

## **REMEDIAL CASE 205-2**

### **Thomas B. HOOVER v. The Presbytery of CHARLOTTE**

This is a remedial case which has come before this commission on appeal by Thomas B. Hoover, minister, from a decision by the Permanent Judicial Commission of the Synod of the Mid-Atlantic.

Pursuant to *Book of Order*, D-13.1200a, this commission finds it has jurisdiction, the appellant has standing to appeal, that the appeal was properly and timely filed, and is in order.

#### **History**

The record in this case is obscure, but the following history emerges.

In 1982, the Presbytery of Mecklenburg voted not to receive Mr. Hoover as a member of that presbytery. Mr. Hoover had hoped that such acceptance would have made him eligible to receive pension payments from the Kate Biting Reynolds Fund.

On September 19, 1984, Mr. Hoover filed a complaint against the Presbytery of Mecklenburg for its refusal to approve his membership. The synod PJC denied his complaint, which decision was affirmed by the General Assembly Permanent Judicial Commission on January 18, 1986.

In March, 1986, Mr. Hoover filed a new complaint, against the Presbytery of Catawba, seeking somehow to override the Presbytery of Mecklenburg's action concerning his membership. This case was ultimately dismissed with prejudice by the General Assembly Permanent Judicial Commission in May, 1989.

That same month, Mr. Hoover filed a new complaint against the Presbytery of Catawba complaining of miscellaneous procedural matters.

On July 9, 1990, the General Assembly Permanent Judicial Commission advised Mr. Hoover that there could be no further judicial processes relating to his attempts to qualify for the Reynolds Fund.

Mr. Hoover filed more complaints. In December, 1990, the Executive Committee of the General Assembly Permanent Judicial Commission questioned whether Mr. Hoover's complaints were being promptly processed and ordered the stated clerk of the Presbytery of Charlotte (to which Mr. Hoover belonged after the redrawing of presbytery boundaries) to transmit immediately to the presbytery PJC all complaints and correspondence received from Mr. Hoover since the prior disposition of Mr. Hoover's cases before the General Assembly Permanent Judicial Commission.

The presbytery PJC was ordered to examine all materials received and to take appropriate action. The presbytery PJC filed a report with the General Assembly Permanent Judicial Commission. On May 10, 1991, the General Assembly Permanent Judicial Commission found that as of March 15, 1991, there were no judicial matters involving Mr. Hoover pending before any PJC and ordered that all correspondence from Mr. Hoover filed prior to that date be removed from the docket of the General Assembly Permanent Judicial Commission.

On April 12, 1991, he filed another complaint in the office of the stated clerk of the synod requesting remedial action. The complaint alleged that the Presbytery of Charlotte had been guilty of delinquencies and irregularities in its relationship with the complainant and in

actions taken relating to the complainant.

The Synod of the Mid-Atlantic Permanent Judicial Commission provided Mr. Hoover with a trial on March 20, 1992. Complainant appeared in person and without counsel. No appearance was made by the Presbytery of Charlotte, which had previously advised the commission that it would not appear.

At the trial, testimony was presented by Mr. Hoover and two other witnesses. At the conclusion of the trial, Mr. Hoover stated to the commission that he appreciated the patience of the commission and that he had no objection to the conduct of the hearing.

After deliberating, the synod commission unanimously found that the evidence did not support the allegations that the Presbytery of Charlotte had been guilty of judicial default or had denied complainant due process.

In its written decision, the synod PJC made the following findings:

- (1) The evidence in this case does not support the conclusion that the complainant has been denied due process.
- (2) The evidence in this case does not support a finding that the complainant has been denied pastoral care and opportunity for ordained service from 1984 to the present time by the Presbytery of Charlotte nor does the evidence support a finding that the Presbytery of Charlotte has entered into its public records false and damaging statements with reference to the Complainant.
- (3) This specification related to "conversations" held or not held pursuant to an order of the General Assembly of the Presbyterian Church (U.S.A.). It is not the function of this commission to monitor the orders of the General Assembly.
- (4) This specification also related to orders of the General Assembly and to reports made in response to such orders. It is not the function of this commission to monitor the orders of the General Assembly.
- (5) This specification was withdrawn at the request of the complainant.

In accordance with its findings, the commission orders and directs that the relief requested by the complainant be denied and that the complaint, and all specifications thereof, be dismissed with prejudice.

The commission might well have dismissed the complaint for lack of specificity immediately after the complaint was filed. The commission concluded that it should give the complainant an opportunity to present his evidence to the commission. The complainant has been given this opportunity, and the commission has found no credible evidence upon which to support the complaint.

In determining this appeal, it should be emphasized at the outset that this commission is restricted to a consideration of the complaint dated April 10, 1991. Any complaints existing prior to that time were determined judicially by the decision of this commission dated May 10, 1991, finding that as of March 15, 1991, there were no pending judicial matters involving Mr. Hoover before any permanent judicial commission of the Presbyterian Church (U.S.A.).

Furthermore, in reaching a decision in this case, this commission is restricted to a consideration of the evidence contained in the record of the proceedings and trial before the synod PJC. Any correspondence or other evidence referred to by Mr. Hoover which is not contained in the record cannot be considered in this case. (D-8.2200).

Specifications of Error

Mr. Hoover lists the following specifications of error.

(1) Synod erred in denying the complainant "a speedy adjudication of his concerns" as in *Hoover vs. Synod of the Piedmont*, which was finally dismissed with prejudice by the GA Permanent Judicial Commission (*Minutes*, 1989, p. 111).

This specification of error is not sustained.

The complaint was filed on April 10, 1991. On August 7, 1991, the moderator of the synod PJC asked Mr. Hoover and the stated clerk of the presbytery to meet "for the purpose of reviewing the complaint, making the complaint more specific; and preparing a joint statement of facts relating to the complaint for submission to the [Synod] Commission for consideration." The synod PJC met in September, 1991, was advised of its moderator's request and did nothing further on the matter. There is no evidence that Mr. Hoover and the stated clerk of presbytery ever held the suggested meeting. In October, the moderator of the synod PJC again wrote to Mr. Hoover and the stated clerk of presbytery suggesting dates in December and January for a pre-trial conference. The moderator of the synod PJC held a pre-trial conference on January 25, 1992, and issued a pre-trial order of February 10, 1992, requiring Complainant Hoover to specify "in writing the dates, places, and circumstances" relating to his complaint. Mr. Hoover did not comply with the pre-trial order. The trial of the case was held on March 20, 1992. Because of the absence of certain witnesses, Mr. Hoover sought to have the case continued to an even later date.

(2) The synod erred by not finding the Presbytery of Charlotte (a) delinquent in an untimely implementation (January 9, 1992) of D-6.0700a. and (b) derelict of duty as mandated at D-6.0800 and at 6.0900a.

This specification of error is sustained.

The record indicates that the presbytery did not promptly appoint a committee of counsel, no "concise answer" to the complaint was filed, and that "minutes and papers related to the case" were not timely filed with the stated clerk of synod.

The record shows that over eight months elapsed between the filing of Mr. Hoover's complaint and the appointment of a committee of counsel by the presbytery. However, it appears that this delinquency did not prejudice Mr. Hoover's case.

(3) The synod erred in Pre-trial Conference ... on Jan. 25, 1992 by  
(a) mistakenly proceeding with Thomas B. Hoover styled "appellant" and the Presbytery of Charlotte styled "appellee" for the April 10, 1991, Complaint.

This specification of error is sustained.

The terminology was mistaken, but it was a harmless error.

(b) Manifesting prejudice toward one party (the complainant) while, though present, not calling on the other party (the respondent) to participate pursuant to D-6.1200b; and prejudging what decision the full synod commission would make at trial.  
This specification of error is not sustained.

Although permanent judicial commissions often confirm pretrial decisions, they are free to do otherwise. The record does not indicate manifest prejudice and Mr. Hoover has not offered evidence to support his allegation.

(c) Improperly receiving as evidence, for the record, an unsigned document in which the submitting person accuses the complainant of "frivolous" action and "offenses against the peace, unity and purity of the Church."

This specification of error is not sustained.

The document in question stops short of accusing the complainant in stating that his submitting of letters "can be interpreted as frivolous complaints which are offenses against the peace, unity and purity of the Church."

(4) The synod PJC erred on March 19, 1992, when ratifying its moderator's pretrial conference order by which complaint specifications were deleted, modified, and supplemented without foreknowledge of the complainant who on March 20, 1992, personally objected to that action for the record.

This specification of error is not sustained.

The record shows that although the pretrial conference order considered the specifications in the complaint, only Specification 5 was removed, and that was done at the request of the complainant.

(5) The synod PJC erred on March 20, 1992, by proceeding to trial

(a) Despite complainant's announcement that he was unable to secure counsel for the prosecution. (D-8.1000a.)

(b) In the absence of respondent's "committee of counsel", having William Rikard, Esq. as chairman, and in the absence of the presbytery stated clerk who was informed that he should be present as a resource official.

(c) In the absence of witnesses for the complainant, to whom citations had been issued, viz.: John J. Evans, Jessie R. McCombs, H. Lewis Patrick, Robert L. Walton (also a Mecklenburg county commissioner) and Raymond Worsley. D-9.0000 appears to be applicable concerning witnesses and their testimony.

This specification of error is not sustained.

D-8.1000 provides that "each party to a remedial . . . case shall be entitled to appear and be represented by counsel. . ." However, no provision requires a PJC to obtain counsel for a party to a remedial case. Nor should lack of counsel be used to prevent a PJC from holding a trial of a remedial case.

The absence of the respondent's committee of counsel might have prejudiced the case against the respondent, but would not have prejudiced the case against Complainant Hoover.

The trial transcript shows that Mr. Hoover acquiesced in proceeding with the trial despite the absence of his witnesses, and at the conclusion of the trial stated on his own initiative "I have no objections raised to the conduct of this particular hearing."

(6) The synod erred on March 20, 1992, in disregarding the error of the Presbytery of Charlotte which was made on March 18, 1992 with the intent of prejudicing the commission.

This specification of error is not sustained.

On the latter date respondent's committee of counsel circulated to members of the synod PJC a motion to dismiss and a "motion in the alternative" with supporting material. Mr. Hoover claims that doing so violated D-8.2200, which forbids circulation among members of a permanent judicial commission of "any written, printed, or visual materials of any kind upon any matter pertaining to the case before the final disposition thereof." However, the filing of motions pertaining to a case and materials supporting them is a part of the process of orderly deliberation on a case.

(7) Synod PJC erred on March 20, 1992, when telling complainant to "forget the *Book of Order*" in his attempt to cite G-11.0502a (first sentence), G-11.0502g (first sentence) and G-11.0503 as relevant to and supportive of his complaint Specification 2.

This specification of error is not sustained.

The record does not support this allegation.

(8) Synod PJC erred on March 20, 1992, if in fact it found more credible the testimony of Reginald R. Hawkins than the testimony given under oath by the complainant himself.

This specification of error is not sustained.

D-9.0400 lays upon the PJC the responsibility for determining the credibility of any witness, and gives a nonexhaustive list of factors which may be considered.

(9) Synod PJC erred at trial on March 20, 1992, by "hastening to a decision" on that date rather than ordering a continuance so that the complainant could obtain documentary evidence requested by a member of the PJC and so that the commission might hear at a later date testimony of cited witnesses who did not appear.

This specification of error is not sustained.

Mr. Hoover was afforded full opportunity to introduce his documentary evidence but failed to do so. Mr. Hoover on his own initiative stated at the conclusion of the trial, "I have no objections raised to the conduct of this particular hearing."

(10) Synod erred by "mistake" and "injustice in the decision" when voting to "dismiss with prejudice," because such a dismissal would nullify a complainant's right to appeal.

This specification of error is not sustained.

Chapter 13 of the Rules of Discipline protects the right of any party to a remedial case to appeal the decision of a lower governing body to a higher one, regardless of the language of the decision.

### **Order**

It is therefore ordered that:

(1) The Presbytery of Charlotte and its stated clerk are instructed hereafter to deal carefully and promptly with all judicial matters presented to them, whether by others or by Mr. Hoover, in accordance with the Rules of Discipline.

(2) The decision of the synod's PJC is affirmed.

(3) This decision concludes consideration of these issues. The Permanent Judicial Commissions of the Presbytery of Charlotte and the Synod of Mid-Atlantic are advised to dismiss any remedial case filed by Mr. Hoover in relation to events which took place earlier than March 20, 1992.

Milton S. Carothers and Marcos Feliciano were not present and took no part in the proceedings.

### ***In the Matter of* Thomas B. HOOVER**

The General Assembly Permanent Judicial Commission met and considered communications from Thomas B. Hoover. The following responds to these communications and indicates the Commission's vote on each request.

a. Letter to Alan Elmore, Stated Clerk, Presbytery of Charlotte, dated November 23, 1991.

This letter is not addressed to and makes no request involving the General Assembly Permanent Judicial Commission.

b. Document dated December 7, 1992.

This document makes no specific request of the General Assembly Permanent Judicial Commission.

The commission voted unanimously to take no action on this document.

c. Letter to E. D. Witherspoon, Jr., Manager of Judicial Process, dated January 7, 1992.

This letter requests the General Assembly Permanent Judicial Commission Executive Committee to suspend action on items (a) and (b) above noted. No action is pending on these matters for the General Assembly Permanent Judicial Commission to suspend.

The Commission voted unanimously to take no action.

d. Document dated January 28, 1993.

(1) The first part of this document requests that the General Assembly Permanent Judicial Commission order another trial on the matters comprising Remedial Case

205-2.

The Commission voted unanimously not to order a new trial in the matters of 205-2.

(2) The second part of this document requests the General Assembly Permanent Judicial Commission to assume original jurisdiction or remand for action complaints filed by Mr. Hoover on May 27, 1992 and December 7, 1992.

The Commission voted unanimously not to assume jurisdiction in matters filed by Mr. Hoover on May 27, 1992 and December 7, 1992.

e. Document dated March 15, 1993.

(1) This document requests that the General Assembly Permanent Judicial Commission order the Synod of Mid-Atlantic to hear promptly all complaints filed with that governing body.

The Commission voted unanimously not to order the Synod as requested.

(2) The second part of this document requests that the General Assembly Permanent Judicial Commission direct the Synod of Mid-Atlantic to make a final determination, following a committee investigation, of the legitimacy of this complainant's monetary claims as set forth in a document mailed to the synod stated clerk in early 1993.

The Commission voted unanimously not to direct the Synod as requested.

The Commission further voted unanimously to instruct the stated clerk of the Presbytery of Charlotte to:

(a) Treat the document submitted May 27, 1992, accusing H. Alan Elmore of an offense, as a legitimate accusation against an individual. A special disciplinary committee shall be appointed to determine if an offense has been committed and if so, can it be proved and will charges be filed. It is strongly suggested that a special stated clerk be designated to handle matters related to this situation.

(b) Treat the document submitted November 23, 1992, by Thomas B. Hoover as a legitimate request for vindication and begin the appropriate processes as described in Chapter VII of the Rules of Discipline. Mr. Hoover must supply by May 1, 1993, a statement of the offense he is rumored to have committed, or forfeit this course of action.

The Commission voted unanimously to instruct Thomas B. Hoover to:

(a) Submit to the stated clerk of the Presbytery of Charlotte a statement of the rumors from which he is seeking vindications as referred to in his document dated November 23, 1992. This statement shall be submitted by May 1, 1993. Failure to submit said statement shall be deemed withdrawal of the vindication request.

(b) Submit no additional documents, requests, or complaints on this subject until and unless requested to do so by a special disciplinary committee of the Presbytery of Charlotte.