

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

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Jeffrey K. Raines,)	
Complainant/Appellant,)	
)	
v.)	DECISION AND ORDER
)	
Session of the Miami Shores Presbyterian)	
Church,)	Remedial Case 217-6
Respondent/Appellee.)	
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Headnotes

1. Appeal Only from Final Decision (D-8.0101): Process at the beginning of a remedial case requires the determination of preliminary questions specified in D-6.0305. Answering any of these questions in the negative requires dismissal of the case under D-6.0306c. Dismissal of a case by a permanent judicial commission is a final decision, which renders the case ripe for appeal. An appeal is not in order when all criteria listed in D-6.0305 are answered in the affirmative. D-8.0101 permits appeal only when a final decision has been rendered.
2. Renunciation of Jurisdiction (G-6.0501): Renunciation of jurisdiction (G-6.0501) requires a written statement, delivered to the clerk of the governing body that states in clear and certain terms the act of renunciation of jurisdiction.
3. Resignation of Elder from Membership (G-10.0302b(3)): The request for termination of membership of an elder or a deacon is governed by G-10.0302b(3).
4. Procedure on Challenge to Preliminary Questions (D-8.0302): The permanent judicial commission has discretion under D-8.0302b not to conduct a hearing on a challenge to the findings of the moderator and clerk on preliminary questions. However, when such a challenge is made, D-8.0302a requires that the parties be provided an opportunity to present evidence and argument on the findings in question.

History

On December 18, 2003, the Session (Session) of the Miami Shores Presbyterian Church (MSPC) took action concerning the Miami Country Day School owned by the church. Jeffrey K. Raines (Appellant), a member of MSPC and an elder not currently serving on session, disagreed with this decision. On December 19, 2003, he and his wife sent a letter to the interim pastor asking to be removed from its membership and stating that they wished to receive no further communication from the church, citing a disagreement with the decision concerning the Day School and other actions of the Session and MSPC. On the same day, Appellant talked with the

Stated Clerk of the Presbytery of Tropical Florida and sent her a letter stating that he would be filing a remedial complaint against Session with the Presbytery of Tropical Florida (Presbytery). The Notice of Appeal indicates that Appellant forwarded a detailed complaint to the Stated Clerk on December 20, 2003, and submitted a formal complaint on January 7, 2004.

Appellant petitioned the Presbytery Permanent Judicial Commission (PPJC) for a stay of enforcement to prevent the Session from implementing its decision regarding the Miami Country Day School. On January 14, 2004, the (PPJC) issued the requested stay.

On January 15, 2004, Session acted to accept the Appellant's resignation from membership. The minutes of this meeting label it "Joint Session/Deaconate Meeting Minutes." Session then filed a challenge to Appellant's standing to bring a complaint, stating that he was no longer a member of MSPC. On May 5, 2004, the Moderator and Clerk of the PPJC ruled that Appellant did have standing. Session challenged that ruling.

On May 10, 2004, Appellant, upon advice from his lawyer, sent a letter to Session rescinding his resignation. He cited G-10.0302b(3) as the reason, stating that the Session had not followed its mandate to counsel diligently with him prior to removing him from its membership roll. On May 20, 2004, Session unanimously passed a resolution denying his request for reinstatement as a member. Appellant did not receive notice of that resolution until September 2, 2004.

On May 26, 2004, the PPJC conducted a hearing on the challenge to Appellant's standing. Session argued that Appellant had no standing to file as he was no longer a member of the church. The PPJC disagreed and ruled that he had standing when he filed the complaint; therefore, the case could continue. Session filed an appeal with the Synod of South Atlantic Permanent Judicial Commission (SPJC) concerning the decision on Appellant's standing.

On August 13, 2004, the Moderator and Clerk of the SPJC ruled that the appeal was premature because the PPJC had not conducted a trial, and therefore the SPJC did not have jurisdiction. Session challenged this decision.¹

On September 30, 2004, the full SPJC dismissed the appeal in the complaint, ruling that Appellant had renounced jurisdiction with his letter of resignation of December 19, 2003, and he therefore had no standing to file a complaint.

¹ On September 13, 2004, Appellant filed another remedial complaint with the Presbytery of Tropical Florida, citing irregularities of Session concerning Appellant's church membership resignation. This matter is before the PPJC, pending the outcome of this case.

On October 11, 2004, Appellant filed an appeal of the SPJC's decision to dismiss with this Commission, asking that this decision be rendered null and void and that the case be allowed to go forward to a trial on the merits under the jurisdiction of the Presbytery.

Specifications of Error

Specification of Error #1 (error in constitutional interpretation, D-8.0105g)

“The Synod PJC agreed to hear and render a decision in a mid-judicial process appeal.

There is no provision for such an appeal within our system of justice described in the Book of Order.”

This specification of error is sustained.

An appeal from a pre-hearing determination by a permanent judicial commission on the preliminary questions is appropriate when any point listed in D-6.0305 has been answered in the negative, which would require dismissal of the case under D-6.0306c. Because a decision in this regard terminates further proceedings, it is *final* in nature and renders the case “ripe” for appeal. An appeal is not in order when all criteria listed in D-6.0305 are answered in the affirmative. Rather, the merits of the case are to be tried until a *final decision* is rendered. Thereafter, an appeal may be filed on the decision, either on the merits or the preliminary questions. D-8.0101 permits appeal only when a *final decision* has been rendered by a lower governing body.

In support of this specification, Appellant has chronicled the history of the proceedings and has particularly noted that the PPJC conducted a hearing and determined that Appellant had standing. Appellant further notes that the moderator and clerk of the SPJC found that “inasmuch as the case has not been heard and acted upon, an appeal is not appropriately before the Synod Permanent Judicial Commission. In short, since the case has not been tried, it is not ready for an appeal.”

In arguing against this specification, Appellee makes reference to D-8.0101: “An appeal of a remedial case is the transfer to the next higher governing body of a case in which a decision has been rendered in a lower governing body, for the purpose of obtaining a review of the proceedings and decision to correct, modify, set aside, or reverse the decision.” Appellee notes that it appealed the PPJC's decision on the standing issue and points out that, while the *Book of Order* is silent on the issue of a pretrial appeal concerning standing, there is nothing that precludes a ruling pretrial. According to the Appellee, the only requirement is that there has been a “decision” which the higher governing body may review.

In the instant matter, the findings on the preliminary questions by the PPJC do not constitute a final decision since all questions were answered in the affirmative. Therefore, the SPJC erred by entertaining the appeal on the preliminary question of standing rather than affirming the determination of the SPJC moderator and clerk. The matter was improperly before

the SPJC because the case had not been tried, the decision lacked finality, and thus was not ready for appeal.

Specification of Error #2 (error in constitutional interpretation, D-8.0105g)

“In the decision, the Synod PJC [erroneously] stated that Jeffrey K. Raines ‘renounced jurisdiction, and in accordance with G-6.0501 is no longer a member of that congregation.’”

This specification of error is sustained.

This Commission disagrees with the SPJC determination that because Appellant “submitted a letter of resignation, he has renounced jurisdiction.” Appellant’s letter of December 18, 2003, does not meet the requirements of G-6.0501. These requirements include a written statement that specifies that the person “renounces jurisdiction of the church,” as well as delivery of that statement to the clerk of the governing body. Appellant’s letter makes no mention of renouncing jurisdiction of the church. Since renunciation involves divestment of rights and privileges within the church, as well as the giving up of membership and office, the writing must expressly state in clear and certain terms the act of renunciation of jurisdiction in order for the renunciation to be effective under G-6.0501. Therefore, this Commission rejects Appellee’s argument that the letter was a renunciation that became effective upon receipt.

At oral argument before this Commission, Appellee argued that G-6.0501 rather than G-10.0302b(3) governs the resignation of an elder from membership in a congregation. The only categories of membership of a particular church are baptized members, active members, inactive members and affiliate members. (G-5.0200) An elder is an active member who has been elected by members of the congregation, ordained by the Session to fulfill a particular function, and differs from other members in function only. (G-6.0102) The request for termination of membership of an active member, including elders and deacons, is governed by G-10.0302b(3).²

Specification of Error #3 (refusing a party reasonable opportunity to be heard or to obtain or present evidence, D-8.0105b)

² This case largely concerns the status of the membership of Appellant. The record currently before us suggests that Session took action to terminate the membership of Appellant and his wife on January 15, 2004 at a meeting attested by minutes which are clearly labeled as “Joint Session/Diaconate Meeting Minutes.” *The Book of Order* requires that a joint meeting of the Session and Board of Deacons be held at least annually. “No binding decisions may be reached in such joint meeting, but the session and the board may act separately on matters committed to their care.” (G-6.0405) The record does not indicate that any action was taken by Session to adjourn for its business, constitute itself as a separate body, or in any way separate itself as a governing body from the Board of Deacons. Rather, the minutes show that the Deacons were involved throughout the duration of the meeting, and no separate votes are displayed. Therefore, a question exists, therefore, as to whether there was a proper action taken in the first place to remove Appellant and his wife from membership in MSPC. This matter is left for determination by the PPJC.

“The Synod PJC refused (i.e., did not allow) Jeffrey K. Raines any opportunity to be heard or to obtain or present evidence. In fact, neither Jeffrey K. Raines, his counsel ([the] Rev. Dr. Albert Bush), or representatives of the Presbytery of Tropical Florida knew when or if the Synod PJC would consider the matter.”

This specification of error is sustained.

Under D-8.0302, when the findings of the moderator and clerk on the preliminary questions are challenged by either party, a permanent judicial commission is required to provide the parties with the opportunity to present evidence and argument on the findings in question. In the present matter, Appellee submitted its challenge to the findings of the SPJC moderator and clerk on August 31, 2004. The SPJC rendered its determination on September 30, 2004. The record supports Appellant’s assertion that the SPJC did not give him the opportunity to present evidence or argument. This was inconsistent with the provisions of D-8.0302 and was particularly significant since Appellee submitted affidavit evidence to the SPJC on September 13, 2004. Appellant had no opportunity to challenge the affidavits, argue their appropriateness, present rebuttal evidence, or cross-examine the affiants.

This commission is aware of the Appellee’s argument that there is no requirement in D-8.0302 for a hearing on a challenge to the findings of the moderator and clerk. Conducting a hearing was within the discretion of the SPJC. Whenever there is a challenge, this provision requires a permanent judicial commission to give the parties an opportunity to present evidence and argument. Since this provision was not fulfilled, this specification is sustained.

Specification of Error #4 (injustice in process or decision D-8.0105f)

“Under D-8.0104, the Book of Order states ‘The permanent judicial commission shall deny a petition if its approval would defeat the ends of justice.’”

This specification of error is not sustained.

D-8.0104 concerns the action of a permanent judicial commission upon receipt of a petition to withdraw an appeal. This is not relevant to this case, and so is not sustained. Moreover, issues involving injustice in the process or decision related to the SPJC proceedings (e.g., affording the Appellant opportunity to present evidence or argument) have been addressed in Specification of Error #3.

Decision and Order

IT IS ORDERED that the decision of the Permanent Judicial Commission of the Synod of South Atlantic is reversed, and this case is remanded to the Presbytery of Tropical Florida Permanent Judicial Commission for trial.

IT IS FURTHER ORDERED that the Clerk of Session of Miami Shores Presbyterian Church, Miami Shores, Florida, the Stated Clerk of the Presbytery of Tropical Florida, and the

Stated Clerk of the Synod of the South Atlantic, each read this Order of Dismissal at their first meeting following receipt of this Order; that the Session, Presbytery, and Synod enter the full Order of Dismissal upon its minutes, and that an excerpt from those minutes showing entry of the Order of Dismissal be sent to the Stated Clerk of the General Assembly. (D-8.0404f, D-13.0404f)

Absences

The following members were not present and took no part in this Decision and Order: John Dudley, Mildred Morales, and Janet Wilson.