

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

First Presbyterian Church of Hendersonville, N.C.	(<p>Decision and Order</p> <p>GA Remedial Case 223-01</p>
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The Session of First Presbyterian Church of Hendersonville, by and through its active Ruling Elders (aka The Session of First Presbyterian Church of Hendersonville, "D-Church," by and through its active Ruling Elders)	(
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Bob Briner, Brenda Bradshaw, Gilbert Broyles, Lloyd Candell, Bill Durant, William Eadie, Marjorie Heaver, Richard House, Mary Jamieson, Henry Leissing, Marguerite Martin, Eloise Murray, William Nagle, Greg Pope, Dale Stephens, Marvin Thomason, all both Individually and as Ruling Elders	(
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Appellants (Original Complainants)	(
	(
v.	(
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The Presbytery of Western North Carolina	(
	(
Appellee (Original Respondent)	(

Arrival Statement

This is an appeal to the General Assembly Permanent Judicial Commission (the GAPJC or this Commission) from a February 15, 2016, Decision of the Permanent Judicial Commission of the Synod of the Mid-Atlantic (SPJC). In that Decision, the SPJC dismissed the Appellants’ (originally the Complainants’) case for lack of standing and lack of a timely filing of the Complaint. Appellants appealed the SPJC’s dismissal of the Complaint to the GAPJC.

Jurisdictional Statement

This Commission finds that it has jurisdiction, Appellants have standing to file this appeal, the appeal was properly and timely filed, and the appeal states one or more grounds for appeal under D-8.0105.

Appearances

Forrest Norman and Larry Mobley appeared on behalf of Appellants. Greg Goodwiller and Robert Forsythe appeared on behalf of Appellee.

History

In October 2012, Appellants requested that the Presbytery of Western North Carolina (the Presbytery) grant their congregation dismissal from the Presbyterian Church (U.S.A.) to the Evangelical Presbyterian Church. In response, the Presbytery appointed an Administrative Commission (AC) to manage the dismissal process requested by Appellants. Pursuant to the AC's request, on July 29, 2014, the Presbytery bestowed upon the AC additional general powers under G-3.03, and the powers of Chapter 6, "Church Property," of the Presbyterian Church in the United States *Book of Church Order*, 1982–1983 because, following reunion in 1983, First Presbyterian Church of Hendersonville elected to be governed by that provision under the church property exceptions of G-4.0208. On August 13, 2014, the AC, acting as the Presbytery, determined under G-4.0207 that there was a continuing congregation of First Presbyterian Church of Hendersonville, thereafter recognized as the "true church within the Presbyterian Church (U.S.A.);" and there was also a group seeking dismissal. On August 15, 2014, the AC sent a letter to the leaders of the group requesting dismissal, as well as the ministers and clerks of session of the Presbytery, informing them of its true church declaration, among other matters. Appellants did not file a complaint within 90 days from that declaration.

Appellants sent a letter to the Presbytery on May 19, 2015, challenging the authority of the AC and alleging a delinquency in failing to grant the Appellants' dismissal request and requesting it be cured at the Presbytery's July 28, 2015, meeting. At that meeting, the Presbytery did not take the action requested by Appellants. Appellants then filed a complaint with the Synod of the Mid-Atlantic on August 25, 2015, alleging that the Presbytery engaged in "delinquencies, irregularities and constitutional deviations" by failing to grant the dismissal they had requested in October 2012.

On December 3, 2015, the officers of the SPJC issued the Report of the SPJC Officers' Findings regarding the Complaint, finding that, although the SPJC had jurisdiction over the Complaint and the Complaint stated a claim upon which relief could be granted, Appellants did not have standing to file the Complaint and the Complaint was not timely filed.

Appellants filed a Challenge to the Report of the SPJC Officers' Findings with the SPJC on January 4, 2016. After a hearing on Appellants' Challenge, the SPJC dismissed the Complaint on February 15, 2016, concluding that Appellants did not have standing to file the Complaint and that the Complaint was not timely filed.

Appellants appealed the SPJC's dismissal of the Complaint to the GAPJC. By Preliminary Order for Hearing issued April 7, 2016, the officers of the GAPJC determined that, under the provisions of D-8.0301, this Commission has jurisdiction, the Appellants have standing to file this Appeal, the Appeal papers were properly and timely filed, and the Appeal states one or more of the grounds for appeal set forth in D-8.0105.

Specifications of Error

Specification of Error No. 1: The SPJC erred in ruling that the Complaint was not timely filed.

This specification of error is not sustained (see Decision below).

Specification of Error No. 2: The SPJC erred in ruling that the Complainants did not have standing.

Because of the above finding, this Commission does not reach the issue of standing (see Decision below).

Decision

Appellants alleged in their complaint both irregularities and delinquencies related to claims of: the Presbytery's failure to act upon or bring to vote the dismissal request; the Presbytery's grant of authority to the AC and subsequent grant of additional authority; the decision of the AC to identify a schism; and the AC's declaration of one faction to be the true church. Appellants further alleged the Presbytery improperly deferred to those identified as the true church.

At its core, the issue in this case arises from the AC's declaration of a true church. According to the *Book of Order*, "[i]f there is a schism within the membership of a congregation and the Presbytery is unable to effect a reconciliation or a division into separate congregations within the Presbyterian Church (U.S.A.), the Presbytery shall determine if one of the factions is entitled to the property because it is identified by the Presbytery as the true church within the Presbyterian Church (U.S.A)." G-4.0207. In this case, the Presbytery delegated these powers to the AC at the July 29, 2014, meeting. The AC exercised these powers and declared those members of the First Presbyterian Church of Hendersonville who wish to remain with the Presbyterian Church (U.S.A.) to be the true church and thus entitled to the property. This decision was communicated to the leaders of the group requesting dismissal and to all ministers and clerks of session of the Presbytery by letter dated August 15, 2014.

The *Book of Order* requires "a complaint of an irregularity shall be filed within ninety days after the alleged irregularity has occurred; and a complaint of a delinquency shall be filed within ninety days after failure or refusal of respondent to cure the alleged delinquency at its next meeting, provided that a written request to do so has been made prior to said meeting." D-6.0202(a). The AC's determination of the true church, communicated by letter dated August 15, 2014, set in motion the 90-day period. Appellants argued that the failure of the Presbytery to vote on the dismissal during the Presbytery meeting following their request to cure constituted a delinquency. Where there is no constitutional requirement to act, there can be no delinquency. (*Edmunds v. Presbytery of Cape Fear*, 1984, 107, 11.088). The allegations of irregularities were not timely filed because Appellants filed their complaint on August 25, 2015, well past the 90-day time period. *See generally (Smith v. Presbytery of the Peaks*, 2015, 222-04).

This Commission heard significant oral argument concerning standing; this decision, however, does not reach that preliminary question. This Commission is concerned about the silence of the *Book of Order* regarding the status of the faction that is not declared to be the true church pursuant to G-4.0207. This Commission encourages the General Assembly to provide additional guidance in addressing these issues.

Order

IT IS THEREFORE ORDERED that the Decision of the Synod of the Mid-Atlantic Permanent Judicial Commission is hereby affirmed and this case is dismissed.

IT IS FURTHER ORDERED that the appellants be notified of this Decision and Order.

IT IS FURTHER ORDERED that the Clerk of Session of First Presbyterian Church of Hendersonville report this Decision to the Session at the first meeting after receipt, that the Session enter the full Decision upon its minutes and 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 Western North Carolina report this Decision to the Presbytery of Western North Carolina at the first meeting after receipt, that the

Presbytery of Western North Carolina 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 Mid-Atlantic report this Decision to the Synod of the Mid-Atlantic at the first meeting after receipt, that the Synod of the Mid-Atlantic 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 Terry Epling, Paul Hooker, and Kevin Nollette were excused from this meeting. Commissioner Sarah Thornburg was recused from this appeal and did not participate in the hearing or deliberations.

Concurrence of Jean C. Kennedy, June L. Lorenzo, and Susan C. McGhee

We concur with the Decision and Order of the GAPJC, save portions of the final paragraph of the decision. While we join this Commission in not reaching the preliminary question of standing, we do not agree with the recommendation for additional guidance on the provisions of G-4.0207.

Certificate

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 223-01, The Session of the First Presbyterian Church of Hendersonville, N.C., (Complainants/Appellants) v. The Presbytery of Western North Carolina (Respondent/Appellee) made and announced at Louisville, KY this 8th day of October, 2016.

Dated this 8th day of October, 2016.