

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

Mary Holder Naegeli, J. Mark Stryker, and)
Margaret H. Gelini,)
Appellants (Complainants),)
v.)
Presbytery of San Francisco,)
Appellee (Respondent).)

DECISION AND ORDER

Remedial Case 219-11

Headnotes

1. **Consideration of departure.** The proper time to determine whether a candidate has expressed a departure from the essentials of the Reformed faith and polity is at the time of a presbytery's examination of the candidate for ordination.
2. **Removal of a candidate.** A presbytery has discretion whether to maintain or remove the name of a candidate from its roll of candidates for minister of the Word and Sacrament.
3. **Consideration of a departure requires full examination.** A governing body responsible for examination and ordination of officers may grant a departure only when the departure is one that it finds in the context of the entire examination is not a "serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church" (G-6.0108a).
4. **Confidential materials.** Judicial commissions should establish appropriate procedures for consideration and handling of confidential information.

Arrival Statement

This remedial case came before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on an appeal filed by Appellants, Mary Holder Naegeli, J. Mark Stryker, and Margaret H. Gelini (collectively, Naegeli), from a Decision of the Permanent Judicial Commission of the Synod of the Pacific (SPJC) on March 20, 2009.

Jurisdictional Statement

This Commission finds that it has jurisdiction, the Appellants have standing to file the Appeal, the Appeal was properly and timely filed, and the Appeal states one or more of the grounds for appeal under D-8.0105.

Appearances

Mary Holder Naegeli appeared in person and by her counsel, Bruce McIntosh. Mr. McIntosh appeared for J. Mark Stryker and Margaret H. Gelini. Doug Nave and Pamela Byers appeared for the Presbytery of San Francisco.

History

This case concerns the Presbytery's actions surrounding a candidate for the office of minister of the Word and Sacrament. The Candidate was first under care of the Presbytery of the Twin Cities Area, and since April 1997 has been under care of the Presbytery of San Francisco Presbytery). In April 2004, the Candidate affirmed to the Committee on Preparation for Ministry (CPM) that she was then in a same-sex relationship and was not in compliance with G-6.0106b. In 2004, the CPM did not complete a Final Assessment or certify that the Candidate was ready for examination for ordination pending a call.

On December 5, 2007, the CPM conducted a Final Assessment of the Candidate. At that time, the Candidate presented a Statement of Departure from G-6.0106b, stating: "By my conscience, faith and theology, I cannot and will not accept the terms of this standard." There was no evidence that the Candidate acknowledged she was living in violation of G-6.0106b. The CPM voted 12-9 to report to the Presbytery that the Candidate was ready for examination for ordination pending a call with a departure.

Before the January stated meeting of Presbytery, a packet containing the Candidate's Statement of Departure and a December 15, 2007, letter from CPM were distributed. The CPM letter identified and explained two motions (a majority report and a minority report) that would be presented at the Presbytery meeting:

1. That the Presbytery accept the recommendation of the CPM and certify the Candidate as ready for examination effective January 15, 2008, with a departure (majority report).
2. That the Presbytery remove the Candidate from the roll of candidates effective January 15, 2008 (minority report).

Both the majority and minority reports were presented at the Presbytery meeting on January 15, 2008. Following presentation and discussion of both motions, Presbytery held a lengthy debate to substitute the minority report for the main motion (majority report). By a vote of 151-168, the Presbytery declined to substitute the minority report for the main motion, and then by a vote of 167-151, the Presbytery approved the original motion (majority report) to

certify the candidate as ready for examination with a departure. The Candidate was not present at the January 15, 2008, Presbytery meeting.

The Presbytery's decision that the Candidate was ready for examination with a departure was stayed by the Stated Clerk of the Synod of the Pacific on February 29, 2008. Naegeli filed a remedial complaint that was tried before the SPJC. On March 20, 2009, the SPJC granted the request to rescind the Presbytery's certification that the Candidate is "ready for examination." The SPJC declined to rule that the Candidate's departure constitutes a failure to adhere to the essentials of the Reformed faith and polity under G-6.0108a because it found the examination of the Candidate had not yet taken place. The SPJC did not order the Presbytery to remove the Candidate from its roll of candidates. On October 30, 2009, this Commission heard oral argument on Naegeli's Appeal of the SPJC decision.

Specifications of Error

The Specifications of Error have been grouped, renumbered, reordered and restated as follows:

Errors Relating to the Actions of the Presbytery

Specification of Error No. 1. The SPJC erred when it mandated that the examination for ordination is the proper time for a presbytery to determine whether a candidate's departure constitutes a failure to adhere to the essentials of the Reformed faith and polity.

This Specification of Error is Not Sustained.

Specification of Error No. 2. The SPJC erred when it failed to instruct the Presbytery to remove the Candidate from the roll of candidates.

This Specification of Error is Not Sustained.

Errors Relating to Constitutional Interpretation of G-6.0106b

Specification of Error No. 3. The SPJC erred when it failed to rule that G-6.0106b is a churchwide mandatory ordination standard that cannot be waived by any ordaining body.

This Specification of Error is Sustained in Part and Not Sustained in Part.

Specification of Error No. 4. The SPJC erred when it declined to instruct the Presbytery to find that the Candidate's departure constitutes a failure to adhere to the essentials of the Reformed faith and polity under G-6.0108 of the Book of Order, thus barring the Candidate from ordination.

This Specification of Error is Not Sustained.

Errors Relating to the Actions by the CPM

Specification of Error No. 5. The SPJC erred when it determined it had no jurisdiction to review the actions taken by a Committee on Preparation for Ministry.

This Specification of Error is Sustained in Part and Not Sustained in Part.

Specification of Error No. 6. The CPM acted improperly (a) in the manner in which it counseled the Candidate regarding mandatory churchwide ordination standards, (b) by failing to remove the Candidate who remained opposed to the sexual ethic provision of G-6.0106b, and (c) in the manner in which it communicated with the Presbytery when presenting the Candidate's Statement of Departure to the Presbytery.

This Specification of Error is Not Sustained.

Errors Relating to the Procedures of the SPJC

Specification of Error No. 7. The SPJC erred in the handling of certain documents referred to as "Envelope B" when it refused to permit Appellants to view these documents, refused to admit them into the record at trial and refused to permit trial testimony regarding these documents and CPM's handling of them.

This Specification of Error is Sustained.

Specification of Error No. 8. The SPJC erred when it refused to admit the minutes and records of the CPM into the record at trial and refused to permit trial testimony regarding the minutes and related actions by the CPM.

This Specification of Error is Sustained.

Specification of Error No. 9. The SPJC erred when it ruled that a reporter was not required at a pretrial conference.

This Specification of Error is Not Sustained.

Decision

Errors Relating to Actions of the Presbytery

Naegeli contends the SPJC erred when it concluded that the proper time to determine whether a candidate has expressed a departure from the essentials of the Reformed faith and polity as expressed in the *Book of Confessions* and the Form of Government (G-6.0108a) is at the time of a presbytery's examination of the candidate. This Commission disagrees with Naegeli and sustains the SPJC on this point. Candidates for ordination to the office of minister of the Word and Sacrament must appear before presbytery to be examined (G-14.0482). The examining presbytery (ordinarily the presbytery placing the call to the candidate (G-14.0481)) shall receive

the report of its CPM (or other appropriate committee) and the report shall include a summary of any waivers or exceptions to ordination requirements granted to the candidate (G-14.0482). Departures from ordination requirements are addressed in G-6.0108 and are not the same as exemptions, exceptions or waivers addressed in G-14.0450 and G-14.0470 through G-14.0474.

Examination and ordination of a candidate for ordained office are responsibilities of the governing body in which the officer will serve, which is a presbytery in the instance of candidates for ministry (G-14.0120; G-14.0482). Individual presbyteries may adopt procedures that lodge certain responsibilities with a CPM or similar committee, but under G-14.0482, the candidate must appear before the presbytery to present a statement of personal faith and commitment to ministry. At this time, the presbytery may conduct such further examination of the candidate as it deems necessary, including a consideration of any departures from standards for ordination (G-14.0482; G-6.0108a).

In this case, a report of the CPM was presented to the Presbytery on January 15, 2007, but the Candidate was not present, did not present a brief statement of faith and was not examined by the Presbytery at that meeting. Although a report about the Candidate was made to the Presbytery, including a statement about the Candidate's intended departure from G-6.0106b, the Candidate has not yet been examined, and the Presbytery has not yet determined whether the Candidate should proceed to ordination and installation, with or without a departure being granted.

The SPJC rescinded the Presbytery's certification that the Candidate was ready for examination because the language in the motion before the Presbytery was that the Candidate was "ready for examination ... with a departure." The readiness of the Candidate for examination was properly before the Presbytery at the January 15, 2008, meeting. G-14.0450 states that a CPM "shall report to the presbytery when it has certified a candidate ready for examination for ordination, pending a call." This Presbytery has elected to take the additional, but unnecessary, step of voting on a candidate's readiness.¹ The *Book of Order* does not require a statement of the candidate's assent to the constitutional ordination questions as a prerequisite to certification of readiness for examination. In this case, it would not be necessary for the Presbytery to reconsider the certification of the Candidate's readiness to be examined at some future date to be determined by the Presbytery. However, all questions regarding the Candidate's stated departure from G-6.0106b are yet to be determined by the Presbytery and must be considered when the Candidate is examined.

This Commission further notes its instruction in *McKittrick v. Session of West End Presbyterian Church of Albany, NY*, Remedial Case No. 215-05, Minutes, pp. 272-274 (2004):

[When] an installation occurs immediately following the examination process, there may be no practical opportunity for a protesting or dissenting party to seek a stay of enforcement of the decision to install. The Presbyterian custom of

¹ Chapter 14 of the *Book of Order* underwent substantial revision in 2006 by the 217th General Assembly, and hence the Presbytery may have believed that it was still required to vote on the Candidate's certification of readiness for examination.

conducting business ‘decently and in order’ should not be converted into a race in which the swift prevail. We undermine our system of mutual accountability when the proceedings, such as ordination or installation, are rushed with the consequence (whether intended or otherwise) that certain remedies become unavailable. Therefore, we encourage governing bodies to permit sufficient time between the examination and installation or ordination of a candidate so that there can be no intimation that any governing body intended to shield its action from scrutiny.

Naegeli alleges that it was an error for the SPJC not to order the Presbytery to remove the Candidate from the roll of candidates. A presbytery has discretion whether to maintain or remove the name of a candidate from its roll of candidates for minister of the Word and Sacrament. *Le Tourneau v. Presbytery of the Twin Cities Area*, Remedial Case 205-04, Minutes p. 163 (1993) (a presbytery has discretion to maintain a candidate on the roll even when the candidate is not ready for examination for ordination). G-14.0463 states in relevant part that “A Presbytery may also, for sufficient reasons, remove an individual’s name from the roll of inquirers or candidates....” The decision to remove a candidate is within the discretion of the presbytery, and there is no requirement in the *Book of Order* that would require a presbytery to terminate its relationship with a candidate and remove the candidate from the roll of candidates.² There are minimum, but not maximum, time requirements for candidacy stated in G-14.0403 and G-14.0473, and it was not an error not to remove the Candidate from the roll of candidates in this case.

Errors Relating to Constitutional Interpretation of G-6.0106b

Specifications of Error Nos. 3 and 4 address ordination standards, and specifically requirements found in G-6.0106b. As discussed above, the Candidate has not yet been examined by the Presbytery, and the Presbytery has not yet considered whether the Candidate has departed from essentials of Reformed faith and polity as set forth in G-6.0108b. The Presbytery must go through the process required in G-6.0108b to determine whether the Candidate has expressed an interpretation of Scripture that represents a serious departure from essentials of Reformed faith and polity, and if it determines that she has, it must then decide whether the departure infringes on the rights and views of others or obstructs the constitutional governance of the church. Freedom of conscience for officers of the church is bounded by standards of the church. A governing body responsible for examination and ordination of officers may grant a departure only when the departure is one that it finds in the context of the entire examination is not a “serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church” (G-6.0108b).

² A presbytery that finds that a candidate is not in compliance with the *Book of Order* should consider whether to remove the candidate from the roll of candidates, but is not required to do so. *Sheldon, et al. v. Presbytery of West Jersey*, Minutes, p. 589 (2000); see also *Stewart v. Mission Presbytery*, Remedial Case 218-04, Minutes, p. ___ (2008).

This Commission declines to instruct the Presbytery as requested by Naegeli because all examinations of candidates for ordained office must be conducted on an individual basis.

It would be an obstruction of constitutional governance to permit examining bodies to ignore or waive a specific standard that has been adopted by the whole church, such as the 'fidelity and chastity' portion of G-6.0106b, or any other similarly specific provision. On the other hand, the broad reference in G-6.0106b to 'any practice which the confessions call sin' puts the responsibility first on the candidate and then on the examining body to determine whether a departure is a failure to adhere to the essentials of Reformed faith and polity and the remainder of G-6.0108a with respect to freedom of conscience. The ordaining body must examine the candidate individually. The examining body is best suited to make decisions about the candidate's fitness for office, and factual determinations by examining bodies are entitled to deference by higher governing bodies in the review process (*Bush v. Presbytery of Pittsburgh*, Remedial Case 218-10, Minutes, p. ___ (2008). See also *Buescher et al. v. Presbytery of Olympia*, Remedial Case 218-09, Minutes, p. ___ (2008) (discussing 1927 Report of the Special Commission of 1925 ("Swearingen Commission Report"), PCUSA Minutes, pp. 78-79 (1927); see also *Wier v. Session, Second Presbyterian Church of Ft. Lauderdale, Florida*, Remedial Case 214-05, Minutes, p. 339 (2002)).

Errors Relating to the Actions by the CPM

"A higher governing body shall have the right of review and control over a lower one and shall have the power to determine matters of controversy upon reference, complaint, or appeal" (G-4.0301f). Governing bodies beyond the session delegate particular aspects of their tasks to councils, commissions and committees (G-9.0901). The actions of any presbytery or its council, committees or commissions are subject to review. In this case, the SPJC found it "lacked jurisdiction" to review the actions of the CPM. However, this misapprehends the nature of Naegeli's Complaint, which alleged errors of the Presbytery acting through its CPM.

All of the errors alleged based on the CPM's purported "misrepresentations" to the Presbytery are not sustained. The CPM's presentation to the Presbytery was not as clear as it could have been. However, the record does not support any finding that the CPM "misrepresented" anything to the Presbytery. Nevertheless, because a presbytery is not required to vote on the CPM's certification that a candidate is ready to be examined, and because no examination of the Candidate has yet occurred, any alleged errors regarding the CPM's communications to the Presbytery about the Candidate's departure are deemed to be harmless error and not a basis on which to reverse the SPJC Decision.

Errors Relating to the Procedures of the SPJC

The SPJC erred when it did not include in the trial record the minutes of the CPM and all of the documents and records of the CPM concerning the Candidate's certification of readiness for examination, including those documents referred to as "Envelope B." "While a CPM has

discretion to use and rely on confidential documents in order to perform its gatekeeping function, 'secrecy' is inimical to the candor and trust inherent in a covenant relationship" (*Hope, et al. v. Presbytery of San Francisco*, Remedial Case No. 216-06, Minutes p. 363 (2004); see also *Bedford-Central Presbyterian Church v. Presbytery of New York City*, Remedial Case 199-1, 11.0752, Minutes, p. 119 (1987)).

The record in a remedial case consists of those items listed in D-7.0601d, and includes items offered into evidence even if they were not accepted as admissible evidence. D-7.0601b. Thus, all of the papers and records of the CPM and the Presbytery with regard to the certification of the Candidate and her readiness for examination should have been included in the SPJC record. The SPJC may have, in its discretion, determined that the contents of "Envelope B" (or other documents or testimony) contained confidential material that required special handling.³ However, even confidential material may still be part of a trial record.

When there is a question about the admission of proposed evidence that is confidential, a session or permanent judicial commission that is to try the case must review the proposed evidence (whether in the form of documents or testimony) in order to determine whether the proposed evidence should be admitted at the trial. This review should be conducted by the entire session or permanent judicial commission in a closed meeting. If the session or permanent judicial commission decides the proposed evidentiary material should be admitted, then that material must be disclosed to the parties, except that the session or permanent judicial commission may decide in its discretion to communicate the substance of any confidential material without providing the text of the document or testimony or the source of the material, so long as it communicates sufficiently detailed information to permit the affected party to respond to or rebut the material. See discussion of CPM's treatment of confidential material in *Hope, et al. v. Presbytery of San Francisco*, Remedial Case No. 216-06, Minutes p. 363 (2004). A session or permanent judicial commission may insist that confidential information not be disclosed to the public in order to protect reasonable privacy or similar interests of third parties.

If the session or permanent judicial commission determines the proposed evidence should not be admitted, the material should be kept in a sealed envelope or similar container. If there is a subsequent appeal of the admissibility of the disputed material, the sealed material is a part of the record to be reviewed by the appellate permanent judicial commission. A permanent judicial commission considering an appeal concerning the admissibility of the disputed material may decide the material should have been admitted and disclose it to the parties in the manner described above, or it may decide that the material should remain sealed. Other appropriate procedures for handling confidential material may be adopted by a session or permanent judicial commission to fit particular circumstances.

The minutes of the CPM should have been admitted into the record and made a part of it. "The authenticated written records of a governing body or permanent judicial commission shall be admissible in evidence in any proceeding." D- 14.0401.

³ The treatment of confidential material as discussed in *Presbytery of Elizabeth v. Finn*, Disciplinary Case No. 213-09, Minutes, p. 584 (2001), is instructive in this remedial case.

Permanent judicial commissions are required to arrange a verbatim recording "of all testimony and oral proceedings." D-7.0601a. A verbatim recording of all trials is clearly required, but it is unclear whether this provision would require a verbatim record to be made of pretrial proceedings when no oral testimony is taken. In highly controversial matters, where subsequent appeals or other proceedings are likely to occur, it would be a wise practice to make a verbatim record of all pretrial proceedings.

In light of the rulings on Specifications of Error Nos. 1 and 2 above, any error in regard to the trial record or the making of a verbatim record of the pretrial proceedings in this case are deemed to be harmless error and therefore this error is not sustained.

Order

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of the Pacific is AFFIRMED in part and NOT AFFIRMED in part.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of San Francisco report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Pacific report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

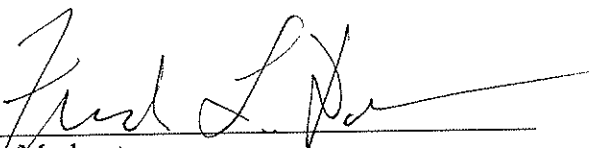
Absences and Non-Participants

Angel Casaus-Urrutia, Yun Jin Kim, and Rebecca New were not present and took no part in this case.

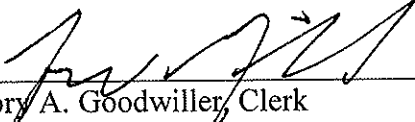
Certificate

We certify that the foregoing is a true and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 219-11, Mary Holder Naegeli, J. Mark Stryker, and Margaret H. Gelini, Appellants (Complainants) v. Presbytery of San Francisco, Appellee (Respondent) made and announced at Indianapolis, IN on November 2, 2009

Dated this 2nd day of November, 2009.



Fred L. Denson, Moderator
Permanent Judicial Commission of the General Assembly

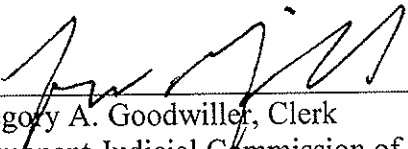


Gregory A. Goodwiller, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Indianapolis, IN on November 2, 2009.

Bruce McIntosh, Counsel for Appellant
Doug Nave, Counsel for Appellee
Stated Clerk, Synod of the Pacific
Stated Clerk, Presbytery San Francisco
General Assembly Permanent Judicial Commission (regular mail)

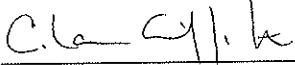
I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on November 2, 2009



Gregory A. Goodwiller, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in Indianapolis, IN on November 2, 2009, in Remedial Case 219-11, Mary Holder Naegeli, J. Mark Stryker, and Margaret H. Gelini, Appellants (Complainants) v. Presbytery of San Francisco, Appellee (Respondent), and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Indianapolis, IN on November 2, 2009.



C. Laurie Griffith
Manager of Judicial Process and Social Witness