

Presbyterian Church (U.S.A.))	
Appellee)	
)	
v.)	Disciplinary Case 203-8
)	
The Rev. James R. Hughes)	
Defendant/Appellant)	

This is a disciplinary case. It comes before the Permanent Judicial Commission of the General Assembly pursuant to an appeal filed by the Reverend James R. Hughes from a decision rendered by the Permanent Judicial Commission of the Synod of The Northeast, (Synod PJC), which came on appeal from a decision by the Permanent Judicial Commission of the Presbytery of Genesee Valley.

Pursuant to D-13.1200a, the Commission finds it has jurisdiction, the Appellant has standing to appeal, the appeal was properly and timely filed, and the appeal is in order.

History

In March, 1989, Randall Fulton wrote to the Stated Clerk of the Presbytery of Genesee Valley to communicate certain information regarding Mr. Hughes, an ordained Presbyterian minister who had been engaged in a counseling practice called "The Chrysalis Foundation" in Pittsford, New York. Mr. Fulton's letter indicated that while he was undergoing counseling Mr. Hughes engaged him in sexual contact and made sexual advances toward him. Mr. Fulton enclosed letters from three friends attesting to similar "counseling" experiences with Mr. Hughes.

The Presbytery, having been advised that an offense had been alleged, appointed a four-member Special Disciplinary Committee (SDC). The SDC organized and began its investigation of the matter. Mr. Hughes was advised of the existence of the SDC and its purpose, and he then retained counsel. The SDC stated that its task was "to conduct a thorough investigation of Mr.

Fulton's complaint and to determine whether or not charges should be filed" against Mr. Hughes.

On August 14, 1989, the SDC met with Mr. Hughes. The proceedings were transcribed. Counsel for Mr. Hughes advised the SDC that Mr. Hughes would not answer questions, noting that they did not want the statement to be used by Mr. Fulton in other proceedings (a possible civil lawsuit) against Mr. Hughes. Counsel for Mr. Hughes stated, moreover, that Mr. Hughes did not want to be questioned until the SDC had questioned Mr. Fulton and, furthermore, that Mr. Hughes wanted to be present personally or by his counsel during the questioning of Mr. Fulton. Mr. Hughes declined to give any substantive statement to the SDC.

On August 25, 1989, the SDC, without the presence or knowledge of Mr. Hughes or his counsel, questioned Mr. Fulton at some length. The transcript of this statement was furnished to counsel for Mr. Hughes.

In all, the SDC met seven times. Prior to the filing of the charges on August 31, 1989, a member of the SDC attempted to contact Mr. Hughes's counsel on several occasions. On August 31, 1989, the SDC's representative reached Mr. Hughes's counsel by telephone and stated that the purpose of the call was to comply with D-7.1000 and informed Mr. Hughes's counsel that charges would be filed. Mr. Hughes's counsel expressed her view that the telephone call did not meet the requirements of D-7.1000.

On August 31, 1989, the Committee filed with the Stated Clerk formal charges against Mr. Hughes. Copies of the charges were forwarded to Mr. Hughes. Attached to the charges were documents containing accusations by others, similar to those of Mr. Fulton. The charges and transcript of Mr. Fulton's investigatory testimony were distributed to the Presbytery PJC clerk and all members of that commission as well as to Mr. Hughes.

On November 16, 1989, the Permanent Judicial Commission of the Presbytery of Genesee Valley held a preliminary hearing at which a list of proposed witnesses for trial was given to Mr. Hughes.

The matter was tried on April 26 and 27, 1990. Two witnesses, Mr. Fulton and another counselee, William S. Hevener, presented uncontested testimony. Several exhibits, on behalf of both Mr. Fulton and Mr. Hughes, were introduced. After deliberating, the Presbytery PJC concluded that the charges had been established, and three findings of "guilty" were issued. Presbytery PJC removed Mr. Hughes "from all ordained offices."

Specifications of Error

Mr. Hughes raises seven specifications of error on this appeal. It is the contention of Mr. Hughes that the errors which occurred prior to and during the trial before the Presbytery PJC, and which were sustained in part by the Synod PJC, served to deny him of his due process rights. With respect to the specifications we take the following actions:

Specification No. 1: The SDC violated the provisions of G-9.0505d by failing to permit Mr. Hughes the right to face his accuser, to hear from his accuser the allegations and assertions against him and the right to be given sufficient time to prepare and make a reasoned defense prior to the filing of formal charges.

This specification of error is not sustained (0-16-0).

Mr. Hughes alleged that the SDC failed to follow the procedures provided for in G-9.0505d and that this failure denied him his due process rights during the time that the SDC was investigating the charges made against him.

G-9.0505d must be construed along with other provisions applicable to the procedures required in various types of proceedings. Specifically, G-9.0505d must be interpreted in light of the Rules of Discipline, which sets forth specifically the procedures to be followed by a special disciplinary committee which is essentially a prosecutorial body and not a decision-making

commission having the power to determine finally the issue of guilt or innocence.

Chapter Seven of the Rules of Discipline provides for the manner in which a special disciplinary committee conducts its work and protects the rights of the accused.

These provisions protect the due process rights of the accused without interfering with the prosecutorial duties of the special disciplinary committee (D-7.0800).

We hold that G-9.0505d must be construed to require due process protections where there are no other specific requirements in the Book of Order to protect the due process rights of a person charged with a violation of his or her obligations to the church.

This commission holds that G-9.0505d is not applicable to a special disciplinary committee whose responsibilities are governed by the procedures and safeguards set forth in The Rules of Discipline.

Specification No. 2: The SDC failed to conduct a thorough investigation pursuant to D-7.0800.

This specification of error is not sustained (0-16-0).

Specification No. 3: The SDC violated the provisions of D-7.1000 by failing to set a final conference with Mr. Hughes.

This specification of error is sustained (14-2-0).

The provisions of D-7.1000 were technically violated because the SDC did not specifically suggest to counsel for Mr. Hughes that options other than the filing of charges be explored. This is understandable in view of the peculiar circumstances in the case.

The SDC was faced with a serious question as to the 3-year time limitation for filing charges as provided in D-7.1100. Furthermore, Mr. Hughes had clearly stated to the SDC that he did not desire to discuss Mr. Fulton's

charges with the SDC unless Mr. Fulton was present and gave his statement first.

Although we believe the SDC should have suggested such a meeting, we hold that the Synod PJC correctly determined that the failure was harmless error.

Specification No. 4: The SDC failed to abide by the provisions of D-7.1500c.

This specification of error is not sustained (1-15-0).

Specification No. 5: The SDC violated D-8.2200a.

This specification of error is not sustained (1-15-0).

D-7.1500c provides that every charge filed by a special disciplinary committee shall set forth the alleged offense with the specification of the facts relied upon to sustain the charge. "Each such specification shall state, as far as possible, the time, place, and circumstances of the commission of the alleged offense and shall be accompanied by a list of the names and addresses of the witnesses for the prosecution and a description of the records and documents to be cited for its support." [emphasis added]

In this case, the information contained in the various letters and documents could have been summarized and attached to the charges filed. The fact that the SDC attached the actual documents to the charges did not prejudice Mr. Hughes.

Furthermore, D-8.2200 is the part which governs the conduct of the trial and precludes the distribution of materials to the members of the PJC after the charges are filed and after the trial proceedings have begun.

The error, if any, was harmless error and does not justify a reversal of the case.

Specification No. 6: The cumulative effect of all of the preceding errors constitutes a manifestation of prejudice in the conduct of the case. (D-13.0300)

This specification of error is not sustained (0-16-0).

Specification No. 7: The SDC failed to follow the strictures of the preamble to the Rules of Discipline.

This specification of error is not sustained (0-16-0).

Order

IT IS, THEREFORE, ORDERED by the unanimous vote of this Commission that the decision of the Synod of the Northeast is affirmed.

Mr. Marcos Feliciano, Esq. and the Honorable Charles L. Weltner were not present and did not participate in the case.