

Report of the Commission on Judicial Business

The Office of the General Synod received one judicial matter shortly before the 2019 meeting of the General Synod. It was an appeal filed on April 8, 2019. It was referred to the Commission on Judicial Business (“CJB”) for review, recommendation, and report to the 2019 General Synod. The CJB informed the 2019 General Synod that there was insufficient time for the CJB to complete its work on the appeal prior to the 2019 General Synod meeting, and that the CJB would complete its work on the appeal in time for written report (and recommendation if applicable) to the 2020 General Synod. This report discusses that appeal. Since the 2019 General Synod meeting, the General Synod office has not received any additional judicial matters.

The CJB met electronically on July 18, 2019, and February 17, 2020. The purpose of the first meeting was to conduct its work on the appeal discussed in this report. The purpose of the second meeting was to approve this report, elect the commission’s moderator, vice moderator, and secretary for the annual period commencing July 1, 2020, and appoint a corresponding delegate to the 2020 General Synod.

Appeal by Phillip and Diane Forner from Action by the Regional Synod of the Great Lakes

Phillip and Diane Forner (“Forners”) filed with the office of the General Synod an appeal from an action taken by the Overtures and Judicial Business Committee of the Regional Synod of the Great Lakes (“Regional Synod”). The Forners’ notice of intent to appeal was filed with an officer of the Regional Synod within the 20-day time frame required under *Book of Church Order* (BCO) Chapter 2, Part III, Article 2, Section 1. The appeal and reasons therefor were filed with the General Synod (the higher judicatory) within 20 days of filing the notice of intent to appeal (April 8, 2019) as required by BCO Chapter 2, Part III, Article 2, Section 2. The appeal was then referred to the General Synod’s Commission on Judicial Business (CJB). The CJB received the record of the case on April 13, 2019. The CJB met via conference call on July 18, 2019, to consider the case.

Upon first review, the members of the CJB ensured that the notice of intent to appeal and reasons therefor were a) filed timely and b) filed with the correct parties (as required by BCO Chapter 2, Part III, Article 2, Sections 1 and 2). These provisions were appropriately followed. The CJB also ensured that the record of the case was submitted by the lower judicatory and that the record was in order. The members confirmed receipt and review of these documents.

On October 29, 2018, the Classis of Zeeland (Zeeland Classis) decided to not undertake an intentional process of reconciliation between the Forners, Spring Valley Church (SVC), and Zeeland Classis. The Forners “appealed” the decision of Zeeland Classis to the next higher judicatory, the Regional Synod. (Discussed below, the Regional Synod determined this to be a complaint, not an appeal). On February 21, 2019, the Regional Synod reviewed the complaint and held that the complaint is to be dismissed without a hearing as frivolous, dilatory, and clearly without merit. This is the decision the Forners now appeal.

By way of background, the complaint made by the Forners that “Zeeland Classis failed to undertake an intentional process of reconciliation between the Forners, Spring Valley Church, and Zeeland Classis” stems from a prior complaint and adjudicatory proceeding where there was the following two part determination by the Zeeland Classis (on May 16, 2017):

1. Zeeland Classis will respectfully request aid from, within her bounds, an established RCA church whose Board of Elders would be willing to receive the Forners' membership and offer pastoral care until such time as reconciliation between SVC and the Forners can be realized, or the Forners find another church home.
2. Zeeland Classis will undertake an intentional process of reconciliation between the Forners, SVC, and Zeeland Classis to assist in the reestablishment of trust between all parties.

Following this determination of the Zeeland Classis on a prior complaint, the Forners filed an appeal. The appeal specifically challenged the first determination of the Zeeland Classis. The Forners exhausted the appeal process contained in the *BCO* to the appeal of the first determination above (which included a hearing and determination by the CJB). Following that exhaustion of appeal, the Forners contacted the Zeeland Classis to inquire about the second determination above—the intentional process of reconciliation. In response, the Zeeland Classis indicated that by appealing the May 16, 2017, determination of the Zeeland Classis in the prior complaint, the Forners had chosen the appeal route, opting out of the process of reconciliation. The Zeeland Classis stated “what could be litigated through the appeals process has been adjudicated.” The classis further specified to the Forners their status within the classis and made recommendations regarding individuals the Forners could meet with.

The Zeeland Classis decision of October 29, 2018, (to not undertake the process of reconciliation) was “appealed” by the Forners to the Overtures and Judicial Business Committee of the Regional Synod. The Regional Synod determined that the email sent by the Forners following the Zeeland Classis decision was a complaint and not an appeal, since an appeal is a transfer to a higher judicatory on which a judgment had been rendered at the lower judicatory. The Regional Synod considered this a complaint (and not an appeal) because the Zeeland Classis did not render a judgment below as there was no specific complaint below. The Regional Synod determined that the email complaining that the Zeeland Classis could not undertake the intentional reconciliation process with the Forners was an initial complaint about the classis (which would appropriately be filed with the applicable regional synod).

In reviewing the complaint, the Overtures and Judicial Business Committee of the Regional Synod found no evidence that any action or decision of the Zeeland Classis violated or failed to comply with the Constitution of the RCA or other regulations of the church (which is how complaints are defined in the *BCO*—see *BCO* Chapter 2, Part II, Article 1, Section 1). Therefore, there were no grounds for the complaint, and the complaint was dismissed as “frivolous, dilatory, and clearly without merit.”

It is that determination of the Regional Synod, dismissing the complaint against the Zeeland Classis, that the Forners now appeal. The CJB has reviewed the record below, along with the appeal and reasons therefor, submitted by the Forners.

Pursuant to *BCO* Chapter 2, Part III, Article 2, Section 6 “[i]f the appeal is deemed to be frivolous, dilatory, or clearly without merit, the committee may dismiss the appeal without a hearing.”

In reviewing whether the appeal is frivolous, dilatory, and without merit, the CJB reviewed the grounds for appeal. *BCO* Chapter 2, Part III, Article 1, Section 3 provides very specific grounds for appeal: irregularity in the proceedings of the lower judicatory, refusal of reasonable indulgence to a party on trial, receiving improper, or declining to receive proper, evidence,

rendering a decision before all the testimony is taken, bias or prejudice in the case, and manifest injustice in the judgment. The CJB also noted that deference is to be given to the lower judicatory on appeal and that the higher judicatory “shall uphold the decision of the lower judicatory if it is supported by substantial evidence in the record when the record is viewed as a whole,” (*BCO* Chapter 2, Part III, Article 2, Section 11).

Based upon these factors, the CJB determined that this appeal is frivolous and clearly without merit. The reasons therefor submitted by the Forners do not cite any of the specific grounds for appeal as required by *BCO* Chapter 2, Part III, Article 1, Section 3. Furthermore, upon review of the entire record, the CJB did not find any instance which would amount to one of the stated grounds for appeal. Specifically,

- No irregularities in the proceedings below.
- There was no trial, so no issues with respect to not providing reasonable indulgence.
- There does not appear to be an instance where any piece of evidence was declined to be a part of the record and no evidence included is improper.
- There was no testimony taken, so no concern regarding a decision being made prior to hearing the testimony and evidence.
- In the lengthy record, which contains many opportunities for the Forners to make their case, there appears no instances of bias or prejudice. The lower judicatories acted in good faith, always responding to the complaint and appeals and supporting the right to process such, so no bias or prejudice is noted.
- Based upon the evidence below, and deference given to the lower judicatory, there is substantial evidence to support the Regional Synod determination, therefore no manifest injustice occurred.

Therefore, the motion was made, seconded, and carried to find the appeal of the Forners to be frivolous and clearly without merit, and the CJB then dismissed the appeal without a hearing, per *BCO* Chapter 2, Part III, Article 2, Section 6.

Respectfully submitted,

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Moderator, General Synod Commission on Judicial Business