

**THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

The Rev. Dr. Brian John, **Appellant**

v.

The Presbytery of New York City, **Appellee**

Decision and Order

Remedial Case 225-05

Arrival Statement

This is an appeal to the General Assembly Permanent Judicial Commission (GAPJC or this Commission) filed by the Rev. Brian John (Appellant) from a February 1, 2021, decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC), titled “Final Determination of the Preliminary Questions.” The SPJC officers initially issued a preliminary order accepting the case for trial, finding that the preliminary questions (D-6.0305) were answered in the affirmative. The Presbytery of New York City (Presbytery or Appellee) challenged that preliminary order; following a hearing, the SPJC sustained the challenge in part, dismissing the complaint for failure to be filed in a timely manner.

Jurisdictional Statement

This Commission finds that it has jurisdiction, Appellant has standing to file the appeal, the appeal was properly and timely filed, and the appeal states one or more of the grounds for appeal set forth in D-8.0105.

Appearances

Appellant was present and was represented by Ruling Elder Vivia L. Joseph, counsel. Appellee was represented by Ruling Elder John M. Griem, Jr., counsel, and a committee of counsel consisting of the Rev. Moses Biney, the Rev. David Brettell, and Ruling Elder Yvonne Winter. Presbytery Stated Clerk Ruling Elder Warren McNeill was also present for the hearing.

History

Appellant Rev. John was installed to serve as pastor of Eastchester Presbyterian Church (EPC), effective January 2, 2018. At some point in 2019, the Commission on Ministry (COM) of

the Presbytery began to work with the EPC Session (Session) and its called pastor, Appellant, to reconcile their differences. The COM invited Appellant and the Session to attend its January 14, 2020, meeting, but Appellant did not attend. He and his legal counsel later met with the COM on March 19, 2020. On June 5, 2020, Appellant was notified by email sent from the COM to the Session, informing them of a called session meeting, on June 11, 2020, to decide whether the Session should call a congregational meeting to determine whether to dissolve the pastoral relationship. The COM appointed a moderator, the Rev. Stephen Phelps, for the June 11, 2020, meeting.

On June 11, 2020, the Session met and voted to call a congregational meeting on Sunday, July 5, 2020. The clerk of session sent a letter to the congregation on June 20, 2020, stating that the purpose of the meeting would be “to consider a resolution to dissolve pastoral relations with Rev. Dr. Brian John and to inform the congregation of some of the experiences of church members which led the Session to call this meeting.” Three pages of the letter listed “examples of concerns raised by members of the congregation.” The letter concluded with a statement that the Session “recommends that the congregation vote in the affirmative on the following question: Shall the congregation of Eastchester Presbyterian Church request that the Presbytery of New York City dissolve the pastoral relation with Rev. Dr. Brian John?” The COM appointed, on June 30, 2020, Rev. Phelps to moderate the called congregational meeting on July 5, 2020. Appellant opposed the appointment of a moderator in an email to the Presbytery.

Appellant maintains that he was not invited to the July 5, 2020, meeting and not afforded an opportunity to be heard; he was not provided with the logon information for the virtual congregational meeting. Presbytery states that he was informed of the meeting by text and voicemail messages “informing [him] of the meeting and inviting him to discuss the terms of his call.” On July 5, 2020, the congregation voted to request that the Presbytery dissolve the pastoral relationship. Following the congregational meeting, the COM met on July 7, 2020, and “concurred” with the vote of the congregation to dissolve the pastoral relationship, stating that it would make the dissolution effective on July 7, 2020. This action was communicated to Appellant in a July 8, 2020, letter from the executive presbyter.

At the next stated Presbytery meeting on September 26, 2020, the COM reported on its actions to dissolve the pastoral relationship. The COM did not present a recommendation for the Presbytery to take a vote on dissolving the pastoral relationship. Instead, COM liaison Ruling Elder John Gingrich provided a report on the congregational meeting of July 5, 2020, and the Presbytery took action to accept his report and “act to concur with the request from Eastchester Presbyterian Church to dissolve the pastoral relationship between [it] and Rev. Dr. Brian John, effective July 7, 2020.”

On October 7, 2020, Appellant filed a remedial complaint with the SPJC under D-2.0202, alleging an irregularity on the part of the Presbytery. In summary, he requested the following relief:

- (i) That EPC’s action, through its clerk of session, to seek appointment of a moderator without a request from two members of the Session to Appellant, be deemed an irregularity and in violation of G-1.0502, G-2.09, G-2.0901, G-2.0903, G-3.0104, G-3.0201, and G-3.0203 of the *Book of Order*;

- (ii) That COM's approval of the request from the Session to appoint a moderator for the June 11, 2020, meeting, without a vacancy in the pulpit, be deemed an irregularity and in violation of G-1.0502, G-2.09, G-2.0901, G-2.0903, G-3.0104, G-3.0201, and G-3.0203 of the *Book of Order*;
- (iii) [same as ii];
- (iv) That the letter to the EPC congregation informing them of the congregational meeting on July 5, 2020, "which instructed them to vote in the affirmative to dissolve the pastoral relationship" be deemed improper;
- (v) That COM actions on July 7, 2020, to dissolve Appellant's pastoral call be deemed an irregularity and in violation of Standing Rule VIII (E) (4) and G-1.0502, G-2.09, G-2.0901, G-2.0903, G-3.0104, G-3.0201, and G-3.0203 of the *Book of Order*;
- (vi) That the July 8, 2020, letter from the executive presbyter informing Appellant of the dissolution of the pastoral relationship be deemed irregular, out of order, and in violation of G-1.0502, G-2.09, G-2.0901, G-2.0903, G-3.0104, G-3.0201, and G-3.0203 of the *Book of Order*;
- (vii) That the PJC issue a ruling that Appellant's call has not been dissolved and that he remains the duly installed pastor of EPC;
- (viii) That EPC and Presbytery be held jointly and severally responsible to compensate Appellant for all unpaid salary and benefits from July 8, 2020, up to and including a determination of his complaint;
- (ix) And that the PJC issue a ruling that Appellant has been damaged by the combined actions of the Presbytery, its COM, the EPC Session and the EPC congregation and that Appellant be compensated in an amount equal to his unpaid salary and benefits or such amount as determined by the PJC.

Appellant also requested a stay of enforcement of the report of the COM as approved in the stated presbytery meeting on September 26, 2020, but no stay was entered. Following the requirements of D-6.0103b and c, the SPJC executive committee reported its findings as to the preliminary questions within seven days of their receipt of the request. The executive committee issued its determination of the preliminary questions on October 13, 2020, answering all four questions in the affirmative. Presbytery's answer to the complaint was due on November 22, 2020, but it received an extension to January 7, 2021. In its answer, Presbytery challenged three of the preliminary question determinations: the SPJC's jurisdiction, the complaint's timeliness, and whether the complaint stated a claim upon which relief could be granted.

The parties appeared before the SPJC to address the challenge to the preliminary questions on February 1, 2021. After deliberations, the SPJC ruled that it had jurisdiction over those parts of the complaint that concern the Presbytery, that Appellant had standing (although this was not challenged by Presbytery), and that the complaint stated a claim upon which relief can be granted. However, the SPJC ruled that the complaint was not filed in a timely manner "because it was filed more than 90 days after July 7, 2020, the date of the challenged action, when the [COM] voted to dissolve the pastoral relationship."

Appellant filed his appeal with the GAPJC on February 25, 2021. On April 13, 2021, a Preliminary Order for Hearing was issued, indicating that Appellant has standing to file, this

Commission has jurisdiction to hear the appeal, the appeal is timely filed, and the appeal states one or more of the grounds for appeal under D-8.0105.

This Commission heard oral arguments in a hearing by videoconference on October 8, 2021.

Specifications of Error

Specification of Error No. 1: Pursuant to D-8.0105g, the Permanent Judicial Commission of the Synod of the Northeast erred in constitutional interpretation, to wit: because the COM is not the Presbytery, and, therefore, it has no authority to dissolve the pastoral relationship, the SPJC's reliance on the actions of COM at its July 7, 2020, meeting was itself fatally flawed (G-3.0109, D-2.0901).

This specification of error is sustained.

See discussion below, Specification of Error No. 2.

Specification of Error No 2: Pursuant to D-8.0105g, the Permanent Judicial Commission of the Synod of the Northeast erred in constitutional interpretation, to wit: because the COM has no authority to dissolve a pastoral relationship, the SPJC improperly determined that the date for calculating the time for the Appellant to file his complaint was July 7, 2020, the date of COM's meeting.

This specification of error is sustained.

At the center of this appeal is whether the alleged irregularity—the action of the Presbytery to dissolve the pastoral relationship—occurred on July 7, 2020, on which date the Presbytery's COM acted to effect said dissolution, or on September 26, 2020, on which date the Presbytery took action to “concur with the request from Eastchester Presbyterian Church to dissolve the pastoral relationship between Eastchester Presbyterian Church and Rev. Dr. Brian John, effective July 7, 2020” (Minutes, Presbytery of New York City, September 26, 2020, Stated Meeting, p. 62). If the former is held to be the effective date of the action, then the remedial complaint is untimely, as the ninetieth day after the COM action was October 5, 2020.

The timeliness issue is linked to the question of whether the COM was in fact sufficiently constituted as an administrative commission and authorized to dissolve the pastoral relationship. The Presbytery's Standing Rules clearly provide that the COM is constituted as an administrative commission under the provisions of G-3.0109. Remaining therefore is the question of the adequacy of its authorization to dissolve a pastoral relationship.

G-3.0109b states that “[a]dministrative commissions are designated to consider *and conclude* matters not involving ecclesiastical judicial process...”(emphasis added). A presbytery may create an administrative commission and designate it with authority to dissolve a pastoral relationship. G-3.0307 specifically permits a presbytery to delegate such matters of oversight in

pastoral relations as the dissolution of relationships to “entities within the presbytery.” See *Sundquist, et al. v. Heartland Presbytery* (2008, 219-03). Thus, Specification of Error No. 1 is incorrect insofar as it makes a general assertion that a COM has no authority to dissolve a pastoral relationship.

However, G-3.0109, in dealing with the general creation of commissions, provides that “[t]he designating council shall state specifically the scope of the commission’s powers and any restrictions on those powers.” G-3.0109b(5) further specifies that presbyteries may form administrative commissions for the purpose of

visiting particular ... congregations... over which they have immediate jurisdiction reported to be affected with disorder, and inquiring into and settling the difficulties therein, *except that no commission of a presbytery shall be empowered to dissolve a pastoral relationship without the specific authorization of the designating body* (G-2.0901) (emphasis added).

Moreover, in *Sundquist*, this Commission held that “an administrative commission may not dissolve a pastoral relationship without adhering to the requirements of G-11.0103o [now G-3.0301a] and G-9.0505b(2) [now G-2.0903 and G-2.0904].”

The record in this case provides no indication that the COM was given “specific authorization” to dissolve the pastoral relationship between Appellant and EPC. Neither do the Standing Rules grant to the COM even a generic authority to dissolve pastoral relationships. The COM thus lacked the necessary constitutional authority to dissolve the pastoral relationship, and its decision cannot be regarded as the date of the Presbytery’s action to dissolve the pastoral relationship. Specification of Error No. 1 is correct on this point and is therefore sustained.

Standing Rule E.4.f. empowers the COM to “*recommend* dissolution of pastoral relationships in appropriate situations” (emphasis added). The authority to recommend dissolution is neither equivalent nor tantamount to the authorization to dissolve, and further action on the part of the Presbytery is required. The Presbytery minutes do indicate that the Presbytery’s action was, in relevant part, to “[a]ccept the COM report from Liaison Elder John Gingrich and *act to concur with the request* from Eastchester Presbyterian Church to dissolve the pastoral relationship...” (Minutes, p. 62, emphasis added). This language suggests that the Presbytery itself understood that it was finalizing the pastoral dissolution requested by EPC under the terms of G-2.0903. Thus the date of the pastoral dissolution—the alleged irregularity—is September 26, 2020, Appellant’s complaint was timely filed, and Specification of Error No. 2 is sustained.

Of paramount importance in this matter is the presbytery’s responsibility to provide *specific* authorization to dissolve a particular pastoral relationship (G-3.0109b(5)).

This Commission has previously cautioned councils of the church regarding the need for specific authorization of commissions. In *Anderson v. Central Florida Presbytery* (1990, 203-2), this Commission affirmed the power of an administrative commission to dissolve a pastoral relationship in the Winter Park Presbyterian Church when it held that the presbytery “fulfilled the requirement for specificity required in the *Book of Order* G-9.0502b [now G-3.0109b(5)] when it established an Administrative Commission to ‘inquire into and settle the difficulties’ in the Winter Park Presbyterian Church.” In *Anderson*, a commission was specifically charged to

address concerns in a particular congregation; it was not a commission with general authority throughout the presbytery. The specific authorization necessary to dissolve a pastoral relationship was implied in the limitation of the commission's charge to matters affecting a particular congregation. This Commission further advised that "in order to avoid misunderstanding," a presbytery should "state with particularity in the order of appointment any limitations or restrictions on the powers delegated to the administrative commission." G-3.0109 requires councils to "state specifically the scope of authority given to a commission... and any restrictions on its powers" (*Suarez-Valera v. Presbiterio del Noroeste* (2020, 225-02)).

Finally, this Commission notes with concern that both the COM in its action on July 7, 2020, and Presbytery in its actions of September 26, 2020, used the term "concur" in consideration of the request to dissolve the pastoral relationship. Such language is inappropriate because the presbytery's responsibility is to dissolve (or not dissolve) a pastoral relationship (G-3.0301a), rather than to concur with requests to dissolve. To indicate otherwise is to confuse the sole authority of a presbytery to dissolve a pastoral relationship by suggesting that the dissolution is within the power of a congregation or pastor.

Specification of Error No 3: Pursuant to D-8.0105g, the Permanent Judicial Commission of the Synod of the Northeast erred in constitutional interpretation, to wit: the SPJC's finding that only "¶59.vii" states a claim to the exclusion of the other paragraphs in the Complaint was arbitrary and capricious especially given the SPJC has jurisdiction over the Presbytery which extends to all other claims stated in the Complaint and there is nothing that distinguishes this "¶59.vii" from the remaining sub-paragraphs, which are all like-minded arising from the same facts and circumstances. SPJC determined, without a trial, that the only paragraph which stated a cause of action was limited to only one of the reliefs sought.

This specification of error is neither sustained nor not sustained.

As the SPJC found, the complaint states at least one claim upon which relief can be granted. The SPJC did not rule out of consideration any claims for relief, and neither does this Commission.

Decision

This case is yet another reminder to councils of the vital importance of creating adequate and appropriate charges to administrative commissions before setting them to their tasks. Had the presbytery charged the COM at any point prior to July 7, 2020, with the authority to dissolve this pastoral relationship, this appeal may have been decided differently. In charging such commissions with the power of dissolution, presbyteries should be mindful of the requirements of G-2.0901 and G-2.0903 to provide for the necessary consultations with pastor, session, and congregation, and to provide opportunity for the pastor to be heard should the pastor not concur in the request of a congregation to dissolve.

In the event that such matters arise unexpectedly or when the time for a stated meeting of presbytery is still at some distance, presbyteries are reminded of their power to call special meetings as deemed necessary (G-3.0203). A presbytery may place a pastor on administrative leave for reasons other than sexual abuse provided that (a) it has an “adequate comprehensive administrative leave policy with a list of types of allegations that trigger an immediate leave as an explicit agreement between the teaching elder, congregation, and presbytery,” or (b) in the absence of such a policy, the leave is approved by the congregation as a change in the terms of call. See *Minutes*, 220th General Assembly (2012), Item 06-09.

A key question is whether a complaint is timely filed. D-6.0202a specifies that a complaint shall be filed “within ninety days after the alleged irregularity has occurred.” This Commission observes a recurring complexity in remedial cases involving actions of administrative commissions. Commissions, unlike councils, may meet irregularly and do not always immediately publicize their decisions. In order to file a timely complaint under D-6.0202a, potential complainants would have to be aware that an action has been taken and when. But many with standing to complain against a commission’s actions do not learn about the action until much later—sometimes even more than ninety days later.

Even though actions of administrative commissions take effect immediately and are effectively the actions of the council that designated them, the *Book of Order* explicitly requires those actions to be reported to the council’s next stated meeting (G-3.0109). From this point forward, in the interest of clarity and fairness, this Commission interprets D-6.0202a to mean that, regardless of the effective date of the decision of an administrative commission, the deadline for filing a remedial complaint is ninety days after the date of the meeting of the council when the administrative commission’s action is reported.

In deciding to sustain Specifications of Error Nos. 1 and 2 and neither to sustain nor not to sustain Specification of Error No. 3, this Commission does not reach a decision on the central claims of the original case, to wit: that the COM did not provide an opportunity for the pastor to be heard on the matter of dissolution per G-2.0903 prior to its vote on September 26, 2020, or that the actions of Presbytery constitute an irregularity under said provision. Rather, this ruling focuses on the narrower question of the date of the Presbytery’s action to dissolve and whether the complaint against that action was timely filed. In finding that the Presbytery failed adequately to charge its COM with specific authority to dissolve the pastoral relationship in this case (or to document that charge) and thus that the date of the action to dissolve was September 26, 2020, we find only that Appellant’s remedial complaint was, in fact, timely filed. Questions of the adequacy of the Presbytery’s actions under G-2.0903 are matters for trial by the SPJC.

Order

IT IS THEREFORE ORDERED that the decision of the Synod of the Northeast Permanent Judicial Commission is reversed and remanded to the SPJC for trial.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of New York City report this Decision to the Presbytery of New York City at the first meeting after receipt, that the Presbytery of New York City enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this Decision to the Synod of the Northeast at the first meeting after receipt, that the Synod of the Northeast enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

Absences and Non-Appearances

The commissioner positions from the Synod of Alaska-Northwest and the Synod of the Trinity were vacant. The Commission notes with sadness the death of Commissioner Jean C. Kennedy from the Synod of the Trinity on September 25, 2021, and rejoices at her inclusion in the glorious company of the saints in light.

Opinion Concurring in Part and Dissenting in Part

We concur in the majority's decision in this appeal to reverse the decision of the Synod of the Northeast Permanent Judicial Commission and remand the matter for trial by that body. We concur in their finding that Appellant's original remedial complaint was timely filed, on the grounds that the Presbytery failed adequately to authorize its COM to dissolve the pastoral relationship in question, and therefore that the actions of the COM cannot be regarded as the date of the dissolution in this case. We further concur in the majority's strong reminder to councils of the importance of adequate and specific authorization for administrative commissions empowered to dissolve pastoral relationships.

We dissent, however, from the majority's interpretation of D-6.0202a. The majority holds that the period within which a remedial complaint may be filed against the action of an appropriately constituted and authorized administrative commission ends ninety days after the next stated meeting of the council which appointed the commission and to which that commission makes its report. As we read the statute, this interpretation is untenable.

D-6.0202a is clear that the ninety-day period within which a complaint may be filed begins with the date on which the irregularity occurred. The majority's interpretation implies that the irregularity is the action of the presbytery to receive the report, an action specifically mandated by G-3.0109. Instead, any alleged irregularity on the part of a commission would have been committed on the date the commission took the action reported. The date of the commission's action—and not the date of its report to the next stated meeting of the council—is therefore the appropriate date to begin the ninety-day period.

To interpret D-6.0202a as the majority does is to extend the time period for filing a remedial complaint well beyond the statutory ninety days. Indeed, in this era in which councils are meeting less frequently (in some cases as few times as once a year), such an interpretation might convert a three-month filing deadline into a substantially longer time. This interpretation renders any action of an administrative commission remediable well beyond the specified limits of the Rules of Discipline and potentially obstructs the constitutional governance of the church.



Paul Hooker



Dave Goss



Linda Windy Johnston



Diana Moore

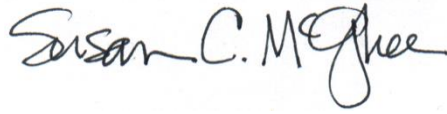


James C. Pak

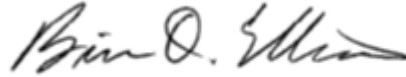
Certificates

We certify that the foregoing is a true and correct copy of the Decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 225-05, the Rev. Dr. Brian John, Appellant v. Presbytery of New York City, Appellee, deliberating by videoconference under the provisions of 6.02.90e of its Manual of Operations, made and announced in Louisville, Kentucky, this 10th day of October, 2021.

Dated this 10th day of October, 2021.



Susan C. McGhee, Moderator
General Assembly Permanent Judicial Commission

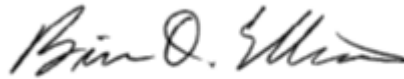


Brian D. Ellison, Clerk
General Assembly Permanent Judicial Commission

I certify that I did transmit a certified copy of the foregoing to the following persons by electronic mail and, directing Flor Vélez-Díaz to deposit it in the mail in Louisville, Kentucky,

Brian John, Appellant
Vivia Joseph, Appellant Counsel
John M. Griem, Jr., Representing the Committee of Counsel for Appellee
Stated Clerk, Presbytery of New York City
Stated Clerk, Synod of the Northeast
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it by electronic mail to Flor Vélez-Díaz, on October 10, 2020.

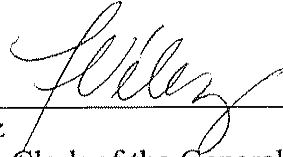


Brian D. Ellison, Clerk
General Assembly Permanent Judicial Commission

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in Louisville, Kentucky, on October 10, 2021, in Remedial Case 225-05, the Rev. Dr.

Brian John, Appellant v. Presbytery of New York City, Appellee, and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, Kentucky, on October 10, 2021.



Flor Vélez-Díaz
Assistant Stated Clerk of the General Assembly,
Presbyterian Church (U.S.A.)
and Manager of Judicial Process and Social Witness