

# PERMANENT JUDICIAL COMMISSION OF THE GENERAL ASSEMBLY

## Information Sheet in Preparation for the 219<sup>th</sup> General Assembly of the Presbyterian Church (U.S.A.) (2010)



*The purposes of this Information Sheet are:*

- *to provide a brief description of items pending before the 219<sup>th</sup> General Assembly that pertain to the General Assembly Permanent Judicial Commission (GAPJC or Commission) and to articulate the Commission's views on these items, and*
- *to provide a brief overview of GAPJC history, organization, general responsibilities, constitutional mandate, boundaries, powers and recent activities (2008-2010).*

*This document does not constitute the GAPJC's official report to the 219<sup>th</sup> General Assembly. The Commission reports to each General Assembly through the Stated Clerk. It also reports directly to the Assembly every six years as part of a mandated review process.*

*While the Commission does not typically take "positions" on matters before the General Assembly, it believes that a number of items before the 219<sup>th</sup> General Assembly are worthy of comment because of their direct impact on the Commission's work.*

### **I. Items Pending before the 219<sup>th</sup> General Assembly**

#### **A. Items Related to Authoritative Interpretation**

##### **1. Item 03-01 Regarding Authoritative Interpretations**

This item would add the following sentence to the end of G-13.0103r (that defines AI's): "No authoritative interpretation shall be issued by a General Assembly which amends or alters a clear mandate contained in any provision of the Book of Order."

##### **2. Item 05-11 On Amending G-13.0103r to Reduce Vexatious and Improper Litigation in the Church**

This item would *strike* the words "or through a decision of the Permanent Judicial Commission in a remedial or disciplinary case" from G-13.0103r, with the result that decisions of the GAPJC would only be binding on the parties to cases before the Commissions, but not on the whole church.

**3. Item 05-24 On Amending G-13.0103r to Clarify the Role of the General Assembly and Its Permanent Judicial Commission**

This item would add the following text (in italics) to G-13.0103r immediately following the words, “or through a decision of the Permanent Judicial Commission:” *which is approved as an authoritative interpretation by the next plenary session of the General Assembly.* It would then restate those words in the next sentence as follows: “the most recent interpretation of a provision of the Book of Order *approved by a plenary session of the General Assembly* shall be binding.”

**4. Item 03-05 On Eliminating G-13.0103q Concerning the Responsibilities of the General Assembly**

This item would strike the item in the list of responsibilities of the General Assembly that reads, “to decide controversies brought before it and to give advice and instruction in cases submitted to it, in conformity with the constitution.”

**GAPJC POSITION: GAPJC does not support Items 03-01, 05-11, 05-24, or 03-05 for the following reasons:**

1. The General Assembly (GA) presently has authority under 13.0103r to provide authoritative interpretation;
2. 03-01 is unclear since there is no standard as to what constitutes a “clear mandate;”
3. In order to determine which GAPJC decisions (or portions of decisions) should be approved as authoritative interpretations, an Assembly would by necessity be required to review thousands of pages of case records. At the same time, constitutional issues could be presented in case after case before each PJC. Since there would be no precedential value in the decisions of the GAPJC, litigants would be encouraged to take every matter through its full appeal process, in the hope that at some point their argument and reasoning would prevail. Consequently, the church would be exposed to a significant use of scarce resources and limited time through additional litigation.
4. Assemblies could effectively take actions which would amend the *Book of Order* without approval by presbyteries.
5. GAPJC is a constitutional commission and has already been given authority by the larger church to interpret the Constitution.
6. If only the GA could resolve constitutional issues, the GA would become bogged down and have little time for other issues. One of the reasons for creating the GAPJC was to avoid this situation (See II. A. Historical Summary below).
7. GA and the GAPJC function very differently by design. GA is an open forum in which a wide variety of advocacy and affinity groups are invited to give input in the

decision making process, advisory delegates voice opinions and even vote in committees, and broad implications of decisions are weighed by commissioners. The GAPJC, on the other hand, hears only from the parties to specific cases, deliberates in private, and renders its decisions as binding interpretations of how the constitution as currently written and as previously interpreted applies to the facts of those cases. *Both* approaches have their place in our system of government, and help the larger church discern what it wants the text of the constitution to be.

8. GA meets for one week every two years, with almost entirely new commissioners at each meeting. The GAPJC meets 3-4 times every year, with only 1/3 of its commissioners being in the first two years of their six year term at any given time. While the GA could be called back into session to resolve a constitutional matter of urgency in the life of the church, to do so would dramatically increase the GA's expenses. GAPJC gives continuity, stability, and consistency to the interpretive process. While judicial procedures can be expensive, they are much less so than holding more frequent (or substantially longer) Assemblies would be.

#### **B. Item 05-01 On Amending D-6.0101 and D-10.0101 Regarding Conciliation and Mediation**

This proposal would add language to the filing requirements for both remedial and disciplinary cases requiring statements "indicating what efforts have been made to fulfill the biblical obligation to conciliate, mediate, and adjust differences."

#### **GAPJC POSITION: GAPJC does not support Item 05-01 for the following reasons:**

1. D-1.0103 encourages "the traditional biblical obligation to conciliate, mediate, and adjust differences without strife. . .;" however, the Rules of Discipline do not delineate specific processes for such conciliation. It is unclear what, if any, effect a statement that mediation efforts have occurred would have. Does this simply mean that a complaint would be dismissed without such a statement? Can a complaint be dismissed without a Rules of Discipline requirement that mediation be undertaken? How does a PJC determine whether mediation has taken place? Does the mediation requirement become yet another preliminary question which must be answered in the affirmative before the case is accepted? The overture, while well-intentioned, leaves many questions unanswered.
2. A filing requirement imposing an obligation on parties to disclose their efforts to resolve a dispute would be counter-productive in judicial processes. It would be inappropriate for parties to disclose to a PJC their activities in seeking to resolve a dispute because such disclosure could influence the judicial process and possibly influence the outcome of a case. Since parties might be required to disclose unsuccessful efforts to compromise, such disclosure could also have the effect of discouraging the parties to engage in settlement discussions at all. In secular civil courts, settlement negotiations are not ordinarily brought to the attention of courts, except under prevailing judicial rules.

3. In 2006 the General Assembly considered an amendment that would have required mediation as a condition to both remedial and disciplinary cases. The Assembly declined to send this amendment to the Presbyteries for approval. About this suggested amendment, the Advisory Committee on the Constitution wrote,

*Item 05-15 seeks to amend the Preamble to the Rules of Discipline (D-1.0301) to emphasize the ‘traditional obligation to conciliate, mediate, and adjust differences without strife...’*

*While we understand that many are frustrated by the perceived misuse of the judicial system, the proposed overture is deeply problematic. The church must be careful to insure that the proposed solutions do not create more serious problems than those they seek to resolve.*

*Even if the word ‘allegations’ were substituted for the word ‘charges’ in the proposed amendment it would fundamentally change judicial process within the church. The governing body would be required to look first at the behavior of the individual who wishes to make an allegation rather than the offense of the accused. The failure of the person making the allegation to have ‘attempted discussion, mediation, and/or reconciliation’ could inhibit the ability of the governing body to determine probable cause and subsequently guilt or innocence of the accused. Furthermore, there is no indication of how a person would establish that he or she has made an effort at mediation and conciliation.*

*Currently an allegation in a disciplinary matter may be received from a number of sources: (1) from a member or nonmember; (2) orally or in writing; (3) from one who alleges direct harm or from one who believes it is the community that has been harmed. It is not advisable to limit the ability of the governing body to receive and deal with either disciplinary or remedial cases by mandating that before the governing body can assume jurisdiction, the individual bringing a disciplinary allegation or remedial complaint must demonstrate efforts to bring about an adjustment or settlement of the quarrel, complaint, delinquency, or irregularity asserted.*

4. In the Self-Study presented to the 218<sup>th</sup> General Assembly (2008), the GAPJC noted,

*The experience of this Commission leads us to urge the General Assembly to consider adopting revision to the Rules of Discipline that would promote alternative forms of dispute resolution and consensus building in lieu of adversarial judicial process.*

Such revision might include: (1) guidelines for mediation; (2) prescribing appropriate mediators; (3) confidentiality provisions; (4) positions taken and offers made in mediation; and (5) rules for recognition and enforcement of mediation orders.

In that same Self-Study, the GAPJC declared, “The Church should strive to resolve disputes in a manner that minimizes divisiveness and expense and promotes consensus,

leaving this Commission to resolve disputes by judicial process as a last resort.” This would appear to have been the intent of the overture in the first place

**C. Item 05-02 On Restoring Previous Provisions of D-13.0102 and D-13.0106 to Deny the Prosecuting Committee the Ability to Appeal a Verdict of “Not Guilty.”**

The rationale for the overture quotes extensively from the GAPJC’s decision in *Davis v. Presbytery of San Francisco* (219-09), noting the problems this Commission has raised about the provision.

**GAPJC POSITION: GAPJC supports Item 05-02 because:**

1. It eliminates double jeopardy
2. It removes disparity in the standard of proof required at trial compared to the standard on appeal.

**D. Item 07-01 Form of Government Task Force Report to the 219<sup>th</sup> GA (2010).**

The 217<sup>th</sup> GA (2006) directed the appointment of a task force to draft a new Form of Government section for the *Book of Order*. The task force presented its work to the 218<sup>th</sup> GA (2008), which expanded the task force (to include members of the GA committee that had dealt with the proposal), and directed the task force to revise its proposal. That proposal is now before GA219.

The GAPJC raised a number of specific issues about the proposal at the 218<sup>th</sup> General Assembly. One of those (the status of GAPJC decisions as “Authoritative Interpretations” of the *Book of Order*) was addressed by the task force in its revision. Another concern (the new wording of current G-6.0108) is of less concern in light the GAPJC’s ruling in *Naegeli, et al. v. Presbytery of San Francisco*. Other concerns, noted below, have not been addressed, and remain problematic to the Commission.

**GAPJC POSITION: GAPJC does not support Item 07-01 (as written) for the following reasons:**

1. Loss of the current interpretive history of the Form of Government

Authoritative Interpretations (AIs) are interpretations of *specific* wording. If one or more words are changed in the text, it may no longer be said that a prior AI authoritatively interprets the new wording – such an interpretation would require either a new General Assembly action or a new GAPJC decision. The interpretive history of the *Book of Order* represents decades of work on the part of the church working out procedures for pastoral call processes, Freedom of Conscience rights, Committee on Ministry authority, etc., which will be called into question by new wording.

2. Lack of due process requirements

The current G-9.0505(b) 1 and 2 of the *Book of Order* contain very precise constitutional language ensuring process rights for pastors in termination processes, in part as an attempt to meet civil court standards for due process and keep such matters within our system. There is also an interpretive history of these provisions that contains no fewer than 9 separate General Assembly and GAPJC Authoritative Interpretations related to these requirements (see annotated *Book of Order*).

The proposed text, which follows, is not only silent on specific due process requirements, but clearly renders the history of past authoritative interpretations invalid, thus resulting in re-litigation of the “matters at issue” in either ecclesiastical or civil courts:

*When an administrative commission has been designated to settle differences within a particular organization or council, it shall, before making its decision final, afford to all persons affected by its decision fair notice and an opportunity to be heard on matters at issue (Proposed Form of Government, G-3.0109).*

3. Impact of shifting constitutional language and requirements to “Manuals of Operations”

The proposal’s approach of moving material from the constitution to *Manuals of Operations* will result in an increased burden on permanent judicial commissions as they will be required to interpret and apply not only the constitution itself, but the *Manuals* of the Councils within their jurisdictions. Since *Manuals of Operations* will not be uniform from Council to Council, rulings of the GAPJC (although authoritative) will in some cases be rulings that apply to only the particular Council whose *Manual* is being interpreted, rather than the whole church.

For example, G-11.0502 of the current Form of Government defines the Committee on Ministry’s rights and responsibilities in pastoral searches, including (among others) the explicit direction that

*No call to a permanent pastoral relationship shall be in order for consideration by the presbytery unless the church has received and considered the committee's counsel before action is taken to issue a call. (G-11.0502d)*

This provision has been challenged and upheld in a number of judicial proceedings. Since the Proposed Form of Government has no mandated Committee on Ministry, its only parallel provision is G-2.0803, which reads

*According to the process of the presbytery and prior to making its report to the congregation, the pastor nominating committee shall obtain approval on the merits, suitability, and availability of those considered for the call. When the way*

*is clear for the committee to report to the congregation, the committee shall notify the session, which shall call a congregational meeting.*

Any determination of whether and to what extent a call, if challenged in our judicial system, should be found in order when the call process is being challenged, will become purely a matter of the policies outlined in the particular presbytery's *Manual*, rather than standards that apply to the whole church.

## **II. Overview of GAPJC**

### **A. Historical Summary, Organization, General Responsibilities, Activities**

#### Historical Summary

Predecessor bodies to the Presbyterian Church (USA) adopted and adapted the Westminster Standards and over the years refined their forms of government, directories for worship, and rules of discipline. Before the latter part of the 19th Century, full General Assemblies deliberated judicial cases; because of the press of business sometimes cases were carried over for several years. As early as the 1880s, General Assemblies had the power to delegate judicial matters to commissions. Throughout the church, it was understood that discipline is the responsibility of all governing bodies. Because General Assemblies, consisting of five hundred members or more, could not easily hear and deliberate cases, the General Assembly appointed commissions to do this work. *Permanent* Judicial Commissions have been prescribed since the mid-20th Century. Powers currently exercised by the General Assembly Permanent Judicial Commission date from 1982. Since reunion in 1983, several amendments to the Rules of Discipline have been made, with major revision adopted in 1995.

Church discipline as exercised through the formal judicial process exists to uphold the integrity of the Body of Christ through mutual accountability. "Central to the Reformed tradition from its very inception is a commitment to the faithful living of Christian faith coupled with an admission that such faithfulness is not possible alone. In the church we need each other, with accountability to each other, to live faithful lives." (from "Ordinary and Extraordinary Discipline: Mutual Accountability in the Reformed Tradition" by Charles Wiley, Office of Theology and Worship)

#### Organization and General Responsibilities

The Rules of Discipline describe the judicial processes of the Church, of which the General Assembly Permanent Judicial Commission (GAPJC) is a part. The GAPJC has both original and appellate jurisdiction as prescribed in the Rules of Discipline. Primarily an appellate court, the Commission hears and decides both remedial and disciplinary cases; however, GAPJC may conduct trials in cases of original jurisdiction.

The membership of the GAPJC is composed of ministers and elders (as nearly equal as possible) from each of the synods (D-5.0100). Thus, there are sixteen commissioners

from the sixteen synods; currently, however, there is one vacancy. Members are elected by the General Assembly and ordinarily serve for six years (D-5.0103). The change to biennial assemblies necessitated the adjustment of the terms of some of the current Commissioners.

The Commission elects its Moderator, Vice-Moderator, Clerk, and Assistant Clerk who constitute the Executive Committee. Officers serve terms of two years and may be reelected. Included among the responsibilities of the Executive Committee is making an initial determination on whether a new case meets the jurisdictional requirements of the Rules of Discipline for acceptance for hearing. Other responsibilities are delineated in the *Manual of the GAPJC*.

### Recent Activities

The Commission is scheduled to meet four times per year over a five-day period for each meeting (Thursday-Monday). Because of caseload, briefing schedules and budgetary considerations, meetings may be cancelled. Since the 2008 General Assembly, the Commission has met eight times (two by conference call) and the Executive Committee has met 35 times (29 by conference call, and six in person during meetings of the full Commission). During this period, the Commission has received 23 cases, conducted 16 hearings and reviewed 10,300 pages of materials included in the records for the cases.

The GAPJC often hears and acts on cases that deal with issues which are vigorously debated in the Church today. In all of its deliberations, the Commission is reminded of the principles of church discipline, which have remained essentially unchanged since the Reformation. It is of no small moment that the Commission hears the words from the Preamble to the Rules of Discipline before every hearing and trial and that this paragraph heads the Commission's Code of Ethics.

In every case before it, the Commission seeks to understand both the specific pleadings as well as the constitutional implications of the case. Because its decisions set precedents which guide the whole Church, the Commission undertakes its work in a spirit of prayer and humility. During every meeting the Commission worships together each morning and evening. On the morning of hearings or trials, the parties are invited to join worship.

Cases before the Commission require balancing the tensions inherent in our polity and theology. Decisions are based on the particular facts of each case. All cases require careful attention to due process and sensitivity to scripture and confessional standards.

As the highest court in the PC (USA), the GAPJC not only speaks to the Church, but also to the civil courts (for example: *Jones v. Wolf* (1979) 443 U.S. 595, 61 L.Ed.2d 775, 99 S. Ct. 3020).

In these days when the fabric of denominational trust is frayed, the Commission seeks ways to encourage resolution of disputes with means other than the judicial process. "The biblical duty of church people to 'come to terms quickly with your accuser while

you are on the way to court . . .’ (Matthew 5:25) is not diminished by the Rules of Discipline. Every church member is enjoined to try to resolve differences without resorting to judicial process” (D-1.0103).

The fabric of trust may be weak in some parts of the denomination at large, but it is not so among Commission members. Commissioners approach their work with deep integrity, respect for each other, and a love for the Church they serve. They seek to acquire a firm understanding of the issues in a case before forming an opinion affecting the outcome.

### Constitutional Mandate, Boundaries and Powers

**Constitutional Mandate:** The GAPJC is a constitutionally mandated Commission of the General Assembly (D-5.101), charged “to serve in judicial matters in accordance with the Rules of Discipline” (G-13.0103o).

**Constitutional Boundaries:** As a Commission, the GAPJC undertakes the judicial function of the General Assembly on behalf of the General Assembly, and considers and concludes judicial matters referred to it (G-9.0502). Its Commissioners are presbyters from each synod who are qualified to be commissioners to the General Assembly (D-5.0100).

Since the General Assembly is the highest governing body of the church, the decisions of the GAPJC are not subject to further review by appeal. Its decisions are Authoritative Interpretations of the *Book of Order*, and the “most recent interpretation of a provision of the *Book of Order* shall be binding” (G-13.0103r). The decisions of the GAPJC are reported to each General Assembly by the Stated Clerk as provided by D-7.0700 and Standing Rule M.2.b.(4).

**Constitutional Powers and Process:** “In the cases transmitted to it the [GA]PJC shall have only the power prescribed by and conduct its proceedings according to the Constitution of the Presbyterian Church (U.S.A.)” (D-5.0202).

## General Assembly Permanent Judicial Commission

A. Bates Butler, III Class of 2010	Tucson, AZ Synod of the Southwest/deCristo Presbytery
Rev. Bradley C. Copeland Class of 2014	Riverside, CA Synod of Southern California and Hawaii/Riverside Presbytery
Rev. Meta Shoup Cramer Class of 2014	Salem, OH Synod of the Covenant/Eastminster Presbytery
Susan Cornman, Vice Moderator* Class of 2012	Arvada, CO Synod of the Rocky Mountains/Denver Presbytery
Tony Cook Class of 2014	Graham, WA Synod of Alaska/Northwest/Presbytery of Olympia
Fred L. Denson, Moderator* Class of 2010	Webster, NY Synod of the Northeast/Presbytery of Genesee Valley
Rev. Dr. Fane Downs, Assistant Clerk* Class of 2010	Ingram, TX Synod of the Sun/Presbytery of Palo Duro
Rev. Gregory A. Goodwiller, Clerk* Class of 2012	Oxford, MS Synod of Living Waters/St. Andrew Presbytery
Rev. Mary Eleanor Johns (Ellie) Class of 2010	Pittsburgh, PA Synod of the Trinity/Lake Erie Presbytery
Rev. Dr. Yun Jin Kim Class of 2012	Newport News, VA Synod of Mid-Atlantic/Atlantic Korean Presbytery
H. Clifford Looney Class of 2014	Vale, OR Synod of the Pacific/Boise Presbytery
Rev. Michael Lukens Class of 2014	Hobart, WI Synod of Lakes and Prairies/Winnebago Presbytery
Rev. Rebecca New Class of 2012	Conway Springs, KS Synod of Mid-America/Southern Kansas Presbytery
William E. Scheu Class of 2012	Jacksonville, FL Synod of South Atlantic/St. Augustine Presbytery
Judy L. Woods Class of 2010	Indianapolis, IN Synod of Lincoln Trails/Presbytery of Whitewater Valley
Vacant Class of 2014	Synod of Puerto Rico

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\* Executive Committee member