

PRESIDENTIAL RULING # 32

For the reasons set out below, the question upon which I am ruling is whether the actions of an Appeal Panel conformed to the Constitution and Regulations in dealing with an appeal which, the person requesting this ruling argued, was “out of time”.

The Ruling

My Ruling is that the action of the Appeal Panel did conform to the constitution and regulations. This is because the time for instituting an appeal runs from the date when the appellant receives the report from the Committee for Discipline - and that report must deal not only with whether the complaint has been made out (Regulation 5.7.4 (o)) but also the action and other determinations of the Committee (Regulation 5.7.4 (r) & (s)).

In this case, the Committee for Discipline decided in March 2014 that the complaint was made out. However, it issued a further report in August 2015, taking into account the matters in Regulation 5.7.4 (r) and (s).

Regulation 5.7.7 entitles an appeal from the decision of the Committee for Discipline, and Regulation 6.2 (a) provides a right to appeal within 21 days from receiving the Original Decision.

In this case, the appellant instituted the appeal within 21 days of receiving the August report and therefore the appeal was “in time”.

Request complies with formalities

- The request for this Ruling comes from the Moderator of the WA Synod on behalf of a member within the bounds of that Synod.
- The request was made in writing, is not hypothetical, and was submitted with a statement of facts as required by Regulation 3.6.4.3 (a) (i)..
- The question upon which I have ruled relates to an interpretation of the Regulations and is a legitimate subject for a Presidential Ruling (Regulation 3.6.4.3 (a) (ii)).
- A number of persons affected were invited to, and did, submit statements (Regulation 3.6.4.3 (a) (iii)).

Limited nature of this Ruling

In addition to the question upon which I have ruled, the request contained a number of other questions upon which I was requested to rule.

I have decided not to rule on some of the other questions because I consider that it is not in the best interests of the Church to give a Ruling. (Regulation 3.6.4.3(b)(i))

I have also decided not to rule on other questions because there is a genuine dispute as to the material facts in respect of which the Ruling is sought (this dispute is clear from the request and the responses). (Regulation 3.6.4.3(b)(iii))

Accordingly, this Ruling relates only to the question identified above.

Reasons for this Ruling

The Committee for Discipline was required to consider the substantial merits of a case before it and decide whether or not the complaint was made out (Regulation 5.7.4 (o)).

The Committee must notify the advocate, the complainant and the respondent whether it has dismissed the complaint or found it made out (Regulation 5.7.4 (q)). In this case, The Committee for Discipline made a “Report of Findings” in March 2014 which contained the finding required by Regulation 5.7.4 (o).

When the Committee finds the complaint made out, it must then determine the action it will take as a result - including the disciplinary action referred to Regulation 5.7.4 (r) and any further determination under Regulation 5.7.4 (s). In this case the Committee for Discipline then issued a further report ("the Final Report") dated 7 August 2014, which included these elements.

Regulation 6.2 (a) provides 21 days for a person to appeal from the time of receiving the Original Decision.

Because the Final Report contained the findings contemplated by each of Regulation 5.7.4 (o) (r) and (s), it must be taken together with the earlier report (Report of Findings). The two reports together made up the complete report, and it is the decision comprised in the complete report which is being appealed. That is, the Final Report incorporates in total the March "Report of Findings" and the entire decision is therefore both documents. Therefore, the time for instituting an appeal runs from the date of the Final Report. This interpretation is underlined by the reference in Regulation 5.7.4 (q) to "the conclusion of the proceedings".

Accordingly, the appeal was made within time.

Regulations

For convenience, I set out below the terms of the relevant Regulations (2012 Edition – the relevant edition for the time when this matter was appealed):

Regulation 5.7.4 (o) (q) (r) (s)

- o) The committee shall consider the substantial merits of the case and shall record such findings of fact and other conclusions as it thinks necessary in the circumstances and decide whether or not the complaint has been made out.
- q) As soon as practicable after the conclusion of the proceedings the Committee shall notify the advocate, the Complainant and the Respondent whether it has dismissed the complaint or found it made out and shall supply each of them with a copy of its findings of facts and other conclusions.
- r) Where the Committee finds the complaint made out it shall, after giving the Respondent and if it thinks fit the advocate an opportunity to be heard on the question of any disciplinary action to be taken, determine:
 - i. That no action be taken;
 - ii. That the Respondent be admonished;
 - iii. That the Respondent be suspended from placement or candidature for such period and on such conditions as it specifies;
 - iv. That the Respondent's placement or candidature be terminated;
 - v. That the Respondent be suspended from the exercise of all or any of the functions of a Minister for such period and on such conditions as it determines;
 - vi. That the recognition of the Respondent as a Minister be withdrawn.
- s) The Committee, whether it has dismissed the complaint or has found it made out, may determine:
 - i. To make written comment on any aspect of the proceedings in a report to the Standing Committee and/or the Presbytery exercising oversight of the Minister;
 - ii. That the Respondent be required to undergo therapeutic or pastoral counselling;
 - iii. That the Respondent be subject to supervision;
 - iv. That the Respondent pay financial restitution;
 - v. That the Respondent be stood aside from the exercise of all or any functions of a Minister on such conditions as it determines.

Regulation 5.7.7

The advocate, complainant or respondent may appeal from the decision of the Committee for Discipline to the Synod which shall refer the matter to the Convenor of the Standing Appeal Panel to be dealt with under Part 6 of these Regulations.

Regulation 6.2 (a)

A person having a right under these Regulations to appeal under this Part 6 shall, within 21 days of receiving the Original Decision, deliver to the Synod Secretary a written request for an appeal to be heard. The Synod Secretary shall promptly deliver the request to the Convenor.