

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

\_\_\_\_\_  
**DECISION**  
\_\_\_\_\_

**Daniel O. HENNIGAN** \_\_\_\_\_ )  
Appellee/Complainant \_\_\_\_\_ )  
 )  
 )  
v. \_\_\_\_\_ ) **REMEDIAL CASE 213-1**  
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 ) \_\_\_\_\_  
**Presbytery of CHARLOTTE** \_\_\_\_\_ )  
Appellant/Respondent \_\_\_\_\_ )

This is a remedial case which has come before this Commission on appeal by the Presbytery of Charlotte, Respondent/Appellant (Presbytery), from a decision of the Permanent Judicial Commission of the Synod of The Mid-Atlantic (SPJC).

Pursuant to Book of Order, D-8.0301, this Commission finds that it has jurisdiction, that appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal states one or more of the grounds for appeal. (References are to the *Book of Order*, 1997-1998.)

**HISTORY**

The Reverend Daniel O. Hennigan (Hennigan) commenced his service as pastor of Woodland Presbyterian Church (Woodland), Charlotte, North Carolina, in 1989. In April 1997, the Stated Clerk/Executive Presbyter of the Presbytery of Charlotte (Presbytery) took note of reports of unrest within the church. In December 1997, Presbytery's Committee on Ministry (COM) received a letter from some elders (both active and inactive) and two inactive deacons of

Woodland requesting Presbytery's assistance in "resolving critical issues and events that have negatively affected the relationship" between members of the church and the pastor, and requesting: 1. the appointment of an administrative commission to assist the Session, and 2. the dissolution of the pastoral relationship with Hennigan or the retirement of Hennigan.

On December 9, 1997, COM authorized a three-person mediation team to meet with the Woodland session. COM's appointed mediation team reported on January 6, 1998, "that the COM recommend to Presbytery...on February 24 the following: the appointment of an Administrative Commission" having powers granted by Presbytery "if the Commission believes them necessary in order to settle the difficulties: 1. To dissolve the pastoral relationship (G-9.0503a[3]); 2. To assume original jurisdiction over the church (G-11.0103s) and/or dissolve the session; 3. To assume the authority to reference any disciplinary allegations between members to the Permanent Judicial Commission of the Presbytery of Charlotte (D-12.000)" (*sic*). The Presbytery took such action on February 24, 1998.

Hennigan filed a complaint with Synod against the Presbytery on March 23, 1998. Hennigan filed an amended complaint (Complaint) on April 28, 1998, which superseded the March 23 complaint, against the appointment of the Administrative Commission, alleging that this was an irregular and constitutionally flawed action. In support of this allegation he asserted thirteen irregularities alleging, among other matters, failure of due process. Hennigan sought as relief dismissal of the Administrative Commission, voiding any and all of its actions; investigation of the Presbytery Stated Clerk; return of all records deposited with the Administrative Commission; and investigation of the COM. The Complaint was answered by Presbytery over one year later, on or about July 9, 1999.

Meanwhile, the Administrative Commission scheduled numerous listening sessions with

members, officers and the pastor, over a period of two months between February 24 and May 26, 1998, and concluded that the pastor was at the center of the church's conflict. On May 26, 1998, the Administrative Commission presented to Hennigan a letter issuing the following order: that effective June 30, 1998, the pastoral relationship be dissolved; that effective June 1, 1998, he cease all pastoral activities; that on or before June 8, 1998, he remove all belongings from the church and return the keys; and that he be paid four weeks compensation. On May 27, 1998, Hennigan sought a stay of enforcement, which was not granted.

Over one year later, trial before the SPJC commenced August 10, 1999, and its decision was rendered on August 11, 1999. At the trial, Hennigan offered evidence related to the action of the Administrative Commission to dissolve the pastoral relationship, which he characterized as an "amendment" to his Complaint. However, he assured the SPJC that the evidence did not in any way "change the shape or form of the complaint," and, although the SPJC offered the Complainant an opportunity to amend his Complaint, he declined to do so. The Presbytery objected to the introduction of evidence related to the action of the Administrative Commission on the grounds that it related to matters not covered by the Complaint. The SPJC declined to sustain all but one of the thirteen alleged irregularities. The SPJC found:

1. The Presbytery of Charlotte and its Administrative Commission erred in failing to give Mr. Hennigan due process, culminating in his removal as pastor at Woodland Church. We further admonish the Presbytery for not being more diligent in guaranteeing due process.
2. In light of oral testimony and documentary evidence, we are convinced that the Woodland Church was affected with enough disorder and difficulties therein to justify the dissolution of the pastoral relationship. However, we are convinced that even if due process been (*sic*) followed, the Presbytery's decision to appoint an Administrative Commission with the authority to dissolve the pastoral relationship and the Administrative Commission's decision to dissolve the pastoral relationship would not have been affected or changed.

The SPJC, therefore, ordered that the decision to dissolve the pastoral relationship stand, and that the Presbytery provide Hennigan the equivalent of five months' additional compensation, stating that "(w)e find that one months (*sic*) compensation is inadequate and unjustified whenever the pastoral relationship is dissolved without the concurrence of the pastor, and that six months' compensation is a generally accepted minimum."

### **SPECIFICATIONS OF ERROR**

Appellant presbytery stated two specifications of error in its notice of appeal dated September 8, 1999.

I. The Synod PJC received into evidence...incidents which took place nearly three (3) months after the incident about which the Complaint is made and nearly one (1) month after the revised Complaint of April 30, 1998. ... Therefore, the Synod PJC did not have jurisdiction over these matters and committed an irregularity in considering this evidence."

The specification of error is sustained.

A remedial action is initiated by the filing of a complaint (D-6.0101), which must include "the particular irregularity including the date, place, and circumstances thereof ..." (D-6.0301b). A limited ability is provided to amend the complaint at trial, pursuant to D-7.0401d, which provides: "The complainant shall be permitted to amend the complaint at the time of the trial, provided that the amendment does not change the substance of the complaint or prejudice the respondent." In addition to the complaint, the issues of a case may be refined (but not expanded beyond the scope of the Complaint) by such means as a trial brief (D-6.0306), determination of preliminary questions (D-6.0308), and a pretrial conference (D-6.0309). These procedures are designed to streamline the case and give each party fair notice of the issues to be tried and evidence to be presented at trial. In this case, there is no indication that any of these procedures were pursued and, in any event, the Complaint was not amended. Therefore, the SPJC could not

consider issues not set forth in the Complaint.

In this case, procedural defaults by both sides obstructed the goals of fair notice and streamlined process. For example, Hennigan failed to amend his complaint to challenge the actions of the Administrative Commission, the Presbytery failed to file a timely answer and Hennigan failed to move for dismissal based on the Presbytery's failure to answer. This Commission urges governing bodies and their commissions, in respect for the purposes of justice (D-1.0000), to extend full procedural safeguards and due process to all parties to judicial actions (*Rice v. Presbytery of Philadelphia, Minutes, 1996, 171*). For example, in this case, the SPJC could have used pretrial procedures to help the parties refine the issues and properly present them for adjudication.

II. \_\_\_\_\_The Synod PJC...stepped beyond its authority in awarding monetary damages to the \_\_\_\_\_Complainant b

\_\_\_\_\_This specification is sustained in part and not sustained in part.

Presbytery correctly argues that permanent judicial commissions have no power to make monetary awards. "As this Commission has consistently held, the *Book of Order* makes no provision for awarding monetary damages because all church power...is only ministerial and declarative." (G-1.0307) (*Veldhuizen v. Presbytery of San Francisco, Minutes, 1996, 71*).

Furthermore, the SPJC cannot substitute its judgment for that of the Administrative Commission without a finding, based on substantial evidence, that the Administrative Commission's decision was improper.

In this case, however, the Presbytery failed to seek a stay of enforcement of the SPJC's Order; instead it deposited the additional compensation into an escrow account. Absent such a stay, the Presbytery was obligated to honor the SPJC's order. (D-8.0103) The Presbytery's failure either to obtain such a stay or honor the Order precludes its challenge to the SPJC's

action in granting additional compensation. Therefore, the appeal on this specification is not properly before this Commission.

**ORDER**

IT IS THEREFORE ORDERED that the portion of the Synod's decision regarding additional severance pay shall stand, but that the remaining portions of the decision are vacated. The Presbytery is ordered to pay the additional compensation and all interest thereon in the escrow account to Hennigan.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Mid-Atlantic 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 Charlotte 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 and proof of payment to Hennigan be sent to the Stated Clerk of the General Assembly.

Dated the 7th day of July, 2000.