular councils, congregations, or agencies over which they have immediate jurisdiction reported to be affected with disorder, and inquiring into and settling the difficulties therein, except that no commission of a presbytery shall be empowered to dissolve a pastoral relationship without the specific authorization by the designating body (G-2.0901).

This provision does not mandate an investigation of discord prior to the formation of an AC, but only the receipt of a report of discord.

As noted above, G-3.0303e does require both an investigation and opportunity for the session to be heard prior to an action to assume original jurisdiction over a congregation. In this case, however, the Presbytery did not itself assume original jurisdiction, but delegated that power to the AC. The Presbytery did not assume original jurisdiction simply by the appointment of the AC, and thus the requirement for investigation does not apply to the action of the Presbytery to appoint and authorize the AC. The AC remains bound to the requirements of G-3.0303e.

This Commission notes that the Constitution intends an administrative commission as an extension of the presbytery's pastoral care and oversight of its congregations and sessions. The authorization of an administrative commission to assume original jurisdiction does not necessarily mean that the administrative commission must or even should exercise that authority. In this case, it may be possible that conversations between the AC and the Session might lead to some resolution of the concerns short of the action to assume original jurisdiction.

d) the SPJC erred in interpreting G-3.0109b(5) regarding terminology required in a report that a congregation or council is affected with disorder.

This specification of error is sustained.

The SPJC decision states that “the reasons cited in the recommendations of the Appellant’s Leadership Team [which were the basis of Appellant’s action to create the AC on September 19, 2020] do not rise to the level of ‘affected with disorder’ in G-3.0109b(5).”

The *Book of Order* does not explicitly define “disorder” or state what constitutes a “report of disorder.” Decisions about whether a reported set of circumstances constitute a report of disorder on which a presbytery might act to appoint an administrative commission are therefore made by the presbytery at the time of the appointment and on the basis of its knowledge of the history and conditions of the congregation for which the commission is named. This Commission is not in a position to assess what the Presbytery knew about North Kent Presbyterian Church or its Session on September 19, 2020, and so it does not substitute its judgment for that of the Presbytery in making this appointment. It further finds that, in the absence of evidence or testimony, the SPJC was in error in substituting its judgment for that of the Presbytery in finding that “disorder does not exist in the congregation or session of the North Kent church.” (see D-7.0402a).

Whether such disorder existed within the Session is not at stake in this decision because it cannot be determined from the record of this case. When appointing administrative commissions under G-3.0109b(5) and G-3.0303e, presbyteries are better positioned than synods to observe and respond to the dynamics of sessions and congregations in the presbytery. Synods should be reluctant to substitute their own judgment regarding the presence of disorder for that of presbyteries in reviewing the authorization of administrative commissions.

e) the SPJC erred in interpreting G-3.0109b(5) when it ruled that the recommendation of the Presbytery's Leadership Team to the presbytery on September 19, 2020, did not constitute a report that the congregation was "affected with disorder."

This specification of error is sustained.

The SPJC finds that Appellant failed to be sufficiently specific in using the recommendation of the Leadership Team as authorization for the AC, on the grounds that the recommendation does not specifically refer to "disorder," even though the SPJC acknowledges that the recommendation does cite G-3.0109b(5), which includes the term. This Commission does not agree. The Presbytery's reference to the constitutional authority for appointing an administrative commission is sufficient.

f) the SPJC erred in interpreting G-3.0109b(5) in finding that the inclusion of the phrase "including but not limited to" in the authorization of the administrative commission violated the requirement of specificity in the Book of Order.

This specification of error is sustained.

The recommendation of the Presbytery Leadership Team, adopted by the Presbytery, was the following:

Therefore, the Leadership Team recommends to the Presbytery of Lake Michigan, pursuant to Book of Order provision G-3.0109 b (5), that an Administrative Commission of three to five members be appointed by the Moderator of the Presbytery for the following purposes, including but not limited to:

1. To clarify the protocol related to appropriate communication between the Session and other entities with the Presbytery, including communications with Administrative Commissions and the Leadership Team.
2. Addressing actions and communications which sow discord and encourage conflict within the Presbytery thereby disrupting the peace, unity and purity of the church.
3. Addressing the inability of the session and pastor to work cooperatively with the Leadership Team to resolve expressed concerns.
4. To address boundary and conflicts of interest related to members' and pastor's roles related to the church, the presbytery and the Greenwood Ministry Association.

It is further recommended that this Administrative Commission have the full authority of the Presbytery of Lake Michigan, except where limited by provisions of the PC(USA) Book of Order. If it is determined that the Session of the North Kent Presbyterian Church, Rockford, MI is unable or unwilling to successfully resolve irregularities in a timely manner, the Administrative Commission of the Presbytery of Lake Michigan has the authority to assume original jurisdiction with full powers of the Session, in which case the Session of the North Kent Presbyterian Church, Rockford, MI will cease to act until such time as the Presbytery shall otherwise direct.

The phrase “including but not limited to” in the recommendation adopted by Appellant in creating the AC pertains to “purposes” for which the AC is created, and not powers given to the AC. Further, the recommendation specifically separates the power to assume original jurisdiction from the “purposes” listed above it, and it limits the power to assume original jurisdiction by reference to “provisions of the PC(USA) Book of Order.” This Commission finds that the phrase, “including but not limited to” in the introduction of the purposes of the AC does not of itself violate the requirement for specificity in G-3.0109.

This Commission does, however, find two significant shortcomings in the Presbytery’s action to authorize its administrative commission. First, the initial sentence of the final paragraph, which reads, “It is further recommended that this Administrative Commission *have the full authority of the Presbytery of Lake Michigan*, except where limited by provisions of the PC(USA) Book of Order” (emphasis added), is overly broad. This sentence could be interpreted to mean that all powers of the Presbytery are vested in this commission where not specifically allocated to other entities within the Presbytery. That the Presbytery may have intended the powers it authorizes its AC to exercise to be limited to matters pertaining to the Session is not clear from the approved language.

Second, this Commission expresses concern at the language of the authorization of the AC to assume original jurisdiction. The authority to assume original jurisdiction is predicated on a determination that the Session “is unable or unwilling to successfully resolve irregularities in a timely manner.” This language differs somewhat from G-3.0303e, which clearly provides that the grounds for determining whether to assume original jurisdiction are that “the session is unable or unwilling to manage wisely its affairs.” While the presence of “irregularities” in the practices of a session are grounds for special administrative intervention by the presbytery (see G-3.0108b), the failure or lack of timeliness of their resolution is not, of itself, evidence of inability or unwillingness to manage wisely a session’s affairs.

Administrative commissions require some latitude in order to accomplish their work. Narrow restrictions of areas into which an AC may inquire unnecessarily hamstring an AC’s work and require that it repeatedly return to the appointing body for expansion of its powers. Such latitude is not unlimited, however. This commission has repeatedly reaffirmed the importance of specificity in the authorizing language of commissions (see G-3.0109, *Suárez-Valera v. Presbiterio del Noroeste* (2020, 225-02) and *John v. Presbytery of New York City* (2021, 225-05)).

In *Atlantic Korean American Presbytery (AKAP) v. Synod of Mid-Atlantic* (2018, 224-02), one of the alleged irregularities on the part of the Synod of Mid-Atlantic was forming an AC to inquire into difficulties in AKAP without sufficient factual basis on which to determine that there was disorder within the presbytery. This Commission held that

[c]ouncils 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, Synod’s decision to appoint an administrative commission to inquire into reported difficulties in one of its constituent presbyteries did not violate any provision of the *Book of Order*. *No provision quantifies how severe the disorder must be in order to justify such an appointment.* (Emphasis added)

Notwithstanding the shortcomings in the authorizing language adopted by the Presbytery for its AC, that language does not rise to the level of invalidating the authorization itself.

Decision

This Commission finds that the SPJC erred in failing to adhere to the terms of the agreement regarding the receipt of testimony and evidence on matters of fact, and that it violated D-7.0402a in sustaining the Session’s complaints in the absence of a preponderance of evidence.

It further finds that the SPJC erred in constitutional interpretation in overturning the appointment of the AC on grounds of the absence of a prior investigation into reported disorder. No investigation into disorder is required by G-3.0109b(5).

This Commission notes with concern the SPJC statement:

This irregularity of appointing an AC with power to assume original jurisdiction echoes within all of us the inequity in power similar to our understanding healthy boundaries, abuse prevention, and our Presbyterian call to further the cause of justice in our world as representatives of Jesus Christ.

The underlying dynamic in the case of North Kent Presbyterian Church Session and the Presbytery of Lake Michigan is abuse of unequal power. The action of the Leadership Team to recommend an AC for North Kent with delegated power to assume original jurisdiction has the effect of intimidating North Kent, as well as other churches, from further requests for open debate on the floor of Presbytery. It also sends the message to other Pastors, sessions and elder commissioners to Presbytery regarding the danger to their career and reputation to seek such an open dialog. The

Presbytery seems to be labeling as disorder normal discussions among pastors, sessions, and presbyters seeking to find others to advocate open discussion.

The *Book of Order* explicitly accords to a presbytery the power to appoint an administrative commission to:

- inquire into and settle difficulties in congregations reported to be affected with disorder (G-3.0109b(5)); and
- assume original jurisdiction if the AC finds, after investigation and affording opportunity to be heard, that the session is unable or unwilling to manage wisely its affairs (G-3.0303e and *Sundquist*).

It is possible that a council may abuse its power in appointing an administrative commission. However, the appointment of a commission with authority to assume original jurisdiction is not, in itself, an “abuse of unequal power.”

While this Commission does not set aside the action of the Presbytery to appoint an AC with authority to assume original jurisdiction, it does encourage the Presbytery to revisit that action at its earliest convenience, and to restate its authorization in language that is more specific, including attention to the requirements of the *Book of Order*. The unique covenantal relationship between presbyteries and sessions requires attentiveness to the pastoral dynamics of an administrative commission’s authority.

Finally, this Commission expresses concern about the attempted “bifurcation” of the matters at trial into matters of fact and matters for constitutional interpretation, and especially the SPJC determination to hear the case initially on the latter only. The agreement of the parties to bifurcate the issues and then to address the constitutional issues in the absence of evidence or testimony may have been intended to simplify the decision process, but it has the opposite effect in this case. This is evident from the SPJC decision, which in several places makes statements that can only be regarded as conclusions drawn from facts not in evidence in the record.

The division of issues or specifications of error into matters of fact and matters of constitutional interpretation is not unheard of in ecclesiastical judicial process. In this case, however, the SPJC based its rulings in part on assertions of fact prior to having received any evidence or heard any testimony in support of these assertions, at least some of which would have been controverted by Appellant at trial. This Commission cautions judicial commissions against hearings that address constitutional issues in the absence of findings of fact that raise those issues.

Order

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of the Covenant is reversed, and this matter is concluded.

IT IS FURTHER ORDERED that the Clerk of the Session of North Kent Presbyterian Church report this Decision to the Session at the first meeting after receipt, that the Session 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 Lake Michigan report this Decision to the Presbytery of Lake Michigan at the first meeting after receipt, that the Presbytery of Lake Michigan 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 Synod of the Covenant report this Decision to the Synod of the Covenant at the first meeting after receipt, that the Synod of the Covenant 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.

Absences and Non-Appearances

Commissioner Mari Glory González-Guerra was absent and did not participate in the hearing and deliberations. The commissioner positions from the Synod of Alaska-Northwest and the Synod of the Trinity were vacant.

Opinion Concurring in Part and Dissenting in Part

We concur in part and dissent in part. We concur in the Commission’s resolution of the individual specifications of error, but dissent from the Order and the extent of relief granted, as follows:

- We concur entirely with the Commission’s resolution of Specifications of Error Nos. 1-3, and in its critique of how the SPJC bifurcated proceedings and then made factual determinations that went beyond either (1) evidence received in a hearing or (2) stipulated and undisputed facts.
- We dissent from the Commission’s Order (and related parts of the decision) to the extent that the Order allows to remain in place the Presbytery’s delegation to an AC of its power to assume original jurisdiction over a session, where that delegation is constitutionally deficient.
- We would set aside *both* the SPJC decision *and* the final paragraph of the Presbytery’s action, which contains that constitutionally deficient delegation.

In a series of recent decisions, the Commission has repeatedly reaffirmed the importance of specificity in the authorizing language of administrative commissions (see G-3.0109, *Suárez-Valera v. Presbiterio del Noroeste* (2020, 225-02) and *John v. Presbytery of New York City* (2021, 225-05)). The *Book of Order* in G-3.0109 requires that “[t]he designating council *shall state specifically the scope of the commission’s powers and any restrictions on those powers*” (emphasis added). In *Suárez-Valera*, the Commission admonished “councils to state specifically the scope of authority given to a commission or a committee and any restrictions on its powers (G- 3.0109).” In *John*, the Commission held that a presbytery’s delegation of authority was

constitutionally deficient, emphasizing “the paramount importance” and “the vital importance of creating adequate and appropriate charges to administrative commissions before setting them to their tasks.”

That same constitutional requirement is at issue in this case, and the same principles apply. Indeed, this requirement and these principles are particularly important here where one of the powers delegated to the AC is the power to assume original jurisdiction over a session – the power of one council of this church to assume the powers of another. It also is especially critical where, as here, the AC is authorized by a presbytery in response to disputes voiced by a session against the presbytery.

In the present case, the Presbytery has delegated to the AC the Presbytery’s power to assume original jurisdiction of the Session, with the following language:

“It is further recommended that this Administrative Commission have the full authority of the Presbytery of Lake Michigan, except where limited by provisions of the PC(USA) Book of Order. If it is determined that the Session of the North Kent Presbyterian Church, Rockford, MI is unable or unwilling to successfully resolve irregularities in a timely manner, the Administrative Commission of the Presbytery of Lake Michigan has the authority to assume original jurisdiction with full powers of the Session, in which case the Session of the North Kent Presbyterian Church, Rockford, MI will cease to act until such time as the Presbytery shall otherwise direct.”

The Commission’s decision in this case finds “two significant shortcomings in the Presbytery’s action to authorize its administrative commission.” As an initial matter, the Commission finds that the first sentence of that authorization “is overly broad,” explaining that “this sentence could be interpreted to mean that all powers of the Presbytery are vested in this commission where not specifically allocated to other entities within the Presbytery.” We agree.

The Commission’s decision in this case also recognizes as problematic the language of the Presbytery’s delegation that empowers the AC to assume original jurisdiction of the Session if the AC determines that the Session “is unable or unwilling to successfully resolve irregularities in a timely manner.” The Commission focuses on the “in a timely manner” language, as not necessarily rising to the level of “inability or unwillingness to manages wisely a session’s affairs” as provided in G-3.0303e.

We are even more concerned that the authorization provides a standard that is not the standard that the *Book of Order* prescribes. The *Book of Order* authorizes a presbytery to assume original jurisdiction of a session – in effect, supplanting the session’s authority – only when the presbytery finds that the session is “unable or unwilling to manage wisely its affairs,” after “a thorough investigation, and after full opportunity to be heard has been accorded to the session” (G-3.0303e). In this case, the Presbytery’s delegation of this power does not specify the standard (and restrictions) specified in the *Book of Order*, but rather substitutes its own.

When a council (here, a presbytery) delegates its authority to an administrative commission, the plain language of G-3.0109 requires that designating council “*shall state*

specifically” (1) “the scope of the commission’s powers,” and (2) “any restrictions on those powers” (emphasis added). The delegation here (1) grants broad, non-specified authority to the AC, which the Commission recognizes “is overly broad,” and (2) states none of the restrictions on the power at issue here that are specified in G-3.0303e. With these deficiencies, even if there is a passing reference generally to limitations provided by the *Book of Order*, the Presbytery’s authorizing language is insufficient or misleading enough that it fails to meet the requirements of the Constitution.

The Commission’s decision acknowledges that there are “two significant shortcomings in the Presbytery’s action to authorize its administrative commission.” The Commission then leaves the full authorization in place, but “encourage[s] the Presbytery to revisit that action at its earliest convenience, and to restate its authorization in language that is more specific including attention to the requirements of the *Book of Order*.”

We dissent because we believe the Commission’s Decision and Order leave in place a delegation of power that is unconstitutional. We would set aside the last paragraph of the Presbytery’s delegation of power to the AC (i.e., the paragraph that empowers the AC to assume original jurisdiction of the Session), leaving in place the remainder of the Presbytery’s delegation to the AC of other specified powers.



Scott Clark



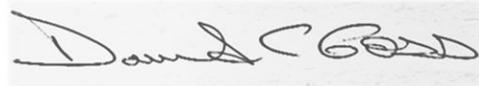
James Pak



Linda Windy Johnston



Wendy S. Tajima



David C. Goss

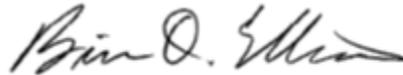
Certificates

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 225-07, Presbytery of Lake Michigan, Appellant v. Session of North Kent Presbyterian Church, Appellee, deliberating by videoconference under the provisions of 6.02.90e of its Manual of Operations, made and announced in Louisville, Kentucky, this 3rd day of April, 2022.

Dated this 3rd day of April, 2022.



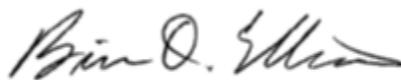
Susan C. McGhee, Moderator
General Assembly Permanent Judicial Commission



Brian D. Ellison, Clerk
General Assembly Permanent Judicial Commission

I certify that I did transmit a certified copy of the foregoing to the following persons by electronic mail and, directing Flor Vélez-Díaz to deposit it in the mail in Louisville, Kentucky,
Kenneth Tiews, Appellant Counsel
Arthur Spalding, Representing the Committee of Counsel for Appellee
Clerk of Session, North Kent Presbyterian Church
Stated Clerk, Presbytery of Lake Michigan
Stated Clerk, Synod of the Covenant
General Assembly Permanent Judicial Commission.

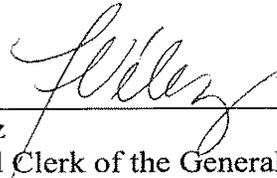
I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it by electronic mail to Flor Vélez-Díaz, on April 3, 2022.



Brian D. Ellison, Clerk
General Assembly Permanent Judicial Commission

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 Louisville, Kentucky, on April 3, 2022, in Remedial Case 225-07, Presbytery of Lake Michigan, Appellant v. Session of North Kent Presbyterian Church, 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, Kentucky, on April 3, 2022.



Flor Vélez-Díaz
Assistant Stated Clerk of the General Assembly,
Presbyterian Church (U.S.A.)
and Manager of Judicial Process and Social Witness