

JACK H. PHILLABAUM,
Appellant

vs.

THE PRESBYTERY OF
WYOMING,
Appellee

Opinion

This is an appeal from a decision of the Synod of the Rocky Mountains (herein "Synod") in a remedial case brought by the Reverend Jack H. Phillabaum (herein "Appellant") against the Presbytery of Wyoming (herein "Presbytery").

The General Assembly Permanent Judicial Commission has jurisdiction, the Appellant has standing to appeal, and the appeal papers were properly and timely filed. The appeal is in order.

This case began with an original complaint being filed with the Synod alleging certain irregularities by the Presbytery in receiving the report of its Administrative Commission, which has been formed to investigate the resignation of Appellant from the Community Federated Church in Thermopolis, Wyoming. The Administrative Commission had found that Appellant had voluntarily resigned as pastor of the church, after consultation with and at the request of the Presbytery's Committee on Ministerial Relations.

The Permanent Judicial Commission of the Synod met on November 7, 1981, and received the evidence presented by Appellant and the presbytery. The thrust of Appellant's complaint was that the Administrative Commission had withheld evidence from the Presbytery that was supportive of the Appellant, that a bias existed against him because of his military background, and that his resignation had not been voluntary but, in fact, was the result of harassment and duress. The Permanent Judicial Commission of the Synod failed to sustain any of the irregularities set forth and the Administrative Commission "could have dealt with the entire situation in a more thorough and constructive manner."

On his appeal of the Synod's decision to this body, Appellant lists thirteen separate allegations of error against the Synod, four of which were withdrawn by Appellant at the hearing on his appeal. Since the complaint is clearly answered by our decision on the first two specifications of error, the remaining seven specifications of error are not here set forth or discussed.

The first two specifications of error contained in Appellant's brief are as follows:

Specification 1: The Permanent Judicial Commission of the Synod of the Rocky Mountains did place at the outset of the Remedial Hearing Proceedings time limitations to assure the Permanent Judicial Commission of the Synod of the Rocky Mountains sufficient time to

make a 3:30 P.M. airplane flight schedule.

Specification 2: The Permanent Judicial Commission of the Synod of the Rocky Mountains failed to afford Complainant full opportunity to be heard in complaint against the Presbytery of Wyoming, thereby the hearing falls short of the process prescribed by Presbyterian law.

At the outset, we note that the hearing before the Permanent Judicial Commission of the Synod, as an original proceeding in a remedial matter, was governed by the Book of Church Discipline, Chapter VIII, Section 11(88.11) (1981-82), which provided in pertinent part:

11. Hearing Procedure, Remedial Cases.--The hearing of a remedial case shall proceed as follows:

(d) Such evidence, if any, as the court shall deem necessary or proper, shall be presented on behalf of the complainant and the respondent.

(e) The parties shall be given the opportunity to be heard, the complainants having the right of opening and closing the argument.

The Synod recognized the Appellant's right to be heard in a letter from the moderator of the Permanent Judicial Commission to Appellant, dated September 24, 1981. It is clear, however, that limitations were placed on time to be devoted to the hearing. On October 8, 1981, the Moderator wrote to the members of the Synod Permanent Judicial Commission, forwarding a proposed agenda that provided two hours for presentation by each of the parties. The letter indicated that returning flights by airline would depart from the site of the hearing at 4:21 P.M. on that day. These limitations appearing on the face of the proposed agenda were communicated to Appellant by the Moderator's letter to him dated October 8, 1981.

A revised agenda appears to have been mailed to Commission members on October 30, 1981, by their Moderator, providing for only one hour in which Appellant was to present his case to the Commission, followed by one-half hour of cross-examination by the members of the Presbytery. This revised agenda provided for a twenty-minute break after the presentation of the Appellant's case (including cross-examination), after which the respondent Presbytery was afforded an equivalent one and one-half hours for presentation and cross-examination of its witnesses.

The transcript of testimony from the Synod's hearing, held November 7, 1981, reveals that the Moderator confirmed this time schedule at the beginning of the hearing, with the only modification being to provide fifteen-minute segments at the conclusion of each period of cross-examination to allow the Commissioner time to ask their own questions of the witnesses. In the course of opening the hearing, the Moderator observed, on the record:

We have to leave, several of us have to leave by 3:30 here, so you can see we are up against some time problems, not of our choosing, but because the airline doesn't cooperate. (Transcript, 11/7/81 - hereafter "TR" 7.)

A review of the hearing transcript reveals that the time constraint imposed upon the presentation of evidence was objected to by Appellant and had an effect upon the presentation of evidence. Appellant stated that the one hour limitation on the presentation of his evidence would cause him to feel rushed. He noted that he had brought six witnesses, in addition to himself, to present testimony. (TR. 80.)

The record discloses that Appellant repeated his concern about the time limitation, following his reading into the record a written statement of his own and communications from several of his supporters. (TR. 96.) He was compelled to caution his witnesses to keep their testimony as brief as possible. The testimony of the Appellant's third witness was interrupted by the Commission's clerk for the announcement that Appellant had only five minutes remaining to

present his testimony. (TR. 117.) While the fourth witness was testifying, the clerk announced that Appellant's time was exhausted.

The Commission then acceded to the well-intentioned request of the Presbytery that five minutes of the Presbytery's time allotted for cross-examination of Appellant's witnesses be transferred to Appellant to permit the remaining two witnesses to testify. (TR. 120-122.) The Presbytery made clear, however, that it was only prepared to yield two and one-half minutes for each witness. (TR. 121.) When the Appellant sought to secure additional testimony from one of his witnesses, an objection was made by a member of the Commission, which was joined in and sustained by the Moderator, with the observation that Appellant's time was up. (TR. 124.)

There is no question but that a Permanent Judicial Commission has the power to control its proceedings and is entitled to limit testimony to those matters which are properly before it. We do not suggest that a complainant is entitled to an unlimited amount of time in which to present a case. Clearly, redundant or irrelevant testimony may be excluded from a proceeding.

We also recognize the genuine personal sacrifice often made by members of our church in participating in the many activities necessary to insure the fairness intended in the proper functioning of our Presbyterian Form of Government.

From our view of the record, it appears that the Synod imposed time limitations more appropriate to an appellate proceeding. An original hearing in a remedial case can be distinguished from an appeal, however. The opportunity to be heard that is afforded a complainant under our Book of Church Discipline is an important right that deserves preservation and protection. We note that Appellant in this case sought to establish irregularities relating to his alleged involuntary resignation, involving a set of events that had transpired over a period of nearly two years, and involved the congregation and various representatives of the Presbytery as well as at least one outside agency.

Where, as here, a complainant seeks to present his allegations in the face of time constraints imposed by the hearing body over the objection of the complainant, and where the transcript reveals that the Complainant was foreclosed from fully developing his testimony with a significant number of witnesses, we cannot say that the Commission has received all the evidence necessary for it to deliberate and decide the matter in the best interest of all of the parties.

We conclude that the Permanent Judicial Commission of the Synod failed to afford the Appellant a full opportunity to be heard within both the spirit and intent of the Book of Church Discipline. Therefore, Specification 1 and Specification 2 contained in Appellant's Brief are hereby sustained.

The case is remanded to the Synod of the Rocky Mountains for a new trial in accordance with the provisions of the Rules of Church Discipline (1982-83), said hearing to be held within ninety days of the date of this decision. Jurisdiction is not retained.

The Reverend Robert N. Oerter, Jr., and the Reverend Roberto E. Velez were absent and did not participate in the decision. (Book of Church Discipline, Chapter VIII, Section 13 (88.13).) The Reverend Herman B. Eschen participated in the deliberation of this case but, due to his death, did not vote upon the specifications of error or in the adoption of this opinion.

Concurring Opinion of Roy H. Zuefeldt

Joined by C. Donald Close,

**Justin M. Johnson, and
Paul F. Kortepeter**

I concur in the decision of the majority of the Commission, however, at the time the Synod gave notice to Appellant of the date, time, and place for the hearing on his complaint against the Presbytery, the Synod advised him as follows:

If you desire legal counsel (and that counsel lives within the synod bounds) his expenses will be taken care of. Otherwise, this is your responsibility. (Letter from the Moderator of Synod Permanent Judicial Commission to Appellant, dated 10/8/91.)

From the record, it would appear that before Appellant received this advice, he wrote to the Synod on October 11, 1981, "requesting counsel in accordance with Book of Church Discipline (1979), Chapter VIII, Section 10 (88.10)...." At the hearing on November 7, 1981, Appellant stated on the record that "I asked for the appointment of counsel and I am without counsel...The reason I do not have counsel present is that there was question as to the expense of counsel and I could not afford counsel." (TR. 8.) I note that at the conclusion of the proceedings before the Synod, wherein the Appellant had been given ten minutes to sum up, he requested one of his witnesses, the former chairman of the Stewardship Committee at the United Federated Church in Thermopolis, to speak again. The church member said:

Jack has attempted to give his particular views and his points here today, but he's completely overpowered. He should have had legal counsel here today, and we all know that. I mean, any one observer, and thank goodness for the Commission, you have attempted, and I have seen that from the table, you have attempted to come back with some cross-examination to help Jack out just a wee bit.... (TR. 149-150.)

The Synod, in the case now on appeal, offered to provide Appellant with the expense of counsel, provided that counsel lived within the synod bounds. This is more than the Synod was obligated to do in this remedial case. The record does not contain any documents, or testimony, to support a conclusion that Appellant was prevented from securing counsel of his own choice with the right to submit his voucher for legal expenses at the appropriate time, if his chosen counsel did journey to the Synod hearing from within the Synod's bounds.

On remand, this offer of the Synod should remain open. The record does establish that Appellant had access to counsel, both attorneys and otherwise, who resided within the Synod at all times material to this complaint. Therefore, it remains within the discretion of Appellant to determine whether he desires to pursue this matter further with, or without, the benefit of counsel. I find no irregularity in the Synod's position on this matter.