

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

The Presbytery of Western North Carolina, )  
Appellant )  
v. ) Remedial Case 217-7  
The Reverend Parker T. Williamson, )  
Appellee )

APPELLANT'S REPLY BRIEF

The Appellant, the Presbytery of Western North Carolina, through its Committee of Counsel, pursuant to D-8.0304, files this reply brief in response to the brief of Rev. Parker T. Williamson filed February 22, 2005 in support of his Cross-Appeal.

ARGUMENT

1) The Presbytery Does Have Adequate Written Criteria for the Validation of Ministries as Required by G-11.0403.

Appellee argues the SPJC's nine to one vote in favor of sustaining the presbytery's Policy for Review of Validated Ministries was in error because it should have found the presbytery did not have adequate written criteria for the validation of ministries as required by G-11.0403. In response, the presbytery states that the presbytery's policy was duly adopted and the SPJC, which heard extensive testimony regarding the review process found that: "The written policy was well-conceived, and conscientiously implemented."

There does remain the question of the constitutionality of that portion of the presbytery's Policy for Review which adopts as its written criteria for the validation of ministries the standards for ministry set forth in G-11.0403 a.-3. Appellee argues that the presbytery has no written criteria, however, such is not the case. To the contrary, a presbytery committee under the supervision of the COM, after considerable research into the matter, decided the best course of action was to specifically and in writing adopt the five standards set out in G-11.0403 a.-e. as the presbytery's written criteria for the review of validated ministries. There is no constitutional requirement that the written criteria be original work product or specifically tailored to each applicant's requested ministry. The presbytery found no better or more appropriate criteria than those set forth in G-11.0403 a.-e., nor need it have.

2) The Presbytery was Entitled to Take Into Account a Document Named, "A Declaration of Conscience" in its Annual Review of Appellee's Ministry.

Appellee argues the nine to one vote by the SPJC rejecting his claim he was the victim of retaliation because of a document named, "A Declaration of Conscience" constitutes error. The presbytery responds that, inasmuch as Appellee claimed he participated in the creation and dissemination of the document in the course of the vocation he had asked to be validated, it was proper for its contents to be reviewed.

Appellee further argues the views contained in the document encouraging the withholding of per capita giving are constitutionally protected and constitute valid dissent. Thereby, the argument goes, any issue taken with the contents of such document must be retaliatory and otherwise improper. It is an interesting irony that Appellee makes his argument before a judicial commission that is completely funded by the per capita funds he no longer believes is "worthy of support." Be that as it may, the document contains far more information about Appellee's views than merely the value of giving to the PC(USA) unrestricted mission and per-capita budgeted programs. The commissioners and minister members were entitled to consider all of the contents of the document as to whether Appellee was engaged in a valid ministry consonant with the mission of the presbytery as required by G-11.0411.

For instance, the presbytery members were entitled to consider whether it was consonant with the mission of the presbytery to widely publish that there is an "irreconcilable disunion" within the PC(USA) which contains within it "denominational officials" who undermine the Constitution and groups who train their follows to subvert it. (An oblique reference to an organization named, "The Covenant Network" referred to in the document's preceding sentence.) The presbytery was also entitled to consider whether language stating "any compromise with proponents of a false gospel" will only "delay the day of decision that will ultimately come" may tend to promote disunity within the denomination. To conclude, it was highly appropriate for the presbytery to broadly utilize the document Appellee refers to as his theological stance in determining whether his vocation meets the criteria for valid ministry.

3) The Presbytery Was Entitled to Take Into Account Prior Years Conduct in its Annual Review of Appellee's Ministry.

Appellee argues that the SPJC erred in voting ten to zero rejecting his claim that the presbytery should not be permitted to consider events occurring more than one year prior to the application for validation. Appellee argues by analogy that due to the punitive nature of the review process, in any event, the presbytery should not be permitted to consider events occurring longer ago than the three year statute of limitations set out in the disciplinary code.

In response, the presbytery states that its minister members and commissioners do have a duty to consider relevant and timely information. However, the Constitution places no particular constraints on the dates events might have occurred that might be considered relevant to presbytery members in making their decision. Nor should it. Particularly in the case of Appellee who writes for a periodical and routinely makes public statements on behalf of an organization that has no affiliation with the PC(USA), it might be relevant to review Appellee's writings and public statements over a period of years to determine the context for statements made in a contemporary publication or

public statement. In any event, Appellee's application was an administrative review process and not a disciplinary action and, thus, the imposition of a time bar, in essence a statute of limitations, whether of one year, three years, or more, is inappropriate and unnecessary.

4) The Presbytery Did Not Fail to Conduct a Thorough Review of Appellee's Application for Validation in 2004.

Appellee argues that the SPJC erred in voting nine to zero (one abstention) against his assertion that the presbytery failed to review all relevant documents during its review process and, therefore, did not thoroughly review his application as required by G-11.0411. The presbytery's first response is to state it is impossible for Appellee to know what documents the commissioners and minister members may have reviewed prior to their vote to no longer validate his vocation as a ministry consonant with the mission of the presbytery. Many of the membership know the Appellee personally and have observed his work for years. Further, Appellee's various opinions are disseminated widely on his employer's web site and are available in that forum for all to read. They also appear in a publication that is distributed free in the regular the mail [sic] to more than 500,000 readers, according to numbers cited by the publication.

Second, the issue of which documents were or weren't reviewed in 2004 is moot. The SPJC for other reasons overturned the presbytery's decision of January, 2004 not to renew Appellee's request for validation and, accordingly, Appellee has been restored to his previous status as an active member in good standing until another annual review can be conducted. The presbytery recognizes its duty to conduct a thorough review in any future applications for validation Appellee may make.

5) The Presbytery Did Not Act On Incompetent "Evidence" in its Review of Appellee's Application for Validation in 2004.

Appellee argues that the review process for validation of ministries must be based upon a "competent evidentiary basis, not on mere opinion or prejudice." Such "evidence" requires, according to Appellee, "documentation and testimony." The presbytery responds that, through his consistent use of juridical language, Appellee seeks to impose upon administrative committees and presbytery meetings themselves the formality of courts of law, complete with the requirement of a thorough knowledge of the formal rules of evidence. Not meeting such formalities, Appellee argues, constitutes a violation of the Constitution. However, such is not the requirement of our Constitution. If it were, no committee could function without a lawyer present. No presbytery action could be sustained unless commissioners and minister members had the legal training required to know whether the opinions they offered from the floor were legally sustainable as competent, relevant, and material evidence.

The standard more appropriate to our situation was set out by this Commission in *Gaba v Presbytery of Eastern Virginia, Remedial Case 215-4*, which considered what the standard should be in a situation involving a pastor whose relationship with a church was sought to be dissolved. This Commission cited with favor *Lewis v. Presbytery of New York City (1995, 133,11.066)* which held, "The presbytery... in making such a decision is obligated to treat all parties fairly and provide them with an opportunity to present their positions. The test is fundamental fairness – the opportunity to be heard and a consideration of their respective positions without prejudice."

The SPJC in our case found that the presbytery's review of Appellee's application for 2004 failed the *Gaba* test of fundamental fairness in several respects and no appeal was taken from that decision. Should Appellee seek revalidation, every effort will be made to honor the SPJC's decision in that regard. The presbytery recognizes its duty as a governing body, but not as a court of law.

6) The SPJC Did Not Have the Judicial Authority to Order the Formulation of a Presbytery-Wide Plan of Reconciliation.

The presbytery's reasoning as to why the SPJC's order of a plan reconciliation was error is set out in detail in Appellant's Brief filed January 25, 2005, so presbytery will confine itself here to a direct response to Appellee's claim the SPJC's order is within the SPJC's judicial discretion. In support of his argument, Appellee cites general references taken from the Book of Order, the various Confessions, and from the Bible, describing the importance of reconciliation. The presbytery would never minimize the importance of reconciliation in the life of faith. The pertinent question, however, is the extent to which a permanent judicial commission has the constitutional authority to intervene in an administrative presbytery process in such a way that the relationship between the parties become [sic] significantly altered.

In our case, before such intervention by the SPJC, the relationship was of someone seeking consent from the body charged with governing him to continue as a member of that body while in service to an organization outside the governing body's jurisdiction. If the SPJC's intervention is permitted, Appellee will become a much stronger force in dealing with the body that was established to govern him. In truth, he will become a co-equal with the presbytery, with new powers and rights conferred upon him by the SPJC.

This Commission several months ago, when considering the authority of a presbytery to control the roll of its candidates for ministry, said in *Hope, et. al v Presbytery of San Francisco* that "[t]he responsibility of making a judgment about the wisdom of a person remaining on the roll of candidates belongs to the candidate's presbytery," citing *Bedford-Central Presbyterian Church v. Presbytery of New York City, Minutes, 1987, p. 119*. This Commission went on to cite with favor the standard found in *Rankin v. National Capital Union Presbytery, UPC Minutes, 1981, p. 113*: "The presbytery, therefore, must be vested with sufficient authority to carry out these many constitutional obligations. This determination is a judgment for which higher judicatories should substitute their judgment only for the most extraordinary reasons."

Laudable though the goal may be, it is difficult to conceive of a bolder attempt by a higher judicatory to substitute its judgment for that of a presbytery in dealing with one of its minister members than to thrust upon it an order that it negotiate a presbytery-wide plan with that member. This constitutes "judicial legislating" and is a clear example of a judicial body crossing over into the powers conferred only to governing bodies. What is telling is that Appellee is unable to refer to a single PJC decision upholding a commission's constitutional authority to order a reconciliation of a non-consenting party. Such power was never conferred to a judicial commission by the Constitution and none should be granted it in this case.

Conclusion

For the reasons cited above in its reply brief, Appellant, the Presbytery of Western North Carolina, respectfully requests that Appellee's Cross-Appeal be dismissed in its entirety.

Respectfully submitted,

MR. ROBERT RIDDLE,  
REV. EUGENE WITHERSPOON &  
REV. MARK CLARK,  
COMMITTEE OF COUNSEL,  
PRESBYTERY OF WESTERN  
NORTH CAROLINA, APPELLANT

Date: March 10, 2005

by: (signature)  
Rev. Mark P. Clark  
For the Committee

CERTIFICATE OF SERVICE

I certify that a copy of Appellant's Reply Brief has been furnished to the Rev. Parker T. Williamson, Appellee herein, and his counsel, the Hon. Robert L. Howard and the Hon. Peggy M. Hedden by Federal Express on the 10<sup>th</sup> day of march, 2005.

Date: March 10, 2005

by: (signature)  
Rev. Mark P. Clark  
For the Committee