

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

<b>PRESBYTERIAN CHURCH (U.S.A.) BY )</b>	
<b>PRESBYTERY OF EAST TENNESSEE )</b>	
<b>Appellee )</b>	
<b>)</b>	
<b>v. )</b>	<b>DISCIPLINARY CASE 211-4*</b>
<b>)</b>	
<b>ROBERT COOK )</b>	
<b>Accused/Appellant )</b>	

This Disciplinary Case comes before the Permanent Judicial Commission of the General Assembly (Commission) on appeal by Robert Cook (Appellant), from a decision by the permanent judicial commission of the Synod of Living Waters (Synod PJC). The Presbytery of East Tennessee is the Appellee.

This Commission finds that it has jurisdiction, that the Appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order (D-13.1200).

**HISTORY**

In 1988 Robert Cook was called to serve as pastor of the West Emory Presbyterian Church. In August 1995, based on information they received, the chair of the Division of Candidates and Professional Ministry and the Moderator of the Presbytery confronted Cook with an allegation of an adulterous relationship with an employee of the church's day care center. Cook admitted the allegation.

\*In adopting amendments to the Form of Government and Rules of Discipline, the 208th General Assembly (1996) affirmed this Commission's request that all cases filed before the adoption of the amendments be adjudicated in accordance with the Rules of Discipline then in effect. Therefore, we consider this case in accordance with the 1995-1996 version of the Rules of Discipline. All references in this decision shall be to the 1995-1996 Rules of Discipline.

A Special Disciplinary Committee (SDC) was appointed in September, 1995. Cook retained counsel that same month. The SDC issued its charge and specifications of fact in January, 1996. The original charge was amended before trial by agreement of the parties.

The Presbytery PJC convened on June 3, 1996. At that time, Cook declined to enter a plea of guilty based on the SDC's statement of facts. The PJC recessed to permit negotiations of the parties. After agreement was reached, the PJC reconvened. Cook then pleaded guilty to the amended charge of adultery, based on the amended statement of facts.

The record states that with the acceptance of the guilty plea, the PJC moderator announced that the only issue before the commission was what censure was to be imposed. The censure hearing was continued to June 29, and concluded the following day.

In its decision the PJC "temporarily excluded Cook from the office of minister for one year;" ordered the pastoral relationship between Cook and the West Emory Church immediately dissolved; and further ordered that Cook undergo counseling and perform 200 hours of community service.

Cook appealed to the permanent judicial commission of the Synod of Living Waters (Synod PJC). In its April 28, 1998 decision, the Synod PJC addressed the specifications of error and sustained the one year exclusion; sustained the mandatory counseling and made explicit the Presbytery's responsibility for the reasonable costs attended thereto; affirmed the denial of reimbursement for legal fees; reversed the requirement of 200 hours of community service; and reversed the immediate dissolution of the pastoral relationship, remanding the matter to the Presbytery for such action as may be appropriate.

The Appellant filed a timely Notice of Appeal. The Appeal to this Commission sets forth the seven specifications of error set forth below.

### **SPECIFICATIONS OF ERROR**

Appellant stated seven specifications of error in the conduct and decision of the trial on appeal by the Synod PJC. Additional specifications of error pertaining to matters in the record were brought before this Commission identified as “Remedial Case #1” (Escrow of Salary) and “Remedial Case #2” (Extension of Censure). These two cases were dismissed under the precedent of *Evans v. Presbytery of Lake Michigan, Minutes*, 1995, p. 121, as attempts to attack a disciplinary case determination through remedial action. Nevertheless, we have determined that these constitute additional specifications of error in the disciplinary case and are so included. (For the sake of brevity and clarity, the specifications listed herein have been paraphrased.)

#### **I. The Synod PJC refused to rule on any of the specifications of error in the appeal before it.**

This specification is sustained in part and not sustained in part.

The Synod PJC erred in failing to record in its minutes votes on each specification of error as required in D-13.1300a, although some of the vote totals are included in the decision. Additionally, while the decision reports individual votes on some of the specifications, it indicates that several were combined into a single omnibus vote. *Presbyterian Church (U.S.A.) v. Hardwick, Minutes*, 1985, p. 113, allows such aggregation of specifications in the decision, but not in the vote on record.

The specifications of error not individually identified in the Synod decision fall into one of two categories:

*1. Errors alleged in the preliminary procedure and the conduct of the trial to determine guilt or innocence.* These include: failure properly to inform the accused of his right to remain silent and to be represented by counsel; failure properly to summon witnesses to appear at trial; failure to sustain the motion to recuse from the trial certain members of the Presbytery PJC.

These are serious allegations of the violation of due process and are not to be dismissed lightly. However, the record clearly indicates that the accused chose not to invoke these errors during the trial so as to exclude evidence, rescind his confession, or to claim innocence. Instead, Appellant made a conscious decision to plead guilty to an amended charge and specifications of fact prepared with the full knowledge and consent of the accused, with benefit and advice of counsel, and with full cognizance that so doing would have implications for his ability to appeal the verdict. Appellant's claim that the plea made at trial was coerced is refuted by his counsel's own admission in oral argument before this Commission. Therefore, the Synod PJC did not err in refusing to consider these specifications on appeal.

*2. Errors alleged in the conduct of the hearing on censure.* These include claims that the Presbytery PJC erred in excluding certain testimony, including that of the accused and of three witnesses "deposed" by his counsel. The record is clear that, upon the Presbytery PJC's acceptance of the plea of "guilty," the moderator declared the trial to be ended, and then proceeded to a hearing on censure. In a hearing on censure following a trial, latitude is provided a PJC in determining what, if any, evidence will be received to assist it in arriving at an appropriate degree of censure [D-8.1200j]. Accordingly, the Presbytery PJC acted within its

discretion to exclude the proffered “depositions.” Yet, even if all the specifications of error were in order and were sustained, this Commission would not find the degree of censure as modified by the Synod PJC to be excessive or unjust. In fact, the Appellant in his oral argument before this Commission acknowledged the appropriateness of the censure imposed.

Therefore, it is our determination that while the Synod PJC did not formally take correct action, in substance the errors **were not** sufficiently harmful or prejudicial so as to constitute reversible error.

## **II. The Synod PJC refused to review the proceedings of the Presbytery PJC.**

This specification of error is not sustained.

This specification is essentially the same as to specification I, and is answered by that response. The Commission finds no evidence to support the claims of manifest prejudice on the part of a member of any PJC or any governing body staff.

## **III. The Synod PJC erred in affirming the content of the verdict and the degree of censure of the Presbytery PJC in that:**

### **A. It failed to reverse the requirement of different counseling and failed to require the Appellee to pay for counseling previously undertaken in compliance with requests of Presbytery officers.**

This specification of error is not sustained.

The Synod PJC correctly affirmed that the Presbytery PJC did not err in requiring different counseling as part of the degree of censure. D-10.0300(3)a provides for censure that includes a period of supervised rehabilitation. We find no reason to

reverse the determination made by the Presbytery PJC that additional counseling was appropriate.

The Synod PJC properly held the Appellee responsible for payment of counseling services mandated by action of the Presbytery PJC. Payment for counseling undertaken prior to the Presbytery PJC judgment is nowhere specified as requested relief in either the notice of appeal to the Synod PJC or the accompanying brief. Accordingly, Synod PJC did not err in failing to grant that which was not sought.

**B. It failed to conduct a timely hearing to appoint counsel for the Appellant, or to assist him with the cost of such counsel and other expenses.**

This specification of error is not sustained.

While the Appellant had made multiple applications for payment of legal fees and other expenses, at no place in the record do we find a request for appointment of counsel. The record is clear that Appellant had engaged the counsel of his choice as early as September, 1995. According to D-8.1000b, the obligation to assume reasonable legal fees is incurred (a) when the accused is unable to employ counsel, (b) when the accused requests the PJC to appoint counsel, (c) when the counsel is appointed by the PJC for the accused, and (d) only to the extent that such fees and expenses are deemed “reasonable.” A limited request that specific counsel already engaged be appointed does not satisfy these requirements.

We note that the Synod PJC went beyond the requirements of the *Book of Order* in gratuitously offering a lump sum to the Appellant for his legal fees and expenses. This offer was rejected by Appellant and was subsequently withdrawn.

**C. It failed to modify the degree of censure sufficiently to make it just and Constitutional.**

This specification of error is not sustained.

Upon review, the Synod PJC modified the degree of censure issued by the Presbytery PJC by: (1) striking the requirement of community service, (2) correcting the inartful phrasing related to the period of temporary exclusion from exercise of office, and (3) declaring the term of temporary exclusion to have been fulfilled. The Synod PJC was within its jurisdiction to modify the degree of censure issued by the Presbytery PJC as it did, and did not manifest prejudice against the Appellant by having done so. By exercising his right to appeal, Appellant necessarily lengthened the period of temporary exclusion from exercise of ordained office under D-8.1700. Enforcing this provision of the *Book of Order* does not constitute error on the Synod PJC's part.

**D. It purported to "suspend" the Appellant's pastoral relationship.**

This specification of error is not sustained.

Appellant claims that because the call was never officially dissolved it is an enforceable "contract" and the terms must be fulfilled. The Synod PJC properly held that while it is true that the call was not dissolved, the imposition of a period of temporary exclusion from the exercise of office effectively suspends the pastoral relationship.

Appellant's citation of *Garton v. Presbytery of Blackhawk, Minutes*, 1991, p. 185 does not apply, in that *Garton* was a remedial case. Accordingly, it involved no temporary exclusion from the exercise of ordained office.

The temporary exclusion from the exercise of ordained ministry brought about by the decision in the instant case, and extended upon appeal as provided in D-8.1700, renders the terms of the call ineffective while the appeal is undertaken. A person temporarily excluded from the exercise of ordained office is not entitled to compensation on the basis of the call during the period of temporary exclusion. If the decision is overturned, the suspension is null and void and a PJC may order that the terms of the call be enforced retroactively. In the absence of such a ruling, the judicial system could be abused by convicted parties seeking to extend their compensation and benefits through incessant appeal and delay, which would not promote the administration of justice, true repentance or timely restoration.

This decision does not prohibit charitable support during periods of exclusion, such as continuation of pension and medical benefits, use of a church manse, or even salary continuation for a period of time. Provision of such charitable assistance does not constitute an admission of a continuing contractual obligation, but rather is an exercise of grace.

**IV. The record on appeal is incomplete and insufficient to render a just decision, and improperly conflates the records of separate remedial cases.**

This specification of error is not sustained.



The record on appeal in this case exceeds 3900 pages and is, by more than half, the largest record ever presented before this Commission. We find the record more than adequate to render a fair decision as to the specifications of error raised. The inadmissibility of excluded testimony was addressed in the response to Specification of Error I. Additionally, the record properly reflects the ruling of this body to include the two “remedial cases” which were dismissed as remedial attacks on a determination in a disciplinary case per *Evans v. Presbytery of Lake Michigan*, but have been subsumed into the disciplinary case for consideration as the following additional specifications of error.

**V. The Synod PJC erred in not enjoining the Presbytery from withholding compensation under the terms of call pending the outcome on appeal. (Remedial Case #1)**

This specification of error is not sustained.

The Commission refers to its finding in Specification of Error III-D above. While there is no obligation for a calling or governing body to escrow salary during a period of temporary exclusion, there is no prohibition from doing so against the prospect of an adverse decision upon appeal.

**VI. The Synod PJC erred in failing to assert its jurisdiction over Presbytery when Presbytery prohibited the Appellant from engaging in any exercise of ordained office during the period of appeal. (Remedial Case #2)**

This specification of error is not sustained.

As stated in the response to Specification of Error III-D above, D-8.1700 prohibits a minister whose censure is under appeal from engaging in the exercise of ordained office unless the presbytery or higher governing body specifically agrees to allow it. In its action of June 24, 1997, Presbytery refused to allow such exercise of ordained office, and as such was merely asserting its own legitimate rights rather than infringing on the rights of the Appellant.

### **ADDITIONAL FINDING**

In the course of this appeal, the Commission was subjected to frequent circulation of extensive materials by the Appellant. This constitutes inexcusable misconduct. D-8.2200a states, “No party to a remedial or disciplinary case or any other person shall circulate or cause to be circulated among the members of the session or permanent judicial commission any written, printed, or visual materials of any kind upon any matter pertaining to the case before the final disposition thereof.” This prohibition applies before, during, and *after* a trial until all appeals have been exhausted. All persons are admonished in the strongest terms to refrain from such direct communications.

### **ORDER**

IT IS THEREFORE ORDERED that the decision of the Synod of Living Waters in this case is affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of Living Waters report this decision to the Synod at its first meeting after receipt, that the Synod 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 East Tennessee report this decision to the Presbytery at its first meeting after receipt, that the Presbytery 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.

Ruby Rodriguez and Patricia Norris, members of the Commission, were not present for the meeting of the Commission and, accordingly, took no part in the deliberations or decision of the case. Christine Levister, Ferdinand Pharr, and William Skinner, former members of the Commission (having resigned), were not present for the meeting of the Commission.

Dated this 13th day of February, 1999.