

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

The Rev. Dr. Brian John, **Appellant/Cross-Appellee**

v.

The Presbytery of New York City, **Appellee/Cross-Appellant**

Decision and Order

Remedial Case 226-02

Arrival Statement

This is an appeal to the General Assembly Permanent Judicial Commission (GAPJC or this Commission) filed by the Rev. Dr. Brian John (Rev. John or Appellant/Cross-Appellee) from a decision issued on April 30, 2022, by the Permanent Judicial Commission of the Synod of the Northeast (SPJC). Both Rev. John and the Presbytery of New York City (Presbytery or Appellee/Cross-Appellant) appealed the SPJC’s decision to the GAPJC.

Jurisdictional Statement

This Commission finds that it has jurisdiction, both Appellant and Cross-Appellant have standing to file the appeals, the appeals were properly and timely filed, and the appeals each state one or more of the grounds for appeal set forth in the *Book of Order*, D-8.0105.

Appearances

Appellant/Cross-Appellee was present and was represented by Ruling Elder Vivian L. Joseph, counsel. Appellee/Cross-Appellant was represented by Ruling Elder John M. Griem, Jr., counsel, and a committee of counsel consisting of the Rev. David Brettell and Ruling Elder Yvonne Wynter. Presbytery Stated Clerk Ruling Elder Warren McNeill was also present for the hearing.

History

Rev. John was installed to serve as pastor of Eastchester Presbyterian Church (EPC), Bronx, New York, effective January 2, 2018. At some point after his arrival, concerns arose in the congregation about aspects of Rev. John’s pastoral ministry. In 2019, the Commission on Ministry (COM) of the Presbytery began to work with the EPC Session (Session) and Rev. John to address those concerns. The COM invited Rev. John and the Session to attend its January 14, 2020, meeting, but Rev. John did not attend. Rev. John and his legal counsel later met with the COM on March 19, 2020. On June 5, 2020, the clerk of the Session sent an email to Rev. John and the Session informing them of a session meeting called by COM for June 11, 2020. The

purpose of this meeting was to consider calling a congregational meeting related to dissolving the pastoral relationship. The COM appointed a moderator, the Rev. Stephen Phelps, for that session meeting. At that meeting, the Session voted to call the congregational meeting for July 5, 2020.

On June 20, 2020, the clerk of the Session sent a letter to the congregation 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 relationship with Rev. Dr. Brian John?”

On June 30, 2020, the COM appointed Rev. Phelps to moderate the congregational meeting which was scheduled for July 5, 2020. Rev. John stated his opposition to the appointment of Rev. Phelps as moderator in an email to the Presbytery.

Rev. John maintains that he was not invited to the July 5, 2020, congregational meeting and not afforded an opportunity to be heard; he states he was not provided with the login information for the virtual congregational meeting. The Presbytery states that Rev. John 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 EPC congregation voted by a large majority to request that the Presbytery dissolve its pastoral relationship with Rev. John. Following the congregational meeting, the COM met on July 7, 2020, and “concurred” with the congregation’s vote. The COM stated that it would make the dissolution effective July 7, 2020. The Presbytery’s executive presbyter communicated the COM’s actions to Rev. John in a letter dated July 8, 2020.

At the next stated Presbytery meeting on September 26, 2020, the COM liaison reported that COM appointed a moderator for the congregational meeting, at which the congregation voted to request dissolution of the pastoral relationship. COM further reported its decision to “concur” with the vote of the congregation “to dissolve the pastoral relationship between [it] and Rev. Dr. Brian John, effective July 7, 2020.” The COM did not ask the Presbytery to vote on a specific recommendation to dissolve the pastoral relationship. Rather, the Presbytery voted to accept the full COM report.

On October 7, 2020, Rev. John filed a remedial complaint with the SPJC under D-2.0202, alleging an irregularity on the part of the Presbytery. Rev. John also requested a stay of enforcement of the dissolution of the pastoral relationship, but no stay was entered.

After the SPJC Executive Committee answered all four preliminary questions in the affirmative, the Presbytery challenged the SPJC Executive Committee’s decisions on the preliminary questions to the full SPJC. 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 the Presbytery), and that the complaint stated a claim upon which relief can be granted. The SPJC also ruled, however, 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.”

Rev. John appealed the full SPJC’s decision on the preliminary questions to this Commission. In a Decision and Order dated October 10, 2021, this Commission reversed the SPJC decision and remanded the case to the SPJC for trial. In its Decision and Order, this Commission stated that it

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.

On April 25, 2022, the SPJC conducted the trial ordered by this Commission. In a decision and order dated April 30, 2022, the SPJC concluded that the pastoral relationship was rightfully dissolved by the Presbytery on September 26, 2020. It further found that Rev. John is entitled to the salary and benefits he would have received during the period from July 8, 2020, to September 26, 2020, and ordered the Presbytery to pay Rev. John “the amount of benefits and salary owed for that period, less any amount already received.”

Rev. John appealed from the SPJC’s decision to this Commission on April 30, 2022. The Presbytery cross-appealed from the SPJC’s order for Presbytery’s payment of salary and benefits on June 7, 2022. The GAPJC hearing on the appeal and cross-appeal occurred in person in Louisville, Kentucky, on October 28, 2022.

Introduction to Specifications of Error

Permanent judicial commissions have long-standing and broad authority to restate, group, consolidate, and summarize, but not omit, specifications of error presented in an appeal for purposes of clarity (D-8.0404d). See *Lewellen v. Presbytery of Los Ranchos* (2017, 223-03).

In the notice of appeal, Appellant alleges four specifications of error, one of which has multiple parts. This Commission has summarized Appellant’s specifications of error as follows:

Specifications of Error in the Appeal

Specification of Error No. 1 (Appeal): Pursuant to D-8.0105g, the SPJC erred in constitutional interpretation when it determined that the July 5, 2020, congregational meeting was properly called pursuant to G-2.0903.

This specification of error is not sustained.

G-2.0903 establishes the procedure for the calling of a congregational meeting when a congregation desires a pastoral relationship to be dissolved:

When a congregation requests the session to call a congregational meeting to dissolve its relationship with its pastor, the session shall call the meeting and request the presbytery to appoint a moderator for the meeting. If the pastor does not concur with the request to dissolve the relationship, the presbytery shall hear from him or her the reasons why the presbytery should not dissolve the relationship. If the pastor fails to appear, or if the reasons for maintaining the relationship are judged insufficient, the relationship may be dissolved.

This Commission agrees with the SPJC that the Presbytery properly applied G-2.0903, having received a request from the Session, which reported concerns from several members and asked the Presbytery for intervention. After several months of interaction among Rev. John, the Session, and the COM, the Session adopted a resolution calling for a special meeting of the congregation to consider dissolution of the pastoral relationship.

Specification of Error No. 2 (Appeal): Pursuant to D-8.0105g, the SPJC erred in constitutional interpretation when it determined that the Appellant was shown fundamental fairness, including having opportunity to be heard.

This specification of error is not sustained.

Appellant argues that he was denied *due process* in the Presbytery's decision to dissolve the pastoral relationship. When a presbytery decides to dissolve a pastoral relationship, it is exercising its administrative powers, not judicial powers. Therefore, the appropriate safeguards are those required to ensure *fundamental fairness*. Fundamental fairness is defined as "the opportunity to be heard and a consideration of [all participants'] respective positions without prejudice" (*Lewis v. Presbytery of New York City* (PJC, 1995, 207-13)). This Commission agrees with the SPJC and finds that Rev. John was shown fundamental fairness throughout this process.

In its decision, the SPJC found that Rev. John was aware of the Session's letter to the congregation dated June 20, 2020, calling for a congregational meeting on July 5, 2020, to discuss dissolution of the pastoral relationship. Rev. John testified that he did not attend the congregational meeting. Rev. John attended the Presbytery meeting on September 26, 2020; he had an opportunity to be heard, and he did speak at the meeting. From the beginning of the Presbytery's engagement with the congregation, Rev. John had several other opportunities to present his opposition to dissolution of the pastoral relationship to the COM and the Presbytery.

Specification of Error No. 3 (Appeal): Pursuant to D-8.0105g, the SPJC erred in constitutional interpretation when it determined that the COM's appointment of a moderator for meetings of the session and congregation was not irregular.

This specification of error is not sustained.

There is potential confusion between related provisions in the *Book of Order*: G-1.0504 and G-3.0104, which apply a general rule for who shall serve as moderator, and G-2.0903, which deals specifically with a congregation's request for dissolution of the pastoral relationship.

Appellant's argument relies on G-1.0504, which pertains to congregational meetings (as well as G-3.0104, pertaining to councils including sessions): "The installed pastor shall ordinarily moderate all meetings of the congregation." G-1.0504 and G-3.0104 further instruct that if it is "impractical" for the installed pastor to moderate, or if the pastor is "unable" to name another moderator, then the presbytery shall make provisions for a moderator.

In contrast, G-2.0903 specifically applies to congregational meetings when a congregation has requested the dissolution of the pastoral relationship, as in this case. Because G-2.0903 offers greater specificity and is more pertinent to these circumstances, it has priority over the other more general provisions. G-2.0903 anticipates the appointment of a moderator by the presbytery for such a congregational meeting.

This Commission also finds no error in the appointment of a moderator for the Session meeting. The SPJC found evidence to support a conclusion that the Presbytery appropriately appointed a moderator, discerning that Rev. John's lack of cooperation rendered it "impractical" for him to moderate, in accordance with G-3.0104.

Specification of Error No. 4 (Appeal): Pursuant to D-8.0105g, the SPJC erred in constitutional interpretation when it determined that the Presbytery's action at its September 26, 2020, meeting was sufficient to dissolve the pastoral relationship.

This specification of error is not sustained.

G-2.0903 is not specific as to the procedure required for a presbytery to dissolve the pastoral relationship. Appellant argues that the Presbytery's action was not sufficient because there was not a vote specifically on a motion to dissolve the pastoral relationship. The SPJC held that the presbytery action, which included a vote to accept the COM report, was sufficient and was tantamount to an affirmative vote by the Presbytery to dissolve the pastoral relationship. According to the SPJC decision's "Findings of Fact":

The COM report to the September Presbytery Meeting included the actions taken by COM to appoint a moderator for the Congregational Meeting and COM's decision to concur with the vote of the EPC Congregation to dissolve the pastoral relationship with Complainant. COM's actions with respect to complainant generated considerable discussion and debate, and additional time was put on the docket to discuss the dissolution of Complainant's call.

Both the minutes of the September Presbytery Meeting and testimony at trial confirm that Complainant himself participated in the debate, availing himself of the opportunity to articulate his position. During the September Presbytery Meeting, the PNYC accepted the COM report.”

A clearer procedure would have been for the COM to have brought specific recommendations for a vote by the Presbytery. Still, in this case, the SPJC found that the Presbytery’s intent to dissolve the pastoral relationship was clear. Factual findings of a lower judicial body are presumed correct and “are not to be disturbed on appeal unless they are plainly wrong, without supporting evidence or manifestly unjust” (*Chesterbrook v. National Capital Presbytery* (2006, 217-12, p. 10), citing *Hardwick v. Permanent Judicial Commission of the Synod of North Carolina* (Minutes, 1983, p. 45)). Nothing in the record before this Commission suggests the Presbytery’s will was not done.

Decision in the Appeal

With regard to Appellant’s claims, this Commission affirms the SPJC decision.

The Constitution provides guidance for living in covenantal relationships within the church. Especially in times of conflict, procedures that honor those relationships, and the individuals within them, are needed in order to be faithful to Christ’s call for unity and justice. The relationship among a pastor, a congregation, and a presbytery is foundational, and dissolutions, though they can be difficult, do occur in the life of the church.

This Commission finds that the Presbytery’s process of dissolving the pastoral relationship between EPC and Rev. John, though imperfect, largely honored its covenantal obligations toward both Rev. John and EPC. This Commission commends the efforts of the Session, as reflected in the record, attempting to address its concerns about Rev. John’s pastoral ministry with him personally, while also seeking the guidance of the COM in good faith. This Commission finds that the Presbytery fulfilled the constitutional requirements for dissolving a pastoral relationship.

Specification of Error in the Cross-Appeal

Specification of Error (Cross-Appeal): Pursuant to D-8.0105g, the SPJC committed an error in constitutional interpretation when it ordered the Presbytery to pay monetary damages.

This specification of error is sustained. (See Decision below.)

Decision in the Cross-Appeal

The Presbytery argues that permanent judicial commissions may not award “monetary damages,” as held in *Hennigan v. Presbytery of Charlotte* (2000, 213-1). In the present case, the order is for salary and benefits defined in the terms of call which were in effect until the date of dissolution. Ensuring that an employing body honors a minister’s terms of call should not be

understood as awarding “monetary damages,” but rather as the fulfillment of covenantal responsibilities toward one another. In this case, the Presbytery is not the employing body, and so the SPJC order does amount to awarding monetary damages and so is unconstitutional.

The Presbytery acknowledged that EPC relied on information provided by the Presbytery in identifying the date of dissolution. Therefore, this Commission strongly urges the Presbytery to ensure that Rev. John receives the full salary and benefits in accordance with his terms of call for the remaining period of his ministry at EPC, from July 8, 2020, to September 26, 2020, which the parties agree is the effective date of the dissolution of his call.

Rev. John also relies on the *Hennigan* decision to argue that the Presbytery is barred from appealing the SPJC award of monetary damages because the Presbytery did not request a stay of enforcement. The finding in *Hennigan*, requiring a stay of enforcement, was a narrow and factually driven part of the decision. It is not applicable to the case before this Commission.

With regard to the claim raised by the Cross-Appellant, this Commission reverses the SPJC decision.

Order

IT IS THEREFORE ORDERED that the decision of the Synod of the Northeast Permanent Judicial Commission is affirmed in part and reversed in part.

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.

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.

Absences and Non-Appearances

Commissioners Scott Clark, Mari Glory González-Guerra, and John C. Welch were excused and did not participate in the hearings and deliberations. The commissioner positions from the Synod of Alaska-Northwest and the Synod of the Sun were vacant.

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 226-02, *The Rev. Dr. Brian John, Appellant/Cross-Appellee v. Presbytery of New York*

City, Appellee/Cross-Appellant, made and announced at Louisville, Kentucky, this 30th day of October, 2022.

Dated this 30th day of October, 2022.

Brian D. Ellison, Moderator
Permanent Judicial Commission of the General Assembly

Diana Moore, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did, on this 30th day of October, 2022, transmit in person a certified copy of the foregoing to Flor Vélez-Díaz for delivery to the following persons:

Brian John, Appellant/Cross-Appellee
Vivia Joseph, Appellant/Cross-Appellee Counsel
Jack Griem, Representing the Committee of Counsel for Appellee/Cross-Appellant
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 in person to Flor Vélez-Díaz, on October 30, 2022.

Diana Moore, Clerk
Permanent Judicial Commission of the General Assembly

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 30th, 2022, in Remedial Case 226-02, *The Rev. Dr. Brian John, Appellant/Cross-Appellee v. Presbytery of New York City, Appellee/Cross-Appellant*, 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, this 30th of October, 2022.

Flor Vélez-Díaz, Assistant Stated Clerk
Manager of Judicial Process and Social Witness