

by one presbytery to another. Such a “transfer” may only be done with consent of the one being transferred.

In civil cases, the PCA has successfully argued that it is a non-hierarchal denomination. Recent civil court rulings have found that the PCA, as a non-hierarchal denomination, does not employ local church pastors and staff members, and as such, cannot be held liable for their actions as employees.

The PCA, along with a local church and presbytery, were recently sued in Washington State by an employee of a local church, seeking to impose civil liability on the PCA by virtue of the presbytery’s and the PCA’s “relationship to the local church.” The Plaintiff argued that the PCA (and the presbytery), as a hierarchal denomination, is liable for the wrongs of the local church. This argument is based on a Roman Catholic Diocese being liable for actions taking place at a local parish, by virtue of it being a hierarchal denomination. While not the primary issue or defense, the PCA was able to be finally dismissed, after an Opinion from the United States Court of Appeals for the Ninth Circuit. Part of the argument was based on the PCA being a non-hierarchal denomination and therefore not liable. A similar result was reached a decade or so earlier when the PCA was sued in Florida in connection with an event that took place in a local church. The PCA was dismissed from that action based on a finding that as a non-hierarchal denomination, it was not liable for what transpired at the local church.

/s/ Samuel J. Duncan.

**APPEAL OF TE ELIOT LEE
VS.
KOREAN EASTERN PRESBYTERY
SJC 2007-11**

I. SUMMARY OF THE FACTS

- 07-10-05 Hudson Korean Presbyterian Church (HKPC) Congregational Meeting, re: TE Lee selected as “interim pastor candidate to serve until all the matters of the church [are] resolved...”
- 10-04-05 68th Stated Meeting of Korean Eastern Presbytery (KEP), re: approved HKPC request for TE Lee to be “interim pastor for next 12 months, and until the [TE Peter B. Kim] litigation in the civil

JOURNAL

- court can be resolved.”
- 10-03-06 71st Stated Meeting of KEP, re: while considering the request from the HKPC Session, KEP discussed its prior action (approval of TE Lee for “one year or until all matters are resolved”) and how this action conflicts with *BCO* 22-6, i.e. temporary pastoral relationships (stated supply) are limited to a period of time no longer than one year and must be renewed annually by the presbytery; the argument was made that the provision (until all matters are resolved) was inconsistent with the *BCO* and that TE Lee’s term as temporary pastor of HKPC was over; a motion to extend the term of TE Lee with the condition that HKPC not withdraw from KEP was defeated.
- 10-30-06 TE Lee filed complaint (2007-1) with KEP concerning the 71st Stated Meeting on 10-03-06, re: Dissolution of Interim Pastor TE Lee’s relationship with HKPC and sending a temporary moderator, based on lack of a quorum.
- 11-08-06 TE Peter B. Kim civil litigation is dismissed with prejudice.
- 11-19-06 HKPC Session Minutes, re: “all matters were not resolved,” i.e. issues regarding TE Peter B. Kim.
- 12-15-06 Called Meeting of KEP - KEP determined that there was no quorum at the 71st Stated Meeting on 10-03-06 during its consideration of the HKPC Session’s request to extend the term of TE Lee as Stated Supply and that its decision relating thereto was invalid; KEP Stated Clerk announced that the HKPC request could now be “rediscussed,” but since the HKPC request had been withdrawn, it was no longer on the floor for discussion; TE Lee’s complaint (2007-1) was invalid; the 11-20-06 Called Meeting of KEP was invalid (not properly called); TE Lee argues that he went to HKPC as the interim pastor, not as stated supply, and that an interim pastor is the same as the a senior pastor, just with a set term, i.e. his term does not end until all the matters with TE Peter B. Kim are resolved; KEP approved a motion that TE Lee went to HKPC as stated supply (with a term of one (1) year), pursuant to *BCO* 22-6; KEP Stated Clerk reported that since there is no pending request from HKPC to extend TE Lee’s Stated Supply relationship, then TE Lee’s term as Stated Supply ended in October, 2006; KEP’s Moderator then declared that the pulpit of HKPC was vacant; KEP approved a motion that the legal matter with TE Peter B. Kim is closed; KEP approved a motion creating a Pulpit (Stated Supply Approval) Commission (requests for stated supply must come from session); and KEP approved a

MINUTES OF THE GENERAL ASSEMBLY

motion creating a judicial commission to deal with a charge against TE Lee.

03-13-07 Two (2) complaints filed with GA/Stated Clerk and KEP (2007-6 [TE Lee] & 2007-7 [RE Han])

2007-6 TE Lee complains:

- 1) 10-03-06 Stated Meeting of KEP - no quorum;
- 2) KEP Clerk refused to show signatures of men who called the 11-20-06 meeting;
- 3) KEP prematurely dissolved the interim pastor relation;
- 4) KEP interpreted interim pastor as stated supply; and
- 5) Judicial Commission did not follow *BCO* 15-2.

2007-7 RE Han complains:

- 1) KEP prematurely dissolved the interim pastor relationship;
- 2) KEP contradicted previous decisions;
- 3) KEP improperly appointed a “pulpit commission.”

04-22-07 KEP, through its Judicial Commission, indicts TE Lee under the following charges and specifications:

- 1) promoting disunity, faction, harming the Body of Christ, rather than striving for the unity, purity, and edification of the church;
- 2) contumacy regarding the December 15, 2006 meeting of KEP and spreading false information, “out-facing,” and “over-bearing the truth;”
- 3) calling the police to deny KEP lawful entrance to a HKPC worship service and physically attacking and restraining TE John Lee;
- 4) moderating HKPC Congregational meeting regarding a vote to leave the PCA; and
- 5) becoming Chairman of the Board of Trustees of HKPC. TE Lee is cited to appear at 8:00 p.m. on May 8, 2007. The record does not contain the Citation.

04-25-07 The Indictment was mailed to TE Lee by certified mail; however, KEP was unable to prove that the Indictment (and Citation to appear at a May 8, 2007 meeting) had been received by TE Lee, who denied having received the same. Note: the record indicates this certified mail was returned to KEP undelivered, so there is no dispute that the Indictment (and Citation) was not timely delivered to TE Lee by certified mail.

JOURNAL

- 05-08-07 TE Lee does not attend this KEP meeting. This meeting is rescheduled for May 20, 2007. Although not in the record, at some point in time, TE John Lee threw the Indictment and (first) Citation (it is not clear if this is for the May 8, 2007 or the May 20, 2007 meeting) on TE Lee's driveway.
- 05-20-07 KEP, through its Judicial Commission, reads the Indictment/Charges to TE Lee, and TE Lee pleads not guilty. Trial is scheduled for May 29, 2007. The record does not contain a (second) Citation relating to the trial.
- 05-21-07 TE Lee advises KEP that the May 29, 2007 trial date has not been scheduled in accord with the *BCO*, i.e. he has not been given the required 14 days notice.
- 05-29-07 Trial of TE Lee conducted by the KEP Judicial Commission, with testimony, cross-examination and arguments. TE Lee was found guilty on all counts or charges. TE Lee was deposed and excommunicated by KEP.
- 06-05-07 73rd Stated Meeting of KEP, re: KEP adopted the Judicial Commission's decision to depose and excommunicate TE Lee.
- 10-19-07 Full SJC adopts the Panel Decisions in 2007-1, 2007-6, and 2007-7, to wit:

Did KEP err when it determined that only those actions at the 71st Stated Meeting on 10-03-06 dealing with HKPC were invalid? Judgment: It is moot since all actions taken at the 71st Stated Meeting of KEP on October 3, 2006 are null and void.

Did KEP err when it clarified that TE Lee's call as "interim pastor" for one (1) year or "until the [TE Peter B. Kim] litigation in the civil court can be resolved" was that of stated supply and limited to one (1) year, unless renewed by the session and presbytery, pursuant to *BCO* 22-6? Judgment: No. Interim pastor and stated supply are the same and limited by *BCO* 22-6 to one (1) year, unless renewed by presbytery. Further, since HKPC withdrew its request to extend the stated supply term of TE Lee, there is no such request pending, and TE Lee's term as Stated Supply ended on or about October 3, 2006. Accordingly, the HKPC pulpit has been vacant since that time.

Did KEP err when it appointed its Pulpit (Stated Supply Approval) Commission? Judgment: No.

Did KEP err when it appointed its Judicial Commission?

MINUTES OF THE GENERAL ASSEMBLY

Judgment: No.

In regard to these Judgments, the Standing Judicial Commission only ruled that the Commissions were properly appointed. There were complaints pending with KEP concerning actions taken after these Commissions were appointed, i.e. the matters complained of herein. The prior Judgments were not to be deemed an approval or disapproval of those actions by the Standing Judicial Commission.

3-5-09 Full SJC adopts the Panel Decisions in 2007-9 and 2007-10, to wit:

Did KEP err when it empowered and authorized the Pulpit (Stated Supply Approval) Commission to act on behalf of HKPC session at the 01-26-07 Called Stated Meeting?

Yes. All actions and decisions made by the Pulpit (Stated Supply Approval) Commission in regard to its acting on behalf of the HKPC session (and Church) are annulled, and any HKPC funds so expended should be returned to HKPC by KEP, if the congregation so requests.

Did KEP err when it approved and ratified actions of the KEP Executive Committee, the actions of the Pulpit (Stated Supply Approval) Commission, and when it filed a civil action against TE Lee seeking among other things a restraining order against TE Lee and to adjudicate ecclesiastical matters?

Yes. The Complaint filed by KEP and the Pulpit (Stated Supply Approval) Commission, acting on behalf of the HKPC Session (and Church), in the New Jersey state court sought to adjudicate ecclesiastical matters that are clearly within the jurisdiction and oversight of the courts of the PCA, i.e. who was the rightful pastor of HKPC and authorizing the Pulpit (Stated Supply Approval) Commission to act as the Session of HKPC.

II. STATEMENT OF THE ISSUES

1. Did KEP err when it proceeded to the trial of TE Lee?

III. JUDGMENT

1. Yes. KEP's disposition and excommunication of TE Lee is reversed

and rendered. As Pastoral Counsel (and not in any way to be construed as a formal Censure), the Standing Judicial Commission encourages TE Lee to be more circumspect, charitable, open minded, and humble in dealing with his brethren in the future.

IV. REASONING AND OPINION

While this Appeal presents many issues, procedural errors by KEP seem to override the necessity of discussing all errors in this Opinion.

First, the record does not provide evidence that KEP met the requirements of *BCO* 32-3 in regard to the serving of the Indictment and Citation upon TE Lee, i.e. there is no documentation in the record that the Indictment and (first) Citation were properly and timely served on TE Lee.

Second, the record does not provide evidence that KEP met the requirements of *BCO* 32-7 (10 days must elapse between the serving of the (first) citation and the second meeting of the court to have the indictment read and a plea entered).

Third, the record evidences KEP's failure to provide TE Lee with 14 days notice of the trial, as required by *BCO* 32-3.

See *BCO* 32-10 (before proceeding to trial, courts ought to ascertain that their citations have been duly served).

Based on these procedural errors, the disposition and excommunication of TE Lee is reversed. *BCO* 42-9 provides that an appellate court may "render the decision that should have been rendered" in cases such as this one. Based on this authority, and after having reviewed the extensive record in five (5) Complaints and this Appeal (and in an effort to bring some finality to the matters that have divided these brothers), the Standing Judicial Commission finds that TE Lee's actions do not raise a strong presumption of guilt (*BCO* 31-2) to justify the institution of formal process. However, as Pastoral Counsel, (and not in any way to be construed as a formal Censure), the Standing Judicial Commission encourages TE Lee to be more circumspect, charitable, open minded, and humble in dealing with his brethren in the future.

The Facts, Issues, Judgments, and Reasoning and Opinion were written by RE Samuel J. Duncan.

MINUTES OF THE GENERAL ASSEMBLY

The vote on SJC 2007-11 was:

TE Dominic A. Aquila, Concur
TE Howell A. Burkhalter, Concur
RE E. C. Burnett, Concur
TE David F. Coffin Jr., Concur
RE Marvin C. Culbertson, Concur
RE J. Howard Donahoe, Concur
RE Samuel J. Duncan, Concur
TE Paul B. Fowler, Absent
TE Grover E. Gunn III, Concur
TE William W. Harrell Jr., Concur
RE Terry L. Jones, Concur
RE Thomas F. Leopard, Absent

TE William R. Lyle, Concur
TE John M. McArthur, Jr., Concur
RE J. Grant McCabe, Concur
TE Charles E. McGowan, Concur
TE D. Steven Meyerhoff, Concur
RE Frederick Neikirk, Concur
RE Steven T. O'Ban, Concur
RE Calvin Poole, Concur
TE G. Dewey Roberts, Disqualified
RE Olin L. Stubbs, Concur
RE John B. White, Jr., Concur

20 Concur, 1 Disqualified, 2 absent

**COMPLAINT OF TE DAVID KNISELEY, ET. AL.
VS.
ROCKY MOUNTAIN PRESBYTERY
SJC 2007-13**

I. SUMMARY OF THE FACTS:

1. January 25-26, 2007 stated meeting - Rocky Mountain Presbytery received an overture from TE David Kniseley regarding the propriety of using the title "minister" for a woman church staff member in one of RMP's mission churches. The specific title was "Minister of Church Life" (ROC 13). The overture argued that "such usage is not only contrary to our *Book of Church Order* but potentially disruptive to the peace of the Rocky Mountain Presbytery and the PCA."
2. April 1, 2007 - The Session of Village Seven Presbyterian Church overtured Rocky Mountain Presbytery asking that it overture General Assembly that "the *PCA Book of Church Order* be amended by adding the following sentence to 1-4. "In the *PCA Book of Church Order* it is to be understood that the term **minister** is to be interpreted to mean **teaching elder**."
3. April 27, 2007 stated meeting - Presbytery is presented with three papers dealing with the above overtures, two arguing in favor of the use of the term "minister" for non-ordained church staff, and one arguing against. These papers were not adopted by Presbytery, nor