



## Holy Synod / Metropolitan Council Joint Session Minutes

Wednesday, September 3, Friday, September 5, 2008  
East Norwich Inn, East Norwich, NY

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**NOTE:** These are combined minutes of two joint sessions which took place on Wednesday, September 3, and Friday, September 5, 2008.

### Opening Divine Liturgy and Moleben Wednesday, September 3, 7:00 AM

#### 1. Roll Call

##### **Holy Synod**

H.E. Archbishop Dmitri

H.E. Archbishop Job

H.E. Archbishop Seraphim

H.G. Bishop Nikon

H.G. Bishop Tikhon

H.G. Bishop Benjamin

##### **Metropolitan Council**

Archpriest Alexander Garklavs

Archpriest Eric G. Tosi

Priest Michael Tassos

##### *Members Elected by the All-American Council*

Archpriest Theodore Boback

Archpriest Gregory Safchuk

Eleana Silk

Dr. Faith Skordinski

##### *§Members elected by Dioceses*

*Diocese of Alaska*

*Albanian Archdiocese*

William Peters

*Archdiocese of Canada*

Archpriest John Tkachuk

Richard Schneider

*Diocese of Eastern Pennsylvania*

Archpriest John Onofrey

Peter Bohlender

*Diocese of the Midwest*

Archpriest Michael Matsko

Dr. Richard West

*Diocese of New England*

Archpriest Mark Sherman

Deacon John Zarras

*Diocese of the South*  
Archpriest Phillip Reese

Gary Popovich

*Diocese of Washington and New York*  
Archpriest George Hasenecz

Robert Kornafel

*Diocese of the West*  
Archpriest Matthew Tate

Dr. Dmitri Solodow

*Diocese of Western Pennsylvania*  
Archpriest John Reeves

Gregory Nescott

*Also present:*

Archpriest Andrew Jarmus (*recording secretary*)

*Guests present for portions of the meeting:*

Archpriest Michael Westerberg

Thaddeus Wojcik

Julia Azrael

Jon Ward

Bernard Wilson

Absent: Metropolitan Herman; Archbishop Nathaniel; Archpriest Constantine White; Dr. Alice Woog

Fr. Alexander Garklavs welcomed all members of the Holy Synod and Metropolitan Council. In particular, he welcomed OCA Secretary, Archpriest Eric G. Tosi, to his first meeting of the Metropolitan Council.

**2. Approval of Archpriest Andrew Jarmus as Recording Secretary:**

**APPROVED BY CONSENSUS**

**3. Approval of Minutes of the 2008 Spring Meeting of the Metropolitan Council**

**MOTION (G. Popovich/Fr. M. Matsko): Accept minutes as presented.**

**CARRIED UNANIMOUSLY**

**4. Opening Address of Metropolitan Herman (see attached).**

With the blessing of His Eminence, Archbishop Dmitri, senior hierarch at the meetings, Metropolitan Herman's opening address was read by His Eminence, Archbishop Seraphim.

As a matter of record, His Eminence, Archbishop Dmitri read to the Holy Synod and Metropolitan Council the letter of His Beatitude, Metropolitan Herman requesting a

leave of absence. This letter was also read in the St. Sergius Chapel at the conclusion of the morning services.

## **5. Report of the Special Investigating Committee (see attached).**

### **5.1. Presentation of Report**

This session was chaired by His Eminence, Archbishop Seraphim, with the blessing of His Eminence, Archbishop Dmitri.

In his opening remarks, His Grace, Bishop Benjamin said, "I believe that only our Orthodox Church in America could have done this investigation, with this degree of openness and accountability." His Grace noted the following correction in the report: p. 10 an event that was recorded as taking place on April 19, 1992 was moved to its proper place in the chronology under the date April 19, 2002 on p. 14.

His Grace and other members of the SIC read the report.

**MOTION (Dn. J. Zarras/G. Nescott): The HS and MC offer their great gratitude for the diligence and work of the SIC, and direct that the report as corrected be immediately posted on the OCA.org web site in its entirety. CARRIED UNANIMOUSLY**

**MOTION (D. Solodow/Fr. J. Tkachuk): That copies of the SIC report be sent to all absent members. CARRIED UNANIMOUSLY**

In closing, the Metropolitan Council expressed their gratitude to the two consultants who worked with the Special Investigating Committee, Ms. Julia Azrael, Esq. and Mr. Bernard Wilson.

**MOTION (Fr. J. Reeves/D. Solodow): To accept the SIC's report separate from the recommendations, and to review the recommendations separately, in sequence. CARRIED UNANIMOUSLY**

**MOTION (P. Bohlender/R. West): Motion to accept the report of the Special Investigating Committee. CARRIED UNANIMOUSLY**

### **5.2. Discussion on Report:**

During discussion on the SIC report presented during the morning session of September 3, 2008, OCA General Counsel, Mr. Thaddeus Wojcik, joined the meeting.

Bishop Nikon noted his strong displeasure with the section of the SIC report concerning a visit he and Archbishops Seraphim and Nathaniel made to Moscow in 2004 at which time Archimandrite Zacchaeus informed them "of Kondratick's

attempt to misappropriate charitable funds.” The report says that the hierarchs did nothing in response; however, Bishop Nikon stated action was taken by informing the Metropolitan who was Fr. Zacchaeus’ immediate superior.

Bishop Nikon also voiced his disappointment that, to his knowledge, none of the three hierarchs mentioned were approached by the SIC to speak about the incident. In response to a question regarding whether or not any other action was taken, Archbishop Seraphim replied that it is standard to allow time for further developments before taking other action.

In response to a question regarding the original video tape that Fr. Zacchaeus recorded in Moscow of his conversation with R. S. Kondratick, Bishop Benjamin reported that Archimandrite Zacchaeus sent what he said was the original tape to the FBI.

The SIC received a copy of the tape but they did not view the original. It was reported that the tape they have received has gaps in the conversation, but it does include Kondratick discussing diversion of the Christmas stocking and Beslan monies, and him writing a breakdown of the trip’s expenses to be paid from the Christmas Stocking funds on a piece of paper that was recovered and turned over to the SIC.

In response to a question as to whether Robert S. Kondratick is still an employee of the OCA, working in a parish of the Diocese of the South, Archbishop Dmitri said that he was not aware that he was officially working in a parish. Thaddeus Wojcik noted the distinction between being an employee of the OCA and being an employee of an OCA parish, noting that being an employee of the latter does not, legally, necessarily correlate with the former.

**ACTION ITEM:** It will be determined whether or not Robert S. Kondratick is, in fact, an employee of the Church.

Regarding the \$24,000.00 housing allowance that R. S. Kondratick was receiving, it was noted that there is nothing illegal or improper with living rent free in a home and receiving a housing allowance, as long as the allowance is declared to the IRS and that the MC gave its approval. It was stated that the housing allowance would have been reviewed by the Administrative Committee, but that the Metropolitan Council was not given a detailed breakdown of staff compensation.

In reference to the report’s conclusion that Metropolitan Herman and Frs. Kucynda, Oselinsky, were treasurers “in name only,” it was reported that Metropolitan Herman did not receive a salary for his work as treasurer. He also did not sign any checks. Frs. Kucynda and Oselinsky both did receive compensation for their work. A discussion followed in which it was observed that the fiduciary duties of a person would not be any less either because she or he did not receive a salary, or because she or he accepted a position but did not carry out the duties inherent in that position, and that they should not benefit from using the same as a defense or mitigating factor.

Fr. Mark Sherman noted that one group that was not recommended for discipline was the elected Audit Committee who were to review OCA books and, with the exception of Mr. John Kozey, did not voice any concerns about Church finances. Archbishop Seraphim noted that auditors were not allowed to see the books until financial records were altered. Bishop Benjamin responded by saying the Audit Committee members were not recommended for disciplinary action because they were unpaid volunteers and they were not competent to adequately carry out their responsibilities as auditors. His Grace added that the question of auditors was addressed in the SIC recommendation to have qualified persons serve in this position.

In response to the question of whether or not Metropolitan Herman himself used Church funds inappropriately, Bishop Benjamin said no. At the same time, he noted that the mismanagement at the OCA Chancery had two different kinds of perpetrators: those who misused money, and those who knew about the misuse and did nothing about it—in particular those in positions of oversight.

There was not a watch-dog psychology at the time when mismanagement took place, because it was assumed that competent people were taking care of things in a responsible way.

SIC members noted that in response to the question of why Metropolitan Herman kept the former Chancellor on for so long, His Beatitude said that he felt that Kondratick was a very gifted man and that under His Beatitude's direction his talents could be focused and kept in check. It was also noted that Metropolitan Herman said that Robert S. Kondratick had such a complete control of the office that removing him would have broken down the entire operation.

### **5.3. Discussion on Recommendations**

Deacon John Zarras offered comments in writing (see attached).

Bishop Benjamin noted that the first three recommendations refer specifically to the Holy Synod and will be addressed by the hierarchs in their session.

Richard Schneider opined that recommendations 4 and 7 were at the heart of the matter. Regarding 4, he said that beyond a statement, action is necessary. An act of repentance at the AAC would express this very appropriately. Regarding 7, he suggested the wording examine the “necessity” of going to civil authorities, rather than the “possibility.”

#### **5.3.1. Immediate Recommendations 1 through 3:**

- **The retirement, resignation, or removal of Metropolitan Herman and his referral to the HS for discipline prior to the 15th All-American Council (AAC).**
- **The referral of Metropolitan Theodosius to the HS for discipline prior to the 15th AAC.**

- **The referral of the former part-time Treasurers Father Paul Kucynda, and Father Dimitri Oselinsky and the former Comptroller Father Stavros Strikis to the HS for discipline prior to the 15th AAC.**

**MOTION (Fr. A. Garklavs/G. Nescott): That the Metropolitan Council adopt recommendations 1 through 3, and that they be discussed by the Holy Synod at their September 4, 2008, meeting and that the Synod report on their deliberations at the second joint HS/MC session Friday, September 5.  
CARRIED UNANIMOUSLY**

**MOTION (G. Nescott/ G. Popovich): That the MC express to the HS, in the strongest possible terms, its sense that the request of Metropolitan Herman for a six month medical leave of absence be denied, in view of the findings of the Special Investigative Committee, and that the Holy Synod instead consider without undue delay Immediate Recommendation # 1 of the report of the Special Investigative Committee, as accepted today by the Holy Synod and the Metropolitan Council. CARRIED UNANIMOUSLY**

**5.3.2. Immediate Recommendation 4: A joint HS and MC resolution of apology and repentance to the Church prior to the 15th AAC and a joint resolution of apology to and commendation for John Kozey acknowledging his vigilance and dedication to his fiduciary responsibilities in light of the opposition he encountered**

**MOTION (Fr. J. Reeves/Dr. R. West): To accept Recommendation 4 as stands. CARRIED UNANIMOUSLY**

**MOTION (D. Solodow/G. Nescott): That the following HS/MC joint statement be posted on the OCA.org web site no later than the end of today's meeting. CARRIED UNANIMOUSLY**

**“The Holy Synod and Metropolitan Council, acknowledging the report of the Special Investigating Committee and the facts made clear therein, humbly apologize to the Church and all those who were harmed by these events.**

**“We recognize our failure to act upon information provided to us, and to demand accountability and openness from each other and from those in our employ.**

**“We commit ourselves to building a culture within the Church which fosters communication, transparency and personal responsibility.**

**“We also wish to offer our profound apology to Mr. John Kozey, former Chair of the OCA Audit Committee. We commend his tireless attempts to bring the facts of this matter to light. For his efforts, he was rebuffed, marginalized and mistreated. We are deeply sorry for this mistreatment.**

**“We know that trust must be rebuilt, and pray you will be encouraged by our actions from now as we move decisively to correct the mistakes of the past and ensure they do not take place again.”**

**5.3.3. Immediate Recommendation 5: A joint HS and MC resolution of commitment to implement the SIC's recommendations prior to the 15th AAC**

**MOTION (Fr. J. Reeves/Fr. P. Reese): To accept Recommendation 5 as stated. CARRIED UNANIMOUSLY**

**5.3.4. Immediate Recommendation 6: To seek the recovery of funds from Metropolitan Theodosius and R. S. Kondratick immediately after receiving this report during the HS and MC joint session, September 3-5, 2008**

**MOTION (Fr. J. Reeves/W. Peters): To accept Immediate Recommendation 6 as stated. CARRIED UNANIMOUSLY**

**5.3.5. Immediate Recommendation 7: The OCA Legal Committee and General Counsel to review this report for possible referral to the Nassau County District Attorney and other appropriate authorities no later than September 30, 2008, and report back to the HS and MC on that date.**

In response to a question regarding whether and to what extent the SIC report is required to be referred to Nassau County District Attorney, Thaddeus Wojcik noted that while he did not anticipate that there would be a requirement to do so, absent the existence of an ongoing crime such as conspiracy, he recommended that this be reviewed further to see if contacting the authorities must be done. If the answer is yes, then this must be followed up. If it is not mandatory, it must be determined if this move is in the best interests of the OCA.

**MOTION (Fr. M. Sherman/Fr. J. Reeves): To accept Recommendation 7 as written and to refer to the MC Legal Committee and to the OCA General General Counsel. CARRIED with ONE VOTE in opposition.**

**5.3.6. Immediate Recommendation 8: The publication of the unabridged 13-page Special Commission report on the OCA's website no later than September 5, 2008**

**MOTION (Fr. J. Reeves/G. Popovich): To accept as stated. CARRIED UNANIMOUSLY**

**5.3.7. Immediate Recommendation 9: A report by the OCA's external auditors to the HS and the MC regarding the adequacy of the newly established internal financial controls and the release of the same on the OCA's website at the 15th AAC**

Fr. Michael Tassos noted that asking the external auditors about the adequacy of internal controls is different from examining agreed-upon procedures of internal controls. He stated that a management level letter is a better and effective option.

**MOTION (Fr. M. Tate/Fr. M. Sherman): To accept as stated. CARRIED UNANIMOUSLY**

**5.3.8. Immediate Recommendation 10: The establishment by the HS and MC of a committee to oversee and report on the progress of the SIC's recommendations. This committee shall consist of one hierarch chosen by the HS, the three OCA corporate officers, and three MC members selected by the MC during their meeting of September 3-5, 2008**

**MOTION (Fr. M. Tate/Fr. J. Reeves): To accept Immediate Recommendation 10 as stated, and that this committee be named on Friday, September 5 at the next HS/MC joint session. CARRIED UNANIMOUSLY**

**5.3.9. Immediate Recommendation 11: The designation of the MC's Ethics Committee as the OCA's ombudsman, a place for whistle-blowers and others to bring concerns without fear of retribution, beginning at the joint session, September 3-5, 2008.**

**MOTION (Dr. F. Skordinski/Fr. M. Matsko): To accept Immediate Recommendation 11 as stated. CARRIED UNANIMOUSLY**

**5.3.10. Immediate Recommendation 12: The establishment of a presentation by the OCA's General Counsel\* to the HS and MC concerning their fiduciary and other legal responsibilities as members of their respective bodies during the 15th AAC and annually thereafter**

\*It was noted that the wording of this recommendation should read "General Counsel," not "legal counsel" as was originally published in the SIC report.

**MOTION (P. Bohelnder/Fr. T. Boback): To accept Immediate Recommendation 12 as amended. CARRIED UNANIMOUSLY**



**5.3.11. Immediate Recommendation 13: The MC's selection of a committee during its September 3-5, 2008 meeting to develop a comprehensive crisis management plan, developing and adopting a policy of immediate action within the Church, and a commitment to provide effective communications with members of the Church, while problems, issues, and crises are being addressed.**

Mr. Bernard Wilson, consultant to the SIC, explained that the reasoning for this recommendation is to deal with a situation quickly, before it gets out of hand. A crisis plan has to be in place before a crisis hits, so that there is a procedure ready when needed. This is especially important as it relates to communicating a message that demonstrates the organization is in good hands, the situation is being handled, and there will be resolution in short order.

**MOTION (Fr. M. Tate/G. Popovich): To accept as stated and that the HS and MC will establish this committee at their next joint session September 5, 2008. CARRIED UNANIMOUSLY**

**5.3.12. Regarding Long-Term Recommendation 1:**

There was discussion as to whether the wording in the SIC report concerning audits of stavropegial institutions was achievable. An alternate wording was suggested and follows.

**MOTION (Fr. M. Tate/Fr. J. Reeves): To accept all six long-term recommendations, noting that Long-Term Recommendation 1's wording regarding the audit of OCA bodies and institutions be amended as follows:**

**“Beginning with calendar year 2008, annual external reviews and/or audits -- at the discretion of the MC -- of all OCA bodies and institutions (including Stavropegial institutions) are to be mandated. Additionally, the financial records of the former Diocese of New York/New Jersey shall be audited. The results of these audits will be presented to the HS and MC and published on the OCA's website within 30 days of their presentation.”**

**CARRIED UNANIMOUSLY**

**6. Legal Issues**

The consensus of the MC was that discussions relating to pending or possible litigation and litigation strategies are confidential, and that such discussions in executive session will not be published in the Minutes.

This session was chaired primarily by Fr. Alexander Garklavs.

## **6.1. Remarks of OCA General Counsel, Mr. Thaddeus Wojcik**

OCA General Legal Counsel, Mr. Thaddeus Wojcik, joined the meeting, beginning his presentation with some general remarks on the role of a General Legal Counsel. Mr. Wojcik noted that although spiritually the Church is the Body of Christ and not a corporation, the Church in America has voluntarily chosen to form a corporation in order to avail itself of certain temporal benefits. Thus, in the eyes of the secular authorities, the OCA it is a corporate entity, whose actions are affected through, and whose interests are protected by, its trustees. While operation by the Church of a corporation avails to the Church certain benefits that otherwise would not be available, it also imposes certain obligations on the Church that otherwise would not be obligatory.

Mr. Wojcik also explained that as General Counsel to the OCA, his role is not necessarily to represent the Church in every legal matter but to oversee all legal aspects of the Church and offer advice either personally or through referrals to other lawyers whose competency is in a given area. General Counsel noted that since he is representing the OCA as a corporation, his advice to the OCA, which must be given through the individuals who legally act on its behalf as its trustees, must always be given having in mind the best interests of that corporation as an entity, without regard to the interests of any individual within the OCA. The General Counsel does not tell the members of the Holy Synod of Bishops or the Metropolitan Council what they must do, but rather what they must do if they want to comply with the laws that pertain to the OCA and to each of them as the fiduciaries of the OCA. The choice whether to follow the law is up to the fiduciaries acting in accordance with their consciences.

Mr. Wojcik then addressed the related questions of who constitutes the OCA's "board of trustees" for New York not-for-profit corporation law, and religious corporation law purposes, and what body within the OCA has the burden of decision-making authority in legal matters. With respect to the former, he opined that, ultimately, legally the OCA's "board of trustees" is the All-American Council since the OCA's Statute and charter provide that the All-American Council is the highest legislative and administrative authority in the OCA; but also that since the All-American Council meets only periodically, the OCA's Statute and charter provide that the Metropolitan Council (which, under the OCA's Statute and charter legally, is the permanent executive body of the OCA's administration) acting together with the Holy Synod of Bishops (which is identified in the OCA's Statute and charter as the supreme canonical authority in the OCA, whose consent is necessary to effectuate any action of the Metropolitan Council) must be understood as effectively the OCA's acting board of trustees between sessions of the All-American Council. In that the HS and MC working together function as the board of trustees in between All-American Councils, he stressed that it is crucial to have synergy between both bodies in order to expedite the decision making process in legal matters.

With respect to the question of what body within the OCA has decision-making authority in legal matters, General Counsel noted that the Statute provides that such authority is in the competence of the MC. However, for practical, day-to-day

purposes, there must be an express understanding and acknowledgement with regard to two questions: (1) from whom does the General Counsel, and any other lawyer representing the OCA, take directions? And (2) to whom do such lawyers generally report? General Counsel noted that in the absence of such an express understanding and acknowledgement, the OCA would be open to legal risks that otherwise would not be present, including the inability to act expeditiously on timely decisions in litigation and other critical legal matters, and he further noted that it was for this reason that the engagement letter between the OCA and Eaton & Van Winkle LLP, the law firm at which Mr. Wojcik works as Counsel, expressly provides for administrative channels of direction and communication.

In discussion on Mr. Wojcik's remarks it was noted that while the Statue identifies the MC as having authority to make decisions on legal matters, it also states that all MC decisions become effective only upon receiving approval of either the Metropolitan or the Holy Synod of Bishops, depending on the specific situation.

MC Legal Committee Chair, Gregg Nescott, underscored that as General Counsel, Mr. Wojcik is counsel to the OCA as a body and not to any one individual or group of individuals within it.

It was also noted by several MC members that according to the job descriptions of the new Chancery executive positions legal issues fall under the responsibilities of the Secretary. Fr. Alexander, as Chancellor, took on legal matters in absence of a secretary over the past year; however, with Fr. Eric G. Tosi in place as Secretary, responsibility for this area should be transitioning to him.

The HS and MC then discussed the issue of the Metropolitan and the Chancellor's recent involvement in pending legal issues that will be discussed at this meeting. Gregory Nescott stated that the Chancery officers did not follow proper procedures in relation to the Metropolitan Council and the mandate of the Legal Committee, apparently at the direction of Metropolitan Herman. Fr. Alexander stated that the reason why His Beatitude made these decisions was that he first wished to clarify the will of both the Metropolitan Council and the Holy Synod in these matters. He also wanted clarification on the purview of these two bodies and of the Legal Committee in these and similar issues.

Metropolitan Council members stated that the manner in which these recent issues have been addressed follows the same pattern of leadership by Metropolitan Herman that was demonstrated within the report of the SIC.

Bishop Nikon asked Mr. Wojcik if he had seen the Proskauer Rose documentation that is kept at the Chancery. He said that the Chancery administration had made it available to him.

In executive session, Mr. Wojcik reviewed the Church's current and pending legal issues. Mr. Wojcik advised that a new lawsuit had been filed against the OCA in August in Nassau County, NY, by Robert Kondratick against the OCA, OCA Communications Director Fr. Andrew Jarmus, and Metropolitan Council Member Dr.

Faith Skordinski. Kondratick seeks \$25,000,000, alleging wrongful dismissal, intentional infliction of mental distress and defamation, among other grounds.

Also in executive session, Gregory Nescott then spoke about the on-going work of the Metropolitan Council Legal Committee.

## **6.2. Report of Mr. Jon Ward**

In executive session, Attorney Jon Ward gave the HS and MC an update on pending legal actions regarding Robert S. Kondratick.

A suit filed by Robert and Elizabeth Kondratick to enforce a disputed “promissory note” (for \$250,000 plus interest) is ongoing in the Nassau County Supreme Court. A judge recently denied their motion for Summary Judgment. Robert Kondratick then assigned his interest in the note to his wife, so she is proceeding alone as sole claimant to the note. The matter is heading toward discovery and depositions, with motions being filed.

The OCA’s counterclaim suit against Kondratick and his family, authorized by the Metropolitan Council and approved by the Holy Synod in May 2008, is continuing. Notice was filed in May, and Kondratick will be served. A complaint, containing specific allegations, is expected to be filed.

The MC and HS authorized counsel to continue these efforts.

There was also discussion in executive session regarding the involvement of other attorneys, beyond the ones currently working through the Legal Committee, in any legal Church matters.

**MOTION (Dr. F. Skordinsi/Fr. J. Tkachuk): Letters of thanks be sent to Attorneys James Perry and Alexandra Makosky for all of their work for the Church.**

**CARRIED -- YES 15 / NO 0 / ABSTAIN 6**

## **6.3. Communications between the central administrative team and the Legal Committee and General Counsel**

Outside of executive session, discussion on legal issues then turned to the question of the accountability of the Church's General Counsel and the MC Legal Committee.

It was noted that when the Legal Committee was established, it was given the mandate to work, in conjunction with Chancery administration, for and on behalf of the MC on legal matters in between meetings of the MC.

Legal Committee chair, Gregory Nescott, outlined the competencies of the members of the committee and of the Church's General Counsel. He stressed that their

opinions, and those of the lawyers with whom they work, need to be trusted, based on their background and expertise. At the same time, there must be synergy between the Metropolitan and Chancery administration on the one hand, and the Legal Committee and General Counsel on the other.

Fr. Michael Tassos stressed that it is crucial for there to be a contact person in the Chancery administration to maintain a direct chain of communication between the two bodies. There should also be regular communications with the Treasurer in order to stay informed about financial implications of Church legal matters.

Gregory Nescott again stressed that the most important issue is that notice of any legal matter that comes into the Chancery must be forwarded to the General Counsel and the Legal Committee.

Mr. Nescott noted that over the past five months since General Counsel and the Legal Committee began working, there has not been one leak regarding legal matters. All parties are taking these matters very seriously.

**MOTION (D. Solodow/Fr. J. Reeves): The MC instructs members of the Administrative Team and the entire MC, and requests members of the HS that General Counsel be informed of any contact with any legal professional in legal matters involving the OCA, in confidence if necessary. CARRIED UNANIMOUSLY**

**MOTION (D. Solodow/G. Nescott): The protocol for the working relationship between General Counsel, the MC Legal Committee, and the Chancery will be as follows. All legal correspondence and questions must be brought to the attention of General Counsel and to the Chair of the Legal Committee. If the matter is agreed by General Counsel and the Legal Committee not to be within the statutory competence of the Committee, then General Counsel will handle the matter in consultation with the Secretary of the OCA. The Secretary shall be the liaison at the Chancery for all legal matters, and shall regularly consult with General Counsel and the Legal Committee concerning such matters.**

**Due to his involvement with the Kondratick litigation to this point, Fr. Alexander Garklavs will continue to be the contact in the Chancery until those matters are resolved. The OCA Treasurer will be kept advised of expenses and potential costs for legal matters. CARRIED UNANIMOUSLY**

#### **6.4. Proskauer Rose**

The MC engaged in an extensive discussion regarding the work that Proskauer Rose has done for the Church and the question of whether or not the firm has released all of its files on the OCA. During this discussion, General Counsel explained that the Legal Committee had authorized him to demand copies of all OCA files held by PR and not previously delivered by PR to the OCA, as such files are necessary for the proper defense of the Kondratick proceedings. General Counsel explained that the

Proskauer Rose attorney, Sarah Gold, refused after several requests to provide him with copies of the OCA's files. General Counsel explained that he was later told by the Chancery that Ms. Gold told Metropolitan Herman that General Counsel had made these demands, and that the Chancery told Ms. Gold that General Counsel did not have the authority that he in fact did have. General Counsel also explained that he was advised by the Chancery that Ms. Gold told Metropolitan Herman that PR had certain OCA files that it could not release but rather that the OCA would be required to pay PR billable hours for a lawyer to be present while OCA personnel copied the files. General Counsel explained that under NY law and according to the rules of professional conduct applicable to NY lawyers, this could not be so, and that PR must deliver all files to the OCA which are the property of the OCA.

**MOTION (Fr. P. Reese/Fr. M. Matsko): The MC authorizes, and the HS approves, General Counsel to demand from PR copies of all files pertaining to Proskauer Rose's representation of the OCA, to which the OCA is entitled under NY law. CARRIED UNANIMOUSLY**

*NOTE: The remainder of agenda items from the HS/MC joint session took place Friday, September 5, 2008.*

## **7. Discussion of Holy Synod Decisions at their September 4, 2008, Meeting**

In response to the question of the timeline for an election of a new Metropolitan, Preconciliar Commission chair, Bishop Nikon said that it is not decided whether or not the election will take place at the upcoming AAC. Archbishop Dmitri said that it is still too early to make a decision, except to say that if the HS feels that this Council is the proper time and place for an election the upcoming AAC is when the election will take place. MC members stressed that, should the election not take place at the upcoming AAC, it will be important for the Church at large to know what the reasoning is for this decision. The HS noted that there is a meeting next month, in October; this will give the hierarchs time to consider a best possible course and make an announcement.

An MC member asked about what action the HS would take regarding Robert S Kondratick's current involvement in an OCA parish of the Diocese of the South. It was noted that allowing Mr. Kondratick to be involved in the administration of a parish, given all that has come to pass, could put the Church in legal jeopardy. Archbishop Dmitri stated that he will ensure that Mr. Kondratick is not an employee of any parish in the OCA.

Members of the MC asked the HS if any other disciplinary action would be taken against Metropolitans Theodosius and Herman, and Frs. Kucynda, Oselinsky and Strikis. In a very open, candid and respectful discussion, members of the HS offered responses. Bishop Benjamin said that there are limits within which the HS can exercise canonical disciplinary actions. Moreover, the HS is not a body involved in handing out justice, but in doing what is best for the Church and for the salvation of

all of those involved. There might be those who want to see perpetrators suffer in some way for their transgressions; however, actions taken were not punishments, but frameworks for repentance and healing.

It was also noted by Archbishop Job that the expression of gratitude to Metropolitan Herman in their statement concerning his retirement was for his episcopal ministry, which spans 35 years, and not solely his ministry as OCA Metropolitan.

It was mentioned that, in addition to Mr. John Kozey, Protodeacon Eric Wheeler was another individual who was attacked for speaking out about financial mismanagement at the Chancery. It was suggested that Protodeacon Eric also be acknowledged in some way. In addition, it was stated that there were other individuals in the Church that were hurt and that the HS should do whatever it can to address this. Bishop Tikhon said that the way that we deal with issues like this is to deal with the person, to “see their face,” and not by classifying them as impersonal factions. The desire of the HS is to move forward in this way and this will bear the fruit of restoring mutual respect and trust.

Regarding how he has been treated by other members of the HS, Archbishop Job stated that he never felt vilified by the Synod. A long-standing problem was that personal opinions were not encouraged and that meeting records were changed after the fact to adjust history. He also noted that the open, candid and very fruitful deliberations of the Holy Synod at their September 4 meeting were “almost unprecedented.” Bishop Benjamin said “I really feel the Holy Spirit working in our Church over the past few days. We have faced the ugliness and we can move on.” Bishop Nikon stressed that there really is a sense of brotherhood among the hierarchs and there is an atmosphere conducive to nurturing this feeling among the hierarchs.

Speaking about the recommendations outlined in the SIC report, Bishop Benjamin noted that some of them have already been addressed and others will be discussed at the October 2008 HS session.

## **8. AAC Report**

Bp. Nikon spoke of the work of the Preconciliar Commission to date, offering updates on the series of Town Hall Meetings that took place over the months of July and August. He spoke very optimistically about the possibilities of the AAC being a time of healing and renewal for the Church.

Fr. Alexander Garklavs outlined the latest proposed agenda. This agenda was prepared before the announcement of Metropolitan Herman’s retirement and thus the context has changed; should the election for Metropolitan be called for the 15<sup>th</sup> AAC, a new agenda will be considered.

Several MC members spoke about the reconsideration of the liturgical schedule of the Church to involve a concrete act of reconciliation before the Eucharist is celebrated; a number of suggestions were discussed.

Regarding a question about the presence of alternate delegates at the AAC, it was clarified that alternate delegates function only if the delegate cannot attend the Council. If the alternate chooses to attend the Council while the delegate can attend, the alternate can only attend as an observer.

Fr. Eric Tosi noted that one of the challenges the PCC is facing is fitting in the statutory requirements of meetings, together with the requirements set out in not-for-profit laws, which must be included in the Council.

**Logistics/Operations Report (see attached)**

**MOTION (D. Solodow/R. Schneider): To accept Fr. Eric's report as presented.  
CARRIED UNANIMOUSLY**

**MOTION to adjourn: Fr. J. Reeves**

**Adjournment Friday, September 5, 2:00 PM.**