
Report of the Permanent Judicial Commission
32nd General Assembly

Members of the Permanent Judicial Commission (PJC) are: TE Bill Catoe (Mid-Atlantic), TE Ron DiNunzio (Florida), RE Jim Herring (Central South), RE Dave Leighton (West), RE Jim Rimmel (Moderator, Alleghenies), TE Steven Riser (Southeast), RE George “Smoky” Russell (Central South), RE Joe Slesinski (East)¹ and RE Ron Schwedland (Midwest).



Jim Rimmel
Moderator

The PJC met in the General Assembly office in Livonia, MI on May 18-19, 2012 and by phone conference on July 23, 2011, September 9, 2011 and November 4, 2011. Minutes of these meetings are on file in the Office of the Stated Clerk.

MATTERS REGARDING JUDICIAL APPEALS AND COMPLAINTS

At its July 23, 2011 meeting the Permanent Judicial Commission (PJC) considered the appeal of TE Austin Olive against the May 13, 2011 Midwest Presbytery action of sanction of removal from office. The PJC ruled in favor of TE Olive and rescinded the sanction against him (**Attachment PJC-A**).

At its September 9, 2011 meeting the PJC considered a claimed appeal a church member had filed against an action of the Central South Presbytery. This appeal was dismissed because this church member lacked standing as a party to the proceeding.

On November 4, 2011 the PJC met to consider a Complaint filed by Goodwill EPC against a September 24 action of the Presbytery of the East. The Commission concluded that the Complaint did not require immediate action. It gave notice to Goodwill EPC and the Presbytery of the East that a hearing would be held during its May 18-19, 2012 meeting in the General Assembly Office in Livonia, MI. In addition, the Commission ruled that the action of the Presbytery of the East not be suspended (**Attachment PJC-B**).

At its May 18-19, 2012 meeting the PJC conducted a hearing related to the Complaint filed by Goodwill EPC (Montgomery, NY) against the September 24, 2011 action of the Presbytery of the East, in accordance with **Book of Discipline** – [hereafter **D.**]13. The action of the Commission is presented in **Recommendation PJC-1**.

MATTERS REGARDING AMENDMENT TO THE BOOK OF ORDER

On referral from the Stated Clerk, the Permanent Judicial Commission examines all proposed amendments to the Constitution for “clarity and consistency of language and for compatibility with other provisions of the Constitution of the Evangelical Presbyterian Church” (**Book of Government** – [hereafter **G.**]16-27.B.2).

¹ During time of hearing on the Goodwill Complaint RE Slesinski was excused having participated in the court below as a member of the judicial commission who had rendered the disputed decision herein.

The Stated Clerk referred a number of overtures proposing amendments to the Constitution:

1. **Overture 12-A**, which addresses Associate membership in presbyteries. It proposes amendment of **G.2-3** and **G.16-14**. The Commission determined that the overture is clear, consistent and compatible with the EPC Constitution.
2. **Overture 12-F**, which addresses Commissioned Pastors. It proposes amendment of **G.10-6**. The Commission determined that the overture is clear, consistent and compatible with the EPC Constitution, but proposes an amendment to **Overture 12-F** that is found in **Recommendation PJC-2**.
3. **Overture 12-G**, which addresses receiving candidates under care from another Reformed body. It proposes amendment of **G.12-2**. The Commission finds that the overture is clear, consistent and compatible with the Constitution of the EPC.
4. **Overture 12-H**, which addresses a Minister who reaches the age 70 while engaged in active ministry. It proposes amendment to **G.15-3**. Upon review of this overture, the Commission proposes a substitute to Overture 12-H, which is found in **Recommendation PJC-3**.
5. **Overture 12-I**, which addresses the Baptized Roll and Baptized Members. It proposes amendment to **G.6-1.B**. The PJC finds that the overture is clear, consistent and compatible with the EPC Constitution.

Per **G.16-27.B.4**, the PJC has the power to propose amendments to the Constitution.

1. The Commission proposes an amendment to **G.16-27.B.2**, which is found in **Recommendation PJC-4**.
2. The PJC was asked to review **D.3-5** and address the apparent confusion between paragraph one and paragraph two of this section. The response of the PJC, which is to propose an amendment to **D.3-5**, is found in **Recommendation PJC-5**.

MATTERS REGARDING INTERPRETATION OF THE BOOK OF ORDER

The Stated Clerk refers overtures and questions concerning interpretation of the *Book of Order* to the Permanent Judicial Commission. The Commission, acting as a committee, recommends its interpretation and its reasons to the Assembly (**G.16-27B.1**). The Stated Clerk referred the following matter to the PJC.

1. Committee on Administration Request for an Interpretation regarding the use of social media by members of churches and presbyteries. The PJC review and response is found in **Recommendation PJC-6**.
2. The Ministerial Vocation Committee (MVC) requested an interpretation of **G.13-5** on the following matters: Because **G.13-5** specifically references “denomination,” are EPC presbyteries prohibited from recognizing the ordination of a minister seeking to transfer to the EPC if that ordination is 1) from non-ecclesiastical source such as the Evangelical Church Alliance, 2) from an independent church, and/or 3) from an association of churches that does not call itself a “denomination”? The PJC response is found in **Recommendation PJC-7**.

OTHER MATTERS

1. The PJC was asked if **Overture 12-C**, addressing Terms of Call was consistent with the Constitution. Upon review of the overture, the PJC determined it is consistent with the Constitution. The PJC response is found in **Recommendation PJC-8**.
2. The PJC was asked to review **D.3-5**, which addresses resignation of membership. To date, the guidance of the Office of the Stated Clerk has been that an “email resignation” of membership in conjunction with a discipline process, is treated as if it were an oral renunciation of jurisdiction. The response of the PJC is found in **Recommendation PJC-9**.

RECOMMENDATIONS TO THE GENERAL ASSEMBLY

Recommendation PJC-1

The PJC recommends that the General Assembly sustain its action in the Complaint of Goodwill EPC v. the Presbytery of the East:

Motion:

The Complaint filed by Goodwill EPC against the Presbytery of the East is not sustained, as the Session of Goodwill EPC does not have judicial standing as a party to take this action.

RATIONALE/GROUNDS: This matter came before the Commission as a Complaint filed by Goodwill EPC against the action taken by the Presbytery of the East on September 24, 2011. The Session of Goodwill EPC does not have the standing to file a Complaint per **D.13-1**, which states, “It is the right of any member of the church in good standing to make complaint against any action of a lower court to whose jurisdiction he is subject...” (emphasis added). The Session of Goodwill EPC is not a “member of the church.” There is no provision for a lower court to file a complaint against the action of a higher court. Therefore, the existing Complaint cannot properly come before the Commission per **D.13-1**, nor can it be sustained, per **D.13-8.A**.

Observations

While the Commission did not take action on the Complaint per **D.13-8**, in response to its review of the Record of the Case and the May 18, 2012 Hearing the Commission issues the following observations:

- 1) The Commission is troubled that the indictment was not amended or augmented in response to the June 8, 2010 admission by the accused that he had “inappropriate contact with a total of six women, four at Goodwill and two not at Goodwill.” This admission contradicts his “No” response to the question posed to him on December 7, 2009, “Are there any other moral or legal failures you want to tell us about?”
- 2) The Presbytery should consider the appropriateness of the filing of new charges in light of the June 8, 2010 disclosure of the accused.

Recommendation PJC-2

The PJC recommends that **Overture 12-F** be approved as amended:

<p align="center">Proposed G.10-6.E.6 (Overture 12-F)</p>	<p align="center">PJC Amended G.10-6.E.6 (change in <i>bold italic</i>)</p>
<p>6. A Ruling Elder previously commissioned as a lay pastor by another Reformed body may become a Commissioned Pastor as deemed appropriate by the Presbytery. Such transfers are subject to the same requirements of the EPC Commissioned Pastor.</p>	<p>6. A Ruling Elder previously commissioned as a lay pastor by another Reformed body may become a Commissioned Pastor as deemed appropriate by the Presbytery <i>and</i> subject to the same requirements of the EPC Commissioned Pastor.</p>

Recommendation PJC-3

The PJC recommends that the General Assembly approve the substitute to **Overture 12-H**.

<p align="center">Current G.15-3</p>	<p align="center">Proposed Revision of G.15-3 (Overture 12-H)</p>	<p align="center">PJC Substitute - G.15-3</p>
<p>Dissolution by reason of age: When a Minister serving in any capacity in the Church reaches the age of 70, that relationship shall be terminated. The Minister is obligated to notify the Presbytery six months prior to the 70th birthday. The Minister is then eligible to be reelected in the same relationship yearly with the approval of the Church Session and the Presbytery. When such a renewal privilege is exercised by the calling body, no installation is necessary. No person having reached the age of 70 is eligible to accept any call as Teaching Elder other than the call being served upon reaching that age. Presbytery may set aside this limitation by a 2/3 vote. The Minister is then eligible to be re-elected in this new relationship yearly with the approval of the Church Session and the Presbytery. Moreover, a</p>	<p>Dissolution by reason of age: When a Minister serving in any capacity in the Church reaches the age of 70, that relationship shall be terminated <i>reviewed by the Ministerial Committee and make its recommendation(s) to Presbytery</i>. The Minister is obligated to notify the Presbytery six months prior to the 70th birthday. The Minister is then eligible to be reelected in the same relationship yearly with the approval of the Church Session and the Presbytery <i>concurrence of the calling body and approval by the Presbytery</i>. When such a renewal privilege is exercised by the calling body, no installation is necessary. No person having reached the age of 70 is eligible to accept any call as Teaching Elder other than the call being served upon reaching that age. Presbytery may set aside this limitation</p>	<p>Dissolution by reason of age: Should a minister desire to continue to serve in his present pastoral relationship beyond the age of 70, he must notify, in writing, the calling body and presbytery. The minister is then eligible to be re-elected yearly for a term of one (1) year. When such renewal privilege is exercised by the calling body no installation is necessary.</p> <p>Should a minister fail to provide the above called for notice or opt not to; his pastoral relationship will be dissolved upon his 70th birthday. However, with the approval of presbytery a minister who has reached the age of 70 is eligible to serve as stated supply, interim supply or occasional supply for a period of up to one (1) year. The presbytery may appoint an appropriate committee of that court to establish such</p>

<p>Minister who has reached the age of 70 is eligible to serve as Stated Supply, Interim Supply, or Occasional Supply for a period of up to one year as approved by the Presbytery. The Presbytery may appoint an appropriate committee of that court to establish such relationships.</p>	<p>by a 2/3 vote. The Minister is then eligible to be re-elected in this new relationship yearly with the approval of the Church Session and the Presbytery. Moreover, a Minister who has reached the age of 70 is eligible to serve as Stated Supply, Interim Supply, or Occasional Supply for a period of up to one year as approved by the Presbytery. The Presbytery may appoint an appropriate committee of that court to establish such relationships.</p>	<p>relationship.</p>
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Recommendation PJC-4

The PJC recommends that the General Assembly approve the following amendment to G.16-27.B.2

<p>Current G.16-27.B.2</p>	<p>Proposed G.16-27.B.2 (change in bold italics)</p>
<p>2. All proposals requesting amendment to the Constitution shall be communicated in writing to the Stated Clerk of the General Assembly no later than 30 days prior to the convening of the next session of the General Assembly.</p>	<p>2. All proposals requesting amendment to the Constitution shall be communicated in writing to the Stated Clerk of the General Assembly no later than 60 days prior to the convening of the next session of the General Assembly.</p>

Grounds: As the EPC grows, the workload of the PJC has increased dramatically. The current thirty day cut-off places an undue burden on the May meeting of the Commission. The sixty day cut-off will provide more adequate notice of the workload of the Commission for its May meeting.

Recommendation PJC-5

The PJC recommends to the General Assembly that D.3-5 be amended by deleting the second paragraph.

<p>Current D.3-5</p>	<p>Proposed D.3-5</p>
<p>Termination of Jurisdiction Jurisdiction in judicial cases ends upon receipt of written notice of renunciation by</p>	<p>Termination of Jurisdiction Jurisdiction in judicial cases ends upon receipt of written notice of renunciation by</p>

<p>the Clerk or Stated Clerk of the court of original jurisdiction. In the event an individual orally renounces jurisdiction, this fact shall be confirmed by letter from the court acknowledging that renunciation. The letter shall be delivered in person or by form of mail requiring a written receipt. If the court receives no written response within ten days, the acknowledgement of renunciation of jurisdiction shall be deemed final. In such instances, a case already begun may be concluded only with the permission of the accused.</p> <p>A “Renunciation of Jurisdiction” shall have the effect of terminating membership in the church and removing an officer from membership and ordained office in the Evangelical Presbyterian Church and terminating that person’s exercise of office. Though a court may pronounce a judgment of admonition, suspension, removal from office, or excommunication against a person who has renounced jurisdiction, it need not do so unless the court deems it necessary for the purity and welfare of the church or the benefit of the offender and may not do so without first giving written notice to the person making such renunciation and providing that person an opportunity to respond within fifteen days of the written notice.</p>	<p>the Clerk or Stated Clerk of the court of original jurisdiction. In the event an individual orally renounces jurisdiction, this fact shall be confirmed by letter from the court acknowledging that renunciation. The letter shall be delivered in person or by form of mail requiring a written receipt. If the court receives no written response within ten days, the acknowledgement of renunciation of jurisdiction shall be deemed final. In such instances, a case already begun may be concluded only with the permission of the accused.</p>
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Grounds:

The existence or use of the second paragraph of current **D.3-5** undermines or negates that provided for under paragraph one of this section relative to the effect of an accused party’s renunciation of membership, i.e. the termination of jurisdiction in any judicial case(s) against the accused in the court.

The following court case underscores the liability a church may incur if it implemented the second paragraph of current **D.3-5**:

Under **Guinn v. Church of Christ**, 775 P2d 766 (Oklahoma 1989) the court held the church liable for invasion of privacy and intentional infliction of emotional distress for actions taken after the plaintiff had notified the church she was withdrawing her membership. The court said, “Parishioner voluntarily joined the Church of Christ and by doing so consented to

submit to its tenets. When she later removed herself from membership, petitioner withdrew her consent, depriving the church of the power actively to monitor her spiritual life through overt disciplinary acts. No real freedom to choose religion would exist in this land if under the shield of the first amendment religious institutions could impose their will on the unwilling and claim immunity from secular courts for their tortuous acts.”

Recommendation PJC-6

The PJC recommends to the General Assembly that the following opinion of the Stated Clerk regarding the use of social media be received and acted on appropriately. Likewise, churches and presbyteries should adopt a similar policy regarding their personnel policy:

The Committee on Administration, per G.6-27.B.1, requests an interpretation of the Book of Order from the Office of the Stated Clerk. The Committee is aware of instances in which church members have utilized electronic and social media (email, Facebook, Twitter and others) to promote opposition to the pastor(s) and / or Session of the local church. Could such use of media constitute “contempt” and/or “immorality” as defined in Book of Discipline 1-8 and 1-10?

Opinion

The opinion of the Office of the Stated Clerk:

The use of social media (ie, email, Facebook, Twitter and others) by members of local churches and presbyteries to promote opposition to the leadership of the church potentially could become a matter for disciplinary action by a Church Session or Presbytery as it may disrupt the unity, purity and peace of the Church.

Grounds

1. The Constitution declares that a “Visible Church” is “bound together in its essential unity where scriptural discipline is practiced, where the Word is rightly proclaimed, where the sacraments are properly observed and where loving fellowship is maintained,” (G.1-5). In addition, the Visible Church “consists of all those...who agree to submit themselves to the government and discipline of the Church, and who promise to promote its purity and peace.” (G.4-1).
2. The responsibility to promote the unity, purity and peace of the church is acknowledged when the church member is asked, “Do you submit yourself to the government and discipline of the Evangelical Presbyterian Church, and to the spiritual oversight of this Church Session, and promise to further the unity, purity and peace of the Church? (G.9-2.A.2; also G.9-2.D.5). It is noted that in this question members are also asked to submit to the government and discipline of the EPC and to the spiritual oversight of the Church Session.
3. Promoting the unity, purity and peace of the church is a major responsibility of the officers of the church. Teaching elders, ruling elders and deacons are asked, “Do you promise to the zealous and faithful in promoting the truths of the Gospel and the purity and peace of the Church, whatever persecution or opposition may arise unto you on that account?” (G.14-1.A.9; also G.14-1.B.3, G.14-1.E.9 and G.14-1.G.2). Officers also

subscribe to the “government and discipline of the Evangelical Presbyterian Church” (G.14-1.A.6 and G.14-1.E.6).

4. The use of social media by a member of a church or presbytery that disrupts the peace and unity of the church may be liable for disciplinary action. In D.1-10, “immorality” is defined as “conduct inconsistent with the biblical standards of conduct, including by not limited to bickering, brawling, debauchery, drunkenness, gossiping, hatred, idolatry, impurity, slander, and sexual immorality such as adultery, fornication, homosexual practice and bestiality.” This definition of immorality is followed with this clarification: “The terms ‘bickering’ and ‘gossiping’ as used herein are intended to deal with those acts that are disruptive to the peace and unity of the church.”
5. The use of social media by a member of a church or presbytery may also be liable for disciplinary action on the grounds of contempt, which is defined in D.1-8 as “willful conduct done in deliberate disrespect of a court of the church, the constitutional documents of the church, or the officers of the church acting in their official capacities.”
6. The Book of Discipline describes the appropriate procedures to be followed, sanctions that may be administered, and process for restoration. It is noted that “the exercise of discipline is highly important and necessary. The purpose of discipline is to maintain the honor of God, to restore the sinner and to remove offense from the church (D.1-5)
7. The Book of Discipline likewise provides several means by which grievances may be considered within the framework of the EPC’s court structure. It is by this system (including, specifically, the initial steps of Matthew 18.15-16) that member grievances are to be addressed. If otherwise, one ignores the clear scriptural mandate found at Hebrews 13.17: “Obey those who rule over you, and be submissive, for they watch out for your souls, as those who must give an account. Let them do so with joy and not grief, for that would be unprofitable for you” and acts contrary to that which was promised when becoming a member of the EPC.

Recommendation PJC-7

The PJC recommends that the General Assembly approve its opinion that there is nothing in G.13-5 that prohibits a presbytery from receiving someone for ordination from a non-ecclesiastical source.

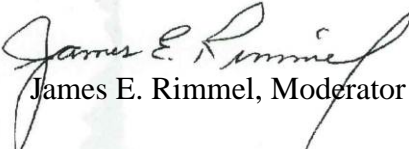
Recommendation PJC-8

The PJC recommends that the General Assembly approve **Overture 12-C**, provided that the initial terms of call are compliant with #1 of the overture.

Recommendation PJC-9

The PJC recommends that the General Assembly approve its opinion that an “email resignation” of membership in conjunction with a discipline process, specifically, D.3-5, be treated as an oral renunciation of jurisdiction.

Respectfully submitted,


James E. Rimmel, Moderator

June 2012



EVANGELICAL PRESBYTERIAN CHURCH

OFFICE OF THE GENERAL ASSEMBLY

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Ruling of the Permanent Judicial Commission

July 23, 2011

Motion:

The Sanction of Removal administered to TE James Austin Olive, Jr. on May 13, 2011 by the Presbytery of the Midwest be and hereby is rescinded, there being a total lack of cogent/admissible evidence that Appellant was guilty of any offense(s) beyond that previously confessed to and for which he was sanctioned in May 14, 2010, in the form of a one (1) year suspension.

RATIONALE/GROUNDS: This matter came before the Commission as an appeal of a specific sanction (removal) meted out to Appellant (TE Olive) by Appellee (Midwest Presbytery) on May 13, 2011. As an appeal this court is obliged to “render its decision based only on that which is contained in the Record.” (BoD 9-4.C) A detailed review of the Record demonstrates Appellee failed to establish a prima facie case in support of the contested removal sanction. It also failed to follow prescribed ecclesiastical procedure thus denying Appellant due process.

Specifically, Appellee’s course of action was improper and thus unsupportable for the following reasons:

1. There is no evidence showing that Appellant was ever charged of any offense by “The Evangelical Presbyterian Church” as required in BoD 6.4; and
2. There is no evidence Appellant was accorded appropriate notice as to “the times, places and circumstances as to the actions alleged to require disciplinary sanctions” as called for in BoD 7-3.B; and
3. There is no evidence of record to show that the court below (Appellee herein) ever “institute[d] an ecclesiastical judicial procedure” after having concluded

that a “strong presumption of guilt of the party accused” (Appellant) was present as called for in BoD 6-2; and

4. There is no cogent evidence of record to show that the requisite burden of proof provided for in BoD 8-10 was present before the court below; and

5. There is no evidence of record cogently demonstrating that Appellant confessed to any offense other than “drunkenness” which served as the basis for the May 14, 2010 decision of Appellee to suspend Appellant for one (1) year. He was thus entitled to the due process protections for an accused party provided under the BoD; and

6. The certified Record before the Commission is devoid of any formal “charges, the indictment, the answer (if any), all the testimony...the written [secret] ballots evidencing the decision and the determination of sanctions” contrary to that called for in BoD 9-4. This proviso makes clear that “[t]hese documents shall constitute the Record of the Case.”

Though somewhat extensive the Record below is devoid of any evidence to warrant/support the contested Sanction of Removal. While there is of record various documents developed/obtained by Presbytery in its administration of an earlier sanction, i.e., a definite suspension of one (1) year, for a matter previously confessed to by TE Olive, nothing of record serves to demonstrate that reasonable and sound constitutional bases were present to support the contested removal. Put simply, the alleged “new”/additional offense(s) has not been confessed to or established through prescribed disciplinary process.

Finally, given the above conclusions relative to the current state of the Record of the Case, including the lack of a prima facie showing by Appellee and manifest denial of due process, as well as our conclusion that the act (removal) below constituted an “injustice of a particular sanction,” the Commission has opted not to consider the matter at this time under BoD 12-8. And, while both Appellant and Appellee may believe a hearing would allow them to complete/expand upon the Record of the Case such is not be in order given that prescribed in BoD 9-4, said proviso reading, in relevant part: “The higher court shall render its decision based only on that which is contained in the Record.”



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November 15, 2011

Certified Mail, Return Receipt Requested

To: Rev. Ron Meyer – Stated Clerk, Presbytery of the East
Fourth Presbyterian Church
5500 River Road
Bethesda, MD 20816
Lanah Hamrick – Asst. Stated Clerk, Presbytery of the East
1114 Neal Drive
Alexander, VA 22308
Rev. Jay Lee – Executive Pastor, Goodwill EPC
2117 State Route 208
Montgomery, NY 12549

Re: Notice of Complaint Hearing

Colleagues:

The Permanent Judicial Commission (PJC) concluded its initial review of the Complaint against the Presbytery of the East on Friday, November 4, 2011.

Please take notice that the PJC will hear your respective arguments (see Book of Discipline 13.7.C) in this matter at 9:30 am on Friday, May 18, 2012. The hearing will be held at the General Assembly office, located at 17197 North Laurel Park Drive, Suite 567, Livonia, MI.

Please know as an appellate court our review in a matter of this nature is generally limited to the Record of the Case. In any event, it is recommended that complainant (Goodwill EPC) and respondent (Presbytery of the East) review carefully Chapter 13 of the Book of Discipline prior to the hearing.

In addition, know that the PJC, in accord with Book of Discipline 13.6, elected to remove the automatic stay of the meted out sanction cited in this section. This leaves in place the sanction imposed by the Presbytery of the East on September 24, 2011 “until the case is finally decided.”

Sincerely,


James Rimmel
Chairman, Permanent Judicial Commission

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