

CASE 2005-9
COMPLAINT OF TE PETER B. KIM
VS.
KOREAN EASTERN PRESBYTERY

I. SUMMARY OF THE FACTS

1. On August 9, 2004, the Session of Hudson Presbyterian Church, TE Peter Kim, RE Changwook Kim, and RE Sae Hwan Han, was presented a petition signed by 25 of the 102 communing members, that met constitutional requirements, asking for a congregational meeting with an agenda consisting of three items: 1) a vote of confidence on the pastor and the elders of the church; 2) to elect a Board of Trustees according to the laws governing a non-profit organization; and 3) to make a proper decision on the church bylaws illegally passed in a previous congregational meeting. The pastor, TE Peter B. Kim, was reported to be out of the country when the petition was presented.
2. On December 7, 2004, RE Sae Hwan Han, a member of the Session, presented TE Peter B. Kim a copy of the request for a congregational meeting.
3. On January 9, 2005 representatives of the congregation of Hudson Presbyterian Church complained to Korean Eastern Presbytery that 30 days had passed since the petition to call a congregational meeting had been submitted and that it appeared that the Session had no intention of calling a congregational meeting.
4. On February 2, Korean Eastern Presbytery appointed an Administrative Commission with the task of resolving the conflict in the Hudson Presbyterian Church. On February 28 the Commission met with TE Peter B. Kim and with representatives of the congregation. On March 17, 2005, a complaint signed by TE Peter B. Kim was submitted to the Korean Eastern Presbytery protesting that an Administrative Commission had been established inasmuch as the complaint filed on January 9 against the Session of Hudson Presbyterian Church had not been first filed with the Session in accordance with *BCO* 43.
5. On March 30, 2005, the Administrative Commission corresponded with the Session giving notice of a 6-part decision which, a) found the members' complaint in order, b) ordered the Session to call a congregational meeting, c) prescribed the agenda to be that of the original petition, d) required the Administrative Commission to be notified of the date of the meeting, e) required the Administrative Commission to be notified of the results of

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the meeting, and f) notified the Session of the Administrative Commission's plan to be present for the congregational meeting.

6. The congregational meeting required by the Administrative Commission was held on April 17, 2005. The congregation voted 40-1-2 to request Presbytery to dissolve the pastoral relationship between the congregation and TE Peter B. Kim. The other items on the agenda failed to pass. A motion to dissolve the ruling elder relationship with RE C. Kim and RE S. Han failed by a vote of 0-41-2.
7. On June 7, 2005, Korean Eastern Presbytery affirmed the report of the Administrative Commission, concurred with the dissolution of the pastoral relationship between TE Peter B. Kim and Hudson Presbyterian Church, and declared the pulpit vacant.
8. Korean Eastern Presbytery held a called meeting on July 12, 2005, to act on two matters, one of which was a complaint filed after the June 7, 2005, Presbytery meeting by TE Peter B. Kim. TE William Jin was designated as Respondent. On August 9, 2005 Korean Eastern Presbytery denied the complaint.
9. On September 8, 2005 a complaint was filed with the Standing Judicial Commission by TE Peter B. Kim against the action of Korean Eastern Presbytery. The complaint, Case 2005-9, was found to be in order and a panel was appointed.

II. STATEMENT OF ISSUES

1. Did KEP err in denying the complaint dated June 1, received June 7, and heard on August 9?
2. Did KEP err in denying the complaint of TE Peter B. Kim at a called meeting on August 9, 2005?

III. JUDGMENT

1. Yes, but this unconstitutional action at the beginning of this process does not justify TE Kim's refusal to obey the directive of presbytery and, in light of his deposition from office (Case 2005-8), further action on this matter is moot.
2. Yes. See Judgment 1.

IV. REASONING AND OPINION

BCO 25-2 states that members in good standing of a congregation may petition the session to call for a congregational meeting. If the session cannot act, fails to act, or refuses to act, then any member in good standing of that

congregation may file a complaint according to the procedure of *BCO* 43-2, which says “a complaint shall first be made to the court whose act or decision is alleged to be in error.” In this case, the complaint of January 9, 2005, should have been made to the session of the Hudson Presbyterian Church—not Korean Eastern Presbytery. The ROC clearly indicates that said complaint was filed first with KEP—not the session of Hudson church. Further errors by KEP concerning this case include the following:

1. KEP appointed an Administrative Commission, which later unconstitutionally handled judicial business (*BCO* 15-1, 3). An administrative commission has power to act for the court, but a judicial commission’s actions do not become the final action of the court until they are either approved or disapproved by vote of the court.
2. The Administrative Commission unconstitutionally ruled on March 28, 2005 that the complaint of January 9, 2005 was judicially in order (even though it had never been filed with the lower court and was not styled as a complaint).
3. On April 17, 2005, subsequent to the congregational vote to request presbytery to dissolve the pastoral relationship, the Administrative Commission voted to dissolve this pastoral relationship. This Commission did not have that authority.
4. KEP acted unconstitutionally on June 7, 2005, in approving the actions of the Administrative Commission.

In the absence of a successful complaint or appeal, Presbytery’s errors do not justify TE Kim’s refusal to obey the directives of presbytery. In light of TE Kim’s deposition, (see Case 2005-8) no remedy is necessary or possible. We remind all parties that strict adherence to the Constitution of the PCA in the process of a case promotes justice for any party and all parties.

The Summary of the Facts was written by TE Charles E. McGowan. The Revised Statement of Issues, Judgment, and Reasoning and Opinion were written by the full Standing Judicial Commission.

The vote on Case 2005-9 was:

TE Dominic A. Aquila	Concur
TE Howell A. (Howie) Burkhalter	Concur
TE Stephen M. (Steve) Clark	Concur
RE M. C. (Cub) Culbertson	Abstain
RE Perry Denniston	Absent
RE J. Howard (Howie) Donahoe	Concur
RE Samuel J. (Sam) Duncan	Concur

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TE Paul B. Fowler	Concur
TE William W. (Bill) Harrell	Absent
RE Terry L. Jones	Concur
TE Paul D. Kooistra	Absent
RE Thomas F. (Tom) Leopard	Concur
TE John M. McArthur, Jr.	Concur
RE J. Grant McCabe	Concur
TE Charles E. McGowan	Concur
TE D. Steven (Steve) Meyerhoff	Concur
RE Frederick (Jay) Neikirk	Concur
RE Steven T. (Steve) O'Ban	Concur
TE Michael M. Rico	Absent
TE G. Dewey Roberts	Dissent
TE Michael F. (Mike) Ross	Absent
RE John Tolson	Concur
RE John B. White, Jr.	Concur
RE W. Jack Williamson	Concur

Adopted: 17 concurring, 1 dissenting, 0 disqualified, 0 recused, 1 abstained and 5 absent.

CONCURRING OPINION
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We concur with the final decision in the Complaint of TE Peter B. Kim vs. Korean Eastern Presbytery but submit the following as additional reasoning. In August of 2004, more than the required number of members of Hudson Presbyterian Church petitioned for a congregational meeting to vote on the issue of whether TE Kim should continue as pastor of the church. Two additional petitions were submitted to the session.

All three petitions were ignored. The petitioners then carried their request to Korean Eastern Presbytery. In response, KEP appointed an Administrative Commission to resolve the conflict within the Hudson Church. It is clear from the record of the case that this was not a judicial commission, whose decisions must be approved by Presbytery, but an administrative commission, which was empowered to act for Presbytery.

The complainant has throughout referred to this Administrative Commission as a judicial commission, even in the face of substantial evidence to the contrary. This commission and KEP clearly realized that after over five months of waiting for the Session of Hudson Church to act in response to calling a congregational meeting something must be done to resolve the conflict within the church.

The complainant bases his complaint on the language of *BCO* 43 which requires that a complaint must be made first to the offending court of the Church before it can be taken to the next higher court. In this instance, there had already been three attempts to get the lower court (the Session of Hudson Church) to act. There is clear evidence in the record of the case and the transcript of the Presbytery hearing on TE Kim's complaint that he had failed to act upon the three petitions.

In such a case, KEP and its administrative commission clearly had the authority to act under the provisions of *BCO* 13-9, to wit, "In cases in which the Session cannot exercise its authority, it (Presbytery) shall have power to assume original jurisdiction." This authority of presbytery is separate and apart from the language of *BCO* 43. Based on the established fact that three separate petitions for calling a congregational meeting were ignored over the space of more than five months, KEP operated within the constitutional framework of the *PCA Book of Church Order*.

RE John B. White, Jr., SJC Chairman
RE W. Jack Williamson
RE Thomas F. Leopard

**DISSENTING OPINION
JUDICIAL CASE 2005-9
COMPLAINT OF TE PETER B. KIM
VS.
KOREAN EASTERN PRESBYTERY**

At the meeting of the Standing Judicial Commission on March 3, 2006, there was initially confusion about whether or not this case should have been ruled administratively out of order by the panel. This confusion had the effect of prejudicing the decisions concerning both this case, 2005-9, and the Appeal, 2005-8, which is closely connected with it. It is not possible to understand the Appeal of TE Peter B. Kim vs. Korean Eastern Presbytery (2005-8) without understanding the facts, which led to the trial. Those facts are laid out in this Complaint, 2005-9, which addresses the very serious and egregious constitutional errors committed by KEP. Some of those constitutional errors by KEP are glossed over by the arrangement of the

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‘Summary of the Facts’ in the present report, which was adopted by a majority of the full Standing Judicial Commission. These egregious errors include the following:

1. On January 9, 2005, a petition from members of the Hudson Presbyterian Church requesting a congregational meeting for a vote of confidence on the pastor and ruling elders of the congregation was received by KEP. This petition was not styled as a complaint according to *BCO* 43 and made no claim to be such. Moreover, there had never been a complaint filed with the lower court, the session of the Hudson Presbyterian Church, as required by *BCO* 25-2 and 43-2. This whole process from the beginning was constitutionally out of order. KEP should have acted constitutionally by denying that the petition was a complaint and advising the petitioners of the proper method for filing a complaint with the Hudson Presbyterian Church session.
2. On February 2, 2005, KEP elected an Administrative Commission to resolve the conflict in the Hudson Presbyterian Church. This Administrative Commission committed numerous egregious breaches of constitutional authority by acting as a Judicial Commission for which it did not have the powers of presbytery, to wit:
 - a. On March 30, 2005, the Administrative Commission decided that the petition for a congregational meeting was a “complaint” and was in order. The power to rule the complaint in order belongs to the presbytery or a judicial commission authorized by presbytery to take such action (*BCO* 15-2, 3). Administrative Commissions do not have such powers. This action of KEP’s Administrative Commission was in violation of our constitution.
 - b. On March 30, 2005, the Administrative Commission ordered the Session of Hudson Presbyterian Church to call a congregational meeting. Administrative Commissions do not have such powers. This action of KEP’s Administrative Commission was in violation of our constitution (*BCO* 15-2, 3).
 - c. On March 30, 2005, the Administrative Commission prescribed the agenda for the congregational meeting, which they ordered. Administrative Commissions do not have such powers. This action of KEP’s Administrative Commission was in violation of our constitution (*BCO* 15-2, 3).
 - d. Following the April 17, 2005 congregational meeting of Hudson Presbyterian Church, this Administrative Commission met and voted to dissolve the relationship between TE Peter B. Kim and Hudson Presbyterian Church. Administrative Commissions do not have such

powers. This action of KEP's Administrative Commission was in violation of our constitution (*BCO 15-2, 3*).

After the panel chairman made a few preliminary remarks on this case on March 3, 2006, the SJC assigned TE Howie Burkhalter the rewriting of the Reasoning and Opinion before the case would be considered. TE Burkhalter then found the evidence in the Record of the Case that 2005-9 was indeed administratively in order, which supported the conclusion which the panel had made about this case. Yet, when the case came back to the SJC for consideration, the discussion of the report was led by members of the Commission at large- not by the chairman of the panel. In my opinion, the full commission never understood the egregious constitutional errors of Korean Eastern Presbytery in Case 2005-9 due to the irregular manner in which this case was reported. In every case, the written and oral report of the panel must be duly considered by the full commission *before* the SJC takes action concerning it. Otherwise, there is no reason to appoint a panel to hear a case, write a report and present that report to the full SJC. There often are facts learned through the hearing of cases which are essential to the decisions which are made. The full SJC often does not comprehend these facts until the panel has made its report. In SJC Case 2005-9, the full SJC never learned some of those facts (or never considered them) because of the irregular process by which it was reported. The result was that there were some erroneous perceptions about this case which were boldly proclaimed as fact and which had the effect of prejudicing the decision on this case. A couple of those erroneous perceptions were:

1. That all these constitutional errors by KEP are moot because there was a congregational meeting properly called by the session of Hudson Presbyterian Church for April 17, 2005 at which a motion to request the dissolution of TE Kim's pastoral relationship with the church was passed by a vote of 40-1-2. Yet, the Record of the Case clearly shows that there never was a session meeting to call this congregational meeting. The meeting was held in blind submission to the unconstitutional order of KEP's Administrative Commission according to the transcript of the testimony at the trial of TE Kim.
2. That the petitioners had tried three times to present a "complaint" to TE Kim before they sent it forward to Korean Eastern Presbytery. Both the Record of the Case and the hearing revealed that there was a confusion of terms when the word "complaint" was used. The fact is there never was a complaint filed with either the session or the presbytery. The document in question was the petition which was then submitted to the presbytery. The proper procedure to take when a session cannot act, fails to act or refuses

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to act within 30 days concerning a petition for a congregational meeting is for any member in good standing to file a complaint with the session. If that complaint is either denied or not heard, then a complaint can be made to the presbytery. Due process was not followed in this case when KEP received that petition as a “complaint.”

The argument by some members of the Standing Judicial Commission that the petition presented to Korean Eastern Presbytery should be considered as a “complaint” is a fatally flawed premise. The SJC often has to rule cases administratively out of order for failure by a party to file the case within 30 days of the action of the court. If the SJC arbitrarily permits a petition for a congregational meeting to be considered as a complaint, then there is no longer any constitutional basis for deciding any case. The whims of jurors on the Standing Judicial Commission do not comprise constitutional authority.

Korean Eastern Presbytery adopted the actions of their Administrative Commission at the stated meeting of presbytery on June 7, 2005. At the hearing of these cases on January 25, 2006, KEP denied that the Administrative Commission ever acted as a Judicial Commission by claiming that none of the actions of the Commission were effective until the meeting of Presbytery on June 7, 2005. This denial is disingenuous at best. It is not possible to deny that the Administrative Commission was acting with judicial powers because otherwise there was no way for the petition to be ruled a “complaint” before the Presbytery met on June 7, 2005; otherwise, there was no way for the Hudson Presbyterian Church to be ordered to call a congregational meeting, (which took place on April 17, 2005) before the presbytery met on June 7, 2005; and, otherwise, there was no way for the Administrative Commission to prescribe the agenda for that congregational meeting before the presbytery met on June 7, 2005. All of these matters were completed before the June 7, 2005 meeting of Korean Eastern Presbytery which alone had the power to take such actions in this instance. These actions of the Administrative Commission were egregious abuses of constitutional authority.

If KEP’s Administrative Commission had ever assumed original jurisdiction over the session on the basis of *BCO* 13-9 (“In cases in which the Session cannot exercise its authority, *Presbytery* shall have power to assume original jurisdiction”), there would be some justification for some of the actions of said Commission. Yet, the ROC clearly indicates that such action was never taken. The Administrative Commission ordered the session of Hudson Presbyterian Church to call a congregational meeting, but it never took action to assume original jurisdiction.

The decision of the full SJC to deny this complaint fails to redress the egregious constitutional errors of Korean Eastern Presbytery. The judgment of the SJC said, “This unconstitutional action at the beginning of this process

does not justify TE Kim's refusal to obey the directive of presbytery." This judgment is flawed and contradicts the constitution of the PCA. *BCO* 32-6 says, "When an accused person shall appear and refuse to plead, or otherwise ***refuse to cooperate with lawful proceedings***, he shall be dealt with for his contumacy (cf. *BCO* 33-2; 34-4)". The SJC judged that a member of a court must submit to unlawful proceedings. The *BCO* says that contumacy is refusal to cooperate with lawful proceedings. These two positions are diametrically opposed to one another and it reveals the grievous error in this judgment of the SJC. In my opinion, this is the worst decision and judgment that this court has ever rendered. And it has the potential to undermine everything for which the PCA has historically stood. True justice does not consider the parties in a case. True justice considers the great Biblical principles of the constitution of the Church. One of those constitutional principles found in the *Westminster Confession of Faith* is that "Christ alone is Lord of the conscience." Without liberty of conscience to protest the unbiblical and unconstitutional decisions of church courts, the only thing left is the tyranny of church courts as they require blind obedience to all their decisions. Sometimes, those protests of conscience must take the form of disobeying the unlawful decisions or actions of church courts. Disobedience of unlawful decisions or actions of a court is not the same thing as disobedience to God. 'We must obey God, not men', said the Apostles.

The effect of this judgment by the SJC is to require blind obedience by everyone in the PCA to the courts of the church and to make church courts the Lord of the conscience of all its members. Under the parameters of this judgment by the SJC, then Christ was guilty of contumacy for disobeying the religious leaders of His day; the Apostles were contumacious for disobeying the Sanhedrin; and, indeed, the founders of the Presbyterian Church in America were contumacious for not submitting themselves to the courts of the Presbyterian Church in the United States.

The error in this fatally flawed judgment is even more egregious in light of the fact that there was no redress that was offered against the constitutional errors by KEP. The judgment on the first issue says, "Yes, but this unconstitutional action at the beginning of this process does not justify TE Kim's refusal to obey the directive of presbytery and, in light of his deposition from office (Case 2005-8), further action on this matter is moot." In other words, no remedy is offered concerning the unconstitutional actions of KEP because they deposed TE Kim for his refusal to obey their unconstitutional actions. A remedy for the unconstitutional actions of KEP cannot be "moot" in light of the fact that TE Kim is the one who filed the complaint. A remedy for KEP's unconstitutional actions cannot be "moot" in light of the fact that TE Kim was deposed from the ministry for refusal to obey that court's unconstitutional breaches of authority. In the Reasoning and Opinion, the SJC writes, "In light of TE Kim's deposition, no remedy is

necessary or possible.” If ever there is a time that a remedy is necessary, it is when a minister is deposed. If a remedy can be given for just cause, then it should be given to the deposed minister. Such remedy is never moot.

Another illogical and hastily considered statement is the first sentence of the last paragraph of the Reasoning and Opinion, which says, “In the absence of a successful complaint or appeal, Presbytery’s errors do not justify TE Kim’s refusal to obey the directives of presbytery.” That statement is a tacit admission that the decisions by the SJC on this case and 2005-8 are wrong. That statement includes the very clear idea that if the complaint or appeal had been successful, then TE Kim’s refusal to obey the Korean Eastern Presbytery would have been justified. Yet, the reason that the SJC denied the Complaint (2005-9) and the Appeal (2005-8) was because of TE Kim’s refusal to obey the presbytery, which represents circular reasoning at its worst. In making said statement, the SJC is unwittingly acknowledging the correctness of my position in this dissent.

In summary, the SJC ruled against this complaint without referencing a single part of the constitution to support their decision. The *BCO* references that are in this decision are the remnants of the original report of the panel which heard the case. The decision, which the SJC reached, is in several places inconsistent with those *BCO* references. The constitutional errors of KEP were overlooked and no remedy was provided to the complainant. The “complaint” which first brought this whole case to the Korean Eastern Presbytery was not a constitutional complaint, but was a petition to the session for a congregational meeting. The congregational meeting in which TE Kim’s pastoral relationship was dissolved was not a constitutionally called congregational meeting. The actions of the Administrative Commission of KEP were unconstitutional at many points. KEP acted unconstitutionally in approving the unconstitutional report of its Administrative Commission. Yet, the SJC denied TE Kim’s complaint without referencing any constitutional basis for doing so. For these reasons, this decision is unworthy of the Presbyterian Church in America and is out of accord with our constitution.

TE Dewey Roberts, Panel Chairman for SJC Cases 2005-8 and 2005-9

IV. THE OFFICERS OF THE SJC CHOSEN FOR NEXT YEAR ARE:

Chairman	TE Dominic A. Aquila
Vice chairman	TE Paul B. Fowler
Secretary	TE Steven (Steve) Meyerhoff
Assistant Secretary	TE John M. McArthur Jr.